

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

[TD 10000]

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:** Final regulations.

**SUMMARY:** This document contains final regulations regarding information reporting and the determination of amount realized and basis for certain digital asset sales and exchanges. The final regulations require brokers to file information returns and furnish payee statements reporting gross proceeds and adjusted basis on dispositions of digital assets effected for customers in certain sale or exchange transactions. These final regulations also require real estate reporting persons to file information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate.

**DATES:**

*Effective date:* These regulations are effective on September 9, 2024.

*Applicability dates:* For dates of applicability, see §§ 1.1001-7(c); 1.1012-1(h)(5); 1.1012-1(j)(6); 1.6045-1(q); 1.6045-4(s); 1.6045B-1(j); 1.6050W-1(j); 31.3406(b)(3)-2(c); 31.3406(g)-1(f); 31.3406(g)-2(h); 301.6721-1(j); 301.6722-1(g).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the final regulations under sections 1001 and 1012, Alexa Dubert or Kyle Walker of the Office of the Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718; concerning the international sections of the final 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 final 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).

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

This document contains amendments to the Regulations on Income Taxes (26

CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301) pursuant to amendments made to the Internal Revenue Code (Code) by section 80603 of the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) relating to information reporting by brokers under section 6045 of the Code. Specifically, the Infrastructure Act clarified the rules regarding how certain digital asset transactions should be reported by brokers, expanded the categories of assets for which basis reporting is required to include all digital assets, and provided a definition for the term digital assets. Additionally, the Infrastructure Act clarified that transfer statement reporting under section 6045A(a) of the Code applies to covered securities that are digital assets and added a new information reporting provision under section 6045A(d) to require brokers to report 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, as defined in section 7701(a)(1) of the Code, that the broker knows or has reason to know is also a broker. Finally, the Infrastructure Act provided that these amendments apply to returns required to be filed, and statements required to be furnished, after December 31, 2023, and provided a rule of construction stating 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).

On August 29, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 59576) proposed regulations (REG-122793-19) (proposed regulations) relating to information reporting under section 6045 by brokers, including real estate reporting persons and certain third party settlement organizations under section 6050W of the Code. Additionally, the proposed regulations included specific rules under section 1001 of the Code for determining the amount realized in a sale, exchange, or other disposition of digital assets and under section 1012 of the Code for calculating the basis of digital assets. The proposed regulations stated that written or electronic comments provided in response to the proposed

regulations must be received by October 30, 2023.

The Treasury Department and the IRS received over 44,000 written comments in response to the proposed regulations. Although <https://www.regulations.gov> indicated that over 125,000 comments were received, this larger number reflects the number of “submissions” that each submitted comment indicated were included in the posted comment, whether or not the comment actually included such separate submissions. All posted comments were considered and are available at <https://www.regulations.gov> or upon request. A public hearing was held on November 13, 2023.

Several comments requested an extension of the time to file comments in response to the proposed regulations. These requests for extension ranged from a few weeks to several years, but most comments requested a 60-day extension. In response to these comments, the due date for the comments was extended until November 13, 2023. The comment period was not extended further for several reasons. First, information reporting rules are necessary to make digital asset investors aware of their taxable transactions and to make those transactions more transparent to the IRS to reduce the tax gap. It is, therefore, a priority that the publication of these regulations is not delayed more than is necessary. Second, although the Infrastructure Act amended section 6045 in November 2021 to broadly apply the information reporting rules for digital asset transactions to a wide variety of brokers, the broker reporting regulations for digital assets were added to the Treasury Priority Guidance Plan in late 2019. Brokers, therefore, have long been on notice that there would be proposed regulations on which to comment. Third, as discussed in Part VI. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS understand that brokers need time after these final regulations are published to develop systems to comply with the final reporting requirements. Without further delaying the applicability date of these much-needed regulations, therefore, extending the comment period would necessarily reduce the time brokers would have to develop these systems. Fourth, a 60-day comment period is not inherently short or inadequate. Executive Order (E.O.) 12866 provides that generally a comment period should be no less than 60 days, and courts have uniformly upheld comment periods of even shorter comment periods. See, e.g., *Connecticut Light & Power Co. v. NRC*,

673 F.2d 525, 534 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 835, 103 S.Ct. 79, 74 L.Ed.2d 76 (1982) (denying petitioner's claim that a 30 day comment period was unreasonable, notwithstanding petitioner's complaint that the rule was a novel proposition); *North American Van Lines v. ICC*, 666 F.2d 1087, 1092 (7th Cir. 1981) (claim that 45 day comment period was insufficient rejected as "without merit"). Indeed, over 44,000 comments were received before the conclusion of the comment period ending on November 13, 2023, which demonstrates that this comment period was sufficient for interested parties to submit comments. Fifth, it has been a longstanding policy of the Treasury Department and the IRS to consider comments submitted after the published due date, provided consideration of those comments does not delay the processing of the final regulation. IRS Policy Statement 1–31, Internal Revenue Manual 1.2.1.15.4(6) (September 3, 1987). In fact, all comments received through the requested 60-day extension period were considered in promulgating these final regulations. Moreover, the Treasury Department and the IRS accepted late comments through noon eastern time on April 5, 2024.

*The Summary of Comments and Explanation of Revisions* of the final regulations summarizes the provisions of the proposed regulations, which are explained in greater detail in the preamble to the proposed regulations. After considering the comments to the proposed regulations, the proposed regulations are adopted as amended by this Treasury decision in response to such comments as described in the *Summary of Comments and Explanation Revisions*.

These final regulations concern Federal tax laws under the Internal Revenue Code only. No interference 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.

## Summary of Comments and Explanation of Revisions

### I. Final § 1.6045–1

#### A. Definition of Digital Assets Subject to Reporting

The proposed regulations required reporting under section 6045 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 or any other property in a payment

transaction processed by a digital asset payment processor (referred to in these final regulations as a processor of digital asset payments or PDAP). The proposed regulations defined a digital asset as a 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 the cryptographically secured distributed ledger. Additionally, the proposed regulations provided that a digital asset does not include cash in digital form.

While some comments expressed support for the definition of digital asset in the proposed regulations, other comments raised concerns that the definition of digital asset goes beyond the statutory definition found in amended section 6045. For example, one comment recommended applying the definition only to assets held for investment and excluding any assets that are used for other functions, which include, in their view, nonfungible tokens (NFTs), stablecoins, tokenized real estate, and tokenized commodities. Another comment recommended narrowing the definition of digital asset to apply only to blockchain "native" digital assets and exempting all NFTs and other tokenized versions of traditional asset classes, such as tokenized securities, and other digital assets that don't function as a medium of exchange, unit of account, or store of value. Another comment recommended that the definition of digital asset distinguish between digital representations of what the comment referred to as "hard assets," such as gold, where the digital asset is merely a proxy for the underlying asset versus digital assets that are not backed by hard assets. Another comment recommended that the definition of digital asset not include tokenized assets, including financial instruments that have been tokenized. The final regulations do not adopt these comments. As discussed more fully in Parts I.A.1. and A.2. of this *Summary of Comments and Explanation of Revisions*, neither the statutory language nor the legislative history to the Infrastructure Act suggest Congress intended such a narrow interpretation of the term.

The Infrastructure Act made changes to the third party information reporting rules under section 6045. Third party information reporting generally contributes to lowering the income 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). It is anticipated that broker information reporting on digital asset transactions will lead to higher levels of taxpayer compliance because brokers will provide the information necessary for taxpayers to prepare their Federal income tax returns and reduce the number of inadvertent errors or intentional omissions or misstatements shown on those returns. Because digital assets can easily be held and transferred, including to offshore destinations, directly by a taxpayer rather than by an intermediary, digital asset transactions raise tax compliance concerns that are specific to digital assets in addition to the more general tax compliance concerns relevant to securities, commodities, and other assets that are reportable under section 6045 and to cash payments reportable under other reporting provisions. The Treasury Department and the IRS have consequently concluded that the definition of digital assets in section 6045(g)(3)(D) provides the appropriate scope for digital assets subject to broker reporting. To the extent sales of digital assets including NFTs, tokenized securities, and other digital assets that may not function as a medium of exchange, unit of account, or store of value, give rise to taxable gains and losses, these assets should be included in the definition of digital assets. *See*, however, Part I.D.3. of this *Summary of Comments and Explanation of Revisions* for a description of an optional reporting rule for many NFTs that would eliminate reporting on those NFTs when certain conditions are met, and Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions* for a description of a special rule providing that assets that are both securities and digital assets are reportable as securities rather than as digital assets when specified conditions are met.

Some comments asserted that the statutory definition of digital assets is or should be limited to assets that are financial instruments. These comments are discussed in Part I.A.2. of this *Summary of Comments and Explanation of Revisions*.

Other comments raised a concern that the definition of digital assets is ambiguous and recommended adding examples that clarify the types of property that are and are not digital assets. For reasons discussed more fully in Parts I.A.1., A.2., and A.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations include several additional examples that illustrate and further clarify certain types of digital assets that

are included in the definition, such as qualifying stablecoins, specified nonfungible tokens (specified NFTs), and other fungible digital assets.

One comment suggested that the term cryptographically secured distributed ledger be defined in the final regulations as a type of data storage and transmission file which uses cryptography to allow for a decentralized system of verifying transactions. This comment also stated that the definition should state that the stored information is an immutable database and includes an embedded system of operation, and that a blockchain is a type of distributed ledger. The final regulations do not adopt this recommendation because clarification of the term is not necessary and because the recommended changes are potentially unduly restrictive to the extent they operate to restrict future broker reporting obligations should advancements be made in how distributed ledgers are cryptographically secured.

One comment suggested that the proposed definition of a digital asset is overly broad because it includes transactions recorded in the broker's books and records (commonly referred to as "off-chain" transactions) and not directly on a distributed ledger. Another comment specifically supported the decision to not limit the definition to only those digital representations for which each transaction is actually recorded or secured on a cryptographically secured distributed ledger. The Treasury Department and the IRS have determined that the definition of digital asset is not overly broad in this regard because eliminating digital assets that are traded in off-chain transactions from the definition would fail to provide information reporting on the significant amount of trading that occurs off-chain on the internal ledgers of custodial digital asset trading platforms. Moreover, since the mechanics of how an asset sale is recorded does not impact whether there has been a taxable disposition of that asset, those mechanics should not impact whether the underlying asset is or is not a digital asset.

A comment suggested that the definition of a digital asset should eliminate the phrase "or any similar technology" because the scope of that phrase is unclear and could negatively impact future technology improvements, such as privacy-preserving technology, cryptography, distributed database systems, distributed network systems, or other evolving technology. Another comment requested that the definition of any

similar technology be limited to instances in which the IRS identifies such future similar technologies in published guidance. The final regulations do not adopt this comment. Using the phrase "any similar technology" is consistent with the Infrastructure Act's use of the same term in its definition of digital assets in section 6045(g)(3)(D). Further, including any similar technology along with cryptographically secured ledgers is necessary to ensure that brokers continue to report on transactions involving these assets without regard to advancements in or changes to the techniques, methods, and technology, on which these assets are based. The Treasury Department and the IRS are not currently aware of any existing technology that would fit within this "or any similar technology" standard, but if brokers or other interested parties identify new technological developments and are uncertain whether they fit within the definition, they can make the Treasury Department and the IRS aware of the new technology and request guidance at that time.

#### 1. Stablecoins

As explained in the preamble to the proposed regulations, the definition of digital assets was intended to apply to all types of digital assets, including so-called stablecoins that are designed to have a stable value relative to another asset or assets. The preamble to the proposed regulations noted that such stablecoins can 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, and are held and transferred in the same manner as other digital assets. In addition to fiat currency, other assets to which so-called stablecoins can be pegged include commodities or other financial instruments (including other digital assets). No comments were received that specifically advocated for the exclusion of a so-called stablecoin that has a fixed exchange rate with (that is, is pegged to) a commodity, another financial instrument, or any other asset other than a specific convertible currency issued by a government or a central bank (including the U.S. dollar) (sometimes referred to in this preamble as fiat currency). The Treasury Department and the IRS have determined that it would be inappropriate to exclude

stablecoins that are pegged to such assets from the definition of digital assets. Accordingly, this preamble uses the term stablecoin to refer only to the subset of so-called stablecoins referred to in the proposed regulations that are pegged to a fiat currency.

Numerous comments received specifically advocated for the exclusion from the definition of digital assets stablecoins that are pegged to a fiat currency. Numerous comments stated that failure to exclude stablecoins from the definition of digital assets would hinder the adoption of these stablecoins in the marketplace, deter their integration into commercial payment systems, and undermine Congressional efforts to establish a regulatory framework for stablecoins that can be used to make payments. Additional comments raised concerns about privacy, drew an analogy to the exemption in the existing regulations for reporting on shares of money market funds, or recommended that reporting on stablecoins be deferred until after the substantive tax treatment of stablecoins is clarified with guidance issued by the Treasury Department and the IRS or until a legislative framework is established by Congress. Several other comments recommended that reporting on stablecoins be required, noting that stablecoins can be volatile in value and regularly vary from a one-to-one parity with the fiat currency they are pegged to, and therefore may give rise to gain or loss on disposition.

After consideration of the comments, the final regulations do not exclude stablecoins from the definition of digital assets. Stablecoins unambiguously fall within the statutory definition of digital assets as they are digital representations of the value of fiat currency that are recorded on cryptographically secured distributed ledgers. Moreover, because stablecoins are integral to the digital asset ecosystem, excluding stablecoins from the definition of digital assets would eliminate a source of information about digital asset transactions that the IRS can use in order to ensure compliance with taxpayers' reporting obligations.

The Treasury Department and the IRS are aware that legislation has been proposed that would regulate the issuance and terms of stablecoins. If legislation is enacted regulating stablecoins, the Treasury Department and the IRS intend to take that legislation into account in considering whether to revise the rules for reporting on stablecoins provided in these final regulations.

Notwithstanding that the final regulations include stablecoins in the

definition of digital assets, the Secretary has broad authority under section 6045 to determine the extent of reporting required by brokers on transactions involving digital assets. In response to the request for comments in the preamble to the proposed regulations on whether stablecoins, or other coins whose value is pegged to a specified asset, should be excluded from reporting under the final regulations, numerous comments largely focused on stablecoins, rather than coins that track a commodity price or the price of another digital asset. Many of these comments requested that sales of stablecoins be exempted from broker reporting in whole or in part because reporting on all transactions involving stablecoins would result in a very large number of reports on transactions involving little to no gain or loss, on the grounds that these reports would be burdensome for brokers to provide, potentially confusing to taxpayers and of minimal utility to the IRS. These comments asserted that most transactions involved little or no gain or loss because, in their view, stablecoins closely track the value of the fiat currency to which they are pegged. Some comments recommended that certain types of stablecoin transactions be reportable, including requiring reporting of dispositions of stablecoins for cash or where there is active trading in the stablecoin that is intended to give rise to gain (or loss).

The Treasury Department and the IRS agree that transaction-by-transaction reporting for stablecoins would result in a high volume of reports. Indeed, according to a report by Chainalysis on the “Geography of Cryptocurrency” analyzing public blockchain transactions (commonly referred to as “on-chain” transactions), stablecoins are the most widely used type of digital asset, making up more than half of all on-chain transactions to or from centralized services between July 2022 and March 2023. Chainalysis, *The 2023 Geography of Cryptocurrency Report*, p. 14 (October 2023). Given the popularity of stablecoins and the number of stablecoin sales that are unlikely to reflect significant gains or losses, the Treasury Department and the IRS have determined that it is appropriate to provide an alternative reporting method for certain stablecoin transactions to alleviate unnecessary and burdensome reporting. Accordingly, the final regulations have added a new optional alternative reporting method for sales of certain stablecoins to allow for aggregate reporting instead of transactional reporting, with a *de minimis* annual

threshold below which no reporting is required. See Part I.D.2. of this *Summary of Comments and Explanation of Revisions*. Consistent with the proposed regulations, brokers that do not use this alternative reporting method must report sales of stablecoins under the same rules as for other digital assets. See Part I.D.2. of this *Summary of Comments and Explanation of Revisions* for the discussion of alternative reporting rules for certain stablecoins.

## 2. Nonfungible Tokens

As with stablecoins, the definition of digital assets in the proposed regulations includes NFTs without regard to the nature of the underlying asset, if any, referenced by the NFT. Although some comments expressed agreement that the definition of digital asset in the statute is broad enough to include all NFTs, other comments raised concerns that the Secretary did not have the authority to include NFTs in broker reporting. That is, the comments argued that while NFTs have value, they do not constitute “representations of value” as required by the statutory definition in section 6045(g)(3)(D). Classifying an NFT as a “representation of value” merely because it has value, these comments asserted, would fail to give effect to the word “representation” in the statute. As support for this view, one comment cited to Senator Portman’s floor colloquy reference to the intended application of the reporting rule to “cryptocurrency.” 167 Cong. Rec. S6095–6 (daily ed. August 9, 2021). Ultimately, these comments recommended excluding sales of NFTs from the definition of digital assets. The final regulations do not adopt these comments. Although NFTs may reference assets with value, this does not prevent them from also “representing value.” Moreover, that interpretation would lead to a result that would contravene the statutory changes to the broker reporting rules by the Infrastructure Act. Excluding all NFTs from the definition of digital assets merely because NFTs may reference assets with value rather than “represent value” would result in the exclusion of NFTs that reference traditional financial assets. These assets have been subject to reporting under section 6045 for nearly 40 years, and there is no reason to exclude them from reporting now based only on the circumstance of their trades through NFTs, rather than through other traditional means.

Numerous comments asserted that the statutory reference to any “representation of value” should limit

the definition of digital assets to only those digital assets that reference financial instruments or otherwise could be used to deliver value (such as a method of payment). Numerous comments expressed that many NFTs, such as, digital art and collectibles, are unique digital assets that are bought and sold for personal enjoyment rather than financial gain and therefore should not be subject to reporting. Similarly, other comments raised the series-qualifier canon of statutory construction, which provides that when a statute contains a list of closely related, parallel, or overlapping terms followed by a modifier, that modifier should be applied to all the terms in the list. Therefore, according to the comments, because “any digital asset” is included in the section 6045(g)(3)(B) list of assets defining specified security and because that list concludes with “any other financial instrument,” these comments argue that the definition of “digital asset” must be limited to assets that are, or are akin to, “financial instruments.” As additional support for this suggestion, one comment cited the rule of last antecedent, which is another canon of statutory construction and provides that a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows. That is, because the “other financial instrument” clause directly follows “any digital asset” in the list, the definition of any digital asset must be limited to only those digital assets that constitute financial instruments.

The final regulations do not adopt these comments. The plain language of the digital asset definition in section 6045(g)(3)(D) reflects only two specific limitations on the definition: “[e]xcept as otherwise provided by the Secretary” and “recorded on a cryptographically secured distributed ledger or similar technology as specified by the Secretary.” The legislative history to the Infrastructure Act does not support the conclusion that Congress intended the “representation of value” phrase to limit the definition of digital assets to only those digital assets that are financial instruments. To the contrary, a report by the Joint Committee on Taxation published in the *Congressional Record* prior to the enactment of the Infrastructure Act cited to and relied on the Notice 2014–21, 2014–16 I.R.B. 938 (April 14, 2014) definition of virtual currency, which first used the phrase “representation of value.” 167 Cong. Rec. S5702, 5703 (daily ed. August 3, 2021) (Joint Committee on Taxation, Technical Explanation of Section 80603

of the Infrastructure Act). That virtual currency definition specifically limited the “representation of value” phrase to those assets that function “as a medium of exchange, unit of account, and/or store of value.” This limitation would not have been necessary had the “representation of value” phrase been limited to assets that function as financial instruments. Moreover, Congress’ use of the term “digital asset” instead of “digital currency” also supports the broader interpretation of the term.

The final regulations also do not adopt the interpretation of the referenced canons of statutory construction presented by the comments because those canons should not be used to limit the definition of digital assets in a statute that includes an explicit and unambiguous definition of that term. Moreover, the referenced canons do not lead to the result asserted by the comments. The series-qualifier canon is not applicable here because not all the items in the list at section 6045(g)(3)(B) are consistent with the “financial instrument” language following the list. For example, section 6045(g)(3)(B)(iii) references any commodity, which under § 1.6045–1(a)(5) of the final regulations effective before the effective date of these final regulations<sup>1</sup> and these final regulations, specifically includes physical assets, such as lead, palm oil, rapeseed, tea, and tin, which are not financial instruments. The term *commodity* also includes any type of personal property that is traded through regulated futures contracts approved by the U.S. Commodity Futures Trading Commission (CFTC), which include live cattle, natural gas, and wheat. See § 1.6045–1(a)(5) of the pre-2024 final regulations. (These final regulations also add to the definition of *commodity*

personal property that is traded through regulated futures contracts certified to the CFTC.) These assets also are not financial instruments. Consequently, the term “any other financial instrument” in section 6045(g)(3)(B)(v) should not be read to limit the meaning of the items in the list that came before it. For similar reasons, the rule of last antecedent also does not limit the meaning of digital assets. Prior to the changes made to section 6045 by the Infrastructure Act, the financial instruments language followed the commodities clause. As such, when enacted the financial instruments phrase could not have been intended to limit the item in the list (commodity) that immediately preceded it. Accordingly, the Treasury Department and the IRS understand the inclusion of other financial instruments as potential specified securities as a grant of authority to expand the list of specified securities, not as a provision limiting the meaning of the other asset types listed as specified securities.

One comment suggested that the final regulations should limit the definition of a digital asset to exclude NFTs not used as payment or investment instruments to align the section 6045 reporting rules with other rules and regulatory frameworks. One comment recommended limiting the definition to only digital assets that can be converted to U.S. dollars, another fiat currency, or an asset with market value. Several comments suggested that including all NFTs in the definition of digital assets would be inconsistent with the intended guidance announced in Notice 2023–27, *Treatment of Certain Nonfungible Tokens as Collectibles*, 2023–15 I.R.B. 634 (April 10, 2023), which indicated that the IRS intends to determine whether an NFT constitutes a collectible under section 408(m) of the Code by using a look-through analysis that looks to the NFT’s associated right or asset. Other comments recommended that the final regulations limit the definition of digital assets to exclude NFTs not used as payment or investment instruments to align the section 6045 reporting rules with the reporting rules for digital assets by foreign governments, such as the Council directive (EU) 2023/2266 of 17 October amending Directive 2011/16/EU on administrative cooperation in the field of taxation, which is popularly known as DAC8. Yet other comments recommended that the final regulations conform to guidelines from the Financial Action Task Force (FATF), an inter-governmental body that sets international standards that aim to prevent money laundering and terrorism

financing. FATF guidelines distinguish between those NFTs that are used “as collectibles” from those used “as payment or investment instruments.” Finally, one comment urged the Treasury Department and the IRS to follow the Financial Accounting Standards Board (FASB) standards, which completely exclude NFTs from their definition of digital assets due to their nonfungible nature. FASB, *Accounting Standards Update, Intangibles—Goodwill and Other—Crypto Assets* (Subtopic 350–60), No. 2023–08, December 2023.

These final regulations do not adopt these comments because they would make the definition of digital assets unduly restrictive. The goal behind information reporting by brokers is to close or significantly reduce the income tax gap from unreported income and to provide information that assists taxpayers. Information reporting generally can achieve that objective when brokers report to the IRS and to their customers the information necessary for customers to report their income. The considerations relevant to a U.S. third party information reporting regime are not the same as the considerations that are relevant to the definition of collectibles under section 408(m), which applies in order to determine assets that have adverse tax consequences if acquired by certain retirement accounts and that are subject to special tax rates. While non-tax policies relating to combating money laundering and terrorism financing or guidelines for generally accepted accounting standards may have some relevance, they are not determinative for Federal tax purposes under the Code. Finally, the Treasury Department and the IRS understand that DAC8 is intended to apply in the same manner as a closely related OECD standard, discussed in the next paragraph. Moreover, NFTs that are actively traded on trading platforms appear to be used for investment purposes in addition to any other purposes. Publicly available information reports that trading in some NFT collections has been in the billions of dollars over time and that 24-hour trading volume in NFTs in 2024 has ranged from \$60–410 million. This trading activity suggests that at least some NFT collections have sufficient volume and liquidity to facilitate their use as investments rather than as traditional collectibles.

Another comment suggested that the final regulations should limit the definition of digital assets to exclude NFTs to align the section 6045 definition of digital assets with the definition of “Relevant Crypto-Asset”

<sup>1</sup> Numerous Treasury decisions have been published under § 1.6045–1. See T.D. 7873, 48 FR 10302 (Mar. 11, 1983); T.D. 7880, 48 FR 12940 (Mar. 28, 1983); T.D. 7932, 48 FR 57485 (Dec. 30, 1983); T.D. 7960, 49 FR 22281 (May 29, 1984); T.D. 8445, 57 FR 53031 (Nov. 6, 1992); T.D. 8452, 57 FR 58983 (Dec. 14, 1992); T.D. 8683, 61 FR 53058 (Oct. 10, 1996); T.D. 8734, 62 FR 53387 (Oct. 14, 1997); T.D. 8772, 63 FR 35517 (Jun. 30, 1998); T.D. 8804, 63 FR 72183 (Dec. 31, 1998); T.D. 8856, 64 FR 73408 (Dec. 30, 1999); T.D. 8881, 65 FR 32152 (May 22, 2000), corrected 66 FR 18187 (April 6, 2001); T.D. 8895, 65 FR 50405 (Aug. 18, 2000); T.D. 9010, 67 FR 48754 (Jul. 26, 2002); T.D. 9241, 71 FR 4002 (Jan. 24, 2006); T.D. 9504, 75 FR 64072 (Oct. 18, 2010); T.D. 9616, 78 FR 23116 (April 18, 2013); T.D. 9658, 79 FR 12726 (Mar. 6, 2014); T.D. 9713, 80 FR 13233 (Mar. 13, 2015); T.D. 9750, 81 FR 8149 (Feb. 18, 2016), corrected 81 FR 24702 (Apr. 27, 2016); T.D. 9774, 81 FR 44508 (Jul. 8, 2016); T.D. 9808, 82 FR 2046 (Jan. 6, 2017), corrected 82 FR 29719 (Jun. 30, 2017); T.D. 9984, 88 FR 87696 (Dec. 19, 2023). The regulations effective before the effective date of these final regulations will collectively be referred to as the pre-2024 final regulations.

under the Crypto-Asset Reporting Framework (CARF), a framework for the automatic exchange of information between countries on crypto-assets developed by the Organisation for Economic Co-operation and Development (OECD) and to which the United States is a party. As discussed in Part I.G.2. of this *Summary of Comments and Explanation of Revisions*, once the United States implements the CARF, U.S. digital asset brokers will need to file information returns under both these final regulations with respect to their U.S. customers, and, under separate final regulations implementing the CARF reporting requirements, with respect to their non-U.S. customers that are resident in jurisdictions implementing the CARF. These final regulations generally attempt to align definitions with those used in the CARF to the extent possible. In this case, however, the final regulations do not adopt this comment because the CARF's definition of Relevant Crypto-Assets is already consistent with a definition of digital assets that includes NFTs. As noted in paragraph 12 of the CARF's Commentary on Section IV: Defined terms, although NFTs are often marketed as collectibles, this function does not prevent an NFT from being able to be used for payment or investment purposes. "NFTs that are traded on a marketplace can be used for payment or investment purposes and are therefore to be considered Relevant Crypto-Assets." See Part I.G.1. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the United States' implementation of the CARF.

Notwithstanding that the final regulations include NFTs in the definition of digital assets under section 6045(g)(3)(D), the Treasury Department and the IRS have determined that, pursuant to discretion under section 6045(a), it is appropriate to provide an alternative reporting method for certain types of NFTs to alleviate burdensome reporting. As discussed in Part I.D.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations have added a new optional alternative reporting method for sales of certain NFTs to allow for aggregate reporting instead of transactional reporting, with a *de minimis* annual threshold below which no reporting is required. The Treasury Department and the IRS anticipate that the *de minimis* annual threshold will eliminate reporting on many low-value NFT transactions that are less likely to be

used for payment or investment purposes.

### 3. Closed Loop Assets

The preamble to the proposed regulations stated that the definition of a digital asset was not intended to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency. The preamble also stated that the definition of digital assets was not intended to cover uses of distributed ledger technology for ordinary commercial purposes, such as tracking inventory or processing orders for purchase and sale transactions, that do not create transferable assets and are therefore not likely to give rise to sales as defined for purposes of the regulations. Several comments requested that the final regulations be revised to provide an exception for closed loop uses in the regulatory text and to add examples illustrating that these types of virtual assets are not included in the definition of a digital asset. Another comment recommended that the final regulations expressly limit the definition of digital assets to only those digital assets that function as currency as described in Notice 2014–21 or that have the capability of being purchased, sold, or exchanged. The Treasury Department and the IRS agree that the text of the final regulations should make clear that transactions involving digital assets in the above-described closed loop environments should not be subject to reporting. The final regulations do not limit the definition of a digital asset as requested to accommodate these comments, however, because it is not clear how the definition could narrowly carve out only these closed loop digital assets without also carving out other assets for which reporting is appropriate. Instead, to address these comments, the final regulations add transactions involving these closed loop digital assets to the list of excepted sales that are not subject to reporting under § 1.6045–1(c)(3)(ii). See Part I.C. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the closed loop transactions added to the list of excepted sales at § 1.6045–1(c)(3)(ii).

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

The preamble to the proposed regulations noted that 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 under sections 1001 and 1012 discussed in Part II. of this *Summary of Comments and Explanation of Revisions*, these final regulations are information reporting regulations, and are therefore not the appropriate vehicle for answering those questions. Accordingly, the treatment of an asset as reportable as a security, commodity, digital asset, or otherwise in these rules applies for purposes of sections 3406, 6045, 6045A, 6045B, 6050W, 6721, and 6722 of the Code, and for certain purposes of sections 1001 and 1012, and should not be construed to apply for any other purpose of the Code, including but not limited to determining whether a digital asset should be classified as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract.

One comment expressed concern that promulgation of final regulations requiring brokers to report on digital asset transactions could be cited by other government agencies to support treating digital assets as securities for purpose of the securities statutes, rules, and regulations. This comment requested that these regulations not take any position on whether digital assets are securities for these other purposes. The Treasury Department and the IRS agree with this comment. 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 final regulations.

### a. Special Coordination Rules for Dual Classification Assets

Because § 1.6045–1(a)(9) of the pre-2024 final regulations (redesignated in the proposed and final regulations as § 1.6045–1(a)(9)(i)) require reporting with respect to sales for cash of securities as defined in § 1.6045–1(a)(3) and certain commodities as defined in § 1.6045–1(a)(5), the proposed regulations included coordination rules to provide certainty to brokers with respect to whether a particular transaction involving securities or certain commodities is reportable as a securities or commodities sale under proposed § 1.6045–1(a)(9)(i) (sale of securities or commodities) or as a digital assets sale under proposed § 1.6045–1(a)(9)(ii) (sale of digital assets) and to avoid duplicate reporting obligations. Specifically, for transactions involving the sale of a digital asset that also constitutes the sale of a commodity or security (other than options that

constitute contracts covered by section 1256(b) of the Code) (dual classification assets), the proposed regulations provided that the broker would report the sale only as a sale of a digital asset and not as a sale of a security or commodity.

Numerous comments raised the concern that requiring brokers that have been historically reporting sales of securities and commodities on Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions* to report these transactions as sales of digital assets on Form 1099-DA, *Digital Asset Proceeds From Broker Transactions* would force these brokers to overhaul their existing reporting systems and potentially cause confusion for taxpayers who are not even aware that their securities and commodities have been tokenized. To address this concern, some comments recommended that the digital asset definition be revised to exclude some or all securities and commodities. Other comments recommended revising the coordination rule so that the reporting rules for sales of securities and commodities apply to digital assets that are also securities or commodities. One comment suggested applying the reporting rules for sales of securities and commodities to any digital asset that represents a fund subject to the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* (1940 Act Fund), or another highly regulated product outside of 1940 Act Funds.

The final regulations do not adopt the comments recommending that sales of dual classification assets generally be reported as sales of securities or commodities. One of the benefits of treating dual classification assets as digital assets is that it avoids forcing brokers to make determinations about whether the dual classification asset is properly classified as a security or a commodity under current law. For example, a rule that treats all dual classification assets as securities and commodities would require brokers to determine whether a digital asset that represents a governance token is properly classified as a security under final § 1.6045-1(a)(3) to determine how to report sales of that digital asset. Moreover, such a rule would affect reporting on digital assets commonly referred to as cryptocurrencies that fit within the definition of a commodity under final § 1.6045-1(a)(5)(i) because the trading of regulated futures contracts in that digital asset has been certified to the CFTC. It would be inappropriate for brokers to report these assets as sales of commodities rather than as sales of digital assets because, as is discussed in Part I.F. of this *Summary of Comments*

and *Explanation of Revisions*, it is important that brokers report basis for these sales.

Other comments offered recommendations designed to limit reporting of dual classification assets under the rules governing sales of securities and commodities. For example, one comment recommended that the reporting rules for sales of securities and commodities apply to any digital asset representing readily ascertainable securities or commodities and not purely blockchain-based digital assets, such as cryptocurrencies or governance tokens, for which treatment as securities or commodities may be uncertain. Another comment recommended that the reporting rules for sales of securities and commodities apply to any digital asset that represents a non-digital asset security or commodity otherwise reportable on Form 1099-B under the reporting rules for sales of securities and commodities or is otherwise backed by collateral that represents such non-digital asset. One comment suggested applying the reporting rules for sales of securities and commodities to any digital asset, the blockchain ledger entry for which solely serves as a record of legal ownership of an underlying security or commodity that is not itself a digital asset. Another comment recommended applying the reporting rules for sales of securities and commodities to dual classification assets that are digitally native to a blockchain that is used simply to record ownership changes. Recognizing that identifying digital assets that represent securities and commodities that are not themselves digital assets could be burdensome, one comment recommended that when information is not available for brokers to make these determinations about dual classification assets, the broker should report the transaction as a sale of a digital asset. Another comment requested that the final regulations include a safe harbor rule providing that no penalties will be imposed on a broker who consistently and accurately reports the sale of dual classification assets under either the reporting rules for sales of securities and commodities (on Form 1099-B) or for sales of digital assets (on Form 1099-DA) based on the broker's reasonable determination that the chosen reporting method is correct because it may be administratively difficult for brokers to examine every dual classification asset to make a determination based on the nature of the asset.

Numerous comments also focused on the circumstances that may give rise to securities and commodities being treated as digital assets. For example,

one comment indicated that the proposed coordination rule would inadvertently capture transactions involving securities and commodities for which brokers use distributed ledger technology, shared ledgers, or similar technology merely to facilitate the processing, clearing, or settlement of orders between well-regulated brokers and other financial institutions. To address this concern, several comments recommended that the reporting rules for sales of securities and commodities apply only to digital assets that are more appropriately categorized within a traditional asset class (for example, as a security with an effective registration statement filed under the Securities Act of 1933) and that are issued, stored, or transferred through a distributed ledger that is a regulated clearing agency system in compliance with all applicable Federal and State securities laws. Another comment recommended addressing this problem by making the information required to be reported for digital asset sales (on Form 1099-DA) not more burdensome than that for securities and commodities (on Form 1099-B). Another comment requested that, if brokers are required to report these dual classification assets on the Form 1099-DA, the final regulations allow brokers to optionally make appropriate basis adjustments for dual classification assets that are securities. This comment also recommended revising the rules in § 1.6045-1(d)(2)(iv)(B) of the pre-2024 final regulations to permit (but not require) brokers to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement and to provide penalty relief under certain circumstances to brokers that take such information into account. Finally, one comment recommended providing written clarity that even though wash sale adjustment rules do not apply to digital assets, they still apply to tokenized securities such as, for example, 1940 Act Funds.

The Treasury Department and the IRS have concluded that it is generally not appropriate to permit optional approaches to reporting dual classification assets because the underlying reporting requirements for securities and commodities are significantly different from those for digital assets due, in large part, to industry differences and the timing of when the reporting rules were first implemented. Although the proposed requirement for brokers to report transaction identification numbers and digital asset addresses has been



removed in these final regulations (*see* Part I.D. of this *Summary of Comments and Explanation of Revisions*), there are several remaining differences in the basis reporting requirements for securities and commodities as compared to digital assets. For example, unlike brokers effecting sales of digital assets, brokers effecting sales of commodities are not required to report the customer's adjusted basis for those commodities because commodities are not included in the definition of covered securities. Additionally, brokers effecting sales of stock, other than stock for which the average basis method is available under § 1.1012-1(e), must generally report the adjusted basis of these shares to the extent they were acquired for cash in an account on or after January 1, 2011, and generally must report the adjusted basis on shares of stock for which the average basis method is available to the extent those shares were acquired for cash in an account on or after January 1, 2012. These brokers of stock that are covered securities under final § 1.6045-1(a)(15)(i)(A) or (B) must also send transfer statements to other brokers under section 6045A when their customers move that stock to another broker.

In contrast, as discussed in Part I.F. of this *Summary of Comments and Explanation of Revisions*, under the final regulations, brokers effecting sales of digital assets that are covered securities under final § 1.6045-1(a)(15)(i)(j) are required to report the adjusted basis of those digital assets only if they were acquired for cash, stored-value cards, different digital assets, or certain other property or services in the customer's account by such brokers providing custodial services for such digital assets on or after January 1, 2026. Additionally, these brokers are not currently required to send transfer statements to other brokers under section 6045A when their customers transfer digital assets that are specified securities to another broker. Indeed, the details of how section 6045A reporting will apply to brokers of digital assets will not be addressed until a future notice of proposed rulemaking. Accordingly, whether the sale of a dual classification asset is treated as a sale of a security or commodity under final § 1.6045-1(a)(9)(i) or as a sale of a digital asset under final § 1.6045-1(a)(9)(ii) has consequences beyond the particular form that the broker must use when filing returns with respect to those sales.

Given these different basis reporting requirements and transfer statement obligations under section 6045A, the Treasury Department and the IRS have

determined that, except in the case of certain exceptions described in the next several paragraphs, it is not appropriate to treat dual classification assets as subject only to the pre-2024 final regulations (that is, required to report the transactions under final § 1.6045-1(d)(2)(i)(A) as sales described in final § 1.6045-1(a)(9)(i) for securities and commodities if those assets can be traded on public blockchains and custodied by customers. Accordingly, final § 1.6045-1(c)(8)(i) provides that brokers must generally treat sales of dual classification assets only as a sale of a digital asset under final § 1.6045-1(a)(9)(ii) and only as a sale of a specified security that is a digital asset under final § 1.6045-1(a)(14)(v) or (vi). As such, the broker must apply the digital asset reporting rules for the information required to be reported for such sale and file the return on Form 1099-DA. Further, as discussed in Part IV. of this *Summary of Comments and Explanation of Revisions*, brokers are not required to send transfer statements under final § 1.6045A-1(a)(1)(vi) with respect to the transfer of these dual classification assets that are reportable as digital assets. Additionally, final § 1.6045-1(d)(2)(iv)(B) does not permit brokers to take into account any other information, including information received from a customer or third party, with respect to covered securities that are digital assets, although brokers may take customer-provided acquisition information into account for purposes of identifying which units are sold, disposed of, or transferred under final § 1.6045-1(d)(2)(ii)(A).

However, to accommodate the comments relating to the application of the various basis adjustment rules, including the wash sale adjustment rules, and other important information applicable to dual classification assets that represent an interest in a traditional security, final § 1.6045-1(c)(8)(i)(D) requires the broker to report certain additional information with respect to any dual classification asset that is a tokenized security. For this purpose, any dual classification asset that provides the holder with an interest in another asset that is a security under final § 1.6045-1(a)(3), other than a security that is also a digital asset, is a tokenized security. This description is intended to apply when the digital asset represents an interest in a separate, traditional, financial asset that is reportable as a security. For example, a digital asset that represents an ownership interest in a traditional share of stock in a 1940 Act Fund or another corporation would be a tokenized

security. A dual classification asset that is an interest in a trust or partnership that holds assets that are securities under final § 1.6045-1(a)(3), other than securities that are also digital assets, also would be a tokenized security.

In addition, an asset the offer and sale of which was registered with the U.S. Securities and Exchange Commission (SEC) (other than an asset treated as a security for securities law purposes solely as an investment contract) is also treated as a tokenized security. This part of the description of tokenized securities is intended to refer to a digital asset that is also a security within the meaning of final § 1.6045-1(a)(3) but does not represent an interest in a separate financial asset. A bond that exists solely in tokenized form would be an example of such a tokenized security, if the bond was issued pursuant to a registration statement approved by the SEC. The reference to whether an asset's offer and sale was registered with the SEC, other than solely as an investment contract, is intended to limit the scope of the term tokenized security to digital forms of traditional financial assets, and not to capture assets native to the digital asset ecosystem. The reference to registration of an asset's offer and sale with the SEC is not intended to imply that such assets are necessarily securities for Federal income tax purposes or for purposes of final § 1.6045-1(a)(3). Additionally, no inference is intended as to how the Federal securities laws apply to sales of digital assets within the meaning of final § 1.6045-1(a)(19), as the interpretation or applicability of those laws are outside the scope of these final regulations.

For the avoidance of doubt, final § 1.6045-1(c)(8)(i)(D) provides that a qualifying stablecoin is not treated as a tokenized security for purposes of these special rules. For sales of tokenized securities, final § 1.6045-1(c)(8)(i)(D) provides that the broker must report additional information required by final § 1.6045-1(d)(2)(i)(B)(6), generally relating to gross proceeds. Final § 1.6045-1(d)(2)(i)(B)(6) requires that the broker report the Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold, any information related to options required under final § 1.6045-1(m), any information related to debt instruments under final § 1.6045-1(n), and any other information required by the form or instructions. In addition, final § 1.6045-1(c)(8)(i)(D) provides that the broker must report additional information required by final § 1.6045-1(d)(2)(i)(D)(4) (relating to reporting for basis and holding period) for sales of



tokenized securities, except that the broker is not required to report such information for a tokenized security that is an interest in another asset that is a security under final § 1.6045–1(a)(3), other than a security that is also a digital asset, unless the tokenized security is also a specified security under final § 1.6045–1(a)(14)(i), (ii), (iii), or (iv). Accordingly, because a trust or partnership interest is not a specified security within the meaning of those paragraphs, a broker is not required to report basis information with respect to a tokenized security that is an interest in a trust or partnership that holds assets that are securities under final § 1.6045–1(a)(3), other than securities that are also digital assets.

Final § 1.6045–1(d)(2)(i)(D)(4) provides specific rules for reporting basis and related information for tokenized securities. It cross-references the wash sale rules in final § 1.6045–1(d)(6)(iii)(A)(2) and (d)(7)(ii)(A)(2), which rules have also been revised to specifically apply to tokenized securities. These wash sale reporting rules apply only to assets treated as stock or securities within the meaning of section 1091 of the Code. They apply regardless of whether the taxpayer buys or sells a tokenized security. For example, if a taxpayer sells a tokenized security (or the underlying traditional stock or security) at a loss and buys the same tokenized security (or the underlying traditional stock or security) within the 30-day period before or after the sale, and the other conditions to the wash sale reporting rules are satisfied, the broker would be required to take the wash sale reporting rules into account in reporting the loss and the basis of the newly acquired asset. Final § 1.6045–1(d)(2)(i)(D)(4) also cross-references the average basis rules in final § 1.6045–1(d)(6)(v), which have been revised to apply to any stock that is also a tokenized security, and the rules related to options and debt instruments in final § 1.6045–1(m) and (n). Accordingly, the information reportable for tokenized securities on Form 1099–DA should be similar to the information reportable for traditional securities on Form 1099–B, except that under final § 1.6045A–1(a)(1)(vi), no transfer statement is required with respect to the transfer of tokenized securities, though penalty relief is provided if the broker voluntarily chooses to provide a transfer statement with respect to tokenized securities. Additionally, until the Treasury Department and the IRS determine which third party information is sufficiently reliable, final § 1.6045–1(d)(2)(iv)(B) provides that

brokers are not permitted to take into account information about covered securities that are digital assets other than what is furnished on a transfer statement or issuer statement, although brokers may take customer-provided acquisition information into account for purposes of identifying which units are sold, disposed of, or transferred under final § 1.6045–1(d)(2)(ii)(A). The Treasury Department and the IRS intend to provide additional guidance on how to report tokenized securities in the instructions to Form 1099–DA.

Final § 1.6045–1(d)(2)(i)(D)(3) requires that, for purposes of determining the basis and holding period information required in final § 1.6045–1(d)(2)(i)(D)(1) and (2), the rules related to options in final § 1.6045–1(m) apply, both with respect to the option and also with respect to any asset delivered in settlement of an option. Accordingly, an option that is itself a digital asset, on an asset that is also a digital asset, is subject to the same reporting rules as other options.

Additionally, in response to the comments described above, the Treasury Department and the IRS have determined that the final regulations should include three exceptions to the rules requiring that dual classification assets be reported as digital assets, for the reasons described herein. Those exceptions apply to dual classification assets cleared or settled on a limited-access regulated network, to dual classification assets that are section 1256 contracts, and to dual classification assets that are shares in money market funds.

First, the Treasury Department and the IRS agree that it is not appropriate to disrupt reporting on dual classification assets that are treated as digital assets solely because distributed ledger technology is used to facilitate the processing, clearing, or settlement of orders between regulated financial entities. Accordingly, in response to the comments submitted, final § 1.6045–1(c)(8)(iii) adds a new exception to the coordination rule for any sale of a dual classification asset that is a digital asset solely because the sale of such asset is cleared or settled on a limited-access regulated network. Under this exception, such a sale will be treated as a sale described in final § 1.6045–1(a)(9)(i) (reportable on the Form 1099–B) and not as a digital asset described in final § 1.6045–1(a)(9)(ii) (reportable on the Form 1099–DA). Additionally, such a sale must be treated as a sale of a specified security under final § 1.6045–1(a)(14)(i), (ii), (iii), or (iv) to the extent applicable, and not as a sale of a specified security that is a digital

asset under final § 1.6045–1(a)(14)(v) or (vi). For all other purposes of this section including transfers, a dual classification asset that is a digital asset solely because it is cleared or settled on a limited-access regulated network is not treated as a digital asset and is not reportable as a digital asset. Accordingly, depending on the type of the asset, the asset may be a covered security under final § 1.6045–1(a)(15)(i)(A) through (G) (if purchased in an account on or after January 1, 2011 through 2016, as applicable) rather than a digital asset covered security under final § 1.6045–1(a)(15)(i)(H), (J) or (K) (if purchased in an account on or after January 1, 2026). Thus, brokers are required under section 6045A to provide transfer statements with respect to transfers of these dual classification assets, and the rules set forth in final § 1.6045–1(d)(2)(iv)(A) and (B), regarding the broker's obligation to take into account the information reported on those statements and certain other customer provided information also apply.

Final § 1.6045–1(c)(8)(iii)(B) sets forth three different types of limited-access regulated network for which this rule applies. The first type of limited-access network is described as a cryptographically secured distributed ledger or network of interoperable distributed ledgers that provide clearance or settlement services and provide access only to a group of persons made up of registered dealers in securities or commodities, banks and similar financial institutions, common trust funds, or futures commission merchants. Final § 1.6045–1(c)(8)(iii)(B)(1)(i). As used in this rule, an interoperable distributed ledger means a group of distributed ledgers that permit digital assets to travel from one permissioned distributed ledger (for example, at one securities broker) to another permissioned distributed ledger (at another securities broker). In such cases, while the clearance or settlement of the dual classification asset is on a network of permissioned distributed ledgers, it is anticipated that the asset will remain in a traditional securities or commodities account from the perspective of an investor in the asset and so can readily be reported as a security or commodity under existing rules.

The second type of limited-access network is also described as a cryptographically secured distributed ledger or network of interoperable distributed ledgers that provide clearance or settlement services, but this type of limited-access network is distinguishable from the first type

because it is provided by an entity that has registered with the SEC as a clearing agency, or has received an exemption order from the SEC as a clearing agency, under section 17A of the Securities Exchange Act of 1934. Additionally, the entity must provide access to the network exclusively to network participants, who are not required to be registered dealers in securities or commodities, banks and similar financial institutions, common trust funds, or futures commission merchants, although it is anticipated that participants typically will be securities brokers and other regulated financial institutions. Final § 1.6045–1(c)(8)(iii)(B)(1)(ii). For example, dual classification assets cleared and settled through a central clearing agency that clears and settles high volumes of equity and debt transactions on a daily basis through automated systems for participants that are financial market participants may be reportable as securities under this exception if the clearance or settlement takes place on a cryptographically secured distributed ledger or network of interoperable distributed ledgers.

Finally, the third type of limited-access regulated network is a cryptographically secured distributed ledger controlled by a single person that is a registered dealer in securities or commodities, a futures commission merchant, a bank or similar financial institution, a real estate investment trust, a common trust fund, or a 1940 Act Fund, that permits the ledger to be used solely by itself and its affiliates (and not to any customers or investors) to clear or settle sales of assets. Final § 1.6045–1(c)(8)(iii)(B)(2). As with the other types of limited-access regulated network, it is anticipated that from an investor perspective the assets will remain in a traditional securities or commodities account.

This exception in final § 1.6045–1(c)(8)(iii) is limited to dual classification assets that are digital assets solely because the sale of such dual classification asset is cleared or settled on a limited-access regulated network. Accordingly, a digital asset commonly referred to as a cryptocurrency that fits within the definition of commodity under final § 1.6045–1(a)(5)(i) because the trading of regulated futures contracts in that digital asset have been approved by or certified to the CFTC will not be eligible for this rule because the cryptocurrency meets the definition of a digital asset for reasons other than because it is cleared or settled on a limited-access regulated network. Given the requirement that the sole reason that the security or

commodity is a digital asset is that transactions involving those assets are cleared or settled on a limited-access regulated network, it is anticipated that brokers will have sufficient information to be able to determine how to report the assets in question under these revised rules. Accordingly, the request for a safe harbor that would allow brokers to avoid penalties if they consistently and accurately report sales of dual classification assets under either final § 1.6045–1(d)(2)(i)(A) (on Form 1099–B) or final § 1.6045–1(d)(2)(i)(B) and (D) as a digital asset (on Form 1099–DA) is not adopted as it is unnecessary.

The second exception to the general dual classification asset coordination rule in final § 1.6045–1(c)(8)(i) treating such assets as digital assets was included in the proposed regulations. Proposed § 1.6045–1(c)(8)(iii) provided that digital asset options or other contracts that are also section 1256 contracts should be reported under the rules set forth in § 1.6045–1(c)(5) of the pre-2024 final regulations for contracts that are section 1256 contracts and not under the proposed rules for digital assets. The final regulations retain this exception and redesignate it as final § 1.6045–1(c)(8)(ii). Accordingly, under this rule, for the disposition of a contract that is a section 1256 contract, reporting is required under § 1.6045–1(c)(5) of the pre-2024 final regulations regardless of whether the contract disposed of is a non-digital asset contract or a digital asset contract or whether the contract was issued with respect to digital asset or non-digital asset underlying property. One comment raised a concern that the proposed rule did not make it clear that information reporting for a section 1256 contract subject to information reporting under section 6045 should be reported on a Form 1099–B regardless of whether the contract is or is not a digital asset. The final regulations respond to this concern by providing additional clarification to the text of § 1.6045–1(c)(5)(i) of the pre-2024 final regulations to make it clear that reporting for all section 1256 contracts should be on Form 1099–B. Accordingly, information reporting for section 1256 contracts in digital asset form will be on Form 1099–B and not on Form 1099–DA.

The third exception to the general dual classification asset coordination rule in final § 1.6045–1(c)(8)(i) treating such assets as digital assets applies to interests in money market funds. Final § 1.6045–1(c)(8)(iv) provides that brokers must treat sales of any dual classification asset that is a share in a regulated investment company that is

permitted to hold itself out to investors as a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2a-7) only as a sale under final § 1.6045–1(a)(9)(i) and not as a digital asset sale under final § 1.6045–1(a)(9)(ii). Accordingly, under § 1.6045–1(c)(3)(vi) of the pre-2024 final regulations, no return of information is required for these shares. This exception is included in the final regulations because the reasons for not requiring reporting of money market shares in traditional form are also applicable for money market shares in digital asset form. Notably, in either case, the disposition of money market shares by non-exempt recipients like individuals generally will give rise to no, or *de minimis*, gain or loss. Moreover, money market funds are a special type of regulated investment company that provide a highly regulated product widely used as a surrogate for cash.

In response to a number of comments, the Treasury Department and the IRS considered whether an exception should apply more broadly to tokenized shares of other 1940 Act Funds. Based on publicly available information, the Treasury Department and the IRS are aware that some 1940 Act Funds permit their shares to be bought and sold in secondary market transactions on a cryptographically secured distributed ledger on a direct peer-to-peer basis—that is, an investor may transfer the shares directly to another investor—and that those shares may be purchased in exchange for other digital assets. The Treasury Department and the IRS have determined that these transactions go beyond the scope of the pre-2024 final regulations, which are applicable to sales of securities for cash, and that such assets therefore should be reported as digital assets. However, as described in the discussion of tokenized securities above, the information reportable by brokers to investors with respect to such shares of 1940 Act Funds, including the availability of average basis reporting, generally should not change, although the information will be reported on Form 1099–DA rather than Form 1099–B.

Finally, the proposed regulations would have included one additional exception to the general coordination rule that would have treated dual classification assets as digital assets. Specifically, proposed § 1.6045–1(c)(8)(ii) provided that a digital asset that also constitutes reportable real estate would be treated as reportable real estate to ensure that real estate reporting persons would only report transactions involving these sales as sales that are subject to reporting under

§ 1.6045-4(a) of the pre-2024 final regulations and not as sales of digital assets. One comment noted that currently, there is no State law that permits legal title to real estate to be held via a digital asset token. Instead, this comment explained that to transfer real estate using digital assets, the digital asset token must hold an interest in a legal entity (typically either a limited liability company (LLC) or a partnership) that in turn owns the real estate. Thus, according to this comment, each token holder owns an ownership interest in an entity, not a claim of ownership to real estate. This comment also noted that, even if a legal entity was not required to be formed to hold title to real estate, these digital asset interests could potentially constitute an unincorporated association of real estate co-owners meeting the definition of a partnership under § 301.7701-3(b)(1)(i). Either way, this comment asserted, reporting on the sale of these interests is not appropriate as a sale of real estate under § 1.6045-4. No comments received suggested that blockchain deeds do exist. The Treasury Department and the IRS are not aware of any current or proposed State law that authorizes legal title to real estate to be held in a digital asset token. Therefore, to address this comment, the final regulations remove this coordination rule for digital assets that constitute reportable real estate. Accordingly, brokers should report on sales of these interests as sales of digital assets under § 1.6045-1(a)(9)(ii) (unless the sales are eligible for the special rule under § 1.6045-1(c)(8)(iii) for securities and commodities cleared or settled on a limited-access regulated network) and not as sales of real estate under § 1.6045-4. The Treasury Department and the IRS will continue to track developments in this area for potential future guidance.

#### b. Other Coordination Rule Issues

The proposed regulations characterized assets as either digital assets or securities based on the nature of the rights held by the customer. Example 27 in proposed § 1.6045-1(b)(27) demonstrated that rule as applied to a fund formed to invest in digital assets, in which the units of the fund were not recorded using cryptographically secured distributed ledger technology. The Example concluded that investments in the units of this fund are not digital assets because transactions involving these fund units are not secured using cryptography and are not digitally recorded on a ledger, such as a blockchain. One comment requested

that the final regulations clarify that if a unit in a trust is not itself traded on a distributed ledger, the unit in the trust should not be treated as a digital asset merely because the assets held by the trust are digital assets. Generally, the holder of an interest in a trust described in § 301.7701-4(c) (a fixed investment trust or FIT) is treated as directly holding its pro rata share of each asset held by the FIT. This comment raised the concern that this normal look through treatment could require a broker to report transactions in FIT units as digital assets on a Form 1099-DA even if the FIT units are not themselves digital assets. The final regulations amend the language of proposed § 1.6045-1(b)(27) (redesignated in these final regulations as Example 20 in § 1.6045-1(b)(20)) to clarify that for purposes of section 6045, if a FIT unit is not itself tradable on a cryptographically secured distributed ledger, the broker is not required to look through to the FIT's assets and should report the sale of a FIT unit under § 1.6045-1(d)(2)(i)(A) on Form 1099-B. The Example also provides that this answer would be the same if the fund is organized as a C corporation or partnership.

The comment also requested expansion of § 1.6045-1(d)(9) of the pre-2024 final regulations, which eliminates the need for widely held fixed investment trusts (WHFITs) to provide duplicate reporting for sales of securities, so that the rule would also apply to WHFIT sales of digital assets. The Treasury Department and the IRS agree that this suggested change is appropriate and have revised the rule in final § 1.6045-1(d)(9) accordingly. As a result, if a WHFIT sells a digital asset, and interests in the WHFIT are held through a securities broker, the WHFIT would report the sale information to the broker pursuant to § 1.671-5 and the broker would in turn send a Form 1099-DA (the appropriate Form 1099) to the IRS and a copy thereof to any trust interest holder that is not an exempt recipient.

Under the proposed regulations, a notional principal contract (NPC) that is executed in digital asset form is a digital asset. See proposed § 1.6045-1(a)(19). One comment noted that there is no broker reporting under the pre-2024 final regulations under section 6045 for an NPC that is not a digital asset. As a result, the comment recommended that an NPC that is a digital asset be excluded from reporting under section 6045. After consideration of this recommendation, the Treasury Department and the IRS concluded that certain payments related to NPCs in

digital asset form should be reportable as digital asset transactions and therefore decline to adopt the recommendation in the final regulations. However, taking into account that payments on NPCs are generally not reportable under section 6045 under the pre-2024 final regulations, the Treasury Department and the IRS intend to continue to study the issues related to NPC payments. Therefore, Notice 2024-57, which is being issued contemporaneously with these final regulations that provides that brokers are not required to report on certain NPCs in digital form, and that the IRS will not impose penalties under section 6721 or section 6722 for failure to file correct information returns or failure to furnish correct payee statements with respect to these transactions until further guidance is issued. See Part I.C.2. of this *Summary of Comments and Explanation of Revisions* for a further discussion of Notice 2024-57.

One comment requested that the final regulations provide examples to address the proper partnership reporting obligations with respect to digital asset interests that constitute an unincorporated association meeting the definition of a partnership. The final regulations do not adopt this comment as it is outside the scope of these regulations. Another comment requested that the final regulations exempt sales of tokenized partnerships investing in real estate from reporting under section 6045 altogether to avoid duplicative reporting because these partnerships are already subject to reporting such sales under the partnership rules on Form 1065, *U.S. Return of Partnership Income*, Schedule K-1, and because accountants and tax advisors that file Schedules K-1 have more accurate information than brokers regarding the proceeds and basis information partners need for preparing their Federal income tax returns. The Treasury Department and the IRS have concluded that partnership interests that invest in real estate should not be treated any differently than partnership interests that invest in other assets. Accordingly, no exception from reporting is made for digital assets representing partnership interests that invest in real estate.

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

##### 1. Custodial Digital Asset Brokers and Non-Custodial Digital Asset Brokers

###### a. Custodial Industry Participants

Prior to the enactment of the Infrastructure Act, section 6045(c)(1)

defined a *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. The pre-2024 final regulations under section 6045 applied 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 either (1) 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, or (2) as a principal in the sale. See § 1.6045–1(a)(1), and (a)(10)(i) and (ii) of the pre-2024 final regulations (redesignated in these final regs as final § 1.6045–1(a)(1) and (a)(10)(i)(A) and (C), respectively). Under these rules, certain digital asset industry participants that take possession of a customer’s digital assets, such as operators of custodial digital asset trading platforms and certain digital asset hosted wallet providers, as well as persons that interact as principals and counterparties to transactions with their customers, such as owners of digital asset kiosks and certain issuers of digital assets who regularly offer to redeem those digital assets, would also generally be considered brokers with respect to digital asset sales.

These industry participants that act as principals and counterparties or as agents to effect digital asset transactions on behalf of their customers (custodial industry participants) are generally financial institutions, such as money services businesses (MSBs), under the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*). Fin-2019–G001, “Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies,” May 9, 2019 (2019 FinCEN Guidance). Anti-money laundering (AML) obligations apply to financial institutions, such as MSBs as defined by the Financial Crimes Enforcement Network (FinCEN), futures commission merchants and introducing brokers obligated to register with the CFTC, and broker-dealers and mutual funds obligated to register with the SEC. “Leaders of CFTC, FinCEN, and SEC Issue Joint Statement on Activities Involving Digital Assets,” October 11, 2019. For example, MSBs are required under regulations issued by the Financial Crimes Enforcement Network (FinCEN) of the Treasury Department 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. See 31 CFR part

1022.210(a). AML programs for MSBs generally include, among other things, policies, procedures, and internal controls reasonably designed to assure compliance with FinCEN’s regulations, as well as a requirement to verify customer-related information. MSBs are also required to register with, and make certain reports to FinCEN, and maintain certain records about transmittals of funds. See 31 CFR part 1022; 2019 FinCEN Guidance. Accordingly, operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks have information about their customers and, in many cases, have already reported digital assets sales by these customers under either section 6045 or 6050W. Consistent with the statutory and regulatory definitions of broker that existed prior to the Infrastructure Act as well as amended section 6045, the final regulations apply to operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks.

Numerous comments agreed that custodial digital asset trading platforms were appropriately treated as brokers under the proposed regulations, and several comments agreed that digital asset hosted wallet providers should also be treated as brokers. One comment requested that the final regulations exclude from the definition of a broker digital asset hosted wallet providers that do not have direct access to the information necessary to know the nature of the transactions processed or the identities of the parties to the transaction. The Treasury Department and the IRS do not agree that a specific exclusion from the definition of broker for digital asset hosted wallet providers is necessary or appropriate. The pre-2024 final regulations defined broker generally to mean 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. The definition of effect under the pre-2024 final regulations treats agents as effecting sales only if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale. Accordingly, a digital asset hosted wallet provider that acts as an agent for its customer would be subject to reporting under section 6045 with respect to its customer’s sale of digital assets only to the extent that the digital asset hosted wallet provider ordinarily would know the gross proceeds from that sale.

Another comment requested that the regulations make clear that acting as a broker with respect to one customer does not mean that the person has a

reporting obligation with respect to all customers. This requested guidance relates to § 1.6045–1(c)(2) of the pre-2024 final regulations, which was not amended. This provision makes it clear that a broker is only required to make a return of information for sales that the broker effects for a customer (provided the broker effects that sale in the ordinary course of a trade or business to effect sales made by others). Accordingly, the final regulations do not adopt this comment because the change it requests is unnecessary. Another comment requested that the regulations be clarified to state that the determination of whether a person is a broker is determined on an annual basis and being a broker in one year does not mean that the person is a broker in another year. This requested guidance relates to a portion of § 1.6045–1(a)(1) from the pre-2024 final regulations that was not proposed to be amended and would apply broadly to all brokers under sections 6045 and 6045A, not just those who effectuate sales of digital assets. Accordingly, the final regulations do not adopt this comment because it is outside the scope of these regulations.

#### b. Non-Custodial Industry Participants

Unlike custodial industry participants, which generally act as principals or as agents to effect digital asset transactions on behalf of their customers, industry participants that do not take possession of a customer’s digital assets (non-custodial industry participants),<sup>2</sup> such as operators of non-custodial digital asset trading platforms (sometimes referred to as decentralized exchanges or DeFi) and unhosted digital asset wallet providers, normally do not act as custodial agents or principals in effecting their customers’ transactions. Instead, these non-custodial industry participants offer other services, such as providing interface services enabling their customers to interact with trading protocols. To resolve any uncertainty over whether these non-custodial digital asset service providers are brokers, section 80603(a) of the Infrastructure Act amended the definition of *broker* under section 6045 to add “any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on

<sup>2</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, including the Bank Secrecy Act and its implementing regulations, which are outside the scope of these regulations.

behalf of another person” (the new digital asset middleman rule). 167 Cong. Rec. S5702, 5703. To implement this new digital asset middleman rule, the proposed regulations provided that, subject to certain exclusions, any person that provides facilitative services that effectuate sales of digital assets by customers is 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. Proposed § 1.6045–1(a)(21)(iii)(A) provided that 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. The proposed regulations also carved out certain services from this definition, such as certain distributed ledger validation services—whether through proof-of-work, proof-of-stake, or any other similar consensus mechanism—without providing other functions or services, as well as certain sales of hardware, and certain licensing of software, where the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger. To ensure that existing brokers of property already subject to broker reporting would be considered to effect sales of digital assets when they accept, or otherwise process, certain digital asset payments and to ensure that digital asset brokers would be considered to effect sales of digital assets received as payment for digital asset transaction costs, proposed § 1.6045–1(a)(21)(iii)(B) provided that a facilitative service also includes the services performed by such brokers in accepting or processing those digital asset payments.

The Treasury Department and the IRS received numerous comments directed at these new digital asset middleman rules. One comment recommended the adoption of an IRS-approved central entity service provider to the digital asset marketplace that could gather customer tax identification information

and receive, aggregate, and reconcile information from various custodial and non-custodial industry participants. Another comment recommended allowing the use of an optional tax attestation token to facilitate tax compliance by non-custodial industry participants. Many other comments recommended that non-custodial industry participants not be treated as brokers. Comments also expressed concerns that the proposed definitions of a facilitative service in proposed § 1.6045–1(a)(21)(iii)(A) and position to know in proposed § 1.6045–1(a)(21)(ii) are overbroad and would, consequently, result in duplicative reporting of the same transactions. Numerous comments said the broad definition of a broker would stifle American innovation and drive the digital asset industry to move offshore. Additionally, many of the comments indicated that certain non-custodial industry participants have not collected customer information under AML programs, and therefore do not have systems in place to comply with the proposed reporting by the applicability date for transactions on or after January 1, 2025.

The Treasury Department and the IRS do not agree that non-custodial industry participants should not be treated as brokers. 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. Section 80603(a) of the Infrastructure Act clarified the definition of broker under section 6045 to include 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.” 167 Cong. Rec. S5702, 5703. However, the Treasury Department and the IRS would benefit from additional consideration of issues involving non-custodial industry participants. The Treasury Department and the IRS have determined that the issuance of these final regulations requiring custodial brokers and brokers acting as principals to report digital asset transactions should not be delayed until additional consideration of issues involving non-custodial industry participants is completed because custodial brokers and brokers acting as principals carry

out a substantial majority of digital asset transactions. Clarifying information reporting for the substantial majority of digital asset transactions, consistent with the applicability dates set forth in the proposed regulations, will benefit both taxpayers, who can use the reported information to prepare their Federal income tax returns, and the IRS, which can focus its enforcement resources on taxpayers who are more likely to have underreported their income from digital asset transactions and custodial brokers and brokers acting as principals who may not be meeting their reporting obligations. Accordingly, the proposed new digital asset middleman rules that apply to non-custodial industry participants are not being finalized with these final regulations. The Treasury Department and the IRS continue to study this area and, after full consideration of all comments received, intend to expeditiously issue separate final regulations describing information reporting rules for non-custodial industry participants. Until this further regulatory guidance is issued, the final regulations reserve on the definition of position to know in final § 1.6045–1(a)(21)(ii) and a portion of the facilitative service definition in final § 1.6045–1(a)(21)(iii)(A). Additionally, because comments were received addressing the breadth of the specific exclusions provided for certain validation services, certain sales of hardware, and certain licensing of software, the final regulations also reserve on these exclusions. The Treasury Department and the IRS recognize that persons that are solely engaged in the business of providing validation services without providing other functions or services, or persons that are solely engaged in the business of selling certain hardware, or licensing certain 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, are not digital asset brokers. Accordingly, notwithstanding reserving on the underlying rule to provide time to study the comments received, the final regulations retain the examples in final § 1.6045–1(b)(2)(ix) and (x), which conclude that persons conducting these actions do not constitute brokers.

The final regulations do not, however, reserve on the portion of the facilitative services definition in final § 1.6045–1(a)(21)(iii)(B), which was included to ensure that sales of digital assets conducted by certain persons other than non-custodial industry participants are treated as effected by a broker under

final § 1.6045–1(a)(10). For example, proposed § 1.6045–1(a)(21)(iii)(B), which provided that a facilitative service includes the acceptance of digital assets by a broker in consideration for property reportable under proposed § 1.6045–1(a)(9)(i) and for broker services, was retained and redesignated as final § 1.6045–1(a)(21)(iii)(B)(1) and (3), respectively. Persons that conduct these actions have complete knowledge about the underlying transaction because they are typically acting as the counterparty. Thus, knowledge is not identified as a specific element of the definition of facilitative services for these persons to be treated as conducting facilitative services. Proposed § 1.6045–1(a)(21)(iii)(B) also provided that a facilitative service includes any service provided by a real estate reporting person with respect to a real estate transaction in which digital assets are paid by the buyer in full or partial consideration for the real estate. This rule has been retained with some modifications to the knowledge requirement which must be met before a real estate reporting person will be treated as conducting facilitative services. See Part I.B.4. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the modified rule, now in final § 1.6045–1(a)(21)(iii)(B)(2), with respect to treating real estate reporting persons as performing facilitative services and, thereby, as digital asset middlemen under the final regulations. Additionally, to ensure that a digital asset kiosk that does not act as an agent or dealer in a digital asset transaction will nonetheless be considered a digital asset middleman capable of effecting sales of digital assets under final § 1.6045–1(a)(10)(i)(D), final § 1.6045–1(a)(21)(iii)(B)(5) provides that the acceptance of digital assets in return for cash, stored-value cards, or different digital assets by a physical electronic terminal or kiosk is a facilitative service. Like persons that accept digital assets in consideration for property reportable under proposed § 1.6045–1(a)(9)(i) and for broker services, knowledge is not identified as a specific element of the definition of facilitative services for these kiosks to be treated as conducting facilitative services because these kiosks are typically acting as the counterparty in the digital asset sale transaction. Finally, as discussed in Part I.B.2. of this *Summary of Comments and Explanation of Revisions*, final § 1.6045–1(a)(21)(iii)(B)(4) treats certain PDAPs that receive digital asset payments from one party (buyer) and

pay those digital assets, cash, or different digital assets to a second party as performing facilitative services and, thereby, as digital asset middlemen under the final regulations.

Taken together, these final regulations apply only to digital asset industry participants that take possession of the digital assets being sold by their customers, such as operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, certain PDAPs, and digital asset kiosks, as well as to certain real estate reporting persons that are already subject to the broker reporting rules. As a result, this preamble does not set forth nor discuss comments received relating to the application of the proposed regulations to non-custodial industry participants (other than persons that operate digital asset kiosks and process payments without taking custody thereof). The Treasury Department and the IRS will continue to consider comments received addressing non-custodial arrangements and plan to expeditiously publish separate final regulations addressing information reporting rules for non-custodial digital asset service providers after issuance of these final regulations.

## 2. Processors of Digital Asset Payments

PDAPs enable persons (buyers) to make payments to second parties (typically merchants) using digital assets. In some cases, the buyer pays digital assets to the PDAP, and the PDAP in turn pays those digital assets, U.S. dollars, or different digital assets to the merchant. In other cases, the PDAP may not take custody of the digital assets, but instead may instruct or otherwise give assistance to the buyer to transfer the digital assets directly to the merchant. The PDAP may also have a relationship with the merchant specifically obligating the PDAP to process payments on behalf of the merchant.

### a. The Proposed Regulations

The proposed regulations used the term digital asset payment processors instead of PDAPs. To avoid confusion associated with the use of the acronym for digital asset payment processors, which may have a different meaning within the digital asset industry, and for ease in reading this preamble, this preamble solely uses the term PDAP, even when referencing the proposed regulations and comments made with respect to the proposed regulations.

The proposed regulations treated PDAPs as brokers that effect sales of digital assets as agents for the buyer. Proposed § 1.6045–1(a)(22)(i)(A) defined

a PDAP as a person who in the ordinary course of its business regularly stands ready to effect digital asset 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 addition, recognizing that some payment recipients might be willing to receive payments facilitated by an intermediary in digital assets rather than cash in a circumstance in which the PDAP temporarily fixes the exchange rate on the digital asset payment that is transferred directly from a customer to that payment recipient, proposed § 1.6045–1(a)(22)(ii) treated 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 PDAP in exchange for different digital assets or cash paid to the second person.

The proposed regulations also included in the definition of a PDAP certain payment settlement entities and certain entities that make payments to payment settlement entities that are potentially subject to reporting under section 6050W. Specifically, proposed § 1.6045–1(a)(22)(i)(B) provided that a PDAP includes a third party settlement organization (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). Additionally, proposed § 1.6045–1(a)(22)(i)(C) provided that the definition of a PDAP 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.

Proposed § 1.6045–1(a)(9)(ii)(D) provided that a sale includes all these types of payments processed by PDAPs. Finally, proposed § 1.6045–1(a)(2)(ii)(A) provided that the customer in a PDAP transaction includes the person who transfers the digital assets or directs the transfer of the digital assets to the PDAP to make payment to the second person.

b. Definition of PDAP, PDAP Customer, and PDAP Sales

Several comments stated that some PDAPs contract only with merchants to process and settle digital asset payments on the behalf of those merchants. That is, despite the buyer benefitting from the merchant's relationship with the PDAP, the buyer is not the customer of the PDAP in these transactions. Consequently, these comments warned, PDAPs are unable to leverage any customer relationship to collect personal identification information and other tax documentation—including Form W-9, *Request for Taxpayer Identification Number and Certification*, or Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*—from buyers. Another comment asserted that treating PDAPs as brokers conflicts with or expands the current FinCEN regulatory AML program requirements for regulated entities to perform due diligence on their customers. Several comments noted that this lack of customer relationship would exacerbate the privacy concerns of the buyers if PDAPs working for the merchant were required to collect tax documentation from buyers. Moreover, these comments raised the concern that collecting this documentation from buyers is even more challenging for one-time small retail purchases because buyers would be unwilling to comply with tax documentation requests at the point of sale. Other comments disagreed with these comments and stated that there is a business relationship between PDAPs and buyers that would make reporting appropriate. Indeed, one comment asserted that PDAPs are technically money transmitters under FinCEN regulations and, as such, are already subject to the AML program obligations, described in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, with respect to the person making payments. See 31 CFR part 1010.100(ff)(5). Other comments recommended that the definition of broker be aligned with the concepts outlined in FATF to, in their view, clarify that a broker must be a legal person who exercises some measure of control or dominion over digital assets on behalf of another person.

In response to these comments, the Treasury Department and the IRS have concluded that the circumstances under which a person processing digital asset payments for others should be required to report information on those payments to the IRS under section 6045 should be narrowed pending additional

consideration of the issues and comments received concerning non-custodial arrangements discussed in Part I.B.1.b. of this *Summary of Comments and Explanation of Revisions*. Under the final regulations, a PDAP is required to report digital asset payments by a buyer only if the processor already may obtain customer identification information from the buyer in order to comply with AML obligations. In such cases, the processor has the requisite relationship with the buyer to collect additional tax documentation to comply with information reporting requirements. Accordingly, final § 1.6045-1(a)(2)(ii)(A) modifies the proposed definition of customer as it applies to PDAPs to limit the circumstances under which a buyer would be considered the customer of a PDAP. Specifically, under this revised definition, the buyer will be treated as a customer of the PDAP only to the extent that the PDAP has an agreement or other arrangement with the buyer for the provision of digital asset payment services and that agreement or other arrangement provides that the PDAP may verify such person's identity or otherwise comply with AML program requirements, such as those under 31 CFR part 1010, applicable to that PDAP or any other AML program requirements. For this purpose, an agreement or arrangement with the PDAP includes any alternative payment services arrangement such as a computer or mobile application program under which, as part of the PDAP's customary onboarding procedures, the buyer is treated as having agreed to the PDAP's general terms and conditions. The PDAP may also be required to report information on the payment to the merchant on whose behalf the PDAP is acting.

Several comments raised the concern that, to the extent there is no contractual relationship between the PDAP and the buyer, the buyer is not the PDAP's customer, and that the proposed regulations, therefore, exceed the Secretary's authority under section 6045(a), which requires persons doing business as a broker to "make a return . . . showing the name and address of each customer [of the broker], with such details regarding gross proceeds." These comments recommended that the final regulations provide that a PDAP that does not have a contractual relationship with a buyer is not a broker with respect to that buyer. Another comment suggested the regulations should not apply to PDAPs at all without a clear congressional mandate. The Treasury Department and the IRS do not agree

that section 6045 requires specific statutory language with respect to each type of broker that already fits within the definition of broker under section 6045(c)(1). Section 6045(c)(2) defines the term customer as "any person for whom the broker has transacted any business." This definition does not require that the specific transaction at issue be conducted by the broker for the customer. Accordingly, if a PDAP transacts some business with the buyer—such as would be the case if the buyer sets up a payment account with the PDAP—then there is statutory authority to require that the PDAP report on the buyer's payments, even though the activities performed by that PDAP were performed pursuant to a separate contractual agreement with a merchant.

One comment expressed confusion with the definition of PDAP in the proposed regulations. Specifically, this comment requested clarification as to why the definition listed a third party settlement organization separately in proposed § 1.6045-1(a)(22)(i)(B) rather than merely as a subset of the description provided in proposed § 1.6045-1(a)(22)(i)(A), in which the person regularly facilitates payments from one party to a second party by receiving digital assets from the first payment and exchanging those digital assets into cash or different digital assets paid the second party. Another comment expressed confusion over why the processor agreement rules in proposed § 1.6045-1(a)(22)(ii) and (iii) include a provision treating the payment of digital assets to a second party pursuant to a processor agreement that fixes the exchange rate (processor agreement arrangement) as a sale effected by the PDAP. This comment also recommended deleting the processor agreement arrangement paragraphs from the definition of a PDAP and moving them to the definition of gross proceeds.

The definition of a PDAP in the proposed regulations included descriptions of ways that a person could facilitate a payment from one party to a second party. Many of these descriptions involved circumstances in which the buyer transfers the digital asset payment to the PDAP, followed by the PDAP transferring payment to a second party. Several of the descriptions involved circumstances in which the PDAP does not take possession of the payment, but instead instructs the buyer to make a direct transfer of the digital asset payment to the second party, or otherwise, pursuant to a processor agreement, temporarily fixes the



exchange rate to be applied to the digital assets received by the second party.

The Treasury Department and the IRS understand that many of the transactions described in the proposed regulations in which the PDAP does not take possession of the payment are undertaken today by non-custodial industry participants. In light of the decision discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions* to further study the application of the broker reporting rules to non-custodial industry participants, the Treasury Department and the IRS have determined that the definition of PDAP and the definition of a sale effected by a PDAP (PDAP sales) in these final regulations should apply only to transactions in which PDAPs take possession of the digital asset payment. Additionally, given the complexity of the multi-part definition of PDAP in the proposed regulations and in response to the public comments, the Treasury Department and the IRS have determined that all types of payment transactions that were included in the various subparagraphs of the definition should be combined into a single simplified definition. This single definition includes the requirement that a person must receive the digital assets in order to be a PDAP and also covers all transactions—and not just those transactions described in proposed § 1.6045–1(a)(22)(i)(B) and (C)—in which the PDAP receives a digital asset and transfers that same digital asset to the second party.

Accordingly, final § 1.6045–1(a)(22) defines a PDAP as a person who in the ordinary course of a trade or business stands ready to effect sales of digital assets by regularly facilitating payments from one party to a second party by receiving digital assets from the first party and paying those digital assets, cash, or different digital assets to the second party. Correspondingly, final § 1.6045–1(a)(9)(ii)(D) revises and simplifies the proposed regulation's definition of a sale processed by a PDAP to include the payment by a party of a digital asset to a PDAP in return for the payment of that digital asset, cash, or a different digital asset to a second party. Accordingly, if a buyer uses a stablecoin or other digital asset to make payment to a PDAP that then transfers the stablecoin, another digital asset, or cash to the merchant, the transaction is a PDAP sale. Additionally, as discussed in Part I.D.4. of this *Summary of Comments and Explanation of Revisions*, the final regulations provide that any PDAP sale that is also a sale under one of the other definitions of

sale under final § 1.6045–1(a)(9)(ii)(A) through (C) (non-PDAP sale) that is subject to reporting due to the broker effecting the sale as a broker other than as a PDAP must be treated as a non-PDAP sale. Thus, for example, an exchange of digital assets that a custodial broker executes between customers will not be treated as a PDAP sale, but instead will be treated as a sale of digital assets in exchange for different digital assets under final § 1.6045–1(a)(9)(ii)(A)(2).

One comment recommended that the regulations be clarified so as not to treat the PDAP as a broker to the extent it does not have sufficient information about the transaction to know it is a sale. Another comment stated that PDAPs do, in fact, maintain detailed records of all transactions for both merchants and buyers. The final regulations adopt this comment by adding services performed by a PDAP to the definition of facilitative service provided the PDAP has actual knowledge or ordinarily would know the nature of the transaction and the gross proceeds therefrom to ensure that payments made using digital assets are treated as sales effected by a broker. Final § 1.6045–1(a)(21)(iii)(B)(4). Accordingly, in a circumstance in which the PDAP processes a payment on behalf of a merchant and that payment comes from a buyer with an account at the PDAP, the PDAP would ordinarily have the information necessary to know that the transaction constitutes a sale and would know the gross proceeds. As such, that PDAP will be treated under the final regulations as effecting the sale transaction under § 1.6045–1(a)(10)(i)(D) for the buyer-customer as a digital asset middleman under § 1.6045–1(a)(21). In contrast, in a circumstance in which the PDAP does not process the payment on behalf of the merchant, the PDAP would ordinarily not have actual knowledge or other information that would allow the processor to ordinarily know the nature of the transaction. Accordingly, assuming nothing else about the transaction provides the PDAP with either actual knowledge or information that would allow the processor to ordinarily know the nature of the transaction, the payment processor would not be treated as providing a facilitative service that effects a sale transaction under these regulations.

One comment stated that PDAPs do not have the infrastructure to collect and store customer identification information or to report transactions involving buyers who do not have accounts with the PDAP. Another comment expressed concern about

asking individuals to provide personal identifying information to PDAPs, which could occur in the middle of a busy store. Another comment requested guidance on how PDAPs should collect sensitive taxpayer information. Several comments expressed concern about the increased risk these rules would create with respect to the personal identifying information collected by PDAPs because that information could be held by multiple brokers. Several other comments stated that extending information reporting to PDAPs would create surveillance concerns because it could allow the IRS to collect data on merchandise or services purchased or provided.

The Treasury Department and the IRS understand that PDAPs that comply with FinCEN and other regulatory requirements are required to collect and in some cases report customer identification information, and have concluded that such PDAPs will likewise be able to implement the systems necessary to, or contract with service providers who can, protect sensitive information of their customers. It is appropriate to have PDAPs collect, store, and report customer identification information for Federal tax purposes because reporting on digital asset payment transactions is important to closing the income tax gap attributable to digital asset transactions. Indeed, reporting is particularly helpful to buyers in these payment transactions because they may not understand that the use of digital assets to make payments is a transaction that may generate a taxable gain or loss. Finally, the final regulations do not require the reporting of any information regarding the specific services or products purchased by buyers in payment transactions. Accordingly, the IRS could not use this information reporting to track or monitor the types of goods and services a taxpayer purchases using digital assets.

#### c. Other PDAP Issues

Comments also raised various other policy and practical objections to including PDAPs in the definition of broker. Specifically, comments suggested that requiring PDAPs to collect tax documentation information for all purchases may halt the development of digital assets as an efficient and secure payment system or may drive customers to not use PDAPs to make their payments, potentially exposing them to more fraud by unscrupulous merchants. Other comments complained that these rules would punish buyers who choose to pay with digital assets and confuse buyers

paying with stablecoins, who expect transactions to be no different than cash transactions. Several comments asserted that the benefits of having PDAPs report on digital asset payments made by buyers was not worth the cost because most tax software programs are able to track and report accurately the gains and losses realized in connection with these payment transactions. These comments asserted that for taxpayers already taking steps to comply with their Federal income tax obligations, an information reporting regime that provides only gross proceeds information with respect to these transactions would not produce particularly useful information. Even for other taxpayers, another comment suggested that reporting by PDAPs provided only limited utility because determining a gain or loss on each purchase would still involve a separate search for cost basis information.

The final regulations do not adopt these comments. Information reporting facilitates the preparation of Federal income tax returns (and reduces the number of inadvertent errors or intentional misstatements shown on those returns) by taxpayers who engage in digital asset transactions. Information reporting is particularly important in the case of payment transactions involving the disposition of digital assets, which many taxpayers do not realize must be reported on their Federal income tax returns. Clear information reporting rules also helps the IRS to identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall income tax gap. Moreover, regarding the impact of these regulations on the development of digital assets as an efficient and secure payment system, the final regulations will assist digital asset owners who are currently forced to closely monitor and maintain records of all their digital asset transactions to correctly report their tax liability at the end of the year because they will receive the necessary information from the processor of the transactions. Eliminating these high entry costs may allow more potential digital asset owners with little experience accounting for dispositions of digital assets in payment transactions to enter the market.

Several comments recommended against having PDAPs report on buyers disposing of digital assets because these PDAPs already report on merchants who receive these payments under section 6050W to the extent the payments are for goods or services. These comments raised concerns that this duplicative reporting for the same transaction

would harm the IRS, create an undue burden for brokers, and cause confusion for buyers making payments. The final regulations do not adopt these comments because the reporting is not duplicative. The reporting under section 6050W reports on payments made to the merchant. That reporting is not provided to the buyers making those payments, and therefore does not address the gross proceeds that the buyer must report on the buyer's Federal income tax returns.

Another comment suggested that the treatment of digital asset payments should be analogous to that of cash payments. That is, since PDAPs are not required to report on buyers making cash payments, they should not be required to report on buyers making payments with digital assets. The final regulations do not adopt this comment because a buyer making a cash payment does not have a taxable transaction while a buyer making a payment with digital assets is engaging in a sale or exchange that requires the buyer to report any gain or loss from the disposition on its Federal income tax return.

Other comments raised the concern that reporting by PDAPs would result in duplicative reporting to the buyer because the buyer's wallet provider or another digital asset trading platform may report these transactions. See Part I.B.5. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the multiple broker rules provided in these final regulations would apply to PDAPs.

Another comment recommended only subjecting PDAPs to broker reporting if they exchange digital assets into fiat currency. The final regulations do not adopt this comment because digital assets are a unique form of property which can be used to make payments. Accordingly, given that digital assets are becoming a more popular form of payment, it is important that taxpayers making payments with digital assets be provided the information they need to report these transactions on their Federal income tax returns.

Notwithstanding that the final regulations require PDAPs to report on PDAP sales, as discussed in Part I.D.2. of this *Summary of Comments and Explanation of Revisions*, the final regulations provide a \$10,000 *de minimis* threshold for qualifying stablecoins below which PDAPs will not have to report PDAP sales using qualifying stablecoins. Additionally, the Treasury Department and the IRS have determined that, pursuant to discretion under section 6045(a), it is appropriate to provide additional reporting relief for

certain low-value PDAP sales using digital assets other than qualifying stablecoins that are less likely to give rise to significant gains or losses. As discussed in Part I.D.4. of this *Summary of Comments and Explanation of Revisions*, the final regulations have added a *de minimis* annual threshold for PDAP sales below which no reporting is required.

### 3. Issuers of Digital Assets

Proposed § 1.6045–1(a)(1) modified the definition of *broker* 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. One comment focused on stablecoin issuers and recommended against treating such issuers as brokers because it is unclear how they would be in a position to know the gain or loss of their customers. Issuers of digital assets that regularly offer to redeem those digital assets will know the nature of the sale and the gross proceeds from the sale when they redeem those digital assets.

Accordingly, it is appropriate to treat these issuers as brokers required to report the gross proceeds of the redemption just as obligors that regularly issue and retire their own debt obligations are treated as brokers and corporations that regularly redeem their own stock also are treated as brokers under § 1.6045–1(a)(1) of the pre-2024 final regulations. Moreover, since these issuers do not provide custodial services for their customers redeeming the issued digital assets, they are not required to report on the customer's adjusted basis under final § 1.6045–1(d)(2)(i)(D). As such whether they are able to know their customer's gain or loss is not relevant to whether they should be treated as brokers under these regulations.

### 4. Real Estate Reporting Persons

The proposed regulations provided 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 generally be required to make an information return with respect to that transaction under proposed § 1.6045–4(a). To ensure that real estate reporting persons report on real estate buyers making payment in such transactions with digital assets, the proposed regulations also included these real estate buyers in the definition of customer and included the services performed with respect to these transactions by real estate reporting persons in the definition of facilitative

services relevant to the definition of a digital asset middleman.

One comment raised the concern that in some real estate transactions, direct (peer to peer) payments of digital assets from buyers to sellers may not be reflected in the contract for sale. In such transactions, the real estate reporting person would not ordinarily know that the buyers used digital assets to make payment. The Treasury Department and the IRS have concluded that it is not appropriate at this time to require real estate reporting persons who do not know or would not ordinarily know that digital assets were used by the real estate buyer to make payment to report on such payments. Accordingly, the definition of facilitative service in final § 1.6045-1(a)(21)(iii)(B)(2) has been revised to limit the services provided by real estate reporting persons that constitute facilitative services to those services for which the real estate reporting person has actual knowledge or ordinarily would know that digital assets were used by the real estate buyer to make payment directly to the real estate seller. For this purpose, a real estate reporting person is considered to have actual knowledge that digital assets were used by the real estate buyer to make payment if the terms of the real estate contract provide for payment using digital assets. Thus, for example, if the contract for sale states that the buyer will make payment using digital assets, either fixed as to number of units or fixed as to the value, the real estate reporting person would be treated as having actual knowledge that digital assets were used to make payment in the transaction notwithstanding that such person might have to query the buyer and seller regarding the name and number of units used to make payment. Additionally, a separate communication to the real estate reporting person, for example, to ensure that the value of the digital asset payment is reflected in any commissions or taxes due at closing, would constitute actual knowledge by the real estate reporting person that digital assets were used by the real estate buyer to make payment directly to the real estate seller.

One comment recommended that to relieve burden on the real estate reporting person, the form on which the real estate seller's gross proceeds are reported (Form 1099-S, *Proceeds From Real Estate Transactions*) be revised with a check box to indicate that digital assets were paid in the transaction and with a new box for the buyer's name, address, and tax identification number (TIN). These revisions would allow the real estate reporting person to file one Form 1099-S instead of one Form 1099-

DA (with respect to the real estate buyer) and one Form 1099-S (with respect to the real estate seller). The final regulations do not make this suggested change because it would be inappropriate to include both parties to the transaction on the same information return. The broker reporting regulations require copies of Form 1099-S to be furnished to the taxpayer, and it would be inappropriate to require disclosure of either party's TIN to the other. For a discussion of how the multiple broker rule would apply to a real estate transaction involving a real estate reporting person and a PDAP, see Part I.B.5. of this *Summary of Comments and Explanation of Revisions*.

Notwithstanding these decisions regarding the appropriateness of reporting under these regulations by real estate reporting persons, as discussed in Part VII. Of this *Summary of Comments and Explanation of Revisions*, the applicability date for reporting has been delayed and backup withholding relief has been provided for real estate reporting persons.

#### 5. Exempt Recipients and the Multiple Broker Rule

##### a. Sales Effected for Exempt Recipients

The proposed regulations left unchanged the exceptions to reporting provided under § 1.6045-1(c)(3)(i) of the pre-2024 final regulations for exempt recipients, such as certain corporations, financial institutions, tax exempt organizations, or governments or political subdivisions thereof. Thus, the proposed regulations did not create a reporting exemption for sales of digital assets effected on behalf of a customer that is a digital asset broker. Several comments recommended that custodial digital asset brokers be added to the list of exempt recipients under the final regulations because the comments asserted that these brokers are subject to rigorous oversight by numerous Federal and State regulators. In response to the request that custodial digital asset brokers be added to the list of exempt recipients, final § 1.6045-1(c)(3)(i)(B)(12) adds digital asset brokers to the list of exempt recipients for sales of digital assets, but limits such application to only U.S. digital asset brokers because brokers that are not U.S. digital asset brokers (non-U.S. digital asset brokers) are not currently subject to reporting on digital assets under these final regulations. See Part I.G. of this *Summary of Comments and Explanation of Revisions* for the definition of a U.S. digital asset broker and a discussion of the Treasury Department's and the IRS's plans to

implement the CARF. Additionally, the list also does not include U.S. digital asset brokers that are registered investment advisers that are not otherwise on the list of exempt recipients (§ 1.6045-1(c)(3)(i)(B)(1) through (11) of the pre-2024 final regulations) because registered investment advisers were not previously included in the list of exempt recipients. For this purpose, a registered investment adviser means a registered investment adviser registered under the Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*, or as a registered investment adviser with a state securities regulator. See Part I.B.5.b. of this *Summary of Comments and Explanation of Revisions* for the documentation that a broker effecting a sale on behalf of a U.S. digital asset broker (other than a registered investment adviser) must obtain pursuant to final § 1.6045-1(c)(3)(i)(C)(3) to treat such customer as an exempt recipient under final § 1.6045-1(c)(3)(i)(B)(12).

##### b. The Multiple Broker Rule

The proposed regulations also did not extend the multiple broker rule under § 1.6045-1(c)(3)(iii) of the pre-2024 final regulations to digital asset brokers. Comments overwhelmingly requested that the final regulations implement a multiple broker rule applicable to digital asset brokers to avoid burdensome and confusing duplicative reporting. Several comments recommended that the rule in § 1.6045-1(c)(3)(iii) of the pre-2024 final regulations, which provides that the broker that submits instructions to another broker, such as a digital asset trading platform, should have the obligation to report the transaction to the IRS, not the broker that receives the instructions and executes the transaction, because the brokers that submit instructions are in a position to provide reporting information to those clients with whom they maintain a direct relationship, while the latter are not. Another comment recommended requiring only the digital asset broker that has the final ability to consummate the sale to report the transaction to the IRS unless that broker has no ability to backup withhold. Another comment recommended allowing digital asset brokers to enter into contracts for information reporting to establish who is responsible for reporting the transaction to the IRS. Finally, several comments recommended that, when two digital asset brokers would otherwise have a reporting obligation with respect to a sale transaction, that only the digital asset broker crediting

the gross proceeds to the customer's wallet address or account have the obligation to report the transaction to the IRS because this is the broker that has the best ability to backup withhold.

As discussed in Part VI. Of this *Summary of Comments and Explanation of Revisions*, backup withholding on these transactions is a necessary and essential tool to ensure that important information for tax enforcement is reported to the IRS. Because the broker crediting the gross proceeds to the customer's wallet address or account is in the best position to backup withhold on these transactions if the customer does not provide the broker with the necessary tax documentation, final § 1.6045-1(c)(3)(iii)(B) adopts a multiple broker rule for digital asset brokers that would require the broker crediting the gross proceeds to the customer's wallet address or account to report the transaction to the IRS when more than one digital asset broker would otherwise have a reporting obligation with respect to a sale transaction. The relief for the broker that is not the broker crediting the gross proceeds to the customer's wallet address or account, however, is conditioned on that broker obtaining proper documentation from the other broker as discussed in the next paragraph. Additionally, the final regulations do not adopt the suggested rule that would allow a broker to shift the responsibility to report to another broker based on an agreement between the brokers because the broker having the obligation to report in that case may not have the ability to backup withhold. A broker, of course, is not prohibited from contracting with another broker or with another third party to file the required returns on its behalf.

Numerous comments provided recommendations in response to the request in the proposed regulations for suggestions to ensure that a digital asset broker would know with certainty that the other digital asset broker involved in a transaction is also a broker with a reporting obligation under these rules. One comment raised a concern with a rule requiring the broker obligated to report to provide notice to the other broker that it will make a return of information for each sale because that requirement would be overly burdensome. Another comment recommended that the broker obtain from the obligated broker a Form W-9 that has been modified to add an exempt payee code for digital asset brokers and a unique broker identification number. Another comment recommended that, absent actual knowledge to the contrary, a

broker should be able to rely on a reasonable determination based on another broker's name or other publicly available information it has about the other broker (sometimes referred to as the eye-ball test) that the other broker is a U.S. digital asset broker. To avoid any gaps in reporting, another comment recommended against allowing brokers to treat other brokers as U.S. digital asset brokers based on actual knowledge or the existing presumption rules. Finally, another comment recommended that the IRS establish a registration system and searchable database for digital asset brokers like that used for foreign financial institutions under 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).

Because of the risk that the multiple broker rule could result in no reporting, the final regulations do not adopt the so-called eye-ball test or the existing presumption rules for determining if another broker is a U.S. digital asset broker. The final regulations also do not adopt an IRS registration system for U.S. digital asset brokers because the IRS is still considering the benefits and burdens of a registration system for both the IRS and brokers. Instead, the final regulations adopt a rule that to be exempt from reporting under the multiple broker rule, a broker must obtain from another broker a Form W-9 certifying that the other broker is a U.S. digital asset broker (other than a registered investment adviser that is not otherwise on the list of exempt recipients (§ 1.6045-1(c)(3)(i)(B)(1) through (11) of the pre-2024 final regulations). Because the current Form W-9 does not have this certification, the notice referred to in Part VII. Of this *Summary of Comments and Explanation of Revisions* will permit brokers to rely upon a written statement that is signed by another broker under penalties of perjury that the other broker is a U.S. digital asset broker until sometime after the Form W-9 is revised to accommodate this certification. It is contemplated that the instructions to the revised Form W-9 will give brokers who have obtained private written certifications a reasonable transition period before needing to obtain a revised Form W-9 from the other broker.

One comment requested clarification regarding which broker—the real estate reporting person or the PDAP—is responsible for filing a return with respect to the real estate buyer in a transaction in which the real estate

buyer transfers digital assets to a PDAP that in turn transfers cash to the real estate seller. The multiple broker rule included in final § 1.6045-1(c)(3)(iii)(B) would apply in this case if the real estate reporting person is aware that the PDAP was involved to make the payment on behalf of the real estate buyer and obtains from the PDAP the certification described above that the PDAP is a U.S. digital asset broker. If the transaction is undertaken in any other way, it is unclear that the real estate reporting person would know the identity of the PDAP or whether that PDAP was required to report on the transaction. Accordingly, the real estate reporting person would be required to report on the transaction without regard to whether the PDAP also is required to report. It is anticipated that taxpayers will only rarely receive two statements regarding the same real estate transaction; however, when they do, taxpayers will be able to inform the IRS should the IRS inquire that the two statements reflect only one transaction.

Another comment requested guidance on how the information reporting rules would work with respect to a digital asset hosted wallet provider that contracts with another business to perform the hosted wallet services for the broker's customers on the broker's behalf. In response to the comment, the final regulations clarify that a broker should be treated as providing hosted wallet services even if it hires an agent to perform some or all of those services on behalf of the broker and without regard to whether that hosted wallet service provider is also in privity with the customer. Additionally, to ensure this interpretation is incorporated in the final regulations, the final regulations revise the definition of covered security in final § 1.6045-1(a)(15)(i)(I) to reference brokers that provide custodial services for digital assets, rather than hosted wallet services for digital assets, to clarify that services provided by the brokers' agents will be ascribed to the broker without regard to the specific custodial method utilized. To the extent a hosted wallet provider acts as an agent of the broker and is in privity with the customer, the multiple broker rules described herein should avoid duplicative reporting.

Finally, as discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS are continuing to study the question of how a multiple broker rule would apply to the non-custodial digital asset industry.

## C. Definition of Sales Subject to Reporting

### 1. In General

The proposed regulations modified the definition of a *sale* subject to reporting to include the disposition of a digital asset in exchange for cash, one or more stored-value cards, or a different digital asset. In addition, the proposed regulations included in the definition of sale 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 or in consideration for the services of a broker. Finally, the proposed regulations provided that a sale includes certain digital asset payments by a customer that are processed by a PDAP.

Several comments recommended that the definition of sale not include exchanges of digital assets for different digital assets or certain other property because such reporting would be impractical for brokers, confusing for taxpayers, and not consistent with the reporting rules for non-digital assets. Another comment recommended limiting reporting to off-ramp transactions, which signify the taxpayer's exit from an investment in digital assets. In contrast, another comment supported the requirement for information reporting on exchanges of digital assets for different digital assets because taxpayers must report all taxable gain or loss transactions of this type that occur within their taxable year.

The final regulations do not adopt the comments to limit the definition of sale to cash transactions. Digital assets are unique among the types of assets that are subject to reporting under section 6045 because they are commonly exchanged for different digital assets in trading transactions, for example an exchange of bitcoin for ether. Some digital assets can readily function as a payment method and, as such, can also be exchanged for other property in payment transactions. As explained in Notice 2014–21, and clarified in Revenue Ruling 2023–14, 2023–33 I.R.B. 484 (August 14, 2023), the sale or exchange of a digital asset that is property has tax consequence that may result in a tax liability. Thus, when a taxpayer disposes of a digital asset to make payment in another transaction, the taxpayer has engaged in two taxable transactions: the first being the disposition of the digital asset and the second being the payment associated with the payment transaction. In contrast, when a taxpayer disposes of cash to make payment, the taxpayer has,

at most, only one taxable transaction. Accordingly, these regulations require reporting on sales and certain exchanges of digital assets because substantive Federal tax principles do not treat the use of digital assets to make payments in the same way as the use of cash to make payments.

Unlike digital assets, traditional financial assets subject to broker reporting are generally disposed of for cash. That is why the definition of sale in § 1.6045–1(a)(9)(i) only requires reporting for cash transactions. In contrast, the barter exchange rules in § 1.6045–1(e) do require reporting on property-for-property exchanges because the barter industry, by definition, applies to property-for-property exchanges and not only cash transactions. Accordingly, the modified definition of sale for digital assets exchanged for other property reflects the differences in the underlying transactions as compared to traditional financial assets, not the disparate treatment of similarly situated transactions based solely on technological differences. Moreover, the purpose behind information reporting is to make taxpayers aware of their taxable transactions so they can report them accurately on their Federal income tax returns and to make those transactions more transparent to the IRS to reduce the income tax gap.

Another comment raised a concern that including exchanges of digital assets for property and services exceeded the authority provided to the Secretary by the Infrastructure Act. The Treasury Department and the IRS do not agree with this comment. The term “sale” is not used in section 6045(a), which provides broadly that the Secretary may publish regulations requiring returns by brokers with details regarding gross proceeds and other information the Secretary may require by forms or regulations. Nothing in section 6045 limits “gross proceeds” to the results of a sale rather than an exchange and the term sale was first defined in the regulations under section 6045 long before the enactment of the Infrastructure Act. Moreover, the Infrastructure Act modified the definition of broker to include certain persons who provide services effectuating transfers of digital assets, which are part of any exchange of digital assets. Accordingly, the changes made by the Infrastructure Act do not provide any limitations on how the Secretary can define the term when applied to the digital asset industry. Another comment suggested that treating the exchange of digital assets for other digital assets or services as a

taxable event is impractical and harmful to taxpayers, and that digital assets should be subject to tax only when taxpayers sell those assets for cash. See Part II.A. of this *Summary of Comments and Explanation of Revisions* for discussion of that issue.

### 2. Definition of Dispositions

Several comments raised questions about whether the definition of sale, which includes any disposition of a digital asset in exchange for a different digital asset, applies to certain dispositions that may or may not be taxable. For this reason, several comments recommended that the final regulations not require reporting on certain transactions until substantive guidance is issued on the tax treatment of those transactions. One comment specifically mentioned reporting should not be applied to transactions involving what it referred to as the “wrapping” or “unwrapping” of tokens for the purpose of obtaining a token that is otherwise like the disposed-of token in order to use the received token on a particular blockchain. In contrast, another comment suggested that the final regulations should require reporting wrapping and unwrapping transactions. One comment suggested that exchanges of digital assets involving “liquidity pool” tokens should also be subject to reporting under the final regulations. Another comment suggested that the final regulations provide guidance on whether reporting is required on exchanges of digital assets for liquidity pool or “staking pool” tokens because these transactions typically represent contributions of tokens when the contributor's economic position has not changed. This comment also suggested, if these contributions are excluded from reporting, that the Treasury Department and the IRS study how information reporting rules apply when the contributors are “rewarded” for these “contributions” or when they receive other digital assets in exchange for the disposition of these pooling tokens. Another comment recommended, instead, that the final regulations explicitly address the information reporting requirements associated with staking rewards and hard forks and recommended that they should be treated like taxable stock dividends for reporting purposes. Another comment recommended that the final regulations address whether digital asset loans and short sales of digital assets will be subject to reporting. The comment expressed the view that the substantive tax treatment of such loans is unresolved, and further suggested that the initial exchange of a digital asset for

an obligation to return the same or identical digital asset and the provision of cash, stablecoin, or other digital asset collateral in the future may well constitute a disposition and, in the absence of a statutory provision like section 1058 of the Code, may be taxable.

The Treasury Department and the IRS have determined that certain digital asset transactions require further study to determine how to facilitate appropriate reporting pursuant to these final regulations under section 6045. Accordingly, in response to these comments, Notice 2024–57 is being issued with these final regulations that will provide that until a determination is made as to how the transactions identified in the notice should be reported, brokers are not required to report on these identified transactions, and the IRS will not impose penalties for failure to file correct information returns or failure to furnish correct payee statements with respect to these identified transactions.

One comment recommended that an exchange of digital assets for governance tokens or any other exchange for tokens that could be treated as a contribution to an actively managed partnership or association also be excluded from reporting under section 6045 until the substantive Federal tax consequences of these contributions are addressed in guidance. The final regulations do not adopt this recommendation. Whether exchanges of digital assets for other digital assets could be treated as a contribution to a partnership or association is outside the scope of these regulations. Additionally, because the potential for duplicate reporting also exists for non-digital asset partnership interests, Treasury Department and the IRS have concluded that different rules should not apply to sales of digital asset partnership interests. Finally, the more general question of whether reporting on partnership interests (in digital asset form or otherwise) under section 6045 is appropriate in light of the potential for duplicate reporting is outside the scope of this regulations project.

The preamble to the proposed regulations requested comments regarding whether the broker reporting regulations should apply to include initial coin offerings, simple agreements for future tokens, and similar contracts, but did not propose such reporting. One comment recommended that initial coin offerings, simple agreements for future tokens, and similar contracts should be covered by broker reporting under the final regulations while another comment asserted that this reporting would not be feasible. Upon

consideration of the comments, the Treasury Department and the IRS have determined that the issues raised by these comments require further study. Accordingly, the final regulations do not adopt the comment's recommendations. However, the Treasury Department and the IRS may consider publishing additional guidance that could require broker reporting for such transactions.

### 3. Exceptions for Certain Closed Loop Transactions

As discussed in Part I.A.3. of this *Summary of Comments and Explanation of Revisions* with respect to closed loop digital assets, the Treasury Department and the IRS do not intend the information reporting rules under section 6045 to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency. Rather than carve these assets out from the definition of a digital asset, however, the final regulations add these closed loop transactions to the list of excepted sales that are not subject to reporting under final § 1.6045–1(c)(3)(ii). Inclusion on the list of excepted sales is not intended to create an inference that the transaction is a sale of a digital asset under current law. Instead, inclusion on the list merely means that the Treasury Department and the IRS have determined that information reporting on these transactions is not appropriate at this time.

One comment recommended that the definition of digital assets be limited to exclude from reporting transactions involving dispositions of NFTs used by loyalty programs. The comment explained that these loyalty programs do not permit customers to transfer their digital asset tokens by sale or gift outside of the program's closed (that is, permissioned) distributed ledger. The final regulations add these loyalty program transactions to the list of excepted sales for which reporting is not required. This exception is limited, however, to those programs that do not permit customers to transfer, exchange, or otherwise use, the tokens outside of the program's closed distributed ledger network because tokens that have a market outside the program's closed network raise Federal tax issues similar to those with other digital assets that are subject to reporting.

Another comment recommended that video game tokens that owners have only a limited ability to sell outside the video game environment be excluded from the definition of digital assets because sales of these tokens represent a low risk of meaningful Federal tax

non-compliance. The final regulations do not treat sales of video game tokens that can be sold outside the video game's closed environment as excepted sales. Instead, as with the loyalty program tokens, the final regulations limit the excepted sale treatment to only those dispositions of video game tokens that are not capable of being transferred, exchanged, or otherwise used, outside the closed distributed ledger environment.

Several comments requested that the final regulations exclude from reporting transactions involving digital representations of assets that may be transferred only within a fixed network of banks using permissioned distributed ledgers to communicate payment instructions or other back-office functions. According to these comments, bank networks use digital assets as part of a messaging service. The comments noted that these digital assets have no intrinsic value, function merely as a tool for recordkeeping, and are not freely transferable for cash or other digital assets outside the system. To address these transactions, one comment recommended that the definition of digital asset be limited to only those digital assets that are issued and traded on permissionless (that is, open to the public) distributed ledgers. Other comments requested that the exception apply to permissioned interoperable distributed ledgers, that is, digital assets that can travel from one permissioned distributed ledger (for example, at one bank) to another permissioned distributed ledger (at another bank).

The Treasury Department and the IRS are concerned that a broadly applicable restriction on the definition of digital assets could inadvertently create an exception for other digital assets that could be involved in transactions that give rise to taxable gain or loss. Accordingly, to address these comments, the final regulations add certain transactions within a single cryptographically secured distributed ledger, or network of interoperable distributed ledgers, to the list of excepted sales for which reporting is not required. Specifically, final § 1.6045–1(c)(3)(ii)(G) provides that an excepted sale includes the disposition of a digital asset representing information with respect to payment instructions or the management of inventory that does not consist of digital assets, which in each case does not give rise to sales of other digital assets within a cryptographically secured distributed ledger (or network of interoperable distributed ledgers) if access to the distributed ledgers (or network of interoperable distributed

ledgers) is restricted to only users of such information and if the digital assets disposed of are not capable of being transferred, exchanged, or otherwise used, outside such distributed ledger or network. No inference is intended that such transactions would otherwise be treated as sales of digital assets. This exception, however, does not apply to sales of digital assets that are also sales of securities or commodities that are cleared or settled on a limited-access regulated network subject to the coordination rule in final § 1.6045–1(c)(8)(iii). See Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions* for an explanation of the special coordination rule applicable to securities or commodities that are cleared or settled on a limited-access regulated network.

The final regulations also include a general exception for closed-loop transactions in order to address other such transactions not specifically brought to the attention of the Treasury Department and the IRS. Because the Treasury Department and the IRS do not have the information available to evaluate those transactions, this exception applies only to a limited class of digital assets. The digital assets must be offered by a seller of goods or provider of services to its customers and exchangeable or redeemable only by those customers for goods or services provided by such seller or provider, and not by others in a network. In addition, the digital asset may not be capable of being transferred, exchanged, or otherwise used outside the cryptographically secured distributed ledger network of the seller or provider and also may not be sold or exchanged for cash, stored-value cards, or stablecoins at a market rate inside the seller or provider's distributed ledger network.

The treatment of closed-loop transactions as excepted sales discussed here is not intended to be broadly applicable to any digital asset sold within a permissioned distributed ledger network because such a broad exception could generate incentives for the creation of distributed ledger networks that are nominally permissioned but are, in fact, open to the public. If similar digital assets that cannot be sold or exchanged outside of a controlled, permissioned ledger and that do not raise new tax compliance concerns are brought to the attention of the Treasury Department and the IRS, transactions involving those digital assets may also be designated as excepted sales under final § 1.6045–1(c)(3)(ii)(A).

#### 4. Other Exceptions

One comment requested that utility tokens that are limited to a particular timeframe or event be treated like closed system tokens. The final regulations do not adopt this suggestion because not enough information was provided for the Treasury Department and the IRS to determine whether these tokens are capable of being transferred, exchanged, or otherwise used, outside of the closed distributed ledger environment. Another comment requested that digital assets used for test purposes be excluded from the definition of digital assets.

According to this comment, test blockchain networks allow users to receive digital assets for free or for a nominal fee as part of the creation and testing of software. These networks have sunset dates beyond which the digital assets created cannot be used. The final regulations do not adopt this comment because not enough information was provided to know if these networks are closed distributed ledger environments or if the tokens are capable of being transferred, exchanged, or otherwise used, prior to the network's sunset date.

One comment requested that the final regulations be revised to prevent the application of cascading transaction fees in a sale of digital assets for different digital assets when the broker withholds the received digital assets to pay for such fees. For example, a customer exchanges one unit of digital asset AB for 100 units of digital asset CD (first transaction), and to pay for the customer's digital asset transaction fees, the broker withholds 10 percent (or 10 units) of digital asset CD. The comment recommended that the sale of the 10 units of CD in the second transaction be allocated to the original transaction and not be separately reported. The Treasury Department and the IRS have determined that a limited exception from the definition of sale should apply to cascading digital asset transaction fees. Specifically, final § 1.6045–1(c)(3)(ii)(C) excepts a sale of digital asset units withheld by the broker from digital assets received by the customer in any underlying digital asset sale to pay for the customer's digital asset transaction costs. The special specific identification rule in final §§ 1.6045–1(d)(2)(ii)(B)(3) and 1.1012–1(j)(3)(iii) ensures that the sale of the withheld units does not give rise to gain or loss. See Part VI.B. of this *Summary of Comments and Explanation of Revisions* for a discussion of the application of this excepted sales rule when the sale of such withheld units gives rise to an obligation by the broker under section 3406 to deduct and withhold a tax.

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

##### 1. In General

The proposed regulations required that for each digital asset sale for which a broker is required to file an information return, the broker report, among other things, the date and time of such sale set forth in hours, minutes, and seconds using Coordinated Universal Time (UTC). The proposed regulations requested comments regarding whether UTC time was appropriate and whether a 12-hour clock or a 24-hour clock should be used for this reporting. Some comments agreed with reporting the time of sale based on UTC time; however, other comments suggested using the customer's local time zone as configured on the platform or in the wallet. Other comments suggested that it is not technologically or operationally feasible to use the time zone of the customer's domicile. Another comment raised the concern that reporting in different time zones from the broker's time zone would make the broker and the IRS unable to reconcile backup withholding, timely tax deposits, and other annual filings. Still other comments requested broker flexibility in reporting the time of sale, provided the broker reported the time of the customer's purchases and sales consistently. Several other comments raised the concern that reporting on the time of transaction was excessively burdensome due to the number of tax lots that the broker's customers could potentially acquire and sell in a single day. Another comment suggested that the information reported with respect to the time of the transaction should be the same as the information reported on the Form 1099–B for traditional asset sales unless there is a compelling reason to do otherwise. Additionally, several comments suggested that the burden of developing or modifying systems to report the time of sale was not warranted because the time of sale within a date (that is reported) does not generally impact customer holding periods if the broker treats the time zone of purchases and sales consistently.

The final regulations adopt the recommendation to remove the requirement to report the time of the transaction. The Treasury Department and the IRS are concerned about the burdensome nature of the time reporting requirement and the administrability of reconciling different times for customer transactions and backup withholding deposits. Additionally, the issues raised by the time of sale with respect to digital asset year-end transactions are



generally the same as for traditional asset sales. It is expected that brokers will determine the date of purchase and date of sale of a customer's digital assets based on a consistent time zone so that holding periods are reported consistently, and that brokers will provide customers with the information necessary for customers to report their year-end sale transactions accurately.

The proposed regulations also required that, for each digital asset sale for which a broker is required to file an information return and for which the broker effected the sale on the distributed ledger, the broker report the transaction identification (transaction ID or transaction hash) associated with the digital asset sale and the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale. Additionally, for transactions involving sales of digital assets that were previously transferred into the customer's hosted wallet with the broker (transferred-in digital asset), the proposed regulations required the broker to report the date and time of such transferred-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. Numerous comments raised privacy and surveillance concerns associated with the requirement to report transaction ID and digital asset address information. These comments noted that a person or entity who knows the digital asset address of another gains access not only to that other user's purchases and exchanges on a blockchain network, but also the entire transaction history associated with that user's digital asset address. One comment expressed concern that reporting transaction ID and digital asset addresses would link the transaction history of the reported digital asset addresses to the taxpayer, thus exposing the financial and spending habits of that taxpayer. Other comments expressed that reporting this information also creates a risk that the information could be intercepted by criminals who could then attempt to extort or otherwise gain access to the private keys of identified persons with digital asset wealth. In short, many comments expressed strongly stated views that requiring this information creates privacy, safety, and national security concerns and could imperil U.S. citizens.

Other comments suggested that the information reporting rules should

balance the IRS's need for transparency with the taxpayer's interest in privacy. Thus, reporting of transaction IDs and digital asset addresses should not be required because the information exceeds the information that the IRS needs to confirm the value of reported gross proceeds and cost basis information. Further, another comment asserted that the IRS does not need transaction ID and digital asset address information because the IRS already has powerful tools to audit taxpayers and collect this information on audit. Other comments raised concerns with the burden of this requirement for custodial brokers. Citing the estimate of the start-up costs required to put systems in place to comply with the proposed regulations' broker reporting requirements, another comment raised the concern that many industry participants are smaller businesses with limited funding and resources that cannot afford to build infrastructure to securely store this information. Another comment raised the concern that reporting of transaction ID and digital asset address information would make the Form 1099-DA difficult for taxpayers to read. Another comment noted that this information is not helpful to taxpayers, who should already know this information. Other comments suggested that the reporting standard for digital assets should not be any more burdensome than it is for securities, and that any additional data fields for digital assets would force traditional brokers that also effect sales of digital assets to modify their systems. Another comment suggested that the final regulations should not require the reporting of transaction ID and digital asset address information in order to align the information reported under section 6045 with the information required under the CARF, a draft of which would have required the reporting of digital asset addresses but ultimately did not include such a requirement.

Some comments offered alternative solutions for providing the IRS with the visibility that this information would provide. For example, one comment suggested that because of the large number of digital asset transactions, brokers should only report the digital asset addresses (not transaction IDs) associated with transactions. Another comment recommended the use of impersonal tax ID numbers that would not reveal the customer's full identity to address privacy concerns. Another comment suggested it would be less burdensome to require reporting of account IDs rather than digital asset

addresses. Another comment suggested that the reporting of this information be optional or otherwise limited to transactions that involve a high risk of tax evasion or non-compliance or that otherwise exceed a large threshold. Another comment recommended the use of standardized tax lot identification like the securities industry. Another comment recommended instructing brokers to retain this information for later examination. Another comment recommended that brokers not report this information but, instead, be required to retain this information to align with the CARF reporting requirements.

The Treasury Department and the IRS considered these comments. Although transaction ID and digital asset address information would provide uniquely helpful visibility into a taxpayer's transaction history, which the IRS could use to verify taxpayer compliance with past tax reporting obligations, the final regulations remove the obligation to report transaction ID and digital asset address information. The Treasury Department and the IRS have concluded, however, that this information will be important for IRS enforcement efforts, particularly in the event a taxpayer refuses to provide it during an examination. Accordingly, final § 1.6045-1(d)(11) provides a rule that requires brokers to collect this information with respect to the sale of a digital asset and retain it for seven years from the due date for the related information return filing. This collection and retention requirement, however, would not apply to digital assets that are not subject to reporting due to the special reporting methods discussed in Parts I.D.2. through I.D.4. of this *Summary of Comments and Explanation of Revisions*. The seven-year period was chosen because the due date for electronically filed information under section 6045 is March 31 of the calendar year following the year of the sale transaction. Because most taxpayers' statute of limitations for substantial omissions from gross income will expire six years from the April 15 filing date for their Federal income tax return, a six-year retention period from the March 31 filing date would end before the statute of the limitations expires. Therefore, the final regulations designated a seven-year period for brokers to retain this information to ensure the IRS will have access to all the records it needs during the time that the taxpayer's statute of limitations is open. The IRS intends to monitor the information reported on digital assets and the extent to which taxpayers

comply with providing this information when requested by IRS personnel as part of an audit or other enforcement or compliance efforts. If abuses are detected that hamper the IRS's ability to enforce the Code, the Treasury Department and the IRS may reconsider this decision to require brokers to maintain this information in lieu of reporting it to the IRS.

Another comment raised the concern that custodial brokers may not have transaction ID and digital asset address information associated with digital assets that were transferred-in to the broker before the applicability date of these regulations. This comment recommended that the reporting requirement be made effective only for assets that were transferred-in to the custodial broker on or after January 1, 2023, to align with the enactment of the Infrastructure Act. The Treasury Department and the IRS understand that brokers may not have transaction ID and digital asset address information associated with digital assets that were transferred-in to the broker before the applicability date of these regulations. The Treasury Department and the IRS, however, decline to adopt an applicability date rule with respect to the collection and retention of this information because some brokers may receive the information on transferred-in assets and to the extent they do, that information should be produced when requested under the IRS's summons authority. Accordingly, brokers should maintain transaction ID and digital asset address information associated with digital assets that were transferred-in to the broker before the applicability date of this regulation to the extent that information was retained in the ordinary course of business.

The proposed regulations also required that for each digital asset sale for which a broker is required to file an information return, that the broker report whether the consideration received in that sale was cash, different digital assets, other property, or services. Numerous comments raised the concern that reporting the specific consideration received is too intrusive and causes security concerns. The final regulations do not make any changes in response to these comments because the language in the proposed (and final) regulations does not require brokers to report the specific goods or services purchased by the customer, but instead requires the broker to report on the category type that the consideration falls into. For example, if digital asset A is used to make a payment using the services of a PDAP for a motor vehicle, the regulations require the PDAP to

report that the consideration received was for property (as opposed to cash, different digital assets, broker services, or other property). The purpose of this rule is to allow the IRS to be able to distinguish between sales involving categories of consideration because sales for cash do not raise the same valuation concerns as sales for different digital assets, other property, or services. In cases in which digital assets are exchanged for different digital assets, however, the Form 1099-DA may request brokers to report that specific digital asset received in return because of the enhanced valuation concerns that arise in these transactions. Another comment suggested that providing the gross proceeds amount in a non-cash transaction would not be helpful or relevant. The final regulations do not adopt this comment because gross proceeds reporting on non-cash transactions is, in fact, helpful and relevant to customers who must include gains and losses from these transactions on their Federal income tax returns.

The proposed regulations would have required the broker to report the name of the digital asset sold. One comment noted that there is no universal convention or standard naming convention for digital assets. As a result, many digital assets share the same name or even the same ticker symbol. This comment recommended that the final regulations allow brokers the flexibility to provide enough information to reasonably identify the digital asset at issue. This comment also recommended that brokers be given the ability to provide the name of the trading platform where the transaction was executed to ensure that the name of the digital asset is clearly communicated. The final regulations do not adopt this comment because it is more appropriate to address these issues on the Form 1099-DA and its instructions.

The proposed regulations also required that, for each digital asset sale for which a broker is required to file an information return, the broker report the gross proceeds amount in U.S. dollars regardless of whether the consideration received in that sale was cash, different digital assets, other property, or services. One comment recommended that brokers not be required to report gross proceeds in U.S. dollars for transactions involving the disposition of digital assets in exchange for different digital assets, but instead be required to report only the name of the digital asset received and the number of units received in that transaction. Although this suggestion would relieve the broker from having to determine the fair market value of the received digital assets in

that transaction, the final regulations do not adopt this suggestion because the U.S. dollar value of the received digital assets is information that taxpayers need to compute their tax gains or losses and the IRS needs to ensure that taxpayers report their transactions correctly on their Federal income tax returns.

The proposed regulations required brokers to report sales of digital assets on a transactional (per-sale) basis. One comment recommended that the final regulations alleviate burden on brokers and instead provide for aggregate reporting, with a separate Form 1099-DA filed for each type of digital asset. The final regulations do not adopt this recommendation. Transactional reporting on sales of digital assets is generally necessary so that the amount received in a digital asset sale can be compared with the basis of those digital assets to determine gain or loss. Transactional reporting is most helpful to taxpayers who must report these transactions on their Federal income tax returns and to the IRS to ensure taxpayers report these transactions on their Federal income tax returns.

Several comments recommended that final regulations include a *de minimis* threshold for digital asset transactions that would exempt from reporting minor sale transactions—and in particular payment transactions—falling below that threshold. One comment suggested that such a *de minimis* threshold could help to prevent taxpayers from moving their digital assets to self-custodied locations that may be outside the scope of broker reporting. One comment recommended that brokers not be required to obtain tax documentation from customers (and therefore not report on those customers' tax identification numbers) for taxpayers with annual transactions below a *de minimis* threshold. A few comments recommended that separate *de minimis* thresholds or reduced reporting requirements be applied to brokers with lower transaction volumes during a start-up or transitional period. Some comments recommended aggregate annual thresholds for this purpose, for example based on the customer's aggregate gross proceeds or aggregate net gain for the year from these transactions, whereas other comments recommended per-transaction thresholds based either on gross proceeds or net gain generated from each transaction. One comment suggested that whatever threshold is applied, that it only be used for PDAPs.

Except as discussed in Parts I.B.2., I.D.2., and I.D.3. of this *Summary of Comments and Explanation of Revisions* (involving payment sale transactions and certain transactions involving

qualifying stablecoins and specified NFTs), the final regulations do not adopt an additional *de minimis* threshold for digital asset sales for several reasons. First, any per-transaction threshold for the types of digital assets not subject to the *de minimis* thresholds discussed in Parts I.B.2., I.D.2., and I.D.3. of this *Summary of Comments and Explanation of Revisions* would not be easy for brokers to administer because these thresholds are more easily subject to manipulation and structuring abuse by taxpayers, and brokers are unlikely to have the information necessary to prevent these abuses by taxpayers, for example by applying an aggregation or anti-structuring rule. Second, the *de minimis* threshold for qualifying stablecoins will already give brokers the ability to avoid reporting on dispositions of \$10,000 in qualifying stablecoins, which are the types of digital assets that are least likely to give rise to significant gains or losses, and the *de minimis* threshold for payment sale transactions will give PDAPs the ability to avoid reporting on dispositions of other types of digital assets that do not exceed \$600. Third, extending any additional annual threshold to sales of these other types of digital assets that are more likely to give rise to tax gains and losses will leave taxpayers without the information they need to compute those gains and losses and will leave the IRS without the information it needs to ensure that taxpayers report all transactions required to be reported on their Federal income tax returns. Fourth, information reporting without taxpayer TINs is generally of limited utility to the IRS for verifying taxpayer compliance with their reporting obligations. Finally, a separate *de minimis* threshold or reduced reporting requirements for small brokers would be relatively easy for brokers to manipulate and would leave the customers of such brokers without essential information.

## 2. Optional Reporting Rules for Certain Qualifying Stablecoins

### a. Description of the Reporting Method

As discussed in Part I.A.1. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have determined that it is appropriate to permit brokers to report certain stablecoin sales under an optional alternative reporting method to alleviate burdensome reporting for these transactions. This reporting method was developed after careful consideration of the comments submitted recommending a tailored exemption from reporting for

certain stablecoin sales. These recommendations took different forms, including requests for exemptions for certain types of stablecoins and recommendations against granting an exemption for other types of stablecoins. One comment suggested that reporting relief would not be appropriate for dispositions of stablecoins for cash or property other than different digital assets. These so-called “off-ramp transactions” convert the owner’s overall digital asset investment into a non-digital asset investment and, the comment stated, could provide taxpayers and the IRS with the opportunity to reconcile and verify the blockchain history of such stablecoins to ensure that previous digital asset transactions were reported. The Treasury Department and the IRS agree that reporting is appropriate and important for off-ramp transactions involving stablecoins because the IRS would be able to use this information to gain visibility into previously unreported digital asset transactions.

Several comments recommended requiring reporting on stablecoin sales when the reporting reflects explicit trading activity around fluctuations involving the stablecoin. Because stablecoins do not always precisely reflect the value of the fiat currencies to which they are pegged, trading activity associated with fluctuations in stablecoins are more likely to generate taxable gains and losses. The Treasury Department and the IRS have concluded that traders seeking to profit from stablecoin fluctuations are likely to sell these stablecoins for cash (in an off-ramp transaction) or for other stablecoins that have not deviated from their designated fiat currency pegs. Accordingly, the Treasury Department and the IRS have concluded that reporting on sales of stablecoins for different stablecoins is also appropriate to assist in tax administration.

In discussing other types of transactions, several comments noted that a disposition of a stablecoin for other digital assets often reflects mere momentary ownership of the stablecoin in transactions that use the stablecoin as a bridge asset in an exchange of one digital asset for a second digital asset. These comments also noted that, to the extent that a disposition of a stablecoin for a different digital asset does give rise to gain or loss, that gain or loss will ultimately be reflected (albeit on a net basis) when the received digital asset is later sold or exchanged. The Treasury Department and the IRS agree that, in contrast to sales of stablecoins for cash or other stablecoins, reports on sales of stablecoins for different digital assets

(other than stablecoins) are less important for tax administration. Accordingly, the Treasury Department and the IRS have concluded that it is appropriate to allow brokers not to report sales of certain stablecoins for different digital assets that are not also stablecoins.

Some comments recommended exempting sales of stablecoins from cost basis reporting given their belief in the low likelihood that these sales would result in gain or loss. Other comments recommended that the final regulations permit combined or aggregate reporting for stablecoin sales to lessen the reporting burden for brokers and the burden of receiving returns on the IRS. The Treasury Department and the IRS agree that basis reporting for all types of stablecoin sales may not justify the burden of tracking and reporting those sales. Although taxpayers that trade around stablecoin fluctuations would benefit from cost basis reporting, the Treasury Department and the IRS have concluded that these traders are more likely to be more sophisticated traders that are able to keep basis records on their own. The Treasury Department and the IRS have also concluded that allowing for reporting of stablecoins sales on an aggregate basis would strike an appropriate balance between the taxpayer’s and IRS’s need for information and the broker’s interest in a reduced reporting burden.

In addition to an overall aggregate reporting approach, numerous comments also recommended that the final regulations include a *de minimis* threshold for these stablecoin sales that would exempt reporting on a taxpayer’s stablecoin sales to the extent that taxpayer’s total gross proceeds from all stablecoin sales for the year did not exceed a specified threshold. Several comments suggested *de minimis* thresholds based on the taxpayer’s aggregate net gain from stablecoin sales for the year. Other comments recommended the use of per-transaction *de minimis* thresholds, based either on the gain or loss in the transaction or the gross proceeds from the transaction.

The Treasury Department and the IRS considered these comments to decide whether to further reduce the overall burden on brokers and the IRS. The final regulations do not adopt a per-transaction *de minimis* threshold because any per-transaction threshold for stablecoins would be relatively easy for customers to abuse by structuring their transactions. Although anti-structuring rules based on the intent of the taxpayer have been used in other information reporting regimes, such as section 6050I of the Code, similar rules

would be unadministrable here. Under section 6050I, the person who receives payment is the person who files the information returns and will know when a payor is making multiple payments as part of the same transaction. For purposes of section 6045 digital asset transaction reporting, however, brokers may not have the information necessary to determine the motives behind their customer's decisions to engage in numerous smaller stablecoin transactions instead of fewer larger transactions involving these stablecoins. Moreover, even for transactions exceeding a *de minimis* threshold, per-transaction reporting still has the potential to result in a very large number of information returns, with a correspondingly large burden on brokers and the IRS. The final regulations also do not adopt an aggregate *de minimis* threshold based on gains or losses because many brokers will not have the acquisition information necessary to determine basis, which would be necessary in order to be able to take advantage of such a *de minimis* rule, thus making the threshold less effective at reducing the number of information returns required to be filed. Instead, the final regulations adopt an aggregate gross proceeds threshold as striking an appropriate balance between a threshold that will provide the greatest burden relief for brokers and still provide the IRS with the information needed for efficient tax enforcement. Additionally, to avoid manipulation and structuring techniques that could be used to abuse this threshold, the final regulations require that the overall threshold be applied as a single threshold applicable to a single customer's sales of all stablecoins regardless of how many accounts or wallets that customer may have with the broker.

Numerous comments recommended various *de minimis* thresholds ranging from \$10 to \$50,000. In determining the dollar amount that should be used for this *de minimis* threshold, the Treasury Department and the IRS considered that the gross proceeds reported for these stablecoin transactions are unlikely to reflect ordinary income or substantial net gain. The Treasury Department and the IRS have concluded that a larger *de minimis* threshold would eliminate most of the reporting on customers with small stablecoin holdings and likely small amounts of gain or loss without allowing more significant sales of fiat-based stablecoins to evade both information and income tax reporting. Accordingly, the Treasury Department and the IRS have determined that a \$10,000 threshold is the most

appropriate because that threshold aligns with the reporting threshold under section 6050I, which Congress has adopted as the threshold for requiring certain payments of cash and cash-like instruments to be reported.

In sum, the final regulations adopt an optional \$10,000 overall annual *de minimis* threshold for certain qualifying stablecoin sales and permit sales over this amount to be reported on an aggregate basis rather than on a transactional basis. Specifically, in lieu of requiring brokers to report gross proceeds and basis on stablecoin sales under the transactional reporting rules of § 1.6045-1(d)(2)(i)(B) and (C), the final regulations at § 1.6045-1(d)(10)(i) permit brokers to report designated sales of certain stablecoins (termed qualifying stablecoins) under an alternative reporting method described at § 1.6045-1(d)(10)(i)(A) and (B). A *designated sale of a qualifying stablecoin* is defined in final § 1.6045-1(d)(10)(i)(C) to mean any sale as defined in final § 1.6045-1(a)(9)(ii)(A) through (D) of a qualifying stablecoin other than a sale of a qualifying stablecoin in exchange for different digital assets that are not qualifying stablecoins. In addition, a designated sale of a qualifying stablecoin includes any sale of a qualifying stablecoin that provides for the delivery of a qualifying stablecoin pursuant to the settlement of any executory contract that would be treated as a designated sale of the qualifying digital asset under the previous sentence if the contract had not been executory. Final § 1.6045-1(d)(10)(i)(C) also defines the term *non-designated sale of a qualifying stablecoin* as any sale of a qualifying stablecoin other than a designated sale of a qualifying stablecoin. A broker reporting under this optional method is not required to report sales of qualifying stablecoins that are non-designated sales of qualifying stablecoins under either this optional method or the transactional reporting rules. Accordingly, for example, if a customer uses a qualifying stablecoin to buy another digital asset that is not a qualifying stablecoin, no reporting would be required if the broker is using the optional reporting method for qualifying stablecoins.

Additionally, if a customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales of qualifying stablecoins do not exceed \$10,000 for the year, a broker using the optional reporting method would not be required to report those sales. The Treasury Department and the IRS anticipate that the combination of allowing no reporting of non-designated sales of

qualifying stablecoins and the \$10,000 annual threshold for all designated sales of qualifying stablecoins will have the effect of eliminating reporting on qualifying stablecoin transactions for many customers.

If a customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales of qualifying stablecoins exceed \$10,000 for the year, the broker must report on a separate information return for each qualifying stablecoin for which there are designated sales. Final § 1.6045-1(d)(10)(i)(B). If the aggregate gross proceeds exceed the \$10,000 threshold, reporting is required with respect to each qualifying stablecoin for which there are designated sales even if the aggregate gross proceeds for that qualifying stablecoin is less than \$10,000. This rule is illustrated in final § 1.6045-1(d)(10)(i)(D)(2) (*Example 2*). A broker reporting under this method must report on a separate Form 1099-DA or any successor form in the manner required by the form or instructions the following information with respect to designated sales of each type of qualifying stablecoin:

- (1) The name, address, and taxpayer identification number of the customer;
- (2) The name of the qualifying stablecoin sold;
- (3) The aggregate gross proceeds for the year from designated sales of the qualifying stablecoin (after reduction for the allocable digital asset transaction costs);
- (4) The total number of units of the qualifying stablecoin sold in designated sales of the qualifying stablecoin;
- (5) The total number of designated sale transactions of the qualifying stablecoin; and
- (6) Any other information required by the form or instructions.

Brokers that want to use this reporting method in place of transactional reporting are not required to submit any form or otherwise make an election to be eligible to report in this manner. Additionally, brokers may report sales of qualifying stablecoins under this optional reporting method for some or all customers, though the method chosen for a particular customer must be applied for the entire year for that customer's sales. A broker may change its reporting method for a customer from year to year. Because the obligation to file returns under the transactional method in final § 1.6045-1(d)(2)(i)(B) is discharged only when a broker files information returns under the optional reporting method under § 1.6045-1(d)(10)(i), brokers that fail to report a customer's sales under either method will be subject to penalties under section 6721 for failure to file

information returns under the transactional method. See Part VI.B. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the backup withholding rules will apply to payments falling below this *de minimis* threshold and to the gross proceeds of non-designated sales of qualifying stablecoins.

In the case of a joint account, final § 1.6045-1(d)(10)(v) provides a rule for the broker to determine which joint account holder will be the customer for purposes of determining whether the customer's combined gross proceeds for all accounts owned exceed the \$10,000 *de minimis* threshold. This joint account rule follows the general rules for determining which joint account holder's name and TIN should be reported by the broker on the information return (but for the application of the relevant threshold). Like the general rules, the joint account holder's name and TIN that must be reported by the broker is determined after the application of the backup withholding rules under § 31.3406(h)-2(a). For example, under these rules, if two or more individuals own a joint account, the account holder that is treated as the customer is generally the first named individual on the account. See Form W-9 at p.5. If, however, the first named individual does not supply a certified TIN to the broker (or supplies a Form W-8BEN establishing exempt foreign status) and if another individual joint account holder supplies a certified TIN, then the broker must treat that other individual as the customer for this purpose. See § 31.3406(h)-2(a)(3). Alternatively, if the first named individual joint account holder supplies a Form W-8BEN establishing exempt foreign status and the other individual joint account holder does not supply a certified TIN (or a Form W-8BEN) to the broker, then the broker must treat that other individual as the customer for this purpose because that is the individual that caused the broker to begin the backup withholding that will be shown on the information return.

#### b. Qualifying Stablecoin

In describing which stablecoins they thought should be afforded reporting relief, comments recommended many different definitions, and those definitions generally included several types of requirements. Because the recommended definitions encompass multiple kinds of digital assets, for ease of description here we will use the term "purported stablecoin" as a stand-in for the type of asset the comments wanted to exempt from some or all reporting.

First, many comments recommended that the purported stablecoin must have been designed or structured to track the value of a fiat currency for use as a means of making payment. Other comments recommended looking to whether the purported stablecoin is marketed as pegged to the fiat currency or whether the stablecoin is denominated on a 1:1 basis by reference to the fiat currency. Second, the comments proposed that the purported stablecoin must, in fact, function as a means of exchange and be generally accepted as payment by third parties. Third, the comments generally recommended that the purported stablecoin have some type of built-in mechanism designed to keep the value of the purported stablecoin in line with the value of the tracked fiat currency, or at least within designated narrow bands of variation from value of the fiat currency. Further, these comments recommended that this stabilization mechanism must actually work in practice to keep the trading value of the purported stablecoin within those designated narrow bands.

Proposals for how this stabilization mechanism requirement could be met varied. For example, several comments recommended a requirement that the issuer guarantee redemption at par or otherwise be represented by a separate claim on the issuer denominated in fiat currency. Another comment recommended that the issuer meet collateralization (or reserve) requirements and provide annual third party attestation reports regarding reserve assets. Another comment proposed that these reserves be held in segregated, bankruptcy-remote reserve accounts for the benefit of holders. Another comment proposed that these reserves be held in short-term, liquid assets denominated in the same fiat currency. Other comments suggested requiring that the purported stablecoin be issued on receipt of funds for the purpose of making payment transactions. Several other comments proposed requiring that the purported stablecoin be regulated by a Federal, State, or local government. One comment suggested prohibiting any stabilization mechanism that is based on an algorithm that achieves price stability by managing the supply and demand of the stablecoin against a secondary token that is not price-pegged. Several comments recommended requiring that the purported stablecoin not deviate significantly from the fiat currency to which it is pegged. For example, the comments recommended that the value

of the stablecoin not be permitted to fall outside a specified range (with suggestions ranging from 1 percent to 10 percent) for a meaningful duration over specified periods (such as for more than 24 hours within any consecutive 10-day period or for any period during a 180-day period during the previous calendar year).

Because the purpose of the optional reporting method is to minimize reporting on very high volumes of transactions involving little to no gain or loss, and because the optional reporting regime will ensure at least some visibility into transactions that in the aggregate exceed the \$10,000 threshold, the Treasury Department and the IRS have determined that the definition of fiat currency-based stablecoins should be relatively broad to provide the most reduction of burden on brokers and the IRS. Thus, because the optional reporting method for stablecoins will provide for aggregate reporting of all proceeds from sales for cash or other stablecoins exceeding the *de minimis* threshold, it is not necessary to limit the definition of qualifying stablecoins to those with specific stabilization mechanisms such as fiat currency reserve requirements, as long as the stablecoin, in fact, retains its peg to the fiat currency.

Accordingly, based on these considerations, the final regulations describe *qualifying stablecoins* as any digital asset that meets three conditions set forth in final § 1.6045-1(d)(10)(ii)(A) through (C) for the entire calendar year. First the digital asset must be designed to track on a one-to-one basis a single convertible currency issued by a government or a central bank (including the U.S. dollar). Final § 1.6045-1(d)(10)(ii)(A).

Second, final § 1.6045-1(d)(10)(ii)(B) requires that the digital asset use one of two stabilization mechanisms set forth in final § 1.6045-1(d)(10)(ii)(B)(1) and (2), which are based on the recommendations made by the comments. The first stabilization mechanism provided in final § 1.6045-1(d)(10)(ii)(B)(1) sets forth a results-focused test. Under this stabilization mechanism, the stabilization requirement is met if the stabilization mechanism causes the unit value of the digital asset not to fluctuate from the unit value of the convertible currency it was designed to track by more than 3 percent over any consecutive 10-day period during the calendar year. Final § 1.6045-1(d)(10)(ii)(B)(1) also provides that UTC should be used in determining when each day within this 10-day period begins and ends. UTC time was chosen so that the same digital asset

will satisfy or not satisfy this test for all brokers regardless of the time zone in which such broker keeps its books and records. Additionally, this stabilization mechanism provides design flexibility to stablecoin issuers because it does not turn on how a digital asset maintains a stable value relative to a fiat currency, so long as it does. The second stabilization mechanism provided in final § 1.6045–1(d)(10)(ii)(B)(2), in contrast, sets forth a design-focused test that provides more certainty to brokers at the time of a transaction. Under this stabilization mechanism, the stabilization requirement is met if regulatory requirements apply to the issuer of the digital asset requiring the issuer to redeem the digital asset at any time on a one-to-one basis for the same convertible currency that the stablecoin was designed to track. Because a qualifying stablecoin that satisfies this second stabilization mechanism includes key requirements set forth in the specified electronic money product definition under section IV.A.4. of the CAREF, it is anticipated that this definition will be considered when regulations are drafted to implement the CAREF. See Part I.G.2. of this *Summary of Comments and Explanation of Revisions* (discussing U.S. implementation of the CAREF).

Third, under final § 1.6045–1(d)(10)(ii)(C), to be a qualifying stablecoin, the digital asset must generally be accepted as payment by persons other than the issuer. This acceptance requirement would be met if the digital asset is accepted by the broker as payment for other digital assets or is accepted by a second party. An example of this is acceptance by a merchant pursuant to a sale effected by a PDAP.

To avoid confusion for brokers, customers, and the IRS, the Treasury Department and the IRS have concluded that the determination of whether a digital asset is a qualifying stablecoin or not must be consistent throughout the entire year. Accordingly, the definition of a qualifying stablecoin requires that the digital asset meet the three conditions for the entire calendar year. For example, if a digital asset loses its peg and no longer satisfies the stabilization mechanism set forth in final § 1.6045–1(d)(10)(ii)(B)(1), it will not be treated as a qualifying stablecoin for the entire year unless the digital asset satisfies the stabilization mechanism set forth in final § 1.6045–1(d)(10)(ii)(B)(2). See Part VI.B. of this *Summary of Comments and Explanation of Revisions* for a discussion of the backup withholding exception for sales of digital assets that

would have been non-designated sales of a qualifying stablecoin up to and including the date that digital asset loses its peg and no longer satisfies the stabilization mechanism set forth in final § 1.6045–1(d)(10)(ii)(B)(1).

The Treasury Department and the IRS recognize that brokers will not know at the beginning of a calendar year whether a digital asset that would be a qualifying stablecoin solely under the results-focused test will be a qualifying stablecoin for that year, and therefore will need to be prepared to report and backup withhold on sales of that asset. However, it is anticipated that the results-focused test will rarely result in a digital asset losing qualifying stablecoin status unless there is a significant and possibly permanent loss of parity between the stablecoin and the convertible currency to which it is pegged. Other alternatives suggested by comments, such as a retrospective test that is based on whether a digital asset failed a results-based test during a period in the past, for example the 180 days prior to a sale, could result in different treatment of the same digital asset depending on when a sale of the digital asset took place during a calendar year, which would be confusing for both brokers and customers. Basing qualification on the results for a prior year would alleviate that concern, but could result in treating a digital asset as a qualifying stablecoin for a year in which it was not stable, and as not a qualifying stablecoin for a later year in which it is stable, which would not achieve the purposes of the optional reporting method for qualifying stablecoins. Accordingly, the Treasury Department and the IRS have concluded that a test that treats a digital asset as a qualifying stablecoin, or not, for an entire calendar year is the most administrable way to achieve those purposes.

### 3. Optional Reporting Rules for Certain Specified Nonfungible Tokens

#### a. Description of the Reporting Method

Notwithstanding the conclusion discussed in Part I.A.2. of this *Summary of Comments and Explanation of Revisions* that the definition of digital assets includes NFTs, the Treasury Department and the IRS considered the many comments received suggesting a modified reporting approach under section 6045 for all or a subset of NFTs. One comment recommended against requiring reporting for NFTs for which the owner does not have the expectation that the NFT will return gain. The final regulations do not adopt this comment because it would be overly burdensome

for brokers to determine each customer's investment expectation. Other comments recommended against any reporting on NFT transactions by brokers under section 6045 because reporting under section 6050W (on Form 1099-K, *Payment Card and Third Party Network Transactions*) is more appropriate for NFT sellers. Indeed, these comments noted, brokers that meet the definition of third party settlement organizations under section 6050W(b)(3) are already filing Forms 1099-K on their customers' sales of NFTs. The final regulations do not adopt these comments because the Treasury Department and the IRS have concluded that the reporting rules should apply uniformly to NFT marketplaces, and not all digital asset brokers meet the definition of a third party settlement organization under section 6050W(b)(3).

Several comments raised valuation considerations, particularly in NFT-for-NFT exchanges or NFT sales in conjunction with physical goods or events, as a reason to exempt all NFTs from reporting. The final regulations do not adopt these comments because taxpayers engaging in these transactions still need to report the transactions on their Federal income tax returns. Additionally, the final regulations already permit brokers that cannot determine the value of property customers receive in a transaction with reasonable accuracy to report that the gross proceeds have an undeterminable value. Final § 1.6045–1(d)(5)(ii)(A).

Other comments recommended against requiring reporting for all NFT transactions because NFTs, unlike other digital assets, are easier for taxpayers to track on the relevant blockchain. As a result, these comments suggested, taxpayers do not need to be reminded of their NFT sales and can more easily determine their bases in these assets by referencing the public blockchain. The final regulations do not adopt this comment because to be helpful for closing the income tax gap, information reporting must not only provide the information necessary for taxpayers to compute their tax gains, it must also provide the IRS with that information to ensure that taxpayers report all transactions required to be reported on their Federal income tax returns.

Several comments asserted that the cost of reporting on non-financial NFTs outweighs the tax administration benefits to taxpayers and the IRS because these assets generally do not have substantial value, and as such transactions in these assets do not contribute meaningfully to the income tax gap. For example, several comments

cited to publicly available statistics showing that many NFT transactions involve small dollar amounts. According to one comment, the average price of an NFT transaction was only \$150 for the third quarter of 2022, and the median NFT transaction value was only \$37.69 over the six-month period ending October 1, 2023.<sup>3</sup> Additionally, the comment stated that the value of approximately 45 percent of all NFT transactions was less than \$25, and 82 percent of all NFT transaction were valued at less than \$500, when compared to total exchange volume on the largest centralized and decentralized exchanges.<sup>4</sup> Given the cost of transactional reporting and the relatively small value of the transactions, several comments suggested that aggregate reporting, in a regime analogous to that under section 6050W for reporting on payment card and third party network transactions, would lessen the burden of broker reporting on non-financial NFTs without a meaningful curtailment of the overall goal of reducing the income tax gap. Other comments recommended against NFT basis reporting under this aggregate reporting proposal because, unlike cryptocurrency and other fungible tokens, past purchase prices for NFTs are trackable on the blockchain through the NFT's unique token identification. Another comment recommended against transactional reporting for creators of non-financial NFTs (primary sales)—as opposed to resellers of non-financial NFTs (secondary sales)—because transactional reporting for creators would needlessly

result in large numbers of separate reports. Additionally, this comment recommended that primary sales of non-financial NFTs should be reported under section 6050W instead of under section 6045 because returns under section 6045 would incorrectly report gross proceeds income instead of ordinary income.

Transactional reporting under section 6045 is generally necessary to allow taxpayers and the IRS to compare the gross proceeds taxpayers received in sales of certain property with the cost basis of that property. Because the cited statistics show that a substantial portion of non-financial NFT transactions are small dollar transactions for which taxpayers can more easily track their own cost basis, the Treasury Department and the IRS agree that the cost of transactional reporting for low-value non-financial NFTs may outweigh the benefits to taxpayers and the IRS. Accordingly, the final regulations have added a new optional alternative reporting method for sales of certain NFTs to allow for aggregate reporting instead of transactional reporting, with a *de minimis* annual threshold below which no reporting is required. Brokers that do not wish to build a separate system for NFTs eligible for aggregate reporting can report all NFT transactions under the transactional system. Additionally, brokers do not need to submit any form or otherwise make an election to report under this method and are not required to report under this optional method consistently from customer to customer or from year to year; however, the method chosen for a particular customer must be applied for the entire year for that customer's sales. Finally, to address the comment regarding the distinction between primary sales of NFTs that give rise to ordinary income and secondary sales of NFTs that give rise to gross proceeds, brokers choosing to report sales of NFTs under this optional method must report, to the extent ordinarily known, the portion of the total gross proceeds reported attributable to primary sales (that is, the first sale of the particular NFT).

Given the statistics cited showing the relatively small average and median values for non-financial NFT transactions, numerous comments said these small purchases should not need to be reported and several comments recommended the application of a *de minimis* threshold below which reporting would not be required at all to alleviate reporting on an overwhelming majority of NFT sales. Some comments recommended the use of a per-transaction threshold with proposed

thresholds ranging from \$50 to \$50,000, while other comments recommended an aggregate gross proceeds threshold, similar to the \$600 threshold applicable under section 6050W(e), as most appropriate. Because some of these NFT sales are currently reportable under section 6050W, the Treasury Department and the IRS have concluded that it would be most appropriate to follow the same \$600 reporting threshold applicable under that provision. Accordingly, the final regulations adopt an annual \$600 *de minimis* threshold for each customer below which brokers reporting under the optional aggregate method are not required to report gross proceeds from these NFTs transactions. If the customer's total gross proceeds (after reduction for any allocable digital asset transaction costs) from sales of specified NFTs exceed \$600 for the year, a broker may report those sales on an aggregate basis in lieu of reporting those sales under the transactional reporting rules. A broker reporting under this method must report on a Form 1099-DA (or any successor form) in the manner required by the form or instructions the following information with respect to the customer's sales of specified NFTs:

- (1) The name, address, and taxpayer identification number of the customer;
- (2) The aggregate gross proceeds for the year from all sales of specified NFTs (after reduction for the allocable digital asset transaction costs);
- (3) The total number of specified NFTs sold; and
- (4) Any other information required by the form or instructions.

Additionally, a broker reporting under this method must report the aggregate gross proceeds that are attributable to the first sale by the creator or minter of the specified NFT to the extent the broker would ordinarily know that the transaction is the first sale of the specified NFT token by the creator or minter. It is anticipated that a broker would ordinarily know that the transaction is the first sale of the specified NFT by the creator or minter if the broker provided services to the creator or minter that enabled the creator to create (or minter to mint) the specified NFT. It is also anticipated that, to the extent a broker inquires whether the customer's sale of the specified NFT will be a first sale, that the broker would ordinarily know this information based on the customer's response. Brokers are not required to seek out such information from third party sources, such as a public blockchain or through blockchain analytics.

The IRS intends to monitor NFTs reported under this optional aggregate

<sup>3</sup> The comment cited a report from NonFungible.com, which stated that all data included was sourced from the blockchain via its own dedicated blockchain nodes. The report includes a table showing the average price for an NFT in the third quarter of 2022 was \$154. This was a drop in value from an average price of \$643 from the second quarter of 2022. The data sets underlying these estimates consist of public blockchain data regarding NFT volume, centralized exchange volume, and decentralized exchange volume. See Dune Analytics, <https://dune.com/browse/dashboards> (last visited October 30, 2023); Dune Analytics, <https://github.com/duneanalytics/spellbook/tree/main> (last visited October 30, 2023); The Block, <https://www.theblock.co/data/crypto-markets/spot/cryptocurrency-exchange-volume-monthly> (last visited Oct. 30, 2023).

<sup>4</sup> This comment cited an article that used data reported in an article published on Medium's website, "Most artists are not making money off NFTs and here are some graphs to prove it" from April 19, 2021. This article stated it was based on blockchain and other marketplace data for the week of March 14 through March 21, 2021. During that timeframe, according to the article, 33.6 percent of primary sales of NFTs were \$100 or less; 20 percent of primary sales were \$100 to \$200, and 7.7 percent of primary sales were \$200 to \$300. While not an exact match to the information provided by the comment, the sales data in this article are comparable.



reporting method to determine whether this reporting hampers its tax enforcement efforts. If abuses are detected, the IRS will reconsider these special reporting rules for NFTs. For a discussion of how the backup withholding rules apply to payments falling below this *de minimis* threshold, see Part VI.B. of this *Summary of Comments and Explanation of Revisions*. See Part I.D.2.a. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the *de minimis* threshold is applied to joint account holders.

#### b. Specified nonfungible token

In determining the specific subset of NFTs that should be eligible for this optional aggregate reporting method, the final regulations considered the comments received in favor of eliminating reporting on sales of certain types of NFTs. For example, one comment suggested the final regulations apply a “use test” to distinguish between NFTs that are used for investment purposes and those that are used for enjoyment purposes. The final regulations do not adopt this comment to define the subset of NFTs that are eligible for aggregate reporting because determining how a customer uses an NFTs would not be administratively feasible for most brokers. Another comment recommended that reporting should be required for those NFTs which (on a look through basis) reference assets that were previously subject to reporting under § 1.6045–1 or otherwise could be used to deliver value, such as a method of payment. The Treasury Department and the IRS generally agree with the distinction made in this comment because brokers already must determine if an effected sale is that of a security, commodity, etc. under the definitions provided under the section 6045 regulations. Accordingly, making the determination that an asset referenced by an NFT fits within those same definitions—or otherwise references a digital asset other than an NFT—is administrable and should not create significantly more burden for brokers. Because both types of NFT can result in taxable income, however, the Treasury Department and the IRS disagree with the comment’s conclusion that only NFTs that reference assets previously subject to broker reporting or otherwise could be used to deliver value should be subject to the final regulations. Instead, it is appropriate to require transactional reporting on sales of NFTs that reference previously reportable assets or otherwise could be used to deliver value

and allow for aggregate reporting on sales of other NFTs.

Accordingly, the final regulations under § 1.6045–1(d)(10)(iii) permit optional aggregate reporting for specified NFTs that look to the character of the underlying assets, if any, referenced by the NFT. Under these rules, to constitute a specified NFT, the digital asset must be of the type that is indivisible (that is, the digital asset cannot be subdivided into smaller units without losing its intrinsic value or function) and must be unique as determined by the inclusion in the digital asset itself of a unique digital identifier, other than a digital asset address, that distinguishes that digital asset from all other digital assets. Final § 1.6045–1(d)(10)(iv)(A) and (B). This means that the unique digital identifier is inherently part of the token itself and not merely referenced by the digital asset. Taken together, these requirements would exclude all fungible digital assets from the definition of specified NFTs, including the smallest units of such digital assets. The Treasury Department and the IRS considered whether the smallest units of fungible digital assets should be included in the definition of specified NFTs to the extent specialized off-chain software catalogs and indexes such units. The final regulations do not include such units in the definition of specified NFTs because, even if it was appropriate to include these assets in the definition of specified NFTs based on the application of off-chain software, the specialized off-chain software that catalogs and indexes such units, in fact, indexes every such unit regardless of whether the particular unit is trading separately or as part of a larger denomination of such digital asset. As a result, including these indexed digital assets in the definition would arguably result in larger denominations of a fungible digital asset being treated as combinations of multiple specified NFTs and thus subject to the optional aggregate reporting rule. Moreover, a definitional distinction that would ask brokers to look to the indexed units to determine if the indexed unit has any value separate from the fungible asset value would be difficult for brokers to administer.

In addition to satisfying these two criteria associated with the nonfungibility of the digital asset itself, to be a specified NFT, the digital asset must not directly (or indirectly through one or more other digital assets that also satisfy the threshold nonfungibility tests) provide the holder with an interest in certain excluded property. Excluded property generally includes

assets that were previously subject to reporting under § 1.6045–1 of the pre-2024 final regulations or any digital asset that does not satisfy either of the two criteria. Specifically, excluded property is defined as any security as defined in final § 1.6045–1(a)(3), commodity as defined in final § 1.6045–1(a)(5), regulated futures contract as defined in final § 1.6045–1(a)(6), or forward contract as defined in final § 1.6045–1(a)(7). Finally, excluded property includes any digital asset that does not satisfy the two threshold nonfungibility tests, such as a qualifying stablecoin or other non-NFT digital assets.

In contrast, a digital asset that satisfies the two criteria and references or provides an interest in a work of art, sports memorabilia, music, video, film, fashion design, or any other property or services (non-excluded property) other than excluded property is a specified NFT that is eligible for the optional aggregate reporting rule under the final regulations. An NFT that constitutes a security or commodity or other excluded property is an interest in excluded property for this purpose. Additionally, by excluding any NFT that provides the holder with any interest in excluded property from the definition of specified NFTs, an NFT that provides an interest in both excluded property and non-excluded property will not be included in the definition of specified NFT. This result lets brokers avoid having to undertake burdensome valuations with respect to NFTs that reference more than one type of property.

While several comments indicated that it would be administratively feasible for brokers to review each NFT to determine the nature of the underlying assets, one comment requested the adoption of a presumption test that would treat an NFT as an interest in financial assets unless the broker categorizes it otherwise. The Treasury Department and the IRS have concluded that a presumption rule for distinguishing between NFTs that is based on whether a broker chooses to categorize the underlying assets could potentially lead to abuse. Brokers that find it too difficult to determine the nature of assets referenced by NFTs can choose not to use the optional aggregate reporting method for NFTs. Accordingly, the final regulations do not adopt this presumption rule.

#### 4. Reporting Rules for PDAP Sales

As discussed in Part I.B.2. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have

determined that it is appropriate to permit some reporting relief for small PDAP sale transactions. Several comments offered alternatives to reporting on payment transaction sales to reduce the reporting burden of PDAPs. For example, several comments suggested exempting PDAPs from the requirement to report cost basis because PDAPs have no visibility into the customer's cost basis. The final regulations do not make any changes to address this comment because neither the proposed regulations nor the final regulations require PDAPs to report cost basis precisely because it is the understanding of the Treasury Department and the IRS that these brokers may not currently have any way to know the customer's cost basis.

Numerous comments recommended against any reporting of payments processed by PDAPs on purchases of common, lower-cost items such as a cup of coffee or ordinary consumer goods. Other comments recommended that the final regulations adopt a *de minimis* threshold for these purchases to reduce the overall reporting burden for these brokers. Another comment asserted that the changes made by the Infrastructure Act to section 6050I (requiring trades or businesses to report the receipt of more than \$10,000 in cash including digital assets) shows that Congress did not intend for section 6045 to capture lower-value digital asset purchase transactions. Another comment suggested that the potential revenue loss involving most purchases is extremely low and that using digital assets to make everyday purchases is not a realistic means of tax avoidance. This comment noted that the digital assets that are used to purchase daily items are stablecoins that do not ordinarily fluctuate in value. Another comment suggested a per transaction *de minimis* threshold for reporting on payments equal to the \$10,000 threshold in section 6050I or the \$50,000 threshold in the CARF. Another comment suggested that the *de minimis* threshold should match the annual threshold under section 6050W, though this comment also noted that this \$600 threshold amount was too low. Another comment recommended a per-transaction threshold for purchases over \$500 (adjusted for inflation), but also recommended, if this *de minimis* rule is adopted, that taxpayers be reminded in the instructions to Forms 1040 and 1099-DA that they still must report the gains and losses from these unreported payment transactions.

As discussed in Parts I.A.1. and I.D.2. of this *Summary of Comments and Explanation of Revisions*, the final

regulations adopt an optional \$10,000 overall annual *de minimis* threshold for qualifying stablecoin sales and permit sales over this amount to be reported on an aggregate basis rather than on a transactional basis. This \$10,000 annual threshold applies to PDAPs who choose to report qualifying stablecoin transactions under this optional method. Accordingly, given the comment that digital asset purchase transactions often are made using stablecoins, many purchases made using the services of PDAPs will not be reported due to the application of that *de minimis* threshold for payment transactions. This sizable overall annual threshold for payments made using qualifying stablecoins is appropriate because taxpayers are unlikely to have significant (if any) unreported gains or losses from these payment transactions that fall below the \$10,000 threshold. In contrast, as suggested by one comment, allowing for a *de minimis* threshold for digital assets other than qualifying stablecoins that are more likely to give rise to significant gains and losses likely would not be helpful to taxpayers who use them. This is because they would have to separately account for their payment transactions below the threshold to accurately report their gains and losses from these transactions for which they would not receive an information return. Moreover, because many PDAP transactions involve transactions in which the digital assets are first exchanged for cash before that cash is transmitted to the merchant, a high threshold for these transactions could create an incentive for taxpayers to dispose of their highly appreciated digital assets by way of payments just to avoid tax reporting. Notwithstanding these concerns, if a given taxpayer engages in relatively low-value payment transactions involving digital assets other than qualifying stablecoins, reporting to the IRS may not be as important in overcoming the overall income tax gap as the burden it would impose on PDAPs.

Accordingly, after balancing these competing concerns, the Treasury Department and the IRS have concluded that an annual *de minimis* threshold of \$600 would be appropriate for PDAP sales under final § 1.6045-1(a)(9)(ii)(D) because that threshold is similar to the threshold under sections 6041, 6041A, and 6050W(e) of the Code, thereby reflecting the balance between accurate tax reporting and information reporting requirements imposed on brokers that Congress thought appropriate. Additionally, this overall threshold for PDAP sales should be more

administrable because PDAPs would not have to adopt processes to monitor structuring activities used by customers to evade reporting. *See, e.g.*, § 1.6050I-1(c)(1)(ii)(B)(2) (treating an instrument as cash where the recipient knows that it is being used to avoid reporting). Under this threshold, PDAPs would not have to report PDAP sales of digital assets with respect to a customer if those sales did not exceed \$600 for the year. If a customer's PDAP sales exceed \$600 for the year, all of that customer's sales would be reportable under the general transactional reporting rules, because customers need that reporting to identify taxable dispositions of digital assets. Additionally, to avoid having to apply multiple *de minimis* thresholds to the same digital assets, the *de minimis* threshold for PDAP sales only applies to digital assets other than qualifying stablecoins or specified NFTs. Thus, for example, if a customer has PDAP sales of \$9,000 using qualifying stablecoins and PDAP sales of \$500 using digital assets other than qualifying stablecoins (or specified NFTs) for a particular year, the PDAP should apply the \$600 threshold for the second set of PDAP sales to eliminate the reporting obligation on the PDAP sales of \$500. Under these facts, the PDAP would not be required to report any of the customer's digital asset transactions for the year.

In the case of a joint account, final § 1.6045-1(d)(2)(i)(C) provides a rule (by cross-reference to final § 1.6045-1(d)(10)(v)) for the broker to determine which joint account holder will be the customer for purposes of determining whether the customer's combined gross proceeds for all accounts owned exceed the \$600 *de minimis* threshold. *See* Part I.D.3.a. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the *de minimis* threshold is applied to joint account holders.

Finally, because a sale under final § 1.6045-1(a)(9)(ii)(A) through (C) that is effected by brokers holding custody of the customer's digital assets or acting as the counterparty to the sale could also be structured to meet the definition of a PDAP sale effected by that broker, final § 1.6045-1(a)(9)(ii)(D) provides that any PDAP sale that is also a sale under one of the other definitions of sale under final § 1.6045-1(a)(9)(ii)(A) through (C) (non-PDAP sale) that would be subject to reporting due to the broker effecting the sale as a broker other than as a PDAP must be treated as a non-PDAP sale. Thus, if a customer instructs a custodial broker to exchange digital asset A for digital asset B, and that broker executes the transaction by

transferring payment (digital asset A) to a second person that is also a customer of that broker, the sale will be treated as a sale under § 1.6045–1(a)(9)(ii)(A)(2), not as a PDAP sale and not eligible for the \$600 *de minimis* threshold.

Similarly, if a PDAP, acting as an agent to a buyer of merchandise, receives digital assets from that buyer along with instructions to exchange those digital assets for cash to be paid to a merchant, the sale will be treated as a sale under § 1.6045–1(a)(9)(ii)(A)(1) and not as a PDAP sale. If, in this last example, the PDAP exchanges the digital assets received from the buyer for cash as an agent to the merchant and not the buyer, then the sale will be treated as a PDAP sale because the sale under § 1.6045–1(a)(9)(ii)(A)(1) would not be subject to reporting by the broker, but for the broker being a PDAP.

#### E. Determining Gross Proceeds and Adjusted Basis

In defining gross proceeds and initial basis in a sale transaction, the proposed information reporting regulations generally followed the substantive tax rules under proposed § 1.1001–7(b) for computing the amount realized from transactions involving the sale or other disposition of digital assets and the substantive rules under proposed § 1.1012–1(h) for computing the basis of digital assets received in transactions involving the purchase or other acquisition of digital assets. In addition, the proposed information reporting regulations generally followed the substantive tax rules proposed in §§ 1.1001–7(b) and 1.1012–1(h)(3) for determining the fair market value of property or services received or transferred by the customer in an exchange transaction involving digital assets.

##### 1. Valuation Issues

Under longstanding legal principles, the value of property exchanged for other property received ordinarily should be equal in value. Under these 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, e.g., 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.

The proposed rules under proposed § 1.6045–1 generally followed these substantive rules for determining fair market value of property or services received by the customer in an exchange

transaction involving digital assets. Specifically, proposed § 1.6045–1(d)(5)(ii)(A) provided that in determining gross proceeds, 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) provided that the broker must use a reasonable valuation method that looks to 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 proposed regulations provided 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.

In the case of one digital asset exchanged for a different digital asset, proposed § 1.6045–1(d)(5)(ii)(A) provided that the broker may rely on valuations performed by a digital asset data aggregator using a reasonable valuation method. For this purpose, the proposed regulations provided that 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. Proposed § 1.6045–1(d)(5)(ii)(C) also provided that a valuation method is not a reasonable method if the method over-weighs prices from exchangers that have low trading volumes, if the method under-weighs exchange prices that lie near the median price value, or if it inappropriately weighs factors associated with a price that would make that price an unreliable indicator of value. Additionally, proposed § 1.6045–1(d)(5)(ii)(B) provided that the broker must look to the fair market value of the services or property received if there is a disparity between the value of the services or property received and the value of the digital asset transferred in a digital asset exchange transaction. However, 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) provided 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. Finally, proposed § 1.6045–1(d)(5)(ii)(B) provided that the broker must report an undeterminable value for gross proceeds from 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.

The Treasury Department and the IRS solicited comments on: (1) whether 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) should be determined by looking to the fair market value of the digital assets used to pay for the transaction costs, and (2) whether there are circumstances under which an alternative valuation rule would be more appropriate.

The responses to these inquiries varied. One comment agreed that using the fair market value of the digital assets used as payment would be the most feasible and easily attainable means of valuing such services. A few comments stated the proposed approach would be problematic, because: (1) market prices of digital assets are highly volatile, not always reflecting the actual economic value of the services rendered, and (2) the reliance on the fair market value of the digital assets, instead of the services rendered, would be inconsistent with longstanding legal principles, resulting in significant compliance costs and recordkeeping burdens. Instead, the comments recommended that the Treasury Department and the IRS develop and re-propose alternative valuation metrics. Another comment recommended that the fair market value of the services giving rise to digital asset transaction costs should be based on the contracted price agreed to by the parties. Another comment stated that these questions rested on an improper assumption that transaction fees should be or can be calculated at a market value. This comment recommended that the final rules provide taxpayers and brokers with the option of determining the value of such services using the acquisition cost of the digital assets used as payment. One comment advised that many digital assets do not have easily ascertainable fair market values, particularly when involving services,

other digital assets, or non-standard forms of consideration.

The final regulations do not adopt the recommendations for alternative valuation approaches. As noted, except in the case of services giving rise to digital asset transaction costs, the proposed regulations required that brokers look to the value of services or property received by the customer in exchange for transferred digital assets in determining gross proceeds. Only when the services or property received cannot be valued does the broker need to look to the fair market value of the transferred digital assets. For broker services giving rise to digital asset transaction costs, the proposed regulations required brokers to look to the fair market value of the digital assets used to pay for digital asset transaction costs because it is likely to be significantly easier for brokers to determine the value of the transferred digital assets than it is to value their services. These valuation rules are reasonable and appropriate because they are consistent with *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, discussed previously in this Part I.E.1. The proposed alternatives do not conform with these authorities. Additionally, these rules provide practical approaches for brokers to use that are less burdensome than a rule requiring a case-specific valuation of services or other property, particularly for digital asset brokers who likely have more experience valuing digital assets transferred.

Several comments stated that brokers would need more detailed guidance on how to determine fair market value in digital asset transactions, including the reasonable methods brokers can use for assigning U.S. dollar pricing to each unique transaction. This comment recommended allowing brokers to choose a reasonable pricing methodology that is convenient for them. For example, this comment noted that it is standard industry practice today to use a daily volume weighted average price (VWAP) to value. Another comment recommended establishing a safe harbor rule that would allow a digital asset's price any time during the date of sale to be used to report gross proceeds. The final regulations do not adopt these comments because the suggested approaches are not consistent with existing case law and IRS guidance as the determination of fair market value must generally be determined at the time of the transaction. See *Cottage*

*Savings Association v. Commissioner*, 499 U.S. 554 (1991).

## 2. Allocation of Digital Asset Transaction Costs

Proposed § 1.6045-1(d)(5)(iv) and (d)(6)(ii)(C)(2) followed the substantive tax rules provided under proposed §§ 1.1001-7(b) and 1.1012-1(h) for allocating amounts paid to effect the disposition or acquisition of a digital asset (digital asset transaction costs). Specifically, these rules generally provided 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. Conversely, in the case of an acquisition of digital assets, the total digital asset transaction costs paid by the customer are generally allocable to the acquisition of the digital assets. The rules also provided an exception in an exchange of one digital asset for another digital asset differing materially in kind or in extent. In that case, the proposed regulations allocated one-half of any digital asset transaction cost paid by the customer in cash or property to effect the exchange to the disposition of the transferred digital asset and the other half to the acquisition of the received digital asset (the split digital asset transaction cost rule). As is discussed in Part II.B.1. of this *Summary of Comments and Explanation of Revisions*, many comments were received raising several concerns with the split digital asset transaction cost rule. For the reasons discussed in that Part, the final §§ 1.1001-7(b) and 1.1012-1(h) include revised rules to instead allocate 100 percent of the digital asset transaction costs to the disposition of the transferred digital asset in the case of an exchange of one digital asset for another digital asset differing materially in kind or in extent. Correspondingly, the final § 1.6045-1(d)(5)(iv)(B) and (d)(6)(ii)(C)(2) include revised rules to follow the final substantive tax rules and now require 100 percent of the digital asset transaction costs to be allocated to the disposition of the transferred digital asset in the case of an exchange of one digital asset for another digital asset differing materially in kind or in extent.

Comments were also received expressing concern in the case of digital asset transaction costs imposed on dispositions of digital assets used to pay those costs (cascading digital asset transaction costs). As discussed in Part II.B.4. of this *Summary of Comments and Explanation of Revisions*, the substantive rules have been revised to respond to these comments, and final

§ 1.6045-1(d)(5)(iv)(C) correspondingly provides that, in the case of a sale of digital assets in exchange for different digital assets, for which the acquired digital assets are withheld to pay the digital asset transaction costs to effect the original transaction, the total digital asset transaction costs paid by the customer to effect both the original transaction and any dispositions of digital assets to pay such costs are allocable exclusively to the original transaction. Final § 1.1012-1(h)(2)(ii)(C) includes a similar rule. Additionally, final § 1.6045-1(d)(6)(ii)(C)(2) follows this rule by cross referencing the rules at final § 1.6045-1(d)(5)(iv)(C).

## 3. Ordering Rules

### a. Adequate Identification of Digital Assets

The proposed information reporting regulations provided ordering rules 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 by cross referencing the identification rules in the proposed substantive tax law regulations. Specifically, proposed § 1.1012-1(j)(3)(ii) provided 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, under the proposed regulations, 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.

To make the final regulations more accessible for brokers, the final regulations set forth the identification rules in final § 1.6045-1(d)(2)(ii)(B) as well as in final § 1.1012-1(j)(3) for taxpayers. A few comments criticized proposed § 1.1012-1(j)(3)(i) for requiring

an adequate identification of digital assets held in the custody of brokers to be made no later than the date and time of the transaction. One comment advised that the proposed rule would provide less flexibility than currently allowed for making an adequate identification of stock under § 1.1012–1(c)(8). The limited flexibility, the comment warned, would pose as “a trap for the unwary” for some taxpayers. The final regulations do not adopt these comments. On the contrary, the volatile nature of digital assets and their markets makes the timing requirement necessary. The proposed rule is analogous to § 1.1012–1(c)(8) because settlement for securities takes place one or more days after a trade while the settlement period for digital asset transactions is typically measured in minutes. In both cases, a specific identification must be made before the relevant asset is delivered for settlement. Accordingly, the Treasury Department and the IRS have determined that the timing requirement for adequate identifications does not pose an undue burden on taxpayers, and the final rules retain the principles set forth in proposed § 1.1012–1(j)(3)(i).

One comment recommended that the final rules adopt a more flexible, principles-based approach for identifying digital assets held in the custody of brokers that would allow brokers the flexibility to implement basis identification in a manner that fits their particular systems and business models, so long as the end result provides sufficient transparency and accuracy. The Treasury Department and the IRS have determined that a uniform rule is preferable to the proposed discretionary rule because of administrability concerns and because it does not result in an undue burden for brokers. As a result, the Treasury Department and the IRS do not adopt this recommendation.

A few comments recommended the inclusion of a rule allowing taxpayers to make adequate identifications by standing orders so taxpayers would be able to make these identifications using a predetermined set of parameters rather than making them on a per-transaction basis, for example, uniformly identifying the highest cost or closest cost basis available. The final regulations adopt this recommendation. Accordingly, final §§ 1.1012–1(j)(3)(ii) and 1.6045–1(d)(2)(ii)(B)(2) include a rule allowing taxpayers to use a standing order or instruction to make adequate identifications.

Another comment requested guidance on whether a taxpayer would be treated as having made an adequate

identification under proposed § 1.1012–1(j)(3)(ii) if the notified broker is only able to offer one method by which identifications can be made for units of a digital asset held in the broker’s custody. The final regulations adopt a clarification pursuant to this comment. Accordingly, in the case of a broker who only offers one method by which a taxpayer may make a specific identification for units of a digital asset held in the broker’s custody, final §§ 1.1012–1(j)(3)(ii) and 1.6045–1(d)(2)(ii)(B)(2) treat such method as a standing order or instruction for the specific identification of the digital assets, and thus as an adequate identification unless the special rules in final §§ 1.1012–1(j)(3)(iii) and 1.6045–1(d)(2)(ii)(B)(3) apply.

Another comment requested clarification on whether an email sent by a taxpayer would satisfy the broker-notification requirement of proposed § 1.1012–1(j)(3)(ii). The Treasury Department and the IRS have determined that it would be most appropriate to allow brokers the discretion to determine the forms by which a notification can or must be made and whether a particular type of notification, by email or otherwise, is sufficiently specific to identify the basis and holding period of the sold, disposed of, or transferred units. Accordingly, to provide brokers with maximum flexibility, the final regulations do not adopt a rule concerning the form of the notification.

A few comments recommended against the proposed regulations’ use of similar ordering rules for digital assets as apply to stocks because blockchains are uniquely different from traditional financial systems. The final regulations do not adopt this comment. Although some digital assets may differ in certain ways from other asset classes, the Treasury Department and the IRS have concluded that the proposed ordering rules provide the most accurate methodology to determine basis and holding period of digital assets.

As discussed in Part VI.C. of this *Summary of Comments and Explanation of Revisions*, the final regulations add a default specific identification rule to avoid the need to separately report and backup withhold on certain units withheld in a transaction to pay other costs. In particular, in a transaction involving the sale of digital assets in exchange for different digital assets and for which the broker withholds units of the digital assets received in the exchange to pay the customer’s digital asset transaction costs or to satisfy the broker’s obligation under section 3406 to deduct and

withhold a tax with respect to the underlying transaction, final §§ 1.1012–1(j)(3)(iii) and 1.6045–1(d)(2)(ii)(B)(3) provide that the withheld units when sold will be treated as coming from the units received regardless of any other adequate identification (including standing order) to the contrary.

This special default specific identification rule ensures that the disposition of the withheld units will not give rise to gain or loss. Final § 1.6045–1(c)(3)(ii)(C) provides that the units that are so withheld for the purpose of paying the customer’s digital asset transaction costs are exempt from reporting, thus minimizing the burden on brokers who would have to otherwise report on this low value (and no gain or loss) transaction and any other further withheld units to pay for cascading transaction fees that do not give rise to gains or losses. As discussed in Part VI.C. of this *Summary of Comments and Explanation of Revisions*, although units that are so withheld for the purpose of satisfying the broker’s obligation under section 3406 to deduct and withhold a tax with respect to the underlying transaction also do not give rise to gain or loss, final § 1.6045–1(c)(3)(ii)(D) provides that these units are only exempt from reporting if the broker sells the withheld units for cash immediately after the underlying sale. The latter limitation was added to the reporting exemption to decrease the valuation risks of units withheld for the purpose of satisfying the broker’s backup withholding obligations. See Part VI.B. of this *Summary of Comments and Explanation of Revisions*, for a more detailed discussion of these valuation risks.

#### b. No Identification of Units Made

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) provided that the broker should treat the units of the digital asset that are sold as the earliest units of that type of digital asset that were either purchased within or transferred into the customer’s account with the broker. The proposed regulations provided that units of a digital asset are treated as transferred into the customer’s account as of the date and time of the transfer.

Numerous comments raised concerns with the rule requiring brokers to treat units transferred into the customer’s account as if they were purchased on the transfer-in date without regard to whether the customer provided the broker with actual purchase date information because it is inconsistent

with the default identification rule, which requires that the units sold be based on actual purchase dates. As such, these comments noted, the rule will disrupt the reasonable expectations of brokers and customers that make a good faith effort to track lots and basis to have lot identifications align. Additionally, one comment raised the concern that this ordering rule would force custodial brokers to keep track of multiple acquisition dates for customers, one for broker ordering purposes and another for the customer's cost-basis purposes. Another comment recommended that exceptions to the ordering rule be made to enhance accuracy, align tax treatment with real-world transactions, and minimize reporting errors. One comment recommended allowing brokers the option of applying the existing first-in-first-out (FIFO) rules for securities brokers, provided they do so consistently. For a discussion of the FIFO rules, see Part II.C.3. of this *Summary of Comments and Explanation of Revisions*. That is, until rules under section 6045A rules are in place, this comment recommended that the final regulations allow brokers to rely upon records generated in the ordinary course of the broker's business that evidence the customer's actual acquisition date for a digital asset, either because another broker provided that information or the customer provided it upon transfer, unless the broker knows that information is incorrect.

The Treasury Department and the IRS solicited comments on whether there were 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. Several comments advised against the adoption of account-based ordering rules, viewing such rules as imposing unnecessary costs and technical challenges, impeding industry innovation, and ignoring the current industry practice of using omnibus accounting structures or transaction aggregation. Instead, these comments recommended the adoption of discretionary ordering rules for digital assets left in the custody of brokers that would allow brokers to decide how to track and report the basis of these digital assets. Another comment recommended that the final rules adopt a more flexible, principles-based approach for digital assets in the custody of a broker that would allow brokers the flexibility to implement basis identification in a manner that fit

their systems and business models, so long as the result provides sufficient transparency and accuracy. Another comment recommended that brokers be allowed to apply more flexible "lot-relief" ordering rules. Another comment recommended that the final rules require the consistent application of a uniform rule for identifying digital assets in the custody of a broker. Consistency, the comment advised, would be key to maintaining the integrity of cost basis for transfers of digital assets in the custody of a broker between brokers and eliminating the need for taxpayers to reconcile discrepancies. The final regulations do not adopt the recommendations to provide brokers with the discretion to implement their preferred ordering rules for digital assets in the custody of brokers. The Treasury Department and the IRS have determined that a uniform rule is preferable to the proposed discretionary rule because of administrability concerns and because having all brokers follow a single, consistent method does not result in an undue burden for brokers.

Numerous comments requested that the final regulations provide safe harbor penalty relief to brokers that rely on reasonably reliable outside data that supplies purchase-date information. In this regard, several comments noted that the aggregation market offers software solutions to track digital assets as they move through the blockchain ecosystem, thus enabling these aggregators to keep meticulous records of taxpayers' digital asset tax lots. Accordingly, these comments opined that purchase date information from these aggregators constitutes reasonably reliable purchase-date information. Although one comment suggested that any information provided by a customer should be considered reasonably reliable, other comments had more specific suggestions, such as email purchase/trade confirmations from other brokers or immutable data on a public distributed ledger. Other comments suggested that brokers should also be allowed to consider purchase date information received from independent third parties, such as official platform records from recognized digital asset trading platforms, because these records are typically subject to regulatory oversight and verification. Another comment recommended that brokers be allowed to rely upon records audited by reputable third party firms that undergo rigorous verification processes as well as information from any government-approved source or tax authority.

The Treasury Department and the IRS have determined that inconsistencies

between broker records and customer records regarding digital asset lots in the custody of a broker may give rise to complexities and reporting inaccuracies. Accordingly, final § 1.6045-1(d)(2)(ii)(B)(4) provides that a broker may take into account customer-provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred under the identification rules. Customer-provided acquisition information is defined as reasonably reliable information, such as the date and time of acquisition units of a digital asset, provided to the broker by a customer or the customer's agent no later than the date and time of a sale, disposition, or transfer. Reasonably reliable information for this purpose includes purchase or trade confirmations at other brokers or immutable data on a public distributed ledger. A broker that takes into account customer-provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect for purposes of the information reporting penalties under sections 6721 and 6722. This penalty relief does not apply, however, to a broker who takes into account customer-provided acquisition information for purposes of voluntarily reporting the customer's basis. The Treasury Department and the IRS, notwithstanding, plan to study further the types of information that could be included in customer-provided acquisition information to determine if certain information is sufficiently reliable to permit reporting the customer's basis. Finally, it should be noted that, although taxpayers may in some cases be entitled to penalty relief from reporting incorrect amounts on their Federal income tax returns due to reasonable cause reliance on information included on a Form 1099, this relief would not be permitted to the extent the information included on that Form is due to incomplete or incorrect customer-provided acquisition information.

Final § 1.6045-1(d)(2)(i)(B)(8) requires brokers to report on whether they relied upon such customer-provided acquisition information in identifying the unit sold to alert customers and the IRS that the information supplied on the Form 1099-DA is, in part, based on customer-provided acquisition information described in final § 1.6045-1(d)(2)(ii)(B)(4). Under this rule, if the broker takes into account customer-

provided acquisition information in determining which unit was sold, the broker must report that it has done so, regardless of whether information on the particular unit sold was derived from the broker's own records or from the customer or its agent. The Treasury Department and the IRS anticipate that brokers will likely identify all units sold as relying on customer-provided acquisition information for customers that regularly transfer digital assets to that broker and provide that broker with customer-provided acquisition information.

Final § 1.6045–1(d)(2)(ii)(B) revises the rule in proposed § 1.6045–1(d)(2)(ii)(B) for the identification of the digital asset unit sold so that it also applies to dispositions and other transfers as well as sales because brokers need clear identification rules for these transactions to ensure they have the information they need about the digital assets that are retained in the customer's account. Additionally, the final regulations add a rule to accommodate the unlikely circumstance in which the broker does not have any transfer-in date information about the units in the broker's custody—such as could be the case if the broker's transfer-in records are destroyed and the broker has not received any reasonably reliable acquisition date information from the customer or the customer's agent. Addressing that circumstance, final § 1.6045–1(d)(2)(ii)(B)(1) provides that in cases in which the broker does not receive an adequate identification of the units sold from the customer by the date and time of the sale, disposition, or transfer, and in which the broker does not have adequate transfer-in date records and does not have or take into account customer-provided acquisition information, the broker must first report the sale, disposition, or transfer of units that were not acquired by the broker for the customer. Thereafter, the broker must treat units as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset were acquired by the customer. A broker may take into account customer-provided acquisition information described in final § 1.6045–1(d)(2)(ii)(B)(4) to determine when units of a digital asset were acquired by the customer if the broker neither knows nor has reason to know that the information is incorrect. For this purpose, unless the broker takes into account customer-provided acquisition information, the broker must treat units of a digital asset that are transferred into the customer's account as acquired as of the date and time of the transfer.

Finally, while it is inevitable that some customers will fail to provide their brokers with reasonably reliable acquisition information or that brokers will decline in some circumstances to rely upon customer-provided acquisition information, customers nonetheless can avoid lot identification inconsistencies by adopting a fallback standing order to track lots in a manner consistent with the broker's tracking requirements.

Finally, one comment requested that the final regulations set forth the procedures the IRS will follow when a broker's reported cost basis amount does not match the cost basis reported by customers due to lot identification inconsistencies. The final regulations do not adopt this comment as being outside the scope of these regulations.

#### F. Basis Reporting Rules

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. Because rulemaking under section 6045A with respect to digital assets was not proposed, much less finalized, the proposed regulations limited the definition of a *covered security* for purposes of digital asset basis reporting to digital assets that are acquired in a customer's account by a broker providing hosted wallet services (that is, custodial services for such digital assets). Accordingly, under the proposed regulations, mandatory basis reporting was only required for sales of digital assets that were previously acquired, held until sale, and then sold by a custodial broker for the benefit of a customer.

One comment raised the concern that brokers do not have access to cost-basis information with respect to transactions that are effected by other brokers. This comment recommended that the final regulations delay requiring brokers to report adjusted basis until the purchase information sharing mechanism under section 6045A is implemented. The proposed regulations did not require basis reporting for sale transactions effected by custodial brokers of digital assets that were *not* previously acquired

by that broker in the customer's account. Accordingly, the final regulations do not adopt this comment. However, a clarification has been made to final § 1.6045–1(d)(2)(i)(D) in order to avoid confusion on this point.

Section 80603(b)(1) of the Infrastructure Act added digital assets to the list of specified securities for which basis reporting is specifically required and provided that a digital asset is a covered security if it is acquired on or after January 1, 2023 (the acquisition applicable date for digital assets). Based on this specific authority provided by the Infrastructure Act, the proposed regulations provided 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). Additionally, proposed § 1.6045–1(a)(15)(i)(j) modified the definition of a *covered security* for which adjusted basis reporting would be required to include digital assets acquired in a customer's account on or after January 1, 2023, by a broker providing hosted wallet services.

Several comments raised the concern that adjusted basis reporting for digital assets acquired before the applicability date of the regulations would make accurate reporting of adjusted basis difficult and, in some cases, impossible. These comments instructed that, to accurately track the adjusted basis of digital assets in an account, brokers need not only purchase price information but also clear lot ordering rules to be sure that the basis of a digital asset sold is removed from the basis pool of the digital assets remaining in the account. Additionally, these comments noted that, the basis reported to customers will not be accurate unless customers applied the same lot ordering rules. The comments also indicated that taxpayers do not have the means to provide brokers with adequate identification of shares they previously sold. Thus, while brokers likely have information about digital assets acquired on or after January 1, 2023, because there were no clear ordering rules in place for transactions that took place on or after January 1, 2023, brokers will not know which lots their customers previously reported as sold between January 1, 2023 and the January 1, 2026 date their systems are in place to allow for cost-basis reporting under these final regulations. Thus,



brokers do not have the information necessary to track the basis of the digital assets that remain in the customer's account.

Several comments also raised the concern that brokers need time, not only to capture the original cost basis for digital asset lots and to build systems to track adjusted basis of digital assets consistent with the ordering rules in the final regulations, but also to build systems capable of performing complex adjustments for gifting and other blockchain events. While one comment indicated that the earliest that brokers could implement adjusted basis tracking is January 1, 2025, other comments stated that brokers should not be required to start building (or revising existing systems) until these regulations are final. Accordingly, these comments recommended aligning the acquisition applicable date for digital assets with the proposed January 1, 2026, applicable date for basis reporting to allow digital asset brokers to build basis reporting systems and basis tracking systems at the same time.

The Treasury Department and the IRS considered these comments. Despite the critical value of adjusted basis tracking and reporting to the broker's customers and to overall tax administration, the final regulations adopt the recommendation made by these comments to align the acquisition applicable date for digital assets with the January 1, 2026, applicability date for adjusted basis reporting. The Treasury Department and the IRS, however, strongly encourage brokers to work with their customers who, as described in Part II.C.2. of this *Summary of Comments and Explanation of Revisions*, are subject to the new ordering rules for transactions beginning on or after January 1, 2025, to facilitate an earlier transition to these new basis tracking rules to the extent possible.

The proposed regulations required 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. Several comments requested a delay in the proposed applicability date for basis reporting. One comment suggested that further delay was warranted because the applicability date for digital asset basis reporting is not consistent with the length of time that stockbrokers were given to implement cost basis reporting rules.

The final regulations do not adopt this request for a delay for several reasons. First, brokers have been on notice that cost basis reporting in some form would be required since the Infrastructure Act was enacted in 2021. Second, many brokers already have systems in place to report cost basis to their customers as a service and other brokers have contracts with third party service providers to do the same. Third, cost basis reporting is essential to taxpayers and the IRS to ensure that gains and losses are accurately reported on taxpayers' Federal income tax returns. Fourth, the initial applicability date for cost basis reporting for digital assets—over four years after the Infrastructure Act was enacted—is not inconsistent with the initial 2011 implementation of the cost basis reporting rules for stockbrokers, which was only three years after the Energy Improvement and Extension Act of 2008 was enacted. Notwithstanding this decision, the IRS intends to work closely with stakeholders to ensure the smooth implementation of the basis reporting rules, including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases involving intentionally disregarding these rules.

#### G. Exceptions To Reporting of Sales Effected by Brokers on Behalf of Exempt Foreign Persons and Non-U.S. Broker Reporting

##### 1. In General

The proposed regulations provided the same exceptions to reporting in § 1.6045-1(c) for exempt recipients and excepted sales for brokers effecting sales of digital assets (digital asset brokers) that are in the final regulations for securities brokers. Similar to the case of a securities broker effecting a sale of an asset other than a digital asset, the proposed regulations provided an exception to a broker's reporting of a sale of digital assets effected for a customer that is an exempt foreign person and requirements for applying the exception. See § 1.6045-1(g)(1) through (3) (for sales other than digital assets) and proposed § 1.6045-1(g)(4) (for sales of digital assets). For a broker to treat a customer as an exempt foreign person for a sale of a digital asset, the proposed regulations provided requirements for valid documentation of foreign status, standards of knowledge for a broker's reliance on this documentation, and presumption rules in the absence of documentation that may be relied upon to determine a customer's status as a U.S. or foreign person. Under the proposed regulations, these requirements differed in certain

respects depending on the broker's status as a U.S. digital asset broker, a non-U.S. digital asset broker, a controlled foreign corporation (CFC), a digital asset broker conducting activities as a money services business (MSB), or as a non-U.S. digital asset broker or a CFC digital asset broker not conducting activities as an MSB (each as defined in the proposed regulations). See proposed § 1.6045-1(g)(4)(i). A broker's status within one of the foregoing categories also dictated whether a sale of digital assets was considered effected at an office either inside or outside the United States, a determination that in some cases dictated whether a broker was treated as a broker for a sale of a digital asset under proposed § 1.6045-1(a)(1) and whether the exception to backup withholding under § 31.3406(g)-1(e) applied to a sale that is reportable. See proposed § 1.6045-1(a)(1) (defining broker).

Under the proposed regulations, a U.S. digital asset broker is a U.S. payor or middleman as defined in § 1.6049-5(c)(5), other than a CFC, that effects sales of digital assets on behalf of others. A U.S. payor or middleman includes a U.S. person (including a foreign branch of a U.S. person), a CFC (as defined in § 1.6049-5(c)(5)(i)(C)), certain U.S. branches that agree to be treated as U.S. persons, a foreign partnership with controlling U.S. partners or 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. Thus, a U.S. digital asset broker included both U.S. persons and certain categories of non-U.S. persons (other than CFCs). Because it is a U.S. payor or middleman, a U.S. digital asset broker is a broker under proposed § 1.6045-1(a)(1) with respect to all sales of digital assets it effects for its customers, such that the broker must report with respect to a sale absent an applicable exception to reporting. To except reporting based on a customer's status as an exempt foreign person, a U.S. digital asset broker must have obtained a withholding certificate (that is, an applicable Form W-8) to which it must have applied certain reliance requirements when it was not permitted to treat the customer as a foreign person under a presumption rule. If a U.S. digital asset broker was not permitted to treat a customer as an exempt foreign person and failed to obtain a valid Form W-9 for the customer when required under § 1.6045-1(c), backup withholding under section 3406 applied to proceeds from digital assets sales made on behalf of the customer.

The proposed regulations also specified requirements for foreign

brokers that are not U.S. digital asset brokers for sales of digital assets. Under the proposed regulations, a broker effecting sales of digital assets that is not a U.S. digital asset broker is either a CFC digital asset broker or a non-U.S. digital asset broker, which have different requirements depending on whether they conduct activities as a MSB. A non-U.S. digital asset broker or CFC digital asset broker conducts activities as an MSB under the proposed regulations when it is registered with the Department of the Treasury under 31 CFR part 1022.380 (or any successor guidance) as an MSB, as defined in 31 CFR part 1010.100(ff). The requirements for non-U.S. digital asset brokers and CFC digital asset brokers conducting activities as MSBs reference the requirements that apply to a U.S. digital asset broker. In the case of a CFC digital asset broker not conducting activities as an MSB, the broker is (similar to a U.S. digital asset broker) a U.S. payor or middleman, such that it is a broker under proposed § 1.6045–1(a)(1) with respect to all sales of digital asset it effects for its customers. Unlike a U.S. digital asset broker, however, a CFC digital asset broker not conducting activities as an MSB was not permitted to treat a customer as an exempt foreign person based on certain documentary evidence supporting the customer's foreign status (in lieu of a Form W–8), and, because sales of digital assets it effects for customers are treated as effected at an office outside the United States, the exception to backup withholding in proposed § 31.3406(g)–1(e) applied to a sale reportable by the broker.

In the case of a non-U.S. digital asset broker not conducting activities as an MSB, more limited requirements applied than those that applied to other digital asset brokers. Under the proposed regulations, unless the broker collects certain information about a customer that shows certain specified “U.S. indicia,” the broker has no reporting or backup withholding requirements under the proposed regulations. If the broker has such U.S. indicia for a customer, a sale effected for the customer is treated as effected at an office of the broker inside the United States. In that case, the broker was required to report with respect to a sale of a digital asset it effected for the customer when required under § 1.6045–1(c) unless it was permitted to treat the customer as an exempt foreign person based on certain documentary evidence or a withholding certificate it was permitted to rely upon, or when the broker was permitted to treat the

customer as a foreign person under a presumption rule. Finally, the exception to backup withholding in proposed § 31.3406(g)–1(e) would have applied to a sale of digital assets reportable by a non-U.S. digital asset broker not conducting activities as an MSB.

## 2. Non-U.S. Digital Asset Brokers and the CARF

Several comments on the proposed regulations' rules requiring non-U.S. brokers to report information on digital asset transactions recommended that the rules be revised to provide that non-U.S. brokers that are reporting information on U.S. customers to other jurisdictions under the CARF should not be required to report information to the IRS and should not have to obtain a separate U.S. certification from a customer. Other comments requested that the implementation of rules for non-U.S. brokers be delayed until they are harmonized with the CARF. Other comments relating to the proposed regulations' rules requiring non-U.S. brokers to report information on digital asset transactions recommended that a single diligence standard apply to all non-U.S. brokers.

The Treasury Department and the IRS agree that rules requiring non-U.S. brokers to report information on digital asset transactions should be revised in order to allow for the implementation of the CARF by the United States. As described in the preamble to the proposed regulations, under the CARF, the IRS would provide information on foreign persons for whom U.S. brokers effect sales of digital assets to other countries that have implemented the CARF and receive information from those countries about transactions by U.S. persons with non-U.S. digital asset brokers. Regulations implementing the CARF would exempt non-U.S. brokers that are reporting information on U.S. customers to jurisdictions that exchange information with the IRS pursuant to an automatic exchange of information mechanism from reporting information on such U.S. customers to the IRS under section 6045. This would mean that such non-U.S. brokers would not be required to report information on U.S. customers to both the IRS and a foreign tax administration that is exchanging information with the IRS. The rules provided in the proposed regulations, when finalized and as revised to take into account comments received on diligence standards and other issues, therefore would be expected to apply only to a limited set of non-U.S. brokers in jurisdictions that do not implement the CARF and exchange digital asset information with the United States.

Accordingly, the final regulations reserve on the rules requiring non-U.S. brokers to report information on U.S. customers to the IRS, in order to coordinate the rules for non-U.S. brokers under section 6045 with new rules that will implement the CARF.

The Treasury Department and the IRS intend to propose regulations that would, if finalized, implement CARF in sufficient time for the United States to begin exchanges of information with appropriate partner jurisdictions in 2028 with respect to transactions effected in the 2027 calendar year. It is anticipated that those proposed regulations also would require U.S. digital asset brokers to report information on their foreign customers resident in such jurisdictions, so that the IRS could provide that information to those jurisdictions pursuant to automatic exchange of information mechanisms. Since the proposed CARF regulations would require additional reporting by U.S. digital asset brokers, the final regulations have been drafted taking the CARF definitions into account where feasible in order to minimize differences between the types of information that U.S. digital asset brokers are required to report under the final regulations and under forthcoming proposed CARF regulations. It is anticipated, however, that the information required to be reported by U.S. digital asset brokers under the forthcoming proposed CARF regulations would differ from the information required to be reported under the final regulations in significant ways. For example, the CARF requires reporting of acquisitions and transfers of digital assets, requires all reporting to take place on an aggregate basis, and has different rules for reporting of stablecoins than the final regulations.

As the final regulations reserve on the rules of § 1.6045–1(g)(4) relating to non-U.S. brokers, the final regulations limit the definition of a U.S. digital asset broker for purposes of applying the provisions of § 1.6045–1(g)(4). For these brokers, these provisions include documentation, reliance, and presumption rules to determine whether they may treat customers as exempt foreign persons. The final regulations indicate as reserved those paragraphs of the proposed regulations that addressed definitions or requirements specific to brokers that are not U.S. digital asset brokers. For example, the final regulations reserve the rules for CFC digital asset brokers, non-U.S. digital asset brokers conducting activities as money service businesses and other non-U.S. digital asset brokers that were described in proposed § 1.6045–1(g)(4).

As a result, the remainder of this Part I.G. discusses those comments relevant to U.S. digital asset brokers (or digital asset brokers generally) and excludes discussion of comments specific to only non-U.S. brokers. Comments specific to non-U.S. brokers will be addressed as part of future regulations.

### 3. Revised U.S. Indicia for Brokers To Rely on Documentation

As referenced in Part I.G.1. of this *Summary of Comments and Explanation of Revisions*, under the proposed regulations a digital asset broker is subject to specified requirements for relying on a Form W-8 to treat a customer as an exempt foreign person. With respect to a Form W-8 that is a beneficial owner withholding certificate, the proposed regulations provided that a digital asset broker may rely on the certificate unless the broker has actual knowledge or reason to know that the certificate is unreliable or incorrect. Similar to a securities broker effecting a sale, a digital asset broker is treated as having “reason to know” that a beneficial owner withholding certificate for a customer is unreliable or incorrect based on certain indicia of the customer’s U.S. status (U.S. indicia), which are for this purpose cross-referenced in proposed § 1.6045-1(g)(4)(vi)(B) to the U.S. indicia in proposed § 1.6045-1(g)(4)(iv)(B)(1) through (5) (setting forth the U.S. indicia relevant to a non-U.S. digital asset broker’s requirements under the proposed regulations).

The U.S. indicia in proposed § 1.6045-1(g)(4)(iv)(B)(1) through (5) included the U.S. indicia in § 1.1441-7(b)(5), which generally apply to determine when a U.S. withholding agent is treated as having “reason to know” that a beneficial owner withholding certificate is unreliable or incorrect and which are also applied for that purpose to a securities broker effecting a sale. *See* § 1.6045-1(g)(1)(ii). Proposed § 1.6045-1(g)(4)(iv) further includes as U.S. indicia the following: (1) 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; (2) 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; or (3) 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. As noted in the preamble to the proposed regulations, the additional U.S. indicia were included to account for the digital nature of the activities of digital asset brokers, including that they do not typically have physical offices and communicate with customers by digital means rather than by mail.

Many comments were received that raised issues with the proposed new U.S. indicia. Some comments noted coordination issues that could arise from the new indicia for brokers effecting sales of both securities and digital assets. These comments requested that the U.S. indicia for digital asset brokers be aligned with the U.S. indicia applicable to traditional financial brokers so that brokers effecting sales in both capacities could avoid maintaining parallel systems to monitor differing U.S. indicia depending on the type of sale. A comment noted that some securities brokers may transact only digitally with customers, such that the stated reasoning for the new U.S. indicia is not limited to digital asset brokers.

Other comments objected to one or more of the specified new U.S. indicia, questioning the usefulness of certain of the indicia for identifying potential U.S. customers and noting excessive burdens on brokers in tracking the required information. They noted that IP addresses are not reliable indicators of a customer’s residence given that the location indicated by an IP address will change when customers travel outside of their countries of residence and can be masked by the use of a virtual private network (VPN) so that a customer’s actual location cannot be determined. A comment noted that the proposed regulations do not describe whether an IP address would be required to be checked for all contacts with the customer as they do not define a “customer contact” for this purpose.

Some comments raised concerns with the U.S. indicia relating to transfers effected for customers to and from U.S. bank accounts and U.S. digital asset brokers. Certain of those comments noted that the proposed regulations do not specify how a broker should

determine that a customer’s transfer is to or from a U.S. digital asset broker, with one comment suggesting an actual knowledge standard be permitted, and another comment suggesting that the IRS publish a list of U.S. digital asset brokers. Another comment noted that a customer’s dealings with U.S. digital asset brokers or U.S. banks is not a good indication of a customer’s U.S. status. Finally, some comments noted that requiring determinations of U.S. status for every transfer would add burdens on digital asset brokers that exceed those resulting from the static forms of U.S. indicia that apply to securities brokers (such as for standing instructions to pay amounts to a U.S. account) and may be read to require documentation cures at multiple times.

Because the comments raise concerns sufficient for the Treasury Department and the IRS to reconsider the additional U.S. indicia, the final regulations do not include any of the additional U.S. indicia that are in the proposed regulations for U.S. digital asset brokers. Thus, for purposes of the reliance requirements of U.S. digital asset brokers, the final regulations include only the U.S. indicia generally applicable to U.S. securities brokers. The Treasury Department and the IRS intend to consider whether additional U.S. indicia should be part of the proposed requirements that would be applicable to non-U.S. digital asset brokers (as referenced in Part I.G.2. of this *Summary of Comments and Explanation of Revisions*).

### 4. Transitional Determination of Exempt Foreign Status

To provide additional time for digital asset brokers to collect the necessary documentation to treat existing customers as exempt foreign persons, the proposed regulations provided a transitional rule for a broker to treat a customer as an exempt foreign person for sales of digital assets effected before January 1, 2026, that were held in a preexisting account established with a broker before January 1, 2025. A broker may apply this transitional rule if the customer has not been previously classified as a U.S. person by the broker, and information the broker has for the customer includes a residence address that is not a U.S. address. *See* proposed § 1.6045-1(g)(4)(vi)(F).

No comments were received in response to this proposed rule. The final regulations include this transitional relief. The dates for which relief will apply have been modified to apply to sales effected before January 1, 2027, that were held in an account established with a broker before January 1, 2026.

##### 5. Certification of Individual Customer's Presence in U.S.

With respect to the requirements for a valid beneficial owner withholding certificate provided by a customer to a broker to treat the customer as an exempt foreign person, the proposed regulations stated that a beneficial owner withholding certificate provided by an individual (that is, a Form W-8BEN) 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 183 days or more during each calendar year to which the certificate pertains. See proposed § 1.6045-1(g)(4)(ii)(B). This certification is based on the same requirement applicable to a securities broker in § 1.6045-1(g)(1)(i) to allow the broker to rely on a beneficial owner withholding certificate to treat an individual as an exempt foreign person. One comment stated that this certification requirement would not add sufficient value or reliability to a standard or substitute Form W-8BEN and further noted that language relating to the substantial presence test is included only in the instructions for Form W-8BEN, with a cross-reference in the form's jurat. The comment thereby asserted that an individual may be unaware they are attesting to this standard when they sign a Form W-8BEN. The comment suggested that this language be removed in the final regulations.

As referenced in the comment, this certification relates to a customer's potential classification as a U.S. individual under the substantial presence test in § 301.7701(b)-1(c). It also relates to whether an individual customer is subject to tax on capital gains from sales or exchanges under section 871(a)(2) of the Code when the individual remains a resident alien under section 7701(b)(3)(B) of the Code despite being present in the United States for 183 days or more during a year. As indicated in the preamble to the proposed regulations, Form W-8BEN specifically requires that an individual certify to the individual's status as an exempt foreign person in accordance with the instructions to the form, which include this requirement (relating to broker and barter transactions associated with the form). Thus, this certification is both sufficiently described in the proposed regulations with respect to its reference to Form W-8BEN and relevant to an individual's claim of exempt foreign person status. Moreover, this certification is required today for Forms W-8BEN collected by securities brokers

and the Treasury Department and the IRS have determined that the same certification should be required for Forms W-8BEN collected by digital asset brokers. Thus, this comment is not adopted, and this certification requirement is included in the final regulations for a beneficial owner withholding certification provided to a U.S. digital asset broker. In response to this comment, the IRS may consider revising Form W-8BEN or its instructions to highlight this requirement more prominently for individuals completing the form.

##### 6. Substitute Forms W-8

As described in Part I.G.1. of this *Summary of Comments and Explanation of Revisions*, the proposed regulations provided that a digital asset broker may treat a customer as an exempt foreign person if the broker receives a valid Form W-8 upon which it may rely. They also permit a broker to rely upon a substitute Form W-8 that meets the requirements of § 1.1441-1(e)(4). See proposed § 1.6045-1(g)(4)(ii)(B) and (g)(4)(vi)(A)(1). Some comments requested that the final regulations be amended to allow substitute certification forms based on other reporting regimes to reduce broker compliance burdens, reduce customer confusion, and streamline global information reporting. Some comments specially suggested that FATCA or Common Reporting Standard (CRS) self-certifications (adjusted to account for digital assets) be permitted as qualifying substitute forms. A comment supported the use of the type of substitute form described in Notice 2011-71, 2011 I.R.B. 233 (August 19, 2011), to establish a payee's status as a foreign person for section 6050W reporting purposes.

The Treasury Department and the IRS agree that a broker's ability to leverage a certification form already in use for other purposes may reduce compliance burdens associated with documenting customers. As stated in the preceding paragraph, however, the proposed regulations already permitted brokers to rely on substitute certification forms that meet the standard that applies for purposes of section 1441 of the Code. Under this standard, a substitute form must include information substantially similar to that required on an official certification form and the certifications relevant to the transactions associated with the form. This standard is similar to the standard for the substitute form specified in Notice 2011-71 (in reference to the comment to use that substitute form). Additionally, as the comments referencing the use of self-certifications pertaining to foreign

reporting regimes presumably were made with respect to their use by non-U.S. brokers, and as the requirements for non-U.S. brokers are reserved, these comments are not further considered for the final regulations. See Part I.G.2. of this *Summary of Comments and Explanation of Revisions*. As under the proposed regulations, the final regulations provide that a U.S. digital asset broker may rely on a substitute Form W-8 that meets the standard for purposes of section 1441 to establish a customer's foreign status.

##### H. Definitions and Other Comments

The proposed regulations defined a hosted wallet as a custodial service provided to a user that electronically stores the private keys to digital assets held on behalf of others and an unhosted wallet as a non-custodial means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Included in the definition of unhosted wallets was a statement that 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). Several comments noted that these definitions were confusing because the proposed regulations failed to define a wallet more generally. The final regulations adopt this comment and define a wallet as a means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Final § 1.6045-1(a)(25)(i).

The proposed regulations also provided that "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." Several comments expressed confusion with this definition. One comment suggested that this definition was not consistent with how distributed ledgers work because digital assets themselves are not held in wallets but rather exist on the blockchain. The Treasury Department and the IRS recognize that digital assets are not actually stored in wallets. Indeed, the preamble to the proposed regulations explained that references to an owner "holding" digital assets generally or "holding" digital assets in a wallet or account were meant to refer to holding or controlling, whether directly or indirectly through a custodian, the keys to the digital assets. To address the comment, however, the final regulations conform the definition in the text to the preamble's

explanation. Accordingly, under the final § 1.6045-1(a)(25)(iv), “[a] digital asset is referred to in this section as 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.” Additionally, the final definition provides that 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 hosted wallet, are similarly referred to as held in a wallet. The same concept applies to references to “held at a broker,” “held by the user of a wallet,” “acquired in a wallet or account,” or “transferred into a wallet or account.” Holding, acquiring, or transferring, in these cases, refer to holding, acquiring, or transferring the ability to control, whether directly or indirectly through a custodian, the keys to the digital assets.

Another comment suggested references to “wallet or account” in this definition and elsewhere in the proposed regulations failed to recognize the difference between those terms in the digital asset industry. The final regulations do not adopt this comment. Although many terms in the digital asset industry may have their own unique meaning, the terms wallet and account, in these final regulations, are used synonymously.

Another comment indicated that there were several additional unclear definitions, including “software”, “platform”, and “ledger.” The regulations do not adopt this comment. Standard rules of construction apply to give undefined terms, such as software, ledger, and platform, their usual meaning. These terms are sufficiently basic to not warrant additional definitions.

## I. Comments Based on Constitutional Concerns

### 1. First Amendment

Multiple comments alleged that the proposed regulations, if finalized, would violate the First Amendment to the U.S. Constitution on a variety of asserted bases. Some comments viewed the proposed regulations as requiring developers to include code in their products that would reveal customer data, while others asserted that the proposed regulations would require persons who fit the definition of broker to write their software in a manner that goes directly against their closely held political, moral, and social beliefs. Comments also said the proposed regulations would infringe on a taxpayer’s freedom of association under the First Amendment because the IRS

could use the taxpayer identification information and wallet data reported by brokers to monitor their financial associations.

The Department of the Treasury and the IRS do not agree that the regulations as proposed or as finalized infringe upon rights guaranteed by the First Amendment. The First Amendment provides, among other things, that “Congress shall make no law . . . abridging the freedom of speech.” U.S. CONST. Amend. I. Protected speech includes the right to utter, print, distribute, receive, read, inquire about, contemplate, and teach ideas. *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). It also includes the right to freely associate with others for expressive purposes. *Freeman v. City of Santa Ana*, 68 F.9d 1180, 1188 (9th Cir. 1995). Protected speech includes conduct designed to express and convey ideas. *New Orleans S.S. Ass’n v. General Longshore Workers*, 626 F.2d 455, 462 (5th Cir. 1980), aff’d. *Jacksonville Bulk Terminals, Inc. v. International Longshoremen’s Ass’n*, 457 U.S. 702 (1982). The rights protected by the First Amendment include both the right to speak freely and the right to refrain from speaking at all. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). A First Amendment protection against compelled speech, however, has been found only in the context of governmental compulsion to disseminate a particular political or ideological message. See, e.g., *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974) (holding unconstitutional a state statute requiring newspapers to publish the replies of political candidates whom they had criticized); *Wooley v. Maynard*, 430 U.S. 705 (1977) (holding that a state may not require a citizen to display the state motto on his license plate). Challenges to government-compelled disclosures that are based on the freedom of association are determined on an “exacting scrutiny” standard, which requires a “substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010) (internal quotation marks omitted)).

The final regulations do not compel political or ideological speech. Although they do require disclosure of certain information, they do not infringe on a taxpayer’s right to free association. Instead, the final regulations merely require information reporting for tax compliance purposes, a sufficiently important governmental interest. See

*Collett v. United States*, 781 F.2d 53, 55 (6th Cir. 1985) (rejecting a taxpayer’s First Amendment challenge to the imposition of a frivolous return penalty under section 6702 and holding that “the maintenance and viability of the tax system is a sufficiently important governmental interest to justify incidental regulation upon speech and non-speech communication”) (citing *United States v. Lee*, 455 U.S. 252, 260 (1982)). The information required from brokers with respect to digital asset sales is similar to the information required to be reported by brokers with respect to other transactions required to be reported, and the IRS has an important interest in receiving this information. The IRS gathers third-party information about income received and taxes withheld to verify self-reported income and tax liability reported on Federal income tax returns. The use of reliable and objective third-party verification of income increases the probability of tax evasion being detected and increases the cost of evasion to the taxpayers, thereby decreasing the overall level of tax evasion by taxpayers. Information reporting also assists taxpayers receiving such reports to prepare their Federal income tax returns and helps the IRS determine whether such returns are correct and complete. Accordingly, the Treasury Department and the IRS have concluded the final regulations would pass muster under First Amendment scrutiny.

### 2. Fourth Amendment

Multiple comments contended the proposed regulations, if finalized, would violate the Fourth Amendment’s prohibition on warrantless searches and seizures of a person’s papers and effects because they do not currently provide their brokers with their personal information when they transact in digital assets. Comments asserted the proposed regulations would violate the Fourth Amendment because reporting information that would link an individual’s identity to transaction ID numbers and their digital asset addresses would allow the government to see historical and prospective information about the individual’s activities. Although the Treasury Department and the IRS do not agree that requiring the reporting of this information would violate the Fourth Amendment, the final regulations do not require this information to be reported. Instead, the final regulations require this information to be retained by the broker to ensure the IRS will have access to all the records it needs if requested by IRS personnel as part of

an audit or other enforcement or compliance effort.

The Fourth Amendment protects against “unreasonable searches and seizures.” U.S. CONST. Amend IV. The Fourth Amendment’s protections extend only to items or places in which a person has a constitutionally protected reasonable expectation of privacy. *See California v. Ciraolo*, 476 U.S. 207, 211 (1986). Customers of digital asset brokers do not have a reasonable expectation of privacy with respect to the details of digital asset sale transactions effectuated by brokers. *See United States v. Gratkowski*, 964 F.3d 307, 311–12 (5th Cir. 2020) (rejecting the defendant’s Fourth Amendment claim of a reasonable expectation of privacy in transactions recorded in a publicly available blockchain and in the records maintained by the virtual currency exchange documenting those transactions, noting that “the nature of the information and the voluntariness of the exposure weigh heavily against finding a privacy interest.”). *See also, Goldberger & Dublin, P.C.*, 935 F.2d 501, 503 (2nd Cir. 1991) (citing *United States v. Miller*, 425 U.S. 435, 444 (1976); *Cal. Bankers Ass’n v. Shultz*, 416 U.S. 21, 59–60 (1974)) (summarily rejecting a Fourth and Fifth Amendment challenge to information reporting requirements under section 6050I and noting that similar “contentions relative to the Fourth and Fifth Amendments have been rejected consistently in cases under the Bank Secrecy Act by both the Supreme Court and this Court.”) (additional citations omitted). Gains or losses from these sale transactions must be reflected on a Federal income tax return. Customers of digital asset brokers do not have a privacy interest in shielding from the IRS the information that the IRS needs to determine tax compliance. Moreover, these taxable transactions will be reported to the IRS in due course anyway. To the extent the digital asset sale transactions are recorded on public ledgers, those transactions are not private. Just because customers might choose not to exchange identifying information with brokers when engaging in digital assets transactions does not render the underlying transactions private, particularly when the customers choose to engage in such transactions in a public forum, such as a public blockchain. Therefore, the Treasury Department and the IRS have concluded that the final regulations do not violate the Fourth Amendment.

### 3. Fifth Amendment and Assertions of Vagueness

Some comments stated that the proposed regulations, if finalized, would violate the Fifth Amendment’s prohibition on depriving any person of life, liberty, or property without due process of law. These comments based this assertion on a variety of views, including that the proposed regulations are unconstitutionally vague and impossible to apply in practice, particularly rules relating to customer identification and documentation. Other comments stated the proposed regulations violate the Fifth Amendment due process clause because the definitions of broker, effect, and digital asset middleman are too vague to be applied fairly. Some comments stated the proposed regulations violate the Fifth Amendment’s protections against compelled self-incrimination.

The Due Process Clause of the Fifth Amendment provides that “no person shall . . . be deprived of life, liberty, or property, without due process of law.” This provision has been interpreted to require that statutes, regulations, and agency pronouncements define conduct subject to penalty “with sufficient definiteness that ordinary people can understand what conduct is prohibited.” *See Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Although some comments stated that digital asset users have not routinely exchanged identifying information with their brokers in the past, this does not mean the requirement that brokers obtain customers’ identifying information going forward is vague—much less unconstitutionally so. “The ‘void for vagueness’ doctrine is a procedural due process concept,” *United States v. Professional Air Traffic Controllers Organization*, 678 F.2d 1, 3 (1st Cir. 1982), but “‘[a]bsent a protectible liberty or property interest, the protections of procedural due process do not attach.” *United States v. Schutterle*, 586 F.2d 1201, 1204–05 (8th Cir. 1978). There is no protectible liberty or property interest in the information required to be disclosed under the regulation. In any event, the relevant test is that a “regulation is impermissibly vague under the Due Process Clause of the Fifth Amendment if it ‘fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.’” *United States v. Szabo*, 760 F.3d 997, 1003 (9th Cir. 2014) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010)). The regulation is not

unconstitutionally vague by this measure. To be sure, brokers will have to obtain the identifying information of users they may not have met in person. However, online brokers have successfully navigated this issue in other contexts.

The Fifth Amendment also provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. CONST. Am. V. The U.S. Supreme Court has held that this right, properly understood, only prevents the Government from “compel[ing] incriminating communications . . . that are ‘testimonial’ in character.” *United States v. Hubbell*, 530 U.S. 27, 34 (2000). The Supreme Court has held that “the fact that incriminating evidence may be the byproduct of obedience to a regulatory requirement, such as filing an income tax return . . . [or] maintaining required records . . . does not clothe such required conduct with the testimonial privilege.” *Hubbell*, 530 U.S. at 35.

Some comments specifically stated that the definitions of broker, effect, and digital asset middleman are unconstitutionally vague. As discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, the final regulations apply only to digital asset industry participants that hold custody of their customers’ digital assets and the final regulations revise and simplify the definition of a PDAP. The Treasury Department and the IRS continue to study the non-custodial industry and intend to issue separate final regulations describing information reporting rules for non-custodial industry participants. Therefore, any concerns regarding the perceived vagueness of the definitions as they apply to custodial industry participants have been addressed in these final regulations.

### 4. Privacy and Security Concerns

Comments expressed a variety of concerns related to the privacy and safety implications of requiring brokers to collect financial data and social security numbers. The Treasury Department and the IRS considered the privacy and security implications of the proposed regulations. Section 80603 of the Infrastructure Act made several changes to the broker reporting provisions under section 6045 to clarify the rules regarding how digital asset transactions should be reported by brokers. The purpose behind information reporting under section 6045 is to provide information to assist taxpayers receiving the reports in preparing their Federal income tax

returns and to help the IRS determine whether such returns are correct and complete. The customer's name and TIN are necessary to match information on Federal income tax returns with section 6045 reporting. Although this is personally identifiable information that customers may wish to keep private and secure, the IRS interest in receiving this information outweighs any privacy concerns about requiring brokers to collect and retain this information. The final regulations do not require brokers to report the transaction ID numbers or digital asset addresses. If brokers do not believe their existing security measures are sufficient to keep personally identifiable information and tax information private and secure, they can choose to implement new security measures or choose to contract with third parties with expertise in securing confidential data.

Comments said they were concerned about brokers, especially smaller brokers, being able to securely store customer data and one comment requested that the final regulations include requirements for the IRS to monitor broker compliance with security measures. Other comments requested a reporting exception for small digital asset brokers that would be based on the value of assets traded during a calendar year or a valuation of the broker's business. These comments were not adopted for the final regulations. Traditional brokers, including smaller brokers, have operated online for many years and have implemented their own online security policies and protocols without specific security regulations under section 6045. The final regulations do not include a general *de minimis* threshold that would exempt small brokers from reporting; however, the Treasury Department and the IRS are providing penalty relief under certain circumstances for transactions occurring during calendar year 2025 and brokers can use this time to improve existing security practices or put a security system in place for the first time.

Some comments expressed concerns about numerous third parties, such as multiple brokers, having access to customer data and questioned the ability of brokers to securely transfer customer data to third parties. Comments also included concerns about the IRS's ability to securely store customer data. The final regulations do not require the information reported to be disseminated to third parties, but as with many other information returns, require filing the complete information with the IRS and furnishing a statement to the taxpayer which can include a

truncated TIN rather than the entire TIN. The final regulations also provide a multiple broker rule, which require only one broker to be responsible for obtaining and reporting the financial and identifying information of a person who participated in a digital asset transaction. Furthermore, and as more fully explained in Part I.B.2. of this *Summary of Comments and Explanation of Revisions*, the final regulations require PDAPs to file information returns with respect to a buyer's disposition of digital assets only if the processor already may obtain customer identification information from the buyer to comply with AML obligations pursuant to an agreement or arrangement with the buyer. The Treasury Department and the IRS acknowledge the concerns raised regarding the IRS's ability to securely store customer data and the information reported on digital asset transactions. The information on Forms 1099-DA will be subject to the same security measures as other information reported to the IRS. Generally, tax returns and return information are confidential, as required by section 6103 of the Code. Additionally, the Privacy Act of 1974 (Pub. L. 93-679) affords individuals certain rights with respect to records contained in the IRS's systems of records. One customer asserted that any information collected on the blockchain is public information, not "return information" under section 6103 and is therefore subject to the Freedom of Information Act (FOIA). Although the blockchain itself is public, all information reported on a Form 1099-DA and filed with the IRS becomes protected in the hands of the IRS under section 6103(b)(2) and is not subject to FOIA.

Some comments express concerns about TIN certification and predicted that individuals would be confused when digital asset brokers requested their TINs. Some comments expressed fear that malicious actors who were not brokers would try to trick individuals into providing their personal information. Some comments said that as potential brokers, they were concerned about having customer data and that data being accessed by unauthorized individuals or entities. Concerns about malicious actors tricking customers into providing their personal information through online scams such as phishing attacks, while unfortunate, are not unique to digital asset reporting. Digital asset brokers who have a legitimate need for the TIN and other personal information of customers should provide their

customers with an explanation for their requests to ensure their customers will not be confused or concerned. Additionally, brokers should act responsibly to safely store any information required to be reported on Form 1099-DA, Form 1099-S, Form 1099-B, and Form 1099-K including personal information of customers.

#### 5. Authority for and Timing of Regulations

Multiple comments expressed concerns that the Treasury Department and the IRS lacked authority to promulgate the digital asset broker regulations or asserted that the proposed regulations were published too soon or without sufficient development. For example, some comments said the IRS should wait to regulate digital assets until after consulting with other Federal agencies or that the proposed regulations addressed issues that should first be addressed by Congress or other agencies. Congress enacted the Infrastructure Act in 2021 and section 80603 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. Congress's power to lay and collect taxes extends to the requirement that brokers report information on taxable digital asset transactions. The proposed regulations were published on August 29, 2023, and the final regulations are intended to implement the Infrastructure Act; therefore, the IRS is not attempting to regulate digital assets without prior Congressional approval. 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 Commodities Exchange Act, or to otherwise impact the interpretation or applicability of those or any other laws, which are outside the scope of these final regulations.

Comments said the proposed regulations exceeded the authority granted by Congress. Section 80603 of the Infrastructure Act clarifies 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. The Treasury Department and the IRS are issuing these final regulations to implement these statutory provisions. The Treasury Department



and the IRS disagree that these final regulations preempt Congressional action because as discussed in Parts I.A.2. and I.B.1.b. of this *Summary of Comments and Explanation of Revisions*, the final regulations are consistent with statutory language.

Comments said the proposed regulations are hostile and aggressively opposed to digital asset technology and are not technologically neutral. Third-party information reporting addresses numerous types of payments, regardless of whether or not these payments are made online. Section 6045(a) requires brokers to file information returns, regardless of whether or not the brokerage operates online. 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. The final regulations implement the Infrastructure Act and require brokers to file information returns that contain information similar to the existing Form 1099-B. 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; therefore, the final regulations that require this additional reporting do not exceed statutory authority.

Other comments raised a variety of policy considerations including that the proposed regulations could negatively impact the growth of the digital asset industry which offers a variety of benefits. Information reporting assists taxpayers receiving such reports to prepare their Federal income tax returns and helps the IRS determine whether such returns are correct and complete. The legislation enacted by Congress confirming that information reporting by digital asset brokers is required represents a judgment that tax administration concerns should prevail over the policy considerations raised by the comments. Furthermore, information reporting from these regulations may result in reduced costs for taxpayers to monitor and track their 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 may increase the number of digital asset owners and may increase existing owners' digital asset trade volume. 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. In addition, these regulations may ultimately mitigate some compliance costs for brokers by providing clarity, certainty, and consistency on which types of transactions and information are, and are not, subject to reporting.

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

### A. Comments on the Taxability of Digital Asset-for-Digital Asset Exchanges

A few comments questioned the treatment, under the rules in proposed § 1.1001-7(b)(1) and (b)(1)(iii)(C), of an exchange of one digital asset for another digital asset, differing materially in kind or in extent, as a taxable disposition. Such treatment, a comment advised, would be detrimental to taxpayers, because it would ignore the virtual nature of digital assets and volatile and drastic price swings in this market and the potential adverse tax consequences of having to recognize capital gains immediately but with allowable capital losses being limited in some instances. Another comment stated the proposed treatment would be administratively impractical, because such a rule, the comment argued, rests on the false presumption that an exchange of digital assets is akin to an exchange of stocks/securities and that, unlike those exchanges, taxpayers have opportunities to engage in digital asset exchanges in a manner that may go unnoticed by the IRS, and therefore, untaxed. Another comment challenged the proposed treatment, because digital assets, the comment opined, are software that do not encompass legal rights within the meaning of *Cottage Savings Association v. Commissioner*, 499 U.S. 554 (1991).

The final regulations do not adopt these comments. The Treasury Department and the IRS have determined that treating an exchange of digital assets for digital assets is a realization event, within the meaning of section 1001(a) and existing precedents. See, e.g., *Cottage Savings Ass'n*, 499 U.S. at 566 (“Under [the Court’s] interpretation of [section] 1001(a), an exchange of property gives rise to a realization event so long as the

exchanged properties are ‘materially different’—that is, so long as they embody legally distinct entitlements”). Moreover, the Treasury Department and the IRS have determined that the treatment is consistent with longstanding legal principles. Nor do the Treasury Department and the IRS agree with the comment’s assessment that digital assets are only software that do not represent legally distinct entitlements. Accordingly, final § 1.1001-7(b)(1) and (b)(1)(iii)(C) retain the rules in proposed § 1.1001-7(b)(1) and (b)(1)(iii)(C) treating such an exchange as a realization event.

Alternatively, one comment criticized treating an exchange of digital assets for digital assets, differing materially either in kind or in extent, as a taxable disposition, without also providing guidance defining the factors necessary for determining what are material differences. The absence of such guidance, the comment believed, would require taxpayers and brokers to rely on decades-old case law to make such determinations and would result in discrepancies in information reporting for the same types of transactions. Accordingly, the comment recommended the final rules include guidance on these factors. The final regulations do not adopt this recommendation. The Treasury Department and the IRS have concluded that a determination of whether property is materially different in kind or in extent is a factual one, and, thus, beyond the scope of these regulations.

### B. Digital Asset Transaction Costs

Proposed § 1.1001-7(b)(2)(i) defined the term *digital asset transaction costs* as the amount 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. By cross-reference to proposed § 1.1001-7(b)(2)(i), proposed § 1.1012-1(h)(2)(i) adopted the same meaning for this term.

Proposed § 1.1001-7(b)(2)(ii) provided rules for allocating digital asset transaction costs to the disposition or acquisition of a digital asset. Proposed § 1.1001-7(b)(2)(ii)(A) set forth the general rule for allocating digital asset transaction costs for purposes of determining the amount realized. Proposed § 1.1001-7(b)(2)(ii)(B) included a special rule, in the case of digital assets received in exchange for other digital assets that differ materially in kind or in extent, allocating one-half of the total digital asset transaction costs paid by the taxpayer to the disposition of the transferred digital asset for

purposes of determining the amount realized.

Proposed § 1.1012-1(h)(2)(ii) provided rules for allocating digital asset transaction costs to acquired digital assets. Proposed § 1.1012-1(h)(2)(ii)(A) included a general rule requiring such costs to be allocated to the basis of the digital assets received. As a corollary to proposed § 1.1001-7(b)(2)(ii)(B), proposed § 1.1012-1(h)(2)(ii)(B) included a special rule in the case of digital assets received in exchange for other digital assets that differ materially in kind or extent, allocating one-half of the total digital asset transaction costs paid by the taxpayer to the acquisition of the received digital assets for purposes of determining the basis of those received digital assets.

#### 1. Proposed Split Digital Asset Transaction Cost Rule

The Treasury Department and the IRS solicited comments on whether the proposed split digital asset transaction cost rule, as described in proposed §§ 1.1001-7(b)(2)(ii)(B) and 1.1012-1(h)(2)(ii)(B), would be administrable. The responses to this inquiry varied widely. One comment viewed the split digital asset transaction cost rule as administrable but only if the digital assets used to pay the digital asset transaction costs can be reasonably valued and recognized at their acquisition cost. The final regulations do not adopt this comment. The determination of whether digital assets can be reasonably valued could be made differently by different brokers and give rise to inconsistent reporting. The sale or disposition of digital assets giving rise to digital asset transaction costs is subject to the rules of final §§ 1.1001-7 and 1.1012-1(h), which provide consistent rules for all digital asset-for-digital asset transactions.

Another comment opined that the proposed split digital asset transaction cost rule would be administrable, but that its application would pose an increased risk of error and would not reflect current industry practice. In contrast, several comments expressed the view that the proposed split digital asset transaction cost rule, in fact, would not be administrable. These comments cited a variety of reasons, including that the rule's application would be too burdensome, complicated, or confusing for brokers and taxpayers and would render oversimplified allocations not reflective of the diverse and complex nature of digital asset transactions. Other comments opined that the lack of administrability would derive, in part, from the disparity of

having a different allocation rule for exchanged digital assets than the allocation rules applied to other asset classes, which, in their view, would result in disparate tax treatment for the latter type of costs. A few comments advised that the administrability issues would be caused in part, from the difficulties the rule would create when later seeking to reconcile transaction accounting and transaction validation. One comment shared the view that the proposed rule would be difficult for decentralized digital asset trading platforms to administer because it would require coordination of multiple parties providing facilitative services, and no such coordination currently exists in the form of technological infrastructure and standardized processes for tracking and communicating cost-basis information across these platforms.

Several comments noted that digital asset transaction costs paid for effecting an exchange of digital assets were generally low, with one comment opining that such costs were generally less than 1 percent of a transaction's total value. These comments often noted that the resulting allocations from applying the proposed split digital asset transaction cost rule would result in no or minimal timing differences in the associated income. Other comments questioned whether the benefits derived from having taxpayers and brokers apply the proposed split digital asset transaction cost rule would be commensurate with the additional administrative burdens that would be placed on the parties. A few comments shared the concern that the proposed split digital asset transaction cost rule would impose additional burdens and complexity, because such a rule would require brokers to implement or modify their existing accounting systems, develop new software, and retain additional professional service providers in order to comply. One comment also noted the resulting allocations from the proposed split digital asset transaction cost rule would be inconsistent with the allocations required by Generally Accepted Accounting Principles and would produce unnecessary book-tax differences. Some comments expressed the concern that the proposed split digital asset transaction cost rule would produce arbitrary approximations not necessarily reflecting the economic reality of the particular transactions. Additionally, one comment stated that the proposed split digital asset transaction cost rule would pose litigation risks for the IRS because such

a rule would override the parties' contracted cost allocations and thus impede their rights under contract law. Another comment argued that the proposed split digital asset transaction cost rule would impede the right of taxpayers and brokers to determine which party bears the economic burden of digital asset transaction costs. The Treasury Department and the IRS have concluded that the proposed split digital asset transaction cost rule would be overly burdensome for taxpayers and brokers to administer. Accordingly, the final regulations do not adopt the proposed rule.

#### 2. Recommended Alternatives for the Split Digital Asset Transaction Cost Rule

A few comments recommended the adoption of a rule allocating digital asset transaction costs based on the actual amounts paid for the specific disposition or acquisition, which some viewed as promoting taxpayer equity. One comment also recommended that this rule be coupled with flexibility sufficient to accommodate different types of transactions and technological solutions for ease of administration. Several comments recommended that the final regulations adopt a discretionary rule allowing brokers to decide how to allocate these costs (discretionary allocation rule). Most of these comments also recommended that brokers be required to notify taxpayers of the cost allocations and to apply the allocations in a consistent manner. The cited benefits for this recommendation included that the resulting allocations would be more consistent with the economics of the actual fees charged by brokers, and that the recommended rule would create symmetry with the rules applied to transactions involving other asset classes. In addition to recommending adoption of a discretionary allocation rule, a few comments also recommended the inclusion of safe harbors for brokers. In urging the inclusion of safe harbors, one comment suggested limiting their availability to those brokers who maintain records documenting the actual cost allocations. Of the comments recommending a discretionary allocation rule, most viewed such a rule as comparable with the current rules for allocating transactional costs incurred in transactions with other asset classes. One comment also recommended that the discretionary allocation rule be extended to cover taxpayers' allocations of digital asset transaction costs.

In addition to recommending a discretionary allocation rule, many comments also recommended that the

final rules provide an option, allowing brokers or taxpayers to allocate digital asset transaction costs on a per-transaction basis. This approach, in their view, was necessary because of the diverse types of digital asset transactions. Comments claimed that a “one-size-fits-all” approach would not account for the inevitable variability, and that the recommended approach would promote fairness and administrability. One comment recommended that the final regulations include a *de minimis* rule excluding digital asset transaction costs under a specified threshold. Another comment recommended that the split digital asset transaction cost rule be replaced with rules requiring taxpayers to account for digital asset transaction costs in accordance with the principles of section 263(a) of the Code, while permitting brokers to allocate and report digital asset transaction costs either as a reduction in the amount realized on the disposed digital assets or as an additional amount paid for the acquired digital assets so long as the brokers’ reporting is consistently applied. One comment recommended the inclusion of a simplified reporting rule with less emphasis on precise allocations of digital asset transaction costs for smaller transactions. The comment did not offer parameters for defining smaller transactions in this context. The final regulations do not adopt these recommendations. The Treasury Department and the IRS have determined that the adoption of discretionary allocation rules would place additional administrative burdens on taxpayers, brokers, and the IRS. Such rules would render disparate treatment of such costs among brokers and/or taxpayers with multiple wallet or broker accounts, thus necessitating the need for additional tracking and coordination to avoid discrepancies. In contrast, a uniform rule is less susceptible to manipulation and avoids administrative complexities.

### 3. Proposed 100 Percent Digital Asset Transaction Cost Rule

The Treasury Department and the IRS also solicited comments on whether a rule requiring 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 (100 percent digital asset transaction cost rule) would be less burdensome.

Several comments agreed that the proposed 100 percent digital asset transaction cost rule would be less burdensome. Other comments, however, did not share this view for a variety of

reasons. Some comments stated that the resulting allocations would not accurately reflect the economic realities of the transactions, although one comment expressed the view that these allocations would more closely reflect economic realities than the allocations resulting from the proposed split digital asset transaction cost rule. One comment cited the rule’s rigidity, which the comment concluded would lead to increased potential disputes between the IRS and taxpayers and expose both parties to additional litigation and administrative burdens. One comment cited the oversimplifying effect the rule would have on diverse and complex digital asset transactions, which would, in the comment’s view, result in inaccurate reporting of gains and losses and other unintended tax consequences, pose a potential disincentive for taxpayers to engage in smaller transactions, and disproportionately impact investors engaged in certain investment strategies. The Treasury Department and the IRS do not agree that the resulting allocations rendered by the 100 percent digital asset transaction cost rule are inconsistent with the economic realities of some digital asset transactions. The 100 percent digital asset transaction cost rule likely creates minor timing differences, but such differences do not outweigh the benefits, in the form of clarity and certainty in determining the allocated costs. Further, the Treasury Department and the IRS have concluded that the 100 percent digital asset transaction cost rule appropriately balances concerns about administrability, compliance burdens, manipulability, and accuracy. Specifically, it alleviates the burdens placed on brokers and taxpayers from having to track the allocated costs separately to ensure the amounts are accurate. Additionally, the 100 percent digital asset transaction cost rule, applied to both unhosted wallets and accounts held in the custody of a broker, is less burdensome than the proposed split digital asset transaction cost rule and the recommended discretionary allocation rule.

One comment cited the current industry consensus to treat an exchange of one digital asset for another digital asset as two separate transactions consisting of: a sale of the disposed digital asset followed by a purchase of the received digital asset. Because of this industry consensus, the comment recommended that these costs be treated as selling expenses reducing the amount realized on the disposed digital assets. The final regulations adopt this

comment. Final § 1.1001–7(b)(2)(ii) sets forth rules for allocating digital asset transaction costs, as defined in final § 1.1001–7(b)(2)(i), by retaining the general rule in proposed § 1.1001–7(b)(2)(ii)(A), and revising proposed § 1.1001–7(b)(2)(ii)(B). Final § 1.1001–7(b)(2)(ii)(A) replaces the split digital asset transaction cost rule with the 100 percent digital asset transaction cost rule. Under final § 1.1001–7(b)(2)(ii)(A), the total digital asset transaction costs, other than in the case of certain cascading digital asset transaction costs described in final § 1.1001–7(b)(2)(ii)(B), are allocable to the disposed digital assets.

Final § 1.1012–1(h)(2)(ii) also includes corresponding rules to those in final § 1.1001–7(b)(2)(ii), for allocating digital asset transaction costs, as defined in final § 1.1012–1(h)(2)(i). Final § 1.1012–1(h)(2)(ii) retains the general rule in proposed § 1.1012–1(h)(2)(ii)(A), and revises the special rule in proposed § 1.1012–1(h)(2)(ii)(B), removing the split digital asset transaction cost rule and allocating digital asset transaction costs paid to effect an exchange of digital assets for other digital assets, differing materially in kind or in extent, exclusively to the disposition of digital assets. Under final § 1.1012–1(h)(2)(ii)(A), digital asset transaction costs, other than those described in final § 1.1012–1(h)(2)(ii)(B) and (C), are allocable to the digital assets received. Under final § 1.1012–1(h)(2)(ii)(B), if digital asset transaction costs are paid to effect the exchange of digital assets for other digital assets, differing materially in kind or in extent, then such costs are allocable exclusively to the disposed digital assets. Final § 1.1012–1(h)(2)(ii) also adds special rules in final § 1.1012–1(h)(2)(ii)(C) for allocating certain cascading digital asset transaction costs, which are discussed in Part II.B.4. of this *Summary of Comments and Explanation of Revisions*. Final § 1.1012–1(h)(2)(ii) also states that any allocations or specific assignments, other than those in accordance with final § 1.1012–1(h)(2)(ii)(A) through (C), are disregarded.

Finally, final § 1.1001–7(b)(2)(ii)(B) adds a new special rule for cascading digital asset transaction costs. See Part II.B.4. of this *Summary of Comments and Explanation of Revisions* for a discussion of the special rule in final § 1.1001–7(b)(2)(ii)(C) for allocating certain cascading digital asset transaction costs and the Treasury Department’s and the IRS’s reasons for adopting that rule.

#### 4. Cascading Digital Asset Transaction Costs

The Treasury Department and the IRS solicited comments on whether 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 be treated as digital asset transaction costs associated with the original transaction.

A few comments agreed that cascading digital asset transaction costs should be allocated to the original transaction. Most comments, however, opposed allocating such costs exclusively to the original transaction, citing an array of reasons. A few comments advised that such an approach would improperly aggregate economically distinct transactions and would fail to accurately measure cost basis and any gains or losses on the disposed digital assets used to pay the subsequent digital asset transaction costs. These comments expressed the position that the proposed approach would conflict with existing tax jurisprudence and fail to reflect economic reality. One comment cited the oversimplifying effect of such a rule, which would, in the comment's view, lead to inequitable tax treatment and imposition of undue operational burdens.

A few comments cited the significant operational burdens placed on both taxpayers and brokers to implement such a rule. One of these comments also cited the complicating and potentially inequitable effect such a rule would have on making the allocation and tax calculations. Comments recommended a variety of alternatives for allocating cascading digital asset transaction costs. Some comments recommended that these costs be allocated to each specific transaction giving rise to the costs. In recommending this approach, one comment noted that it would offer a more nuanced and accurate reflection of the financial realities of digital asset transactions, thus ensuring "fairer" tax treatment, "clearer" records, and "easier" audit trails, while also acknowledging that it may impose increased administrative burdens. In addition to making the above recommendation, one comment also offered an alternative approach suggesting that such costs be allocated proportionally based on the significance of each transaction in the cascading chain. This alternative recommendation, the comment noted, would balance the needs for accurate cost reporting and accounting, and would reduce disproportionately high tax burdens

arising from minor transaction costs, while the comment acknowledged that it may be complex to implement. Another comment recommended allocating cascading digital asset transaction costs based on some other factors, such as the complexity or difficulty of each transaction and market conditions. The final regulations do not adopt these comments for allocating cascading digital asset transaction costs. The Treasury Department and the IRS have determined that these costs should be allocated in the same manner provided in the general allocation rules with a limited exception because this framework is less burdensome, produces accurate tax determinations, and reduces the potential for errors and inconsistencies.

A few comments included a description of network fees, exchange fees, one time access fees, and other service charges and recommended that the final rules treat these types of fees as cascading digital asset transaction costs. Final §§ 1.1001–7 and 1.1012–1(h) do not adopt these recommendations. The Treasury Department and the IRS have determined that whether a type of transaction fee fits within the definition of cascading digital asset transaction costs is a factual determination and is beyond the scope of these regulations.

Final § 1.1001–7(b)(2)(ii)(B) adopts a modified special rule for allocating certain cascading digital asset transaction costs for an exchange described in final § 1.1001–7(b)(1)(iii)(C) (an exchange of digital assets for other digital assets differing materially in kind or in extent) and for which digital assets acquired in the exchange are withheld from digital assets acquired in the original transaction to pay the digital asset transaction costs to effect the original transaction. For such transactions, the total digital asset transaction costs paid by the taxpayer, to effect the original exchange and any dispositions of the withheld digital assets, are allocable exclusively to the disposition of digital assets from the original exchange. For all other transactions not otherwise described in final § 1.1001–7(b)(2)(ii)(B), digital asset transaction costs are allocable in accordance with the general allocation rule set forth in final § 1.1001–7(b)(2)(ii)(A), that is, digital asset transaction costs are allocable to the specific transaction from which they arise.

Final § 1.1012–1(h)(2)(ii) adds corresponding special allocation rules for certain cascading digital asset transaction costs paid to effect an exchange of one digital asset for another digital asset and for which digital assets

are withheld from those received in the exchange to pay the digital asset transaction costs to effect such an exchange. For such transactions, the total digital asset transaction costs paid by the taxpayer to effect the exchange and any dispositions of the withheld digital assets are allocable exclusively to the digital assets disposed of in the original exchange.

#### C. Basis

Final § 1.1012–1(j) clarifies the scope of the lot identification rules for *digital assets* defined by cross-reference to § 1.6045–1(a)(19), except for digital assets the sale of which is not reported by a broker as the sale of a digital asset because the sale is a sale of a dual classification asset described in Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions* that is cleared or settled on a limited-access regulated network subject to the coordination rule in final § 1.6045–1(c)(8)(iii), a disposition of contracts covered by section 1256(b) subject to the coordination rule in final § 1.6045–1(c)(8)(ii), or is a sale of a dual classification asset that is an interest in a money market fund subject to the coordination rule in final § 1.6045–1(c)(8)(iv). Final § 1.1012–1(j)(3) applies to digital assets held in the custody of a broker, whereas the final rules in § 1.1012–1(j)(1) and (2) apply to digital assets not held in the custody of a broker. Final § 1.1012–1(j) also defines the terms *wallet*, *hosted wallet*, *unhosted wallet*, and *held in a wallet* by cross-reference to the definitions for these terms in § 1.6045–1(a)(25)(i) through (iv).

#### 1. Digital Assets Not Held in the Custody of a Broker

For units not held in the custody of a broker, such as in an unhosted wallet, proposed § 1.1012–1(j)(1) provided that if a taxpayer sells, disposes of, or transfers less than all the units of the same digital asset held within a single wallet or account, 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. Under the proposed regulations, 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) provided 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 could 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.

#### a. Methods and Functionalities of Unhosted Wallets

The Treasury Department and the IRS solicited comments on whether there are methods or functionalities that unhosted wallets can provide to assist taxpayers with the tracking of a digital asset upon the transfer of some or all units between custodial brokers and unhosted wallets. In response, one comment stated that unhosted wallets currently lack the functionalities to allow taxpayers to make specific identifications, as provided in proposed § 1.1012–1(j)(2), of their basis and holding periods by the date and time of a sale, disposition, or transfer from an unhosted wallet even if taxpayers were to employ transaction-aggregation tools. In contrast, another comment advised that existing transaction-aggregation tools could provide the needed assistance for tracking digital assets held in unhosted wallets. The remaining comments suggested that no methods or functionalities are currently available or feasible that would allow unhosted wallets to track purchase dates, times, and/or the basis of specific units. Noting that unhosted wallets are open-source software created by developers with limited resources, one comment opined that any expectation that such functionalities can be added to these wallets before 2030 would be unreasonable. Creating such functionalities, some comments also stated, would require the adoption of universal industry-wide standards or methods for reliably tracking cost basis information across wallets and transactions, yet existing technology challenges and the complexity of some transactions would serve as impediments to their adoption. These comments also stated that the addition of comprehensive cost-basis tracking to

unhosted wallets would make such wallets prohibitively risky for taxpayers, thus depriving them of their privacy, security, and control benefits.

The Treasury Department and the IRS have determined that the final ordering rules for digital assets not held in the custody of a broker should strike a balance between the compliance burdens placed on taxpayers and the necessity for rules that will comply with the statutory requirements of section 1012(c)(1) to render accurate tax results. Accordingly, notwithstanding existing technology limitations, final § 1.1012–1(j)(2) provides that 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. Taxpayers can comply with these rules by keeping books and records separate from the data in the unhosted wallet. A specific identification can be made only if adequate records are maintained for the unit of a specific digital asset not held in the custody of a broker to establish that a unit sold, disposed of, or transferred is removed from the wallet. Taxpayers that wish to simplify their record maintenance tasks may adopt a standing rule in their books and records that specifically identifies a unit selected by an unhosted wallet for sale, disposition or transfer as the unit sold, disposed of or transferred, if that would be sufficient to establish which unit is removed from the wallet.

#### b. Ordering Rule for Digital Assets Not Held in the Custody of a Broker

The Treasury Department and the IRS also solicited comments on whether the ordering rules of proposed § 1.1012–1(j)(1) and (2) for digital assets not held in the custody of a broker should be applied on a wallet-by-wallet basis, as proposed, on a digital asset address-by-digital asset address basis, or on some other basis. The Treasury Department and the IRS received a variety of responses to this inquiry.

A few comments recommended the adoption of a universal or multi-wallet rule for all digital assets held in unhosted wallets, with one such comment opining that there is not a strong policy reason for prohibiting this approach. The final regulations do not adopt this recommendation because a

wallet-by-wallet approach is more consistent with the statutory requirements in section 1012(c)(1), which requires that regulations prescribe an account-by-account approach for determining the basis of specified securities that are sold, exchanged, or otherwise disposed of.

One comment recommended that proposed § 1.1012–1(j)(1) be modified to require taxpayers to determine the basis of identical digital assets by averaging the acquisition cost of each identical digital asset if it is acquired at separate times during the same calendar day in executing a single trade order and the executing broker provides a single confirmation that reports an aggregate total cost or an average cost per share. The comment also suggested that taxpayers be provided an option to override the mandatory rule and determine their basis by the actual cost on a per-unit basis if the taxpayer notifies the broker in writing of this intent by the earlier of: the date of the sale of any of such digital assets for which the taxpayer received the confirmation or one year after the date of the confirmation (with the receiving broker having the option to extend the one-year notification period, so long as the extended period would end no later than the date of sale of any of the digital assets). The comment noted a similar rule exists for certain stock acquisitions, citing § 1.1012–1(c)(1)(ii). This comment is not adopted. A key feature of the rules provided in § 1.1012–1(c)(1)(ii) is the confirmation required by U.S. securities laws to be sent from a security broker to the customer shortly after the settlement of a securities trade, which may report the use of average basis for a single trade order that is executed in multiple tranches. Digital asset industry participants do not necessarily issue equivalent confirmations for digital asset purchases. As a result, a customer would not know whether the broker used average basis until the customer received an information return from the broker, even though the customer may need to know whether the broker used average basis sooner, such as when the customer decides which units to dispose of in a transaction.

One comment recommended that the final rules adopt an address-based rule for all digital assets held in unhosted wallets, viewing this approach as posing less of a compliance burden on taxpayers. The statutory requirements of section 1012(c)(1) require that in the case of the sale, exchange, or other disposition of a specified security on or after the applicable date for that security, the conventions prescribed by the regulations must be applied on an

account-by-account basis. Accordingly, the final regulations do not adopt this recommendation.

A few comments expressed general concerns about applying the proposed ordering rules to digital assets held in unhosted wallets, with one comment stating that the rules (1) would not align with how taxpayers currently use unhosted wallets; (2) would require complex tracing, making accurate basis reporting infeasible and unnecessarily complex; and (3) would drive digital asset transactions to offshore exchanges, recommending instead that the ordering rules be applied on a per-transaction basis. Another comment recommended a uniform wallet-based rule for all digital assets held in unhosted wallets. In contrast, a few comments viewed such a rule as imposing administrative difficulties because of technological differences in how different blockchains record and track units, explaining that current blockchains employ one of two types of technology for this purpose: the unspent transaction output (UTXO) model and the account model. The UTXO model, comments described, is similar to a collection of transaction receipts or gift cards with the inputs to a transaction being marked as spent and any outputs remaining under the control of the wallet after a transaction's execution as "unspent outputs" or "UTXOs." In contrast, comments described the account model as aggregating the taxpayer's unspent units into a cumulative balance. A relevant difference between the two models, these comments noted, is that units recorded/tracked by a UTXO model are not divisible, whereas those recorded/tracked by an account model are divisible.

In light of these differences, a comment recommended that the final rules include separate ordering rules based on the type of model used to record the particular units. This comment recommended that units of a digital asset recorded/tracked with the UTXO model should be identified by taxpayers using the specific identification rule and applied on a wallet-by-wallet basis, defining wallet for this purpose as a collection of logically related digital asset addresses for which the wallet may form transactions involving more than a single address. This comment also recommended that units recorded by the account model should be identified by taxpayers using the FIFO ordering rule and applied on a digital asset address-by-digital asset address basis. The final regulations do not adopt these recommendations. As explained later in this preamble, the final rules adopt

uniform basis identification rules not tied to a specific technology. The Treasury Department and the IRS have concluded that the use of different rules based on existing recording models would limit the rules' utility and render disparate timing results of the associated gains or losses. The final rules offer flexibility to accommodate evolving recording models. Moreover, as discussed earlier in this preamble, the recommended address-based rule for units recorded by the account model would not conform to the statutory requirements of section 1012(c)(1).

One comment assessed the benefits and drawbacks of both the wallet-based rule and the address-based rule. This comment viewed the wallet-based rule as offering taxpayer simplicity and audit efficiency but posing added complexity and audit burdens in some instances, and the address-based rule as providing more granular tracking results, more accurately reflecting a taxpayer's intentions for a particular transaction but adding additional administrative burdens and increasing the risk of reporting errors. This comment recommended that the final rules adopt a discretionary rule allowing a taxpayer to choose either rule based on the taxpayer's circumstances. The final regulations do not adopt this recommendation because the Treasury Department and the IRS have determined that such a rule would increase the possibility of manipulation and errors in taxpayers' calculations.

One comment rejected both a wallet-based rule and an address-based rule. This comment stated that a wallet-based rule would add complexity and administrative burdens to tracking basis and would pose an increased risk for reporting errors. This comment also stated that an address-based rule would produce excessive granular data, raise privacy concerns, and present technical challenges. Instead, this comment recommended two alternatives, the first of which would be to apply the ordering rules for unhosted wallets by grouping digital asset addresses or wallets, and the second of which would be to allow taxpayers to identify or report only transactions above a minimum balance or transactional volume. The Treasury Department and the IRS have determined that both approaches would create undue administrative burden. Additionally, the Treasury Department and the IRS have determined that the *de minimis* approach would create an unnecessary disparity between the ordering rules for digital assets in unhosted wallets and the ordering rules for digital assets held in the custody of a broker as well as the ordering rules

applicable to other assets. Accordingly, the final regulations do not adopt either of these recommendations.

A few comments expressed concerns that technology limitations would make the proposed specific identification rule unfeasible for all digital assets held in unhosted wallets regardless of the model used by the blockchain to record and track units. Alternatively, a comment recommended, if a uniform ordering rule is desired for UTXO and account models, then the address-based rule should be adopted but with an option allowing taxpayers to identify related digital asset addresses, subject to a burden-of-proof showing of the relatedness. The comment suggested that this alternative would be easy to administer, provide a verifiable audit trail and flexibility, and avoid potential tax reporting discrepancies. The final regulations do not adopt these suggestions. The Treasury Department and the IRS have concluded that the suggested approaches tied to current technology would have limited usefulness since technology can be expected to change in the future. Accordingly, the final regulations adopt a uniform ordering rule for digital assets not held in the custody of a broker because this rule reduces the risk of errors and simplifies taxpayers' gain or loss calculations.

One comment recommended, as an alternative to the proposed ordering rules for digital assets held in unhosted wallets, that taxpayers be required to determine their cost basis of a unit of a digital asset by averaging their costs for all units of the identical digital asset irrespective of their holding periods. This comment suggested that this approach would simplify determination of the basis of individual units because it would eliminate the need to track the acquisition details of each digital asset. This comment noted that certain other countries employ variations of this approach, suggesting, for example, that its adoption would align future information exchanges with other countries under the CARF. The final regulations do not adopt this recommendation because it is inconsistent with sections 1222 and 1223 of the Code, which require taxpayers to determine whether gains or losses with respect to disposed digital assets are long term or short term, within the meaning of section 1222, based on the taxpayer's holding period for the disposed asset as determined under section 1223.

One comment recommended that the proposed ordering rules be revised to adopt the meaning of "substantially similar or related" as the term is used

in IRS Tax Publication 550, *Investment Income and Expenses*. The final regulations do not adopt this recommendation. The Treasury Department and the IRS have determined that this term refers to special rules not covered by these regulations. Accordingly, the term would not serve as a relevant benchmark by which to apply the ordering rules for digital assets held in unhosted wallets.

A comment requested guidance on how taxpayers should comply with the proposed specific identification rules for digital assets held in unhosted wallets when using tracking software that neither provides a way to mark the units sold nor incorporates these sold units into gain and loss calculations. The final regulations do not adopt this comment. The Treasury Department and the IRS have determined that additional guidance on how taxpayers maintain their books and records to meet their substantiation obligations is not needed and is beyond the scope of this project. The specific identification rules should not apply differently simply because currently available basis tracking software may not have the ability to mark specific units as sold or otherwise track basis in a manner consistent with the specific identification rules.

The Treasury Department and the IRS have determined that the final regulations should include a uniform wallet-based ordering rule for all digital assets held in unhosted wallets rather than separate rules based on existing technological differences. The Treasury Department and the IRS have determined that such a rule best facilitates accurate tax determinations. Moreover, such a rule satisfies the statutory requirements of section 1012(c)(1), which requires that the conventions prescribed by regulations be applied on an account-by-account basis in the case of a sale, exchange, or other disposition of a specified security, on or after the applicable date as defined in section 6045(g). Additionally, to conform with this decision, final § 1.1012–1(j)(1) and (2) retain the term *held in a wallet* as defined in final § 1.6045–1(a)(25), but no longer incorporate the term “account” to avoid confusion with industry usage of the term to refer to the account-based models used by blockchains to record and track units of a digital asset. The Treasury Department and the IRS have determined that the term *wallet*, as defined by § 1.6045–1(a)(25), is sufficiently broad to incorporate both wallets and accounts and the removal of the latter term avoids confusion.

Finally, as discussed in Part VII. of this *Summary of Comments and Explanation of Revisions*, the final regulations under § 1.6045–1 are applicable beginning January 1, 2025. Accordingly, digital assets constitute specified securities and are subject to these requirements beginning January 1, 2025.

## 2. Digital Assets Held in the Custody of Brokers

For taxpayers that leave their digital assets in the custody of a broker, unless the taxpayer provides the broker with an adequate identification of the units sold, disposed of, or transferred, proposed § 1.1012–1(j)(3)(i) provided 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 acquired in the taxpayer’s account with the broker. Because brokers do not have the purchase date information about units purchased outside the broker’s custody and transferred into the taxpayer’s account, proposed § 1.6045–1 instead required brokers to treat units of a particular digital asset that are transferred into the taxpayer’s account as purchased as of the date and time of the transfer (rather than as of the date actually acquired as proposed § 1.1012–1(j)(3)(i) requires taxpayers to do). The rule for units that are transferred into the custody of a broker, the comments received in response to this rule, and the final decisions made after considering those comments are discussed in Part I.E.3.b. of this *Summary of Comments and Explanation of Revisions*. See also, final §§ 1.1012–1(j)(3)(i) and 1.6045–1(d)(2)(ii)(B). Additionally, see Part I.E.3.b. of this *Summary of Comments and Explanation of Revisions*, for a discussion of final § 1.1012–1(j)(3)(ii) for how and when a taxpayer can make an adequate identification of the units sold, disposed of, or transferred when the taxpayer leaves multiple units of a type of digital asset in the custody of a broker.

## 3. Transitional Guidance

The IRS published Virtual Currency FAQs<sup>5</sup> explaining how longstanding Federal tax principles apply to virtual currency held by taxpayers as capital assets. For example, FAQs 39–40 explain that a taxpayer may specifically

identify the units of virtual currency deemed to be sold, exchanged, or otherwise disposed of either by referencing any identifier, such as the private key, public key, or by records showing the transaction information for units of virtual currency held in a single account, wallet, or address. The information required by these FAQs include: (1) the date and time each unit was acquired; (2) the taxpayer’s basis and the fair market value of each unit at the time acquired; (3) the date and time each unit was sold, exchanged, or otherwise disposed of; and (4) the fair market value of each unit when sold, exchanged, or disposed of, and the amount of money or the value of property received for each unit. FAQ 41 further explains that if a taxpayer does not identify specific units of virtual currency, the units are deemed to have been sold, exchanged, or otherwise disposed of in chronological order beginning with the earliest unit of the virtual currency a taxpayer purchased or acquired, that is, on a FIFO basis.

Comments expressed concern that the proposed basis identification rules of proposed § 1.1012–1(j) would apply differently from those in FAQs 39–41. Comments also noted that many taxpayers have interpreted FAQs 39–41 as permitting, or at least not prohibiting, taxpayers from specifically identifying units or applying the FIFO rule on a “universal or multi-wallet” basis. The comments generally described this approach as one in which a taxpayer holds units of a digital asset in a combination of unhosted wallets or exchange accounts and sells, disposes of, or transfers units from one wallet or account, but either specifically identifies units or applies the FIFO rule to effectively treat the units sold, disposed of, or transferred as coming from a different wallet or account. For example, assume D holds 50 units of digital asset GH in D’s unhosted wallet, each of which was acquired on March 1, Year 1, and has a basis of \$5. D also acquires 50 units of digital asset GH through Exchange FYZ, each of which was acquired on July 1, Year 1, and has a basis of \$1. Using the universal or multi-wallet approach, D directs Exchange FYZ on December 1, Year 1, to sell 20 units of digital asset GH on D’s behalf but specifically identifies the 20 units sold as 20 units coming from D’s unhosted wallet for purposes of determining the basis. As a result of the sale, D holds 30 units of GH with Exchange FYZ and 50 units of GH in D’s unhosted wallet. Of those 80 units, D treats 30 units as having a basis of \$1 and 50 units as having a basis of \$5,

<sup>5</sup> The IRS first published the Virtual Currency FAQs on October 9, 2019. Since that time, the FAQs have been revised and renumbered. References to FAQ numbers in this preamble are to the numbering in the version of the FAQs as of June 6, 2024.



without regard to whether the units were purchased through Exchange FYZ or in D's unhosted wallet. Whatever the merits of the comments' points, regulations implementing section 1012(c)(1) are required to adopt an account-by-account method for determining basis and the universal or multi-wallet approach does not conform with the statutory requirements. See Part II.C.1.b. of this *Summary of Comments and Explanation of Revisions*.

These comments also expressed concerns that taxpayers, who seek to transition either prospectively or retroactively from the "universal or multi-wallet" approach to the proposed basis identification rules would experience, perhaps unknowingly, ongoing discrepancies. Some of the discrepancies, in their view, may be exacerbated by the limitations of current basis-tracking software. A comment also noted that taxpayers often have multiple numbers of different tokens and multiple numbers of different blockchains, both of which further enhance the significant complexity of basis tracking. These complexities, in the comment's view, make it impractical for taxpayers to specifically identify digital assets as provided in proposed § 1.1012-1(j)(1) or to apply the default identification rule in proposed § 1.1012-1(j)(2).

A comment requested that taxpayers who previously made basis identifications or applied the FIFO rule on a universal or multi-wallet basis consistently with FAQs 39-41 be exempt from the basis identification rules of proposed § 1.1012-1(j). The final regulations do not adopt the request to exempt previously acquired digital assets from the proposed basis identification rules because such a rule would create significant complexity and confusion if taxpayers used different methods for determining basis for existing and newly acquired digital assets. However, see this Part II.C.3. of this *Summary of Comments and Explanation of Revisions* for a discussion of transitional guidance with respect to these issues.

A few comments requested additional rules and examples, explaining how taxpayers should transition from the universal or multi-wallet approach to specifically identify digital assets as provided in final § 1.1012-1(j)(1) or apply the default identification rule in final § 1.1012-1(j)(2). The Treasury Department and the IRS have determined that any basis adjustments necessary to comply with these final rules is a factual determination. However, to promote taxpayer readiness

to comply with the rules in final § 1.1012-1(j) beginning in 2025, Revenue Procedure 2024-28 is being issued contemporaneously with these final regulations, and will be published in the Internal Revenue Bulletin, to provide transitional relief. The transitional relief will take into account that a transition from the universal approach to the specific identification or default identification rules involves evaluating a taxpayer's remaining digital assets and pool of basis originally calculated under the universal approach and may result, unknowingly, in ongoing discrepancies that could be exacerbated by the limitations of currently available basis tracking software. This relief applies to transactions that occur on or after January 1, 2025. Additionally, the IRS will continue to work closely with taxpayers and other stakeholders to ensure the smooth implementation of final § 1.1012-1(j), including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases. Accordingly, final § 1.1012-1(j) will apply to all acquisitions and dispositions of digital assets on or after January 1, 2025.

#### D. Comments Requesting Substantive Guidance on Specific Types of Digital Asset Transactions

A few comments requested that the final rules address the tax treatment of specific transactions such as wrapping, burning, liquidity transactions, splitting or combining digital assets into smaller or larger units, and the character and source of revenue-sharing agreements. These regulations provide generally applicable gross proceeds and basis determination rules for digital assets and therefore are not the proper forum to address those issues. Therefore, the final regulations do not adopt these recommendations. See Part I.C.2. of this *Summary of Comments and Explanation of Revisions* for a further discussion of reporting on such transactions.

#### E. Examples in Proposed § 1.1001-7(b)(5)

A few comments recommended revisions to certain examples included in proposed § 1.1001-7(b)(5). One comment stated that the transaction described in proposed § 1.1001-7(b)(5)(iii) (*Example 3*) is not realistic and should be revised. Final § 1.1001-7(b)(5)(iii) includes a modified example but does not incorporate the comment's recommendation. The Treasury Department and the IRS have determined that the example in final

§ 1.1001-7(b)(5)(iii) illustrates the rules necessary to assist taxpayers in determining amounts realized and that the comment's recommended revisions would limit its usefulness. Another comment recommended that proposed § 1.1001-7(b)(5)(i) (*Example 1*) be revised to address a transaction in which the digital assets are recorded on the blockchain using the UTXO model. The final regulations do not adopt this recommendation. The Treasury Department and the IRS have determined that the recommended revisions are not necessary to highlight the general rules set forth herein.

#### F. Miscellaneous Comments Relating to Fair Market Value, Amount Realized, and Basis

A comment also recommended that the proposed rules be coordinated with other Federal agencies to harmonize the reporting and tax treatment of digital assets across different jurisdictions and markets and should include a uniform standard for determining the fair market value, amount realized, and basis of digital assets, and should include a requirement that brokers report the same information to the IRS and to the customers on Form 1099-B. Such a rule, the comment believed, could be aligned with the requirements of other Federal agencies, which would simplify valuations and reduce the risk of errors or disputes. The final regulations do not adopt this recommendation. These 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.

A comment advised that the proposed rules would produce results that would not reflect economic reality or the preferences of taxpayers, who may already employ different methods and standards for tracking their transactions and calculating their gains and losses. The comment recommended that the final rules adopt rules consistent with existing Federal tax principles and guidance, such as Notice 2014-21, or allow more flexibility and choice for taxpayers to use any reasonable standards consistent with their records and tax reporting. The final regulations do not adopt these recommendations. The Treasury Department and the IRS have determined that providing uniform rules will ease the administrative burdens placed on taxpayers, brokers, and the IRS. A comment expressed concerns that applying the cost allocation rules would require meticulous record-keeping on the part

of taxpayers, which may be challenging for some taxpayers, particularly those engaged in high-frequency trading or small-scale transactions. These issues are also applicable to taxpayers who engage in high-frequency trading of traditional securities. The Treasury Department and the IRS have determined that special rules are not warranted for digital assets.

A few comments suggested that the use of digital assets to pay for transaction costs or certain other services should not be taxable. These comments are not adopted because the Treasury Department and the IRS have determined that treating an exchange of digital assets for services is a realization event, within the meaning of section 1001(a) and existing precedents. See Part II.A. of this *Summary of Comments and Explanation of Revisions* for a further discussion of digital asset dispositions as realization events.

### III. Final § 1.6045-4

In addition to reporting on dispositions by real estate buyers of digital assets in exchange for real estate, the proposed regulations required real estate reporting persons to report on digital assets received by sellers of real estate in real estate transactions. One comment questioned the authority behind this change because the Infrastructure Act did not specifically reference reporting of digital asset payments made in real estate transactions. Section 6045(a) provides that a broker must make a return showing “such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require.” Additionally, section 6045(e)(2) provides that “[a]ny person treated as a real estate reporting person . . . shall be treated as a broker.” Accordingly, the statute gives the Secretary explicit authority to require real estate reporting persons to report on digital asset payments made in real estate transactions.

As discussed in Part I.B.4. of this *Summary of Comments and Explanation of Revisions*, one comment raised the concern that in some real estate transactions, direct (peer to peer) payments of digital assets from buyers to sellers may be paid outside of closing and not reflected in the real estate contract for sale. In such transactions, the comment stated that the real estate reporting person would not ordinarily know that the buyer used digital assets to make payment. Instead, the comment suggested that the buyer (or buyer's representative) would be closer to the details of the transaction and should, therefore, be the reporting party. Section

6045(e) provides authority for just one person to report on the real estate transaction. Accordingly, the final regulations do not make any changes to require a second person to report on the digital asset payment. The Treasury Department and the IRS, however, have determined that it is not appropriate to require reporting by real estate reporting persons on digital asset payments received by the real estate seller when the real estate reporting person does not know, or would not ordinarily know, that digital assets were used by the real estate buyer to make payment. Accordingly, these regulations add final § 1.6045-4(h)(3), which limits the real estate reporting person's obligation to report on digital asset payments received by the seller of real estate unless the real estate reporting person has actual knowledge, or ordinarily would know, that digital assets were received by the real estate seller. Additionally, the regulations modify Example 10 at final § 1.6045-4(r)(10) to reflect this change. See Part I.B.4. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the application of this same standard for real estate reporting persons reporting on the buyer of real estate under final § 1.6045-1.

Another comment recommended against requiring reporting of digital asset addresses and transaction IDs because that information is not relevant to the seller's gross proceeds or basis. Although the requirement to report digital asset addresses and transaction IDs was included in the proposed regulations to determine if valuations of digital assets and real estate were done properly, the final regulations have removed the requirement. See Part I.D.1. of this *Summary of Comments and Explanation of Revisions* for a discussion of the rationale behind removing the requirement to report this information under final § 1.6045-1.

One comment raised the concern that reporting on digital assets would be burdensome for real estate reporting persons because real estate transactions are stand-alone transactions and not ongoing account relationships. This comment stated that valuations would be particularly burdensome in installment sale transactions, where the real estate reporting person would need to report the fair market value as of the time of closing of digital assets to be paid later. Instead, this comment recommended that a new check box be added to Form 1099-S to indicate that digital assets were received by the transferor instead of reporting the gross proceeds from the digital asset transfer.

The Treasury Department and the IRS considered these comments. The final regulations do not adopt this suggestion, however, for several reasons. First, the information reporting rules help to reduce the overall income tax gap because they provide information necessary for taxpayers to prepare their Federal income tax returns and reduce the number of inadvertent errors or intentional misstatements shown on those returns. Information reporting also provides information to the IRS that identifies taxpayers who have engaged in these digital asset transactions and may not be reporting their income appropriately. The fair market value of digital assets used to purchase property (including real property) is generally equal to the value of the property. The real estate reporting person has several ways it can ascertain the value of real estate. For example, the agreed upon price of the real estate could be detailed in the contract of sale. To the extent this agreed upon price influences, for example, the commissions due to real estate agents or the taxes due at closing, this amount may already need to be shared with the real estate reporting person. Additionally, depending on the digital assets, the valuation could be relatively easy to determine if, for example, the digital asset is one that tracks the U.S. dollar or is otherwise widely traded. Also, the real estate reporting person could also ask both the buyer and seller whether they had agreed upon the value of the digital assets paid. Finally, if all these avenues to determine the value of digital assets paid are not successful, the regulations permit the real estate reporting person to report the value as undeterminable.

One comment requested that the examples involving closing attorneys that are real estate reporting persons be revised to refer to closing agents instead to reflect the more common and more general term. This comment has been adopted.

Finally, unrelated to transactions involving digital assets, the proposed regulations updated the rules 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. As part of this update, proposed § 1.6045-4(b)(1) modified an illustration included in the body of the rule of a transaction that is treated as a sale or exchange even though it may not be currently taxable so that it specifically references this exception (that is, a sale of a principal residence giving rise to gain up to \$250,000 or \$500,000 in the case of married persons filing jointly) to the

reporting rule. One comment questioned whether the example should reflect the actual dollars in the reporting exception rule or if the example should, instead, reference the “prescribed amount” because the actual prescribed amounts could change in the future. The final regulations do not adopt this change because referencing “prescribed amounts” could be confusing, and the amounts referenced are merely included in an example and not in any operative rule.

#### IV. Final §§ 1.6045A-1 and 1.6045B-1

The proposed regulations did 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, it was unclear whether brokers had systems in place to provide transfer statements under section 6045A or whether issuers had procedures in place to report information about certain organizational actions (like stock splits, mergers, or acquisitions) that affect basis under section 6045B for assets that qualify both as digital assets and specified securities under the existing rules. Accordingly, the proposed regulations provided that any specified security of a type that would have been a covered security under section 6045A pursuant to the pre-2024 final regulations under section 6045 (that is, described in § 1.6045-1(a)(14)(i) through (iv) of the pre-2024 final regulations) that is also a digital asset is exempt from transfer statement reporting under section 6045A and similarly proposed to exempt issuers from reporting under section 6045B on any such specified security that is also a digital asset. The proposed regulations also provided penalty relief to transferors and issuers that voluntarily provide these transfer statements and issuer reporting statements.

One comment raised the concern that the decision to delay transfer statements for digital assets under section 6045A will mean that brokers will not receive the important information regarding basis that would be included on those transfer statements. Another comment recommended that the section 6045A rules remain applicable to transfers of securities that are also digital assets.

The Treasury Department and the IRS have determined that specified

securities that are digital assets should generally be exempt from the section 6045A transfer reporting requirements because it is unclear at this point how digital asset brokers would be able to provide the necessary information to make basis reporting work efficiently for digital assets that are broadly tradeable. While brokers may more readily be able to provide transfer statements for tokenized securities, the transfer of such assets on a distributed ledger may not necessarily accommodate the provision of transfer statements. Brokers who wish voluntarily to provide transfer statements for digital assets may do so and will not be subject to penalties for failure to furnish the information correctly under section 6722. Accordingly, the final regulations do not make any broadly applicable changes to the regulations under section 6045A in response to these comments. The final regulations do, however, revise the language in proposed § 1.6045A-1(a)(1)(vi) to limit the transfer statement exemption only to those specified securities, the sale of which would be reportable as a digital asset after the application of the coordination rules in final § 1.6045-1(c)(8). See Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the new coordination rule in final § 1.6045-1(c)(8)(iii) treating sales of dual classification assets that are digital assets solely because the sale of such assets are cleared or settled on a limited-access regulated network as sales of securities or commodities and not sales of digital assets. Additionally, until the Treasury Department and the IRS determine the information that will be required on transfer statements with respect to digital assets, final § 1.6045A-1(a)(1)(vi) limits the penalty relief for voluntarily provided transfer statements to those dual classification assets that are tokenized securities under final § 1.6045-1(c)(8)(i)(D). See Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the new coordination rule in final § 1.6045-1(c)(8)(i)(D) regarding tokenized securities.

One comment agreed with the proposal to exempt issuers from reporting under section 6045B on any specified security that is also a digital asset and recommended delaying the application of section 6045B until after the IRS provides guidance under substantive tax law on which corporate actions affect the basis in specified securities that are digital assets. Another comment recommended against delaying issuer statements under section 6045B because that will hinder the

ability of brokers to make basis adjustments related to covered digital assets. Another comment recommended against exempting issuers from reporting on any security that is also a digital asset because tokenized funds, which are 1940 Act Funds, are already subject to section 6045B reporting, and this reporting provides critical information to institutional investors that are otherwise exempt from Form 1099 reporting if they are corporations.

The Treasury Department and the IRS agree that issuers that are already providing issuer statements should continue to do so. The ability of an issuer of traditional securities to provide information about organizational events should not be affected by whether those securities are sold on a cryptographically secured distributed ledger, because issuers may provide the information by posting it on their website. Accordingly, final § 1.6045B-1(a)(6) provides that an issuer of specified securities that was subject to the issuer statement requirements before the application of these final regulations (legacy specified securities) should continue to be subject to those rules notwithstanding that such specified securities are also digital assets. Additionally, final § 1.6045B-1(a)(6) provides that an issuer of specified securities that are digital assets and not legacy specified securities is permitted, but not required, to file an issuer return under section 6045B. An issuer that chooses to provide this reporting and furnish statements for a specified security under section 6045B will not be subject to penalties under section 6721 or 6722 for failure to report or furnish this information correctly. Finally, the final regulations do not make any changes to address the comment requesting guidance under substantive tax law on which corporate actions affect the basis in specified securities that are digital assets because the comment addresses questions of substantive tax law that are outside the scope of these regulations.

#### V. Final § 1.6050W-1

Prior to the issuance of the proposed regulations, several digital asset brokers reported sales of digital assets under section 6050W. The proposed regulations did not take a position regarding the appropriateness 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 the 2010 final regulations under section 6050W. Instead, to the extent these transactions would be reportable under the proposed section 6045 broker reporting rules, the

proposed regulations added a tie-breaker rule that generally provided that section 6045 (and not section 6050W) would apply to these transactions. Thus, when a payor 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 and that payment constitutes a sale of digital assets by the payor under the broker reporting rules under section 6045, the amount paid by the payee in settlement of that exchange would be subject to the broker reporting rules (including any exemptions from these rules) and not section 6050W. Additionally, when goods or services provided by a payee are digital assets, and 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 would be reportable under the broker reporting rules (including any exemptions from these rules) and not section 6050W.

As discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, the final regulations reserve and do not finalize rules on the treatment of decentralized exchanges and certain unhosted digital asset wallet providers as brokers. Because these entities will not be subject to reporting on the sales of digital assets as brokers under final § 1.6045-1, the final regulations have been revised to apply the tie-breaker rule only to payors that are brokers under final § 1.6045-1(a)(1) that effected the sale of such digital assets. Accordingly, the tie-breaker rule will not apply to decentralized exchanges, unhosted digital asset wallet providers, or any other industry participant not subject to these final regulations to the extent they are already subject to reporting under section 6050W.

The proposed regulations also included an example at proposed § 1.6050W-1(c)(5)(ii)(C) (*Example 3*) illustrating the tie-breaker rule in the case of a third party network transaction undertaken by CRX, a third party settlement organization. In the example, CRX effects a payment using an NFT buyer's digital assets that have been deposited with CRX to a participating payee (J) that is a seller of NFTs representing digital artwork. The NFTs that J sells have also been deposited with CRX. Although the payment from buyer to J would have otherwise been reportable under section 6050W because the transaction constitutes the settlement of a reportable payment transaction by CRX, the example concludes that because it is also a sale under proposed § 1.6045-1(a)(9)(ii),

CRX must file an information return under section 6045 and not under section 6050W.

A comment recommended against treating all NFTs as goods and services but instead recommended a case by case determination be made based on the underlying asset or rights referenced by the NFT. To address this comment, the final regulations revise the analysis in § 1.6050W-1(c)(5)(ii)(C) (*Example 3*) of the proposed regulations, redesignated as final § 1.6050W-1(c)(5)(ii)(B) (*Example 2*) in the final regulations, to make it clear that the example applies only to NFTs that represent goods or services such as the NFT in the example, which represents unique digital artwork. The comment also asserted that NFTs representing digital artwork cannot be a good or a service because it cannot be seen, weighed, measured, felt, touched, or otherwise perceived by the senses. The Treasury Department and the IRS have determined that the definition of a good or a service should not be limited in the way suggested by this comment and the final regulations do not do so. One comment requested that the final regulations provide a bright line test or other safe harbor guidance for classifying NFTs that represent more than one asset or right as a good or a service. The final regulations do not adopt this comment because it involves determinations about NFTs that are outside the scope of these regulations. Another comment requested that the final regulations under section 6050W be revised to define goods or services and what it means to guarantee payments, which are components of the definition of a third party payment network transaction subject to reporting under section 6050W. The final regulations do not adopt this comment because it addresses definitions under section 6050W and is thus outside the scope of these regulations.

The proposed regulations also clarified that 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 an instruction to a purchaser to transfer funds directly to the account of the participating payee for purposes of settling the reportable payment transaction. One comment suggested that a settlement organization that provides instructions to a purchaser to transfer funds should not be treated as making or guaranteeing payment. The Treasury Department and the IRS do not agree with this suggestion and no changes are made to this clarification.

Section 6050W(b)(3) provides that a third party settlement organization is a type of payment settlement entity that is a central organization which has the contractual obligation to make payment to participating payees in settlement of third party network transactions. The section 6050W regulations already provided in § 1.6050W-1(a)(2) that a payment settlement entity is making a payment in settlement of a reportable transaction if the payment settlement entity submits the instruction to transfer funds to the account of the participating payee. The final regulations merely clarify these instructions may be made to the purchaser. They do not affect any of the other factors that make a third party a third party settlement organization, such as the existence of an agreement or arrangement that, among other things, guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing those goods and services, as provided in section 6050W(d)(3)(C).

Another comment recommended that the tie-breaker rule be reversed so that transactions involving digital assets would remain reportable under section 6050W rather than under section 6045 because the information reportable under section 6045 is generally for sales of capital assets, whereas the information reportable under section 6050W is for both sales of property and payments for services. This comment also suggested that, since marketplaces that list unique or collectible NFTs resemble well-known marketplaces for tangible goods which are subject to section 6050W reporting, that these NFT marketplaces should report NFT transactions in the same manner as the established marketplaces. Another comment raised the concern that NFT artists find it difficult to calculate their tax under the existing information reporting rules.

The final regulations do not adopt the comment recommending that the tie-breaker rule be reversed because section 6045 was affirmatively amended by Congress to regulate the information reporting of digital asset transactions. Additionally, as a broad statutory provision, section 6045 is better suited for reporting on NFTs, the uses for which continue to evolve in ways that the use of goods and services traditionally subject to section 6050W reporting do not. Moreover, broadly applicable information reporting rules help to reduce the overall income tax gap because it provides necessary information to taxpayers, as explained by one comment stating that the existing rules are not sufficient for artists to

prepare their Federal income tax returns (and reduce the number of inadvertent errors or intentional misstatements shown on those returns) from NFT transactions. Information reporting also provides information to the IRS that identifies taxpayers who have engaged in these transactions. One comment suggested that a payee statement reflecting the information provided on a Form 1099-K would be easier for taxpayers to reconcile to Federal their income tax return because the transactions are reported in a single aggregate form. The final regulations do not adopt this comment because, as discussed in Part I.D.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations already allow brokers to report sales of specified NFTs under an optional aggregate reporting method. Another comment recommended that reporting by brokers on Form 1099-DA for NFT sales should distinguish between sales by NFT creators or minters (primary sales) and sales by NFT resellers (secondary sales). As discussed in Part I.D.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations adopt this comment by requiring brokers that report under the optional reporting method for specified NFTs to indicate the portion of the aggregate gross proceeds reported that is attributable to the specified NFT creator's or minter's first sale to the extent ordinarily known by the broker.

Finally, a comment requested that guidance be provided regarding the character of the percentage payments made to the original NFT creator or minter after a secondary sale of that same NFT because this determination would impact whether these payments are reportable as a royalty (with a \$10 *de minimis* threshold) or as a payment reportable under section 6045 or some other information reporting provision. Additionally, the character of the payment could impact the source of the payment income for purposes of withholding under chapter 3 of the Code and application of treaty benefits (if applicable). The final regulations do not adopt this comment as it is outside the scope of these regulations.

**VI. Final §§ 31.3406(b)(3)–2, 31.3406(g)–1, 31.3406(g)–2, 31.3406(h)–2**

Section 3406 and the regulations thereunder require certain payors of reportable payments, including payments of gross proceeds required to be reported by a broker under section 6045, to deduct and withhold a tax on a payment at the statutory backup withholding rate (currently 24 percent) if the payee fails to provide a TIN,

generally on a Form W–9, along with a certification under penalties of perjury that the TIN furnished is correct (certified TIN), or if the payee provides an incorrect TIN. See § 31.3406(b)(3)–2(a) (Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers). The proposed regulations added digital assets to the title of § 31.3406(b)(3)–2 of the 2002 final regulations but did not make any substantive changes to the rules therein because these rules were considered broad enough to cover digital asset transactions that are reportable under section 6045. Additionally, proposed § 31.3406(g)–2(e) provided that a real estate reporting person must withhold under section 3406 and, pursuant to the rules under § 31.3406(b)(3)–2 of the 2002 final regulations, 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 proposed § 1.6045–1.

**A. Digital Assets Sales for Cash**

Many comments recommended that the final regulations apply the backup withholding rules only to reportable payments associated with digital assets that are sold for cash. One comment explained that brokers that exchange customers' digital assets for cash are regulated under Federal law as MSBs and under State law as money transmitters. As a result, these brokers already have programs in place to comply with applicable AML and customer identification requirements. This comment suggested that because these brokers already have the infrastructure in place to collect proper tax documentation from customers, they can use their existing systems to deduct and withhold backup withholding taxes on payments of cash made in exchange for digital assets. Other comments requested that the Treasury Department and the IRS provide sufficient time to allow these brokers to contact existing customers to collect certified TINs on Forms W–9. In response to these comments, the Treasury Department and the IRS have concluded that it is appropriate to provide temporary relief on the imposition of backup withholding for these transactions to give brokers the time they need to build and implement backup withholding systems for these types of transactions. See Part VI.D. of this *Summary of Comments and Explanation of Revisions* for a description of the transitional relief that will be provided.

**B. Digital Asset Sales for Non-Cash Property**

Section 3406 requires payors to deduct and withhold the backup withholding tax on the payment made to the payee. When reportable payments made to the payee are made in property (other than money), § 31.3406(h)–2(b)(2)(i) provides that the payor (broker) must withhold 24 percent of the fair market value of the property determined immediately before or on the date of payment. As with all backup withholding, the payor is liable for the amount required to be withheld regardless of whether the payor withholds from such property. Under the general rule, payors are prohibited from withholding from any alternative source maintained by the payor other than the source with respect to which the payor has a withholding liability. § 31.3406(h)–2(b)(1). Exceptions from this general rule are provided in § 31.3406(h)–2(b)(2) for certain payments made in (non-cash) property. Specifically, under these rules, instead of withholding from the property payment itself, § 31.3406(h)–2(b)(2)(i) provides that a payor may withhold “from the principal amount being deposited with the payor or from another source maintained by the payee with the payor.” The regulation cross-references to an example illustrating methods of withholding permitted for payments constituting prizes, awards, and gambling winnings paid in property other than cash. See § 31.3406(h)–2(b)(2)(i) (cross-reference to § 31.3402(q)–1(d) (*Example 5*) later redesigned as § 31.3402(q)–1(f) (*Example 4*) by TD 9824, 82 FR 44925 (September 27, 2017)). This example illustrates that payors making payments in property may either gross up the overall payment with cash to pay the withholding tax (plus the withholding tax on that grossed-up payment) or have the payee pay the withholding tax to the payor. For a payor that cannot locate an alternative source of cash from which to withhold, § 31.3406(h)–2(b)(2)(ii) permits the payor to defer its obligation to withhold (except for reportable payments made with prizes, awards, or gambling winnings) until the earlier of the date sufficient cash to satisfy the withholding obligation is deposited into the payee's account maintained with the payor or the close of the fourth calendar year after the obligation arose. If no cash becomes available in these other sources by the close of the fourth calendar year after the obligation arose, however, the payor is liable for the backup withholding tax.

Several comments requested that the final regulations clarify how the backup withholding rules apply to sales of digital assets for different digital assets and other non-cash property. One comment requested that the final regulations provide added flexibility to allow brokers to meet their withholding obligations. First, to the extent that these comments assumed that non-cash property proceeds cannot be subdivided, it should be noted that some digital assets do allow for subdivision and, when they do, the payor can satisfy backup withholding obligations by liquidating a portion of those proceeds. Additionally, depending on contractual relationships with their customers, brokers may be permitted to liquidate alternative sources that are comprised of digital assets to satisfy their withholding obligations. Accordingly, brokers effecting sales of digital assets for different digital assets in many cases may have the ability to satisfy their withholding obligations from the digital assets received in the transaction (that is, from the reportable payment) or from an alternative source of digital assets maintained by the payee with the payor.

Another comment asked if brokers are permitted to withhold from digital assets being disposed of instead of the digital assets received in the exchange when market considerations would make that approach less costly. The Treasury Department and the IRS have determined that withholding from disposed-of digital assets is analogous to having the payee pay the withholding tax to the payor as illustrated in the example of permitted withholding methods for prizes, awards, and gambling winnings. § 31.3402(q)–1(f) (*Example 4*). Accordingly, whether a broker can withhold from digital assets being disposed of is a matter for brokers and customers to determine based on the legal or other arrangements between them. No changes are made to the final regulations to address this comment. The Treasury Department and the IRS intend to study the rules under § 31.3406(h)–2(b) further and may issue guidance providing brokers a greater ability to liquidate alternative sources of digital assets to satisfy backup withholding obligations. Additionally, such guidance may address the four-year deferral rule in fact patterns where digital assets are maintained by the payee with the payor.

One comment recommended that the withholding rate be reduced for dispositions of digital assets for different digital assets or other non-cash property. The final regulations do not adopt these suggestions because the

withholding rate is set by statute in section 3406(a)(1). Another comment recommended that the rules permit a delay in the payment of withheld taxes to the later of 180-days or until the end of the calendar year to allow customers to provide their tax documentation. As discussed in Part VI.D. of this *Summary of Comments and Explanation of Revisions*, the final regulations address this comment by delaying the application of the backup withholding rules.

Although a few comments expressed the view that brokers have the ability to administer backup withholding on dispositions of digital assets for certain types of non-cash property, numerous other comments raised concerns with the logistics of withholding on sales of digital assets for different digital assets, particularly when the price of the digital assets received in the exchange (received digital asset) fluctuates between the time of transaction and the time the received digital assets are liquidated into U.S. dollars for deposit with the Treasury Department. These comments noted that, even for received digital assets that do not experience large fluctuations in value, it is not operationally possible for brokers to be certain that they can liquidate 24 percent of the received digital assets at the same valuation price as applies to the underlying transaction giving rise to the withholding obligation.

Accordingly, these comments questioned whether the withholding tax payment would be deficient if the liquidated value of the withheld digital assets falls below the value of 24 percent of the received digital assets at the time of the underlying transaction and requested relief to the extent the liquidated value is deficient. Another comment questioned if any excess value must be paid to the Treasury Department when the liquidated value of the withheld digital assets is greater than 24 percent of the received digital assets at the time of the underlying transaction. Another comment stated that some brokers do not have processes in place to liquidate received digital assets daily to make required backup withholding deposits in U.S. dollars and requested that deposits to the Treasury Department be permitted in digital assets.

Section 3406 provides that if a payee fails to provide a TIN or certain other conditions are satisfied, the payor shall deduct and withhold from the reportable payment a tax equal to a rate that is currently 24 percent. The responsibility for ensuring that sufficient withholding tax is withheld is by statute a payor responsibility.

Moreover, brokers are in the best position to mitigate any volatility risks associated with disposing of digital assets received in an exchange of digital assets. For example, brokers may be able to minimize or eliminate their risk by implementing systems to shorten the time between the initial transaction and the liquidation of the withheld digital asset. Accordingly, the Treasury Department and the IRS have determined that it is not appropriate for the Federal government to accept the market risk of a customer's withheld digital asset. Instead, the risk should be borne in the first instance by the broker offering digital asset transactions to its customers. Accordingly, the final regulations do not adopt the suggestion to pass the price volatility risk of withheld digital assets onto the Federal government. However, *see* Part VI.D. of this *Summary of Comments and Explanation of Revisions* regarding temporary penalty relief for backup withholding, which is based in part on the risk of payment shortfalls due to the volatility of some digital assets.

The Treasury Department and the IRS understand that a broker may shift the withholding liability risk associated with price volatility to a customer who has invested in the withheld digital asset and has not provided a TIN under penalties of perjury. For example, as suggested by one comment, brokers could mandate that their customers who have not provided a certified TIN maintain with the broker cash margin accounts or digital asset accounts with relatively stable digital assets (such as stablecoins) for brokers to use to satisfy their backup withholding obligations. Brokers could also require their customers to agree to allow the brokers to sell for cash 24 percent of the disposed digital assets at the time of the transaction. In addition, brokers could remind customers that fail to provide their TINs as requested that the customer may be liable for penalties under section 6723 of the Code. Finally, brokers could mandate that their customers provide accurate tax documentation to avoid backup withholding obligations altogether. Because any such arrangement would be a commercial arrangement between the broker and its customer, these final regulations do not address such arrangements.

Several comments requested guidance (with examples) setting forth operational solutions to avoid broker liability with respect to this price fluctuation risk and additional time to put those solutions in place. The final regulations do not include specific examples because there appears to be

many solutions brokers could adopt that are industry and business specific. However, the Treasury Department and the IRS intend to study these rules further and may issue additional guidance.

One comment recommended that the final regulations be revised to prevent the application of cascading backup withholding in a sale of digital assets for different digital assets when the broker sells 24 percent of the received digital assets to pay the backup withholding tax on the initial transaction. For example, a customer exchanges 1 unit of digital asset AB for 100 units of digital asset CD (first transaction), and to apply backup withholding, the broker sells 24 percent (or 24 units) of digital asset CD for cash (second transaction). The comment recommended that the sale of the 24 units of CD in the second transaction not be subject to backup withholding if that sale is effected by the broker to satisfy its backup withholding obligations with respect to a sale of digital assets in exchange for different assets and the cash sale was effected by the broker on or prior to the date that the broker is required to deposit the backup withholding tax liability with respect to the underlying digital asset exchange. The Treasury Department and the IRS have determined that a limited backup withholding exception should apply in the case of cascading backup withholding obligations. To address this cascading backup withholding problem, the final regulations except certain sales for cash of withheld digital assets from the definition of sales required to be reported if the sale is undertaken immediately after the underlying sale to satisfy the broker's obligation under section 3406 to deduct and withhold a tax with respect to the underlying transaction. If that condition is met, the sale will be excepted from broker reporting and backup withholding will not apply. *See* final § 1.6045–1(c)(3)(ii)(D). The special rule for the identification of units withheld from a transaction, discussed in Part I.E.3.a. of this *Summary of Comments and Explanation of Revisions*, also ensures that the excepted sale of the withheld units does not give rise to any additional gain or loss.

Numerous comments requested an exception from backup withholding for transactions in which digital assets are exchanged for property (other than relatively liquid digital assets), such as traditional financial assets, real estate, goods, services, or different digital assets that cannot be fractionalized, such as NFTs and tokenized financial instruments (illiquid property), when

there is insufficient cash in the customer's account. Backup withholding is an essential enforcement tool to ensure that complete and accurate information returns can be filed by payors with respect to payments made to payees. Accurate TINs and other information provided by payors are critical to matching such information with income reported on a payee's Federal income tax return. A complete exception from backup withholding or an exception for sales of digital assets for illiquid property would increase the likelihood that customers will not provide correct TINs to their brokers. Such an exception would also raise factual questions about whether certain property received in a transaction is truly illiquid. For example, one broker might assert that a stored-value card in a fixed amount is illiquid if the broker cannot withhold 24 percent of the value of the card or if the resale market for those cards does not facilitate full face value payments. On the other hand, a different broker might decide to require the payee to send back cash in an amount representing 24 percent of the value of the card. Moreover, brokers have some ability to minimize their backup withholding in these circumstances by taking steps to ensure that the customer pays the backup withholding tax instead of the broker. For example, brokers could remind customers that failure to provide their TINs as requested may result in customers being liable for penalties under section 6723. Brokers also may be able to require customers that refuse to provide accurate tax documentation to maintain cash accounts or other digital asset accounts with the broker. Accordingly, subject to the transition relief discussed in Part VI.D. of this *Summary of Comments and Explanation of Revisions*, the final regulations do not provide an exception to backup withholding for sales of digital assets in exchange for illiquid property.

One comment requested relief from backup withholding when the fair market value of the received digital asset is not readily ascertainable. This comment also requested that the final regulations provide guidance clarifying what the broker must do to conclude that the value of received digital assets is not readily ascertainable. The final regulations do not adopt this comment because the fact pattern is not unique to digital asset transactions. Moreover, the final regulations provide rules, at final § 1.6045–1(d)(5)(ii)(A)(1) through (3), that brokers can use to determine the fair market value of gross proceeds

received by a customer in a digital asset transaction. For example, in the case of a customer that receives a unique NFT in exchange for other digital assets, the broker can look to the value of the disposed digital assets and use that value for the NFT.

Several comments requested an exemption from backup withholding for any sale of a qualifying stablecoin (whether for cash, another digital asset, or other property) because of the low likelihood that these stablecoin sales will give rise to significant gains or losses. Backup withholding on these transactions is a necessary tool to ensure that customers provide their tax documentation in accordance with regulatory requirements and to allow for correct income tax reporting of the gains and losses that do occur. Brokers that request customer TINs in accordance with regulatory requirements are not liable for information reporting penalties with respect to customers who refuse to comply. Backup withholding, therefore, is the only way to ensure that either the broker's customers will provide their TINs and the IRS will receive the information reporting required or that a tax is collected from those customers who do not want the IRS to learn about their activities. Additionally, and as discussed in Part I.D.2. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have concluded that information about certain qualifying stablecoin transactions is essential to the IRS gaining visibility into previously unreported digital asset transactions. Accordingly, the final regulations do not adopt this comment. However, it should be noted, as discussed in Part I.D.1. of this *Summary of Comments and Explanation of Revisions*, if a broker reports information on designated qualifying stablecoins sales under the optional method of reporting, sales of non-designated qualifying stablecoins will not be reported. As such, final § 31.3406(b)(3)–2(b)(6)(i)(B)(1) provides that these non-designated sales of qualifying stablecoins will not be subject to backup withholding.

As discussed in Part I.D.2.a. of this *Summary of Comments and Explanation of Revisions*, there may be circumstances in which a digital asset loses its peg during a calendar year and therefore does not satisfy the conditions required to be a qualifying stablecoin. To give brokers time to learn about such de-pegging events and turn on backup withholding for non-designated sales, final § 31.3406(b)(3)–2(b)(6)(i)(B)(2) provides a grace period before withholding is required. Specifically, in



the case of a digital asset that would have satisfied the definition of a non-designated sale of a qualifying stablecoin under final § 1.6045–1(d)(10)(i)(C) for a calendar year but for a non-qualifying event during that year, a broker is not required to withhold under section 3406 on such sale if it occurs no later than the end of the day that is 30 days after the first non-qualifying event with respect to such digital asset during such year. For this purpose, a non-qualifying event is defined as the first date during a calendar year on which the digital asset no longer satisfies all three conditions described in final § 1.6045–1(d)(10)(ii)(A) through (C) to be a qualifying stablecoin. Finally, final § 31.3406(b)(3)–2(b)(6)(i)(B)(2) also provides that the date on which a non-qualifying event has occurred with respect to a digital asset and the date that is no later than 30 days after such non-qualifying event must be determined using UTC. As discussed in Part I.D.2.b. of this *Summary of Comments and Explanation of Revisions*, UTC time was chosen for this purpose to ensure that the same digital assets will or will not be subject to backup withholding for all brokers regardless of the time zone in which such broker keeps its books and records.

One comment recommended that the final regulations provide a *de minimis* threshold, similar to the \$600 threshold for income subject to reporting under section 6041, before backup withholding would be required for dispositions of digital assets for different digital assets or other non-cash property. Under section 3406(b)(4) and (6), unless the payment is of a kind required to be shown on a return required under sections 6041(a) or 6041A(a), the determination of whether any payment is of a kind required to be shown on a return must be made without regard to any minimum amount which must be paid before a return is required. While the Secretary may have the authority to apply a threshold that is established by regulation when determining whether any payment is of a kind that must be shown on a required return for backup withholding purposes, the Treasury Department and the IRS have determined that the application of these thresholds to the backup withholding rules would not be appropriate. Accordingly, although the final regulations provide *de minimis* thresholds for reporting payment transaction sales and designated sales of qualifying stablecoins and specified NFTs, the transactions that fall below the applicable gross proceeds thresholds

are nonetheless potentially taxable transactions that taxpayers must report on their Federal income tax returns. The Treasury Department and the IRS have concluded that customers that have not provided tax documentation to their brokers are less likely to report their digital asset transactions on their Federal income tax returns than customers who comply with the documentation requirements. Accordingly, the Treasury Department and the IRS have determined it is important to impose backup withholding on gross proceeds that fall below these thresholds. Therefore, under the final regulations, gross proceeds that are not required to be reported due to the application of the \$600 threshold for payment transaction sales, the \$10,000 threshold for designated sales of qualifying stablecoins, or the \$600 threshold for sales of specified NFTs are nonetheless reportable payments for purposes of backup withholding.

See Part VI.D. of this *Summary of Comments and Explanation of Revisions* for a discussion of certain transitional relief from backup withholding under section 3406.

#### C. Other Backup Withholding Issues

The proposed regulations requested comments addressing short sales of digital assets and whether any changes should be made to the backup withholding rules under § 31.3406(b)(3)–2(b)(3) and (4). In response, one comment requested that the final regulations clarify how gains or losses from short sales of digital assets are to be treated and what, if any, withholding is required for short sales of digital assets. Another comment requested that any backup withholding rules for short sales of digital assets take into account factors like holding periods, borrowed assets, and sale conditions. After considering the requests, as discussed in Part I.C. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have determined that the substantive issues raised by these comments require further study. Accordingly, the final regulations do not address these comments and do not make any changes to these rules. However, see Part VII. of this *Summary of Comments and Explanation of Revisions* for a discussion of guidance being provided along with these final regulations to address reporting on certain transactions requiring further study.

Another comment requested guidance regarding how to apply the rules for making timely deposits of tax withheld

by brokers that operate 24 hours a day. This comment stated that brokers need to know what time (and based on what time zone) their day ends for purposes of making timely deposits and whether timely deposits are measured based on days or by 24 hour rolling periods. Another comment requested that the final regulations permit brokers to report based on the broker's time zone provided that the time zone is disclosed to the customer and is used consistently for all reporting years. Many businesses have continuous operations across several time zones. Because the proposed regulations did not propose any changes to the rules for making timely deposits of tax withheld by digital asset brokers, the final regulations do not provide a special rule for digital asset brokers.

Another comment requested guidance regarding the withholding rules for cross-border transactions, including the appropriate withholding rates under existing U.S. tax treaties. The final regulations do not address this comment because the withholding rules under chapter 3 of the Code are outside the scope of these regulations. See Part VI.D. of this *Summary of Comments and Explanation of Revisions* for a discussion of certain transitional relief from backup withholding under section 3406.

#### D. Applicability Date for Backup Withholding on Digital Asset Sales

Several comments requested that the imposition of backup withholding on dispositions of digital assets for cash, different digital assets, or other non-cash property be delayed until brokers can develop systems to implement withholding on these transactions. Other comments advised that software currently exists that can be embedded in any trading platform's user interface to help brokers obtain proper tax document from customers. The Treasury Department and the IRS have determined it is appropriate to provide temporary relief on the imposition of backup withholding for these transactions to give brokers the time they need to build and implement backup withholding systems for these types of transactions. Accordingly, the notice discussed in Part VI. of this *Summary of Comments and Explanation of Revisions* will also provide transitional relief from backup withholding under section 3406 for sales of digital assets as follows:

##### 1. Digital Asset Sales for Cash

The Treasury Department and the IRS recognize that, although brokers engaging in these cash transactions may

be in a good position to obtain proper tax documentation, they will need time to build systems to collect and retain that documentation and to obtain that documentation from existing customers. Accordingly, to promote industry readiness to comply with the backup withholding requirements, Notice 2024–56 is being issued contemporaneously with these final regulations to provide transitional relief from backup withholding under section 3406 on these sales. This notice, which will be published in the Internal Revenue Bulletin, provides that the effective date for backup withholding date is postponed to January 1, 2026, for potential backup withholding obligations imposed under section 3406 for payments required to be reported on Forms 1099–DA for sale transactions. Additionally, for sale transactions effected in 2026 for customers that have opened accounts with the broker prior to January 1, 2026, the notice further provides that backup withholding will not apply with respect to any payee that furnishes a TIN to the broker, whether or not on a Form W–9 in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5, provided the broker submits that payee’s TIN to the IRS’s TIN matching program and receives a response that the TIN furnished by the payee is correct. *See* § 601.601(d)(2). Transitional relief also is being provided under these final regulations for sales of digital assets effected before January 1, 2027, that were held in a preexisting account established with a broker before January 1, 2026, if the customer has not been previously classified as a U.S. person by the broker, and the information the broker has for the customer includes a residence address that is not a U.S. address.

## 2. Sales of Digital Assets in Exchange for Different Digital Assets (Other Than Nonfungible Tokens That Cannot Be Fractionalized)

As discussed in Part VI.B. of this *Summary of Comments and Explanation of Revisions*, brokers are concerned with the logistics of withholding on sales of digital assets for different digital assets when the price of the digital assets received in the exchange fluctuates between time of transaction and the time the received digital assets are liquidated into U.S. dollars for deposit with the Treasury Department. Although there are steps brokers can take to diminish this price volatility risk or transfer this risk entirely to the customer, the Treasury Department and the IRS recognize that brokers need time to implement these procedures. Accordingly, in addition to

the delayed application of the backup withholding rules provided for digital assets sold for cash, Notice 2024–56 also provides that the IRS will not assert penalties for a broker’s failure to deduct, withhold, and pay any backup withholding tax that is caused by a decrease in the value of received digital assets (other than nonfungible tokens that the broker cannot fractionalize) between the time of the transaction giving rise to the backup withholding liability and the time the broker liquidates 24 percent of the received digital assets, provided the broker undertakes to effect that liquidation immediately after the transaction giving rise to the backup withholding liability.

One comment recommended that the final regulations apply backup withholding to sales of digital assets other than stablecoins in exchange for stablecoins under the same rules as apply to sales of digital assets for cash. The final regulations do not adopt this comment. Although there may be less price volatility risks in received stablecoins than there is with other digital assets, stablecoins are not cash and are not treated as such by these regulations.

## 3. Sales of Digital Assets in Exchange for Other Property

As discussed in Part VI.B. of this *Summary of Comments and Explanation of Revisions*, the final regulations do not provide an exception to backup withholding for sales of digital assets in exchange for illiquid property. The Treasury Department and the IRS, however, understand that there are additional practical issues with requiring backup withholding on PDAP sales and sales effected by real estate reporting persons because these brokers typically cannot withhold from the proceeds, which would typically be the goods or services (or real estate) purchased. Accordingly, in addition to the delayed application of the backup withholding rules provided for digital assets sold for cash, Notice 2024–56 also provides that the IRS will not apply the backup withholding rules to any PDAP sale or to any sale effected by a real estate reporting person until further guidance is issued.

## VII. Applicability Dates and Penalty Relief

The Treasury Department and the IRS received and considered many comments about the applicability dates contained in the proposed regulations. Multiple comments requested additional time beyond the proposed applicability date for gross proceeds reporting on transactions occurring on

or after January 1, 2025, and for basis reporting for transactions occurring on or after January 1, 2026. Comments asked for time ranging from one to five years after publication of the final rules to prepare for reporting transactions, with the most common suggestion being an applicability date between 18 and 24 months after publication of the final regulations. Several comments suggested that broker reporting begin at the same time as CARF reporting, either for all brokers or for non-U.S. brokers. Multiple comments requested that the final regulations become applicable in stages, with many suggesting that custodial industry participants should be required to report during the first stage but that non-custodial participants should begin reporting a year or more later. Comments generally pointed to the time needed to build information reporting systems and to adequately document customers to support their recommendation of later applicability dates. They also cited concerns about fulfilling backup withholding requirements and adapting to filing a new information return, the Form 1099–DA, and about the IRS’s ability to receive and process a large number of new forms.

Conversely, some comments indicated that the proposed applicability dates were appropriate. As one comment noted, some digital asset brokers reported digital asset transactions on Forms 1099–B before the passage of the Infrastructure Act. Similarly, another comment stated that brokers that make payments to customers in the form of staking rewards or income from lending digital assets are already required to file and furnish Forms 1099–MISC, *Miscellaneous Information*, to those customers. Accordingly, in the view of these comments, those brokers have some experience with documenting customers and handling their personally identifiable information. Finally, one comment stated that if transaction ID, digital asset address, and time of the transaction were not required to be reported, then existing traditional financial reporting solutions could be expanded relatively easily to include reporting on dispositions of digital assets.

The Treasury Department and the IRS agree that a phased-in or staged approach to broker reporting is appropriate and have determined that the proposed applicability dates for gross proceeds and basis reporting should be retained in the final regulations for custodial industry participants. At least some of these participants have experience reporting transactions involving their customers.

Further, as described in Part I.D. of this *Summary of Comments and Explanation of Revisions*, under the final regulations, these brokers will not be required to report the time of the transaction, the digital asset address or the transaction ID on Forms 1099-DA. Brokers will be required to report basis for transactions occurring on or after January 1, 2026, but only with respect to digital assets the customer acquired from, and held with, the same broker on or after January 1, 2026. Although the proposed regulations required basis reporting for assets acquired on or after January 1, 2023, it is anticipated that moving the acquisition date to on or after January 1, 2026, and eliminating the need to track basis retroactively will assist brokers in preparing to report basis for transactions that occur beginning in 2026. See Part I.F. of this *Summary of Comments and Explanation of Revisions* for a discussion of the changes made to the basis reporting rules. Finally, and as more fully described in Part I.B.1.b. of this *Summary of Comments and Explanation of Revisions*, the proposed digital asset middleman rules that would apply to non-custodial industry participants are not being finalized with these final regulations. The Treasury Department and the IRS intend to expeditiously issue separate final regulations describing information reporting rules for non-custodial industry participants with an appropriate, separate applicability date.

The rules of final § 1.1001-7 apply to all sales, exchanges, and dispositions of digital assets on or after January 1, 2025.

The rules of final § 1.1012-1(h) apply to all acquisitions and dispositions of digital assets on or after January 1, 2025. The rules of final § 1.1012-1(j) apply to all acquisitions and dispositions of digital assets on or after January 1, 2025.

The rules of final § 1.6045-1 apply to sales of digital assets on or after January 1, 2025.

The amendments to the rules of final § 1.6045-4 apply to real estate transactions with dates of closing occurring on or after January 1, 2026.

The changes made in final § 1.6045A-1 limit the application of the pre-2024 final regulations in the case of digital assets. Accordingly, these changes apply as of the effective date of this Treasury decision.

The rules of final § 1.6045B-1 apply to organizational actions occurring on or after January 1, 2025, that affect the basis of digital assets that are also described in one or more paragraphs of § 1.6045-1(a)(14)(i) through (iv).

The rules of final § 1.6050W-1 apply to payments made using digital assets on or after January 1, 2025.

The rules of final § 31.3406(b)(3)-2 apply to reportable payments by a broker to a payee with respect to sales of digital assets on or after January 1, 2025, that are required to be reported under section 6045.

The rules of final § 31.3406(g)-1 apply on or after January 1, 2025, and the rules of final § 31.3406(g)-2 apply to sales of digital assets on or after January 1, 2026.

The rules of final § 301.6721-1(h)(3)(iii) apply to returns required to be filed on or after January 1, 2026. The rules of final § 301.6722-1(e)(2)(viii) apply to payee statements required to be furnished on or after January 1, 2026.

## Special Analyses

### I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

### II. Paperwork Reduction Act

In general, the collection of information in the regulations is required under section 6045. The collection of information in these regulations with respect to dispositions of digital assets is set forth in final § 1.6045-1 and the collection of information with respect to dispositions of real estate in consideration for digital assets is set forth in final § 1.6045-4. The IRS intends that the collection of information pursuant to final § 1.6045-1 will be conducted by way of Form 1099-DA and that the collection of information pursuant to final § 1.6045-4 will be conducted through a revised Form 1099-S.

The proposed regulations contained burden estimates regarding the collection of information with respect to the dispositions of digital assets and the collection of information with respect to dispositions of real estate in consideration for digital assets. For the proposed regulations, the Treasury Department and the IRS estimated that approximately 600 to 9,500 brokers would be impacted by the proposed regulations. The proposed regulations also contained an estimate of between 7.5 minutes and 10.5 minutes as the average time to complete the required Forms 1099 for each customer. And the proposed regulations also contained an estimate of 13 to 16 million customers

that would have transactions subject to the proposed regulations. Taking the mid-points of the ranges for the number of brokers expected to be impacted by these regulations, the number of taxpayers expected to receive one or more Forms 1099 required by these regulations, and the time to complete those required forms (5,050 brokers, 14.5 million recipients, and 9 minutes respectively), the proposed regulations estimated the average broker would incur 425 hours of time burden and \$27,000 of monetized burden for the ongoing costs per year. The proposed regulations contained estimates of 2,146,250 total annual burden hours and \$136,350,000 in total monetized annual burden.

The proposed regulations estimated start-up costs to be between three to eight times annual costs. Given that the Treasury Department and the IRS expected per firm annual estimated burden hours to be 425 hours and \$27,000 of estimated monetized burden, the proposed regulations estimated 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 was 11,804,375 and total estimated monetized burden is \$749,925,000.

Regarding the Form 1099-DA, 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 taking into account all of the comments received, as well as the changes made in these final regulations that will affect the paperwork burden. A reasonable burden estimate for the average time to complete these forms for each customer is 9 minutes (0.15 hours). The Treasury Department and the IRS estimate that 13 to 16 million customers will be impacted by these final regulations (mid-point of 14.5 million customers). The Treasury Department and the IRS estimate that approximately 900 to 9,700 brokers will be impacted by these final regulations (mid-point of 5,300 brokers). The Treasury Department and the IRS estimate the average broker to incur approximately 425 hours of time burden and \$28,000 of monetized burden. The total estimated aggregate annual burden hours is 2,252,500 and the total estimated monetized burden is \$148,400,000.

Additionally, start-up costs are estimated to be between five and ten times annual costs. Given that we

expect per firm annual estimated burden hours to be 425 hours and \$28,000 of estimated monetized burden, the Treasury Department and the IRS estimate per firm start-up aggregate burden hours from 2,125 to 4,250 hours and \$140,000 to \$280,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours is 3,188 and total estimated monetized burden is \$210,000 per firm. The total estimated aggregate burden hours is 16,896,400 and total estimated monetized burden is \$1,113,000,000.

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 2,563,400 Form 1099-S responses with a total estimated time burden for those responses of 411,744 hours (or 9.6 minutes per Form). 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 final 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.

Numerous comments were received on the estimates contained in the proposed regulations. Many of these comments asserted that the annual estimated time and monetized burdens were too low. Some comments recommended that the estimates be recalculated using a total of 8 billion Forms 1099-DA filed and furnished annually. The request to use this number was based on a public statement made by a former IRS employee. The Treasury Department and the IRS do not adopt this recommendation because the reference to 8 billion returns was not based on the requirements in the proposed or final regulations. Some comments attempted to calculate the monetized burden for specific exchanges using the average amounts used in the proposed regulations. The Treasury Department and the IRS also note that any attempts to recalculate the monetized burden for specific exchanges will likely yield unrealistic results. The monetized burden is based on average costs, and it is expected that smaller firms may experience lower costs overall but higher costs on an average per customer basis. This is because while the ongoing costs of reporting information to the IRS may be small, there will be larger costs associated with the initial setup. It is expected that the larger initial setup costs will likely be amortized among more customers for the larger

exchanges. The Treasury Department and the IRS anticipate conducting a survey in the future to determine the actual costs of compliance with these regulations; however, the estimates used in these final regulations are based on the best currently available information.

Multiple comments said that the estimated number of brokers impacted by the proposed regulations was too low. One comment said the number of entities affected should include everyone who uses credit cards or travels in the United States and should therefore be millions of people. That comment also said the number of entities affected should include individual taxpayers since the proposed regulations includes rules affecting individual taxpayers. One comment said the estimate was too low because it underestimated the impact on decentralized autonomous organizations, governance token holders, operators of web applications, and other similarly situated potential brokers. The estimated number of brokers in these final regulations was not increased based on these comments because the issues raised by these comments do not impact the number of brokers subject to the broker reporting requirements of these final regulations. The definition of a digital asset is not intended to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency; therefore, credit card points are not digital assets subject to reporting under these final regulations. The final regulations include substantive rules for computing the sale or other disposition of digital assets, but because taxpayers are already required to calculate and report their tax liability under existing law, these regulations do not impose an additional reporting requirement on these individuals. Finally, the Treasury Department and the IRS are not increasing the burden estimates based on comments about decentralized autonomous organizations or operators of web applications because the final regulations apply only to digital asset industry participants that take possession of the digital assets being sold by their customers, namely operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, certain PDAPs, and digital asset kiosks, and to certain real estate persons that are already subject to the broker reporting rules.

The Treasury Department and the IRS estimate that approximately 900 to 9,700 brokers, with a mid-point of 5,300, will be impacted by these final regulations. The lower bound of this

estimate was derived using Form 1099 issuer data through 2022 and statistics on the number of exchanges from *CoinMarketCap.com*. Because the Form 1099 issuer data and statistics from CoinMarketCap do not distinguish between centralized and decentralized exchanges, this estimate likely overestimates the number of brokers that will be impacted by these final regulations. The upper bound of this estimate is based on IRS data for brokers with nonzero revenue who may deal in digital assets, specifically the number of issuers with North American Classification System (NAICS) codes for Securities Brokerage (52312), Commodity Contracts Dealing (52313) and Commodity Contracts Brokerage (52314).

The proposed regulations estimated the average time to complete these Forms for each customer as between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). Some comments said the 9-minute average time to complete these Forms for each customer is too low, with one comment stating it underestimated time to complete by at least two orders of magnitude. Another comment said considering the complexity and specificity of the proposed reporting, including the requirement to report the time of transactions, the average time should be 15 minutes. The final regulations remove the requirement to report the time of the transaction. The final regulations also remove the obligation to report transaction ID and digital asset addresses. Additionally, the final regulations include a *de minimis* rule for PDAPs and an optional alternative reporting method for sales of certain NFTs and qualifying stablecoins to allow for aggregate reporting instead of transaction reporting, with a *de minimis* annual threshold below which no reporting is required, which the Treasury Department and the IRS anticipate will further reduce the reporting burden. Given the final regulations more streamlined reporting requirements, the Treasury Department and the IRS have concluded that the original estimate for the average time to complete these Forms was reasonable and retain the estimated average time to complete these Forms for each customer of between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours).

The proposed regulations estimated that 13 to 16 million customers will be impacted by these proposed regulations. Some comments asserted that the estimated number of customers was too low. One comment said the estimate was too low because it assumes that

each of the affected taxpayers would generate a single Form 1099-DA, but that this is incorrect because brokers generally are required to submit separate reports for each sale by each customer. That comment also said that if substitute annual Forms 1099 and payee statements were permissible, the average affected taxpayer likely would generate between 40 to 50 information returns per year. That comment also asserted that the estimate of 14.5 million customers is too low because 40 to 50 million Americans currently own digital assets and 75 million may transact in digital assets this year. Some comments said the estimated number of customers should be 8 billion based on a statement from a former IRS official.

The Treasury Department and the IRS have not updated the estimated number of customers impacted by these final regulations based on these comments. The burden estimate is based on the number of taxpayers who will receive Forms 1099-DA rather than the number of Forms 1099-DA that each taxpayer receives because the primary broker burden is related to the system design and implementation required by these final regulations, including the requirements to confirm or obtain customer identification information. The burden associated with each additional Form 1099-DA required per customer is expected to be marginal compared with the cost of implementing the reporting system. While comments indicated more taxpayers own and transact in digital assets than estimated in the proposed regulations, the Treasury Department and the IRS have concluded that information included on information returns filed with the IRS and tax returns signed under penalties of perjury is the most accurate information currently available for the purpose of estimating the number of affected taxpayers. The Treasury Department and the IRS estimate the number of customers impacted by these final regulations will be between 13 million and 16 million with a midpoint of 14,500,000. The estimate is based on the number of taxpayers who received one or more Forms 1099 reporting digital asset activity in tax year 2021, plus the number of taxpayers who responded yes to the digital asset question on their Form 1040 for tax year 2021.

The proposed regulations used a \$63.53 per hour estimate to monetize the burden. The proposed regulations used wage and compensation data from the Bureau of Labor Statistics (BLS) that capture the wage, benefit, and overhead costs of a typical tax preparer to estimate the average broker's monetized

burden. Some comments said that the monetized burden in the proposed regulations was too low. One comment said the wage and compensation rate used in the proposed regulations was too low because these compliance costs capture the cost of a typical tax preparer and not the atypical digital asset-specific tax and legal expertise needed to comply with these rules. Another comment said the wage and compensation rate was underestimated because of the higher labor cost per hour given the specialized nature of the reporting, the volume of data and cross-functional effort required and similar factors. The Treasury Department and the IRS do not accept the comments that the monetization rate is too low and have concluded that the methodology to determine the rate is correct given the information available about broker reporting costs. The final regulations use an average monetization rate of \$65.49. This updated estimate is based on survey data collected from filers of similar information returns with NAICS codes for Securities Brokerage (52312), Commodity Contracts Dealing (52313) and Commodity Contracts Brokerage (52314), adjusted for inflation. A lower bound is set at the Federal minimum wage plus employment taxes. The upper bound is set using rates from the BLS Occupational Employment Statistics (OES) and the BLS Employer Costs for Employee Compensation from the National Compensation Survey. Specifically, the estimate uses the 90th percentile for accountants and auditors from the OES and the ratio of total compensation to wages and salaries from the private industry workers (management, professional, and related occupations) to account for fringe benefits.

The proposed regulations estimated that initial start-up costs would be between three to eight times annual costs. Some comments said these costs were underestimated because many brokers are newer companies with limited funding and resources. Other comments stated the start-up costs of compliance would hurt innovation. Another comment said the multiple applied was too low and that using a multiplier for start-up costs between five to ten times annual costs would yield a more reasonable estimate of the start-up costs for such a complex reporting regime and would more closely align with prior outcomes for similar regimes that are currently subject to reporting. Because start-up costs are difficult to measure, the Treasury Department and the IRS use a multiplier of annual costs to estimate

the start-up costs. To further acknowledge the difficulty of estimating these cases, the Treasury Department and the IRS have accepted the comment to revise the burden estimate to reflect that start-up costs would be between five and ten times annual costs.

In summary, the Treasury Department and the IRS estimate that 13 to 16 million customers will be impacted by these final regulations (mid-point of 14.5 million customers). A reasonable burden estimate for the average time to complete these forms for each customer is 9 minutes (0.15 hours). The Treasury Department and the IRS estimate that approximately 900 to 9,700 brokers will be impacted by these final regulations (mid-point of 5,300 brokers). The Treasury Department and the IRS estimate the average time burden per broker will be approximately 425 hours. The Treasury Department and the IRS use an estimate that the cost of compliance will be \$65.49 per hour, so the total monetized burden is estimated at \$28,000 per broker.

Additionally, start-up costs are estimated to be between five and ten times annual costs. Given the expected per-firm annual burden estimates of 425 hours and \$28,000, the Treasury Department and the IRS estimate per-firm start-up burdens as between 2,125 to 4,250 hours and \$140,000 to \$280,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours is 3,188 hours and total estimated monetized burden is \$210,000 per firm.

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. On April 22, 2024, the IRS released and invited comments on the draft Form 1099-DA. The draft Form 1099-DA is available on <https://www.irs.gov>. Also on April 22, 2024, the IRS published in the **Federal Register** (89 FR 29433) a Notice and request for comments on the collection of information requirements related to the broker regulations with a 60-day comment period. There will be an additional 30-day comment period beginning on the date a second Notice and request for comments on the collection of information requirements related to the broker regulations is published in the **Federal Register**. The OMB Control Number for the Form 1099-S is 1545-0997. The Form 1099-S will be updated for real estate reporting, which applies to transactions occurring on or after January 1, 2026.

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 section 6103.

### III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the 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 a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether these final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. Because there is a possibility of significant economic impact on a substantial number of small entities, a FRFA is provided in these final regulations.

The expected number of impacted issuers of information returns under these final regulations is between 900 to 9,700 brokers (mid-point of 5,300). Small Business Administration regulations provide small business size standards by NAICS Industry. *See* 13 CFR 121.201. The NAICS includes virtual currency exchange services in the NAICS code for Commodity Contracts Dealing (52313). According to the 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 200 of the 9,700 firms identified as impacted issuers in the upper bound estimate exceed the upper bound estimate exceed the \$41.5 million threshold. This implies there could be 700 to 9,500 impacted small business issuers under the Small Business Administration’s small business size standards.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

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

Information reporting is essential to the integrity of the tax system. The 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 final 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 require brokers to file information returns for customers that sell certain types of property providing 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 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.

Information reporting by brokers and real estate reporting persons under section 6045 with respect to certain digital asset dispositions and digital asset payments received by real estate transferors will lead to higher levels of taxpayer compliance because the income earned by taxpayers engaging in transactions involving digital assets will be made more transparent to both the IRS and taxpayers. Clear information reporting rules that require reporting of gross proceeds and, in some cases, adjusted basis for taxpayers who engage in digital asset transactions will help the IRS identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall tax gap. These final regulations are also expected to facilitate the preparation of tax returns (and reduce the number of inadvertent errors or intentional misstatements shown on those returns) by and for taxpayers who engage in digital asset transactions.

#### B. Affected Small Entities

As discussed above, we anticipate 9,500 of the 9,700 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses.

#### 1. Impact of the Rules

As previously stated in the Paperwork Reduction Act section of this preamble, the Form 1099-DA prescribed by the Secretary for reporting sales of digital assets pursuant to final § 1.6045-1(d) of these final regulations is expected to create an average estimated per customer burden on brokers of between 7.5 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 firm start-up aggregated burden of between 2,125 to 4,250 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 final § 1.6045-4(i) of these final regulations is not expected to 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 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. Alternatives Considered for Small Businesses

The Treasury Department and the IRS considered alternatives to these final 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 that 9,500 of the 9,700 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses. First, one purpose of these 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 final 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 final regulations will help these businesses with their own tax preparation efforts.

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

These final regulations do not overlap or conflict with any relevant Federal rules. As discussed above, the multiple broker rule ensures, in certain instances, that duplicative reporting is not required.

### 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 final 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.

### VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

### 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 Alexa Dubert, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS, including Jessica Chase, Office of the Associate Chief Counsel (Procedure and Administration), Kyle Walker, Office of the Associate Chief Counsel (Income Tax and Accounting), 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.

### Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are amended 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), other than a digital asset not required to be reported as a digital asset pursuant to § 1.6045–1(c)(8)(ii), (iii), or (iv), *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) other than a digital asset not required to be reported as a digital asset pursuant to § 1.6045–1(c)(8)(ii), (iii), or (iv).

(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; reduced by

(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 or withheld to pay digital asset transaction costs, as defined in paragraph (b)(2)(i) of this section, such use or withholding 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 (b)(1)(iii)(A) through (C) of this section 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 as 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 as 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 as 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 amounts paid in cash or property (including digital assets) to effect the sale, 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 sale or disposition of a digital asset. Accordingly, any other allocation or specific assignment of digital asset transaction costs is disregarded.

(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) of this section, the total digital asset transaction costs paid by the taxpayer in connection with the sale or disposition of digital assets are allocable to the sale or disposition of the digital assets.

(B) *Special rule for allocation of certain cascading digital asset transaction costs.* This paragraph (b)(2)(ii)(B) provides a special rule in the case of a transaction described in paragraph (b)(1)(iii)(C) of this section (original transaction) and for which digital assets are withheld from digital assets acquired in the original transaction to pay the digital asset transaction costs to effect the original transaction. The total digital asset transaction costs paid by the taxpayer to effect both the original transaction and any disposition of the withheld digital assets are allocable exclusively to the disposition of digital assets in the original transaction.

(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 sale 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, which together have a fair market value of \$10. The fair market value of the services performed by X also equals \$10. X then performs the services, and TP transfers 10 units of digital asset A to X. Additionally, TP pays \$1 in cash of transaction fee 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)(A) of this section, TP must allocate such costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized from the exchange is \$18, 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 (\$2). TP recognizes a gain of \$13 on the exchange (\$18 amount realized reduced by \$5 adjusted basis in the 10 units of digital asset A).

(iii) *Example 3: Digital asset transaction costs paid with other 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 fees 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 for services rendered by BEX 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)(A) of this section, TP must allocate \$2 of such costs to the disposition of the 10 units of digital asset A. TP must also allocate \$1 of such costs to the disposition of the 3 units of digital asset C. None of the digital asset transaction costs are allocable to the acquired units of digital asset B. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the disposition of digital asset A is \$18, 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 (\$2). Also, under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the disposition of the 3 units of digital asset C is \$2, which is the excess of the gross proceeds determined as of the date and time of the transaction over the allocated digital asset transaction costs of \$1. TP recognizes a gain of \$13 on the disposition of 10 units of digital asset A (\$18 amount realized over \$5 adjusted basis) and a gain of \$0.50 on the disposition of the 3 units of digital asset C (\$2 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)(A) of this section, TP must allocate such costs to the disposition of the 10 units of digital asset A. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the 10 units of digital asset A is \$18, 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 (\$2). TP recognizes a gain on the 10 units of digital asset A transferred of \$13 (\$18 amount realized reduced by \$5 adjusted basis in the 10 units).

(v) *Example 5: Digital asset transaction fees withheld from the acquired digital assets in an exchange of digital assets—(A) Facts.* The facts are the same as in paragraph (b)(5)(iv)(A) of this section (the facts in *Example 4*), except that BEX requires its payment be withheld from the units of the digital asset acquired. At the time of the transaction, BEX withholds 3 units of digital asset B, 2 units of which effect the exchange of digital asset A for digital asset B and 1 unit of which effects the disposition of digital asset B for payment of the transaction fees. TP does not make an identification to BEX identifying other units of B as the units disposed.

(B) *Analysis.* The withholding of 3 units of digital asset B is a disposition of digital assets 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 \$3. Under paragraph (b)(2)(ii)(B) of this section, TP must allocate such costs to the disposition of the 10 units of digital asset A in the original transaction. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the 10 units of digital asset A is \$17, 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 (\$3). TP's amount realized on the disposition of the 3 units of digital asset B used to pay digital asset transaction costs is \$3, which is the fair market value of services received at the time of the transaction. TP recognizes a gain on the 10 units of digital asset A transferred of \$12 (\$17 amount realized reduced by \$5 adjusted basis in the 10 units). TP recognizes \$0 in gain or loss on the 3 units of digital asset B withheld (\$3 amount realized reduced by \$3 (adjusted basis in the 3 units)). See § 1.1012–1(j)(3)(iii) for the special rule for identifying the basis and holding period of the 3 units withheld.

(c) *Applicability date.* This section applies to all sales, exchanges, and dispositions of digital assets on or after January 1, 2025.

■ **Par. 4.** Section 1.1012–1 is amended by adding paragraphs (h) through (j) to 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) other than a digital asset not required to be reported as a digital asset pursuant to § 1.6045–1(c)(8)(ii), (iii), or (iv), 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), and (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 or debt instruments described in paragraph (h)(1)(v) of this section, 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.

(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 this paragraph (h) 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, as defined in paragraph (h)(2)(i) of this section, for transactions described in paragraph (h)(1) of this section. Any other allocation or specific assignment of digital asset transaction costs is disregarded.

(A) *Allocation of digital asset transaction costs on a purchase or exchange for digital assets.* Except as provided in paragraphs (h)(2)(ii)(B) and (C) of this section, the total digital asset transaction costs paid by the taxpayer in connection with an acquisition of digital assets are allocable to the digital assets received.

(B) *Special rule for the allocation of digital asset transaction costs paid to effect an exchange of digital assets for other digital assets.* Except as provided in paragraph (h)(2)(ii)(C) of this section, the total digital asset transaction costs paid by the taxpayer, to effect an exchange described in paragraph (h)(1)(iv) of this section are allocable exclusively to the disposition of the transferred digital assets.

(C) *Special rule for allocating certain cascading digital asset transaction costs.* This paragraph (h)(2)(ii)(C) provides a special rule for an exchange described in paragraph (h)(1)(iv) of this section (original transaction) and for which digital assets are withheld from digital assets acquired in the original transaction to pay the digital asset transaction costs to effect the original transaction. The total digital asset transaction costs paid by the taxpayer, to effect both the original transaction and any disposition of the withheld digital assets, are allocable exclusively to the disposition of digital assets in the original transaction.

(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 paragraphs (h)(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 (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 the digital asset transaction costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's basis in the 20 units of digital asset B received is

\$20, which is the sum of the fair market value of the 20 units of digital asset B received (\$20).

(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 the digital asset transaction costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's basis in the 20 units of digital asset B is \$20, which is the sum of the fair market value of the 20 units of digital asset B received (\$20).

(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 the digital asset transaction costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's total basis in the digital asset B units is \$18, which is the sum of the fair market value of the 18 units of digital asset B received (\$18).

(5) *Applicability date.* This paragraph (h) is applicable to all acquisitions and dispositions of digital assets on or after January 1, 2025.

(i) [Reserved]

(j) *Sale, disposition, or transfer of digital assets.* Paragraphs (j)(1) and (2) of this section apply to digital assets not held in the custody of a broker, such as digital assets that are held in an unhosted wallet. Paragraph (j)(3) of this section applies to digital assets held in the custody of a broker. For the definitions of the terms *wallet*, *hosted wallet*, *unhosted wallet*, and *held in a wallet or account*, as used in this paragraph (j), see § 1.6045-1(a)(25)(i) through (iv). For the definition of the term *broker*, see § 1.6045-1(a)(1). For the definition of the term *digital asset*, see § 1.6045-1(a)(19); however, a digital asset not required to be reported as a digital asset pursuant to § 1.6045-1(c)(8)(ii), (iii), or (iv) is not subject to the rules of this section.

(1) *Digital assets not held in the custody of a broker.* If a taxpayer sells, disposes of, or transfers less than all units of the same digital asset not held in the custody of the broker, such as in

a single unhosted wallet or in a hosted wallet provided by a person other than a broker, the basis and holding period of the units sold, disposed of, or transferred are determined by making a specific identification of the units in the wallet that are sold, disposed of, or transferred, as provided in paragraph (j)(2) of this section. If a specific identification is not made, the basis and holding period of the units sold, disposed of, or transferred are determined by treating the units not held in the custody of a broker as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset not held in the custody of a broker were acquired by the taxpayer. For purposes of the preceding sentence, the date any units were transferred into the taxpayer's wallet is disregarded.

(2) *Specific identification of digital assets not held in the custody of a broker.* 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. A specific identification can be made only if adequate records are maintained for the unit of a specific digital asset not held in the custody of a broker to establish that a unit sold, disposed of, or transferred is removed from the wallet.

(3) *Digital assets held in the custody of a broker.* This paragraph (j)(3) applies to digital assets held in the custody of a broker.

(i) *Unit of a digital asset sold, disposed of, or transferred.* Except as provided in paragraph (j)(3)(iii) of this section, where multiple units of the same digital asset are held in the custody of a broker, as defined in § 1.6045-1(a)(1), and the taxpayer does not provide the broker with an adequate identification of which units are sold, disposed of, or transferred by the date and time of the sale, disposition, or transfer, as provided in paragraph (j)(3)(ii) of this section, the basis and holding period of the units sold, disposed of, or transferred are determined by treating the units held in the custody of the broker as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset held in the custody of a broker were acquired by the taxpayer. For purposes of the

preceding sentence, the date any units were transferred into the custody of the broker is disregarded.

(ii) *Adequate identification of units held in the custody of a broker.* Except as provided in paragraph (j)(3)(iii) of this section, where multiple units of the same digital asset are held in the custody of a broker, as defined in § 1.6045–1(a)(1), 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 identify the units sold, disposed of, or transferred. The taxpayer is responsible for maintaining records to substantiate the identification. A standing order or instruction for the specific identification of digital assets is treated as an adequate identification made at the time of sale, disposition, or transfer. In addition, a taxpayer's election to use average basis for a covered security for which average basis reporting is permitted and that is also a digital asset is also an adequate identification. In the case of a broker offering only one method of making a specific identification, such method is treated as a standing order or instruction.

(iii) *Special rule for the identification of certain units withheld.* Notwithstanding paragraph (j)(3)(i) or (ii) of this section, in the case of a transaction described in paragraph (h)(1)(iv) of this section (digital assets exchanged for different digital assets) and for which the broker withholds units of the same digital asset received for either the broker's backup withholding obligations under section 3406 of the Code, or for payment of services described in § 1.1001–7(b)(1)(ii) (digital asset transaction costs), the taxpayer is deemed to have made an adequate identification, within the meaning of paragraph (j)(3)(ii) of this section, for such withheld units regardless of any other adequate identification within the meaning of paragraph (j)(3)(ii) of this section designating other units of the same digital asset as the units sold, disposed of, or transferred.

(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 of the Code apply.

(5) *Examples.* The following examples illustrate the application of paragraphs (j)(1) through (j)(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 (j)(6) of this section. For purposes of the examples under this paragraph (j)(5), assume that TP is a digital asset investor and that the units of digital assets in the examples are the only digital assets owned by TP.

(i) *Example 1: Identification of digital assets not held in the custody of a broker—(A) Facts.* On September 1, Year 2, TP transfers two lots of digital asset DE to a new digital asset address generated and controlled by an unhosted wallet, as defined in § 1.6045–1(a)(25)(iii). The first lot transferred into TP's wallet 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 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 processor of digital asset payments as defined in § 1.6045–1(a)(22), that then pays \$100 to M, in a transaction treated as a sale by TP of the 10 units of digital asset DE. 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.

(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, prior to the time of the sale, specifying that the 10 units sold were from the 20 units TP acquired on January 1, Year 2, is a specific identification within the meaning of paragraph (j)(2) of this section. TP's notation is sufficient to identify 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 held 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 at or prior to the time of the sale 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 determined by treating the units held in the unhosted wallet as disposed of in order of time from the earliest date on which units of the same digital asset held in the unhosted wallet were acquired by the taxpayer. 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.

(iii) *Example 3: Identification of digital assets held in the custody of a broker—(A) Facts.* On August 1, Year 1, TP opens a custodial 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 a custodial 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 custodial account with BEX. BEX has a policy that purchase or transfer date and time, if necessary, is a sufficiently specific identifier for customers to determine the 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 purchased on January 1, Year 2. 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. Accordingly, the 10 units of digital asset DE that TP sold are the 10 units that TP purchased on January 1, Year 2.

(iv) *Example 4: Identification of digital assets held in the custody of 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. Additionally, TP does not provide purchase date information to BEX with respect to the units transferred into TP's account with BEX.

(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, the ordering rule provided in paragraph (j)(3)(i) of this section applies to determine the units of digital asset DE sold. Pursuant to this rule, the units sold must be determined by treating the units held in the custody of the broker as disposed of in order of time from the earliest date on which units of the same digital asset held in the custody of a broker were acquired by the taxpayer. The 10 units of digital asset DE sold must be attributed to the 10 units of digital asset DE acquired on August 1, Year 1, which are the earliest units of digital asset DE acquired by TP that are held in TP's account with BEX. In addition, because TP did not provide to BEX customer-provided acquisition information as defined in § 1.6045–1(d)(2)(ii)(B)(4) with respect to the units transferred into TP's account with BEX (or adopt a standing order to follow the ordering rule applicable to BEX under

§ 1.6045–1(d)(2)(ii)(B)(2)), the units determined as sold by BEX under § 1.6045–1(d)(2)(ii)(B)(1) and that BEX will report as sold under § 1.6045–1 are not the same units that TP must treat as sold under this section. See § 1.6045–1(d)(2)(vii)(C) (*Example 3*).

(v) *Example 5: Identification of the digital asset used to pay certain digital asset transaction costs*—(A) *Facts*. On January 1, Year 1, TP purchases 10 units of digital asset AB and 30 units of digital asset CD in a custodial account with DRX, a broker within the meaning of § 1.6045–1(a)(1). DRX has a policy that purchase or transfer date and time, if necessary, is a sufficiently specific identifier by which its customers may identify the units sold, disposed of, or transferred. On June 30, Year 2, TP directs DRX to purchase 10 additional units of digital asset AB with 10 units of digital asset CD. DRX withholds one unit of the digital asset AB received for transaction fees. TP does not make any identification of the 1 unit of digital asset AB withheld by DRX. TP engages in no other transactions.

(B) *Analysis*. DRX's withholding of 1 unit of digital asset AB from the 10 units acquired by TP is a disposition by TP of the 1 unit as of June 30, Year 2. See §§ 1.1001–7 and 1.1012–1(h) for determining the amount realized and basis of the disposed unit, respectively. Despite TP not making an adequate identification, within the meaning of paragraph (j)(3)(ii) of this section to DRX of the 1 unit withheld, under the special rule of paragraph (j)(3)(iii) of this section, the withheld unit of AB must be attributed to the units of AB acquired on June 30, Year 2 and held in TP's account with DRX.

(vi) *Example 6: Identification of the digital asset used to pay certain digital asset transaction costs*—(A) *Facts*. The facts are the same as in paragraph (j)(5)(v)(A) of this section (the facts in *Example 5*) except that TP has a standing order with BEX to treat the earliest unit purchased in TP's account as the unit sold, disposed of, or transferred.

(B) *Analysis*. The transaction is an exchange of digital assets for different digital assets and for which the broker withholds units of the same digital asset received in order to pay digital asset transaction costs. Accordingly, although TP's standing order to treat the earliest unit purchased in TP's account (that is, the units purchased by TP on January 1, Year 1) as the units sold is an adequate identification under paragraph (j)(3)(ii) of this section, TP is deemed to have made an adequate identification for such withheld units pursuant to paragraph (j)(3)(iii) of this section regardless of TP's adequate identification designating other units as the units sold. Thus, the results are the same as provided in paragraph (j)(5)(v)(B) of this section (the analysis in *Example 5*).

(6) *Applicability date*. This paragraph (j) is applicable to all acquisitions and dispositions of digital assets on or after January 1, 2025.

■ **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.

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(i) In general.

(ii) Adjustments for wash sales.

(A) Securities in the same account or wallet.

(1) In general.

(2) Special rules for covered securities that are also digital assets.

(B) Covered securities in different accounts or wallets.

(C) Effect of election under section 475(f)(1).

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■ **Par. 6.** Section 1.6045-1 is amended by:

■ 1. Revising and republishing paragraphs (a), (b), (c)(3) and (4), and (c)(5)(i);

■ 2. Adding paragraph (c)(8);

■ 3. Revising and republishing paragraph (d)(2) and revising paragraphs (d)(4) and (5);

■ 4. Revising and republishing paragraphs (d)(6)(i) and (ii), (d)(6)(iii)(A) and (B), and (d)(6)(v);

■ 5. Adding paragraph (d)(6)(x);

■ 6. Revising and republishing paragraphs (d)(7)(i), (d)(7)(ii)(A) and (B), and (d)(9);

■ 7. Adding paragraphs (d)(10) and (11) and (e)(2)(iii);

■ 8. Revising and republishing paragraph (g);

■ 9. Revising paragraphs (j) and (m)(1);

■ 10. Adding paragraph (m)(2)(ii)(C);

■ 11. Revising and republishing paragraphs (n)(6)(i) and (q); and

■ 12. Adding paragraph (r).

The revisions, republications, 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), a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049-5(c)(5). In the case of a sale of a digital asset, a broker includes only a U.S. digital asset broker as defined in paragraph (g)(4)(i)(A)(1) of this section. 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 digital assets in a sale described in paragraph (a)(9)(ii)(D) of this section to a processor of digital asset payments that has an agreement or other arrangement with such person for the provision of digital asset payment services that provides that the processor of digital asset payments may verify such person's identity or otherwise comply with anti-money laundering (AML) program requirements under 31 CFR part 1010, or any other AML program requirements, as are applicable to that processor of digital asset payments. For purposes of the previous sentence, an agreement or other arrangement includes any arrangement under which,



as part of customary onboarding procedures, such person is treated as having agreed to general terms and conditions.

(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 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 of the Code and a mark to fair market value under section 475 or 1296 of the Code 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. In the case of a transaction 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 and 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 a broker that 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 certain sales effected by processors of digital asset payments.* In the case of a processor of digital asset payments as defined in paragraph (a)(22) of this section, the term *sale* also includes the payment by one party of a digital asset to a processor of digital asset payments in return for the payment of that digital asset, cash, or a different digital asset to a second party. If any sale of digital assets described in this paragraph (a)(9)(ii)(D) would also be subject to reporting under one of the definitions of sale described in paragraphs (a)(9)(ii)(A) through (C) of this section as a sale effected by a broker other than as a processor of digital asset payments, the broker must treat the sale solely as a sale under such other paragraph and not as a sale under this paragraph (a)(9)(ii)(D).

(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, 2026.

(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 custodial services for such specified security on or after January 1, 2026, 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, 2026.

(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 Code (for example, a regular interest in a REMIC as defined in section 860G(a)(1) of the Code 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) of the Code 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 as defined in paragraph (a)(12) of this section.

(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.

(ii) [Reserved]

(iii) *Facilitative service*. (A) [Reserved]

(B) *Special rule involving sales of digital assets under paragraphs (a)(9)(ii)(B) through (D) of this section*. A facilitative service means:

(1) 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.

(2) 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, provided the real estate reporting person has actual knowledge or ordinarily would know that digital assets were used by the real estate buyer to make payment to the real estate seller. For purposes of this paragraph (a)(21)(iii)(B)(2), a real estate reporting person is considered to have actual knowledge that digital assets were used by the real estate buyer to make payment if the terms of the real estate contract provide for payment using digital assets.

(3) 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.

(4) Any payment service performed by a processor of digital asset payments

described in paragraph (a)(22) of this section, provided the processor of digital asset payments has actual knowledge or ordinarily would know the nature of the transaction and the gross proceeds therefrom.

(5) The acceptance of digital assets in return for cash, stored-value cards, or different digital assets, to the extent provided by a physical electronic terminal or kiosk.

(22) *Processor of digital asset payments*. For purposes of this section, the term *processor of digital asset payments* 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 regularly facilitating payments from one party to a second party by receiving digital assets from the first party and paying those digital assets, cash, or different digital assets to the second party.

(23) *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.

(24) *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. The term transaction ID includes terms such as a *TxID* or *transaction hash*.

(25) *Wallet, hosted wallet, unhosted wallet, and held in a wallet or account*—(i) *Wallet*. A *wallet* is a means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user.

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

(iii) *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).

(iv) *Held in a wallet or account*. A digital asset is referred to in this section as *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 referred to as 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.

(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 depositary 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.

(vii) A processor of digital asset payments 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 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) [Reserved]

(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) [Reserved]

(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 depositary 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: Processor of digital asset payments, sale, and customer—(i) Facts.* Company Z is an online merchant that accepts digital asset DE as a form of payment for the merchandise it sells. The merchandise Z sells does not include digital assets. Z does not provide any other service that could be considered as standing ready to effect sales of digital assets or any other property subject to reporting under section 6045. CPP is in the

business of facilitating payments made by users of digital assets to merchants with which CPP has an account. CPP also has contractual arrangements with users of digital assets for the provision of digital asset payment services that provide that CPP may verify such user's identity pursuant to AML program requirements. Z contracts with CPP to help Z's customers to make payments to Z using digital assets. Under Z's 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. CPP is a third party settlement organization, as defined in § 1.6050W-1(c)(2), with respect to the payments it makes to Z. Customer R seeks to purchase merchandise from Z that is priced at \$6,000 (which is 6,000 units of DE). After R initiates a purchase, R is directed to CPP's website where R is directed to enter into an agreement with CPP, which as part of CPP's customary onboarding procedures developed pursuant to AML program requirements, requires R to submit information to CPP to verify R's identity. Thereafter, R is instructed to transfer 6,000 units of DE to a digital asset address controlled by CPP. CPP then pays \$6,000 in cash to Z, who in turn processes R's order.

(ii) *Analysis.* CPP is a processor of digital asset payments within the meaning of paragraph (a)(22) of this section because CPP, in the ordinary course of its business, regularly effects sales of digital assets as defined in paragraph (a)(9)(ii)(D) of this section by receiving digital assets from one party and paying those digital assets, cash, or different digital assets to a second party. Based on CPP's contractual relationship with Z, CPP has actual knowledge that R's payment was a payment transaction and the amount of gross proceeds R received as a result. Accordingly, CPP's services are facilitative services under paragraph (a)(21)(iii)(B) of this section and CPP is acting as a digital asset middleman under paragraph (a)(21) of this section to effect R's sale of digital assets under paragraph (a)(10)(i)(D) of this section. R's payment of 6,000 units of DE to CPP in return for the payment of \$6,000 cash to Z is a sale of digital assets under paragraph (a)(9)(ii)(D) of this section. Additionally, because CPP has an arrangement with R for the provision of digital asset payment services that provides that CPP may verify R's identity pursuant to AML program requirements, R is CPP's customer under paragraph (a)(2)(ii)(A) of this section. Finally, CPP is also required to report the payment to Z under § 1.6050W-1(a) because the payment is a third party network transaction under § 1.6050W-1(c). The answer would be the same if CPP paid Z the 6,000 units of DE or another digital asset instead of cash.

(13) *Example 13: 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 processor of digital asset payments. 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.

(14) *Example 14: Processor of digital asset payments—(i) Facts.* Customer S purchases goods that are not digital assets with 10 units of digital asset DE from Merchant M using a digital asset DE credit card issued by Bank BK. BK has a contractual arrangement with customers using BK's credit cards that provides that BK may verify such customer identification information pursuant to AML program requirements. In addition, as part of BK's customary onboarding procedures, BK requires credit card applicants to submit information to BK to verify their identity. M is one of a network of unrelated persons that has agreed to accept digital asset DE credit cards issued by BK as payment for purchase transactions under an agreement that provides standards and mechanisms for settling the transaction between a merchant acquiring bank and the persons who accept the cards. Bank MAB is the merchant acquiring entity with the contractual obligation to make payments to M for goods provided to S in this transaction. To make payment for S's purchase of goods from M, S transfers 10 units of digital asset DE to BK. BK 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.* BK is a processor of digital asset payments as defined in paragraph (a)(22) of this section because BK, in the ordinary course of its business, regularly effects sales of digital assets as defined in paragraph (a)(9)(ii)(D) of this section by receiving digital assets from one party and paying those digital assets, cash, or different digital assets to a second party. Bank BK has actual knowledge that payment made by S is a payment transaction and also knows S's gross proceeds therefrom. Accordingly, BK's services are facilitative services under paragraph (a)(21)(iii)(B) of this section and BK is acting as a digital asset middleman under paragraph (a)(21) of this section to effect sales of digital assets under paragraph (a)(10)(i)(D) of this section. S's payment of 10 units of DE to BK for the payment of those units, less BK's processing fee, to Bank MAB is a sale by S of digital assets under paragraph (a)(9)(ii)(D) of this section. Additionally, because S transferred digital assets to BK in a sale described in paragraph (a)(9)(ii)(D) of this section and because BK has an arrangement with S for the provision of digital asset payment services that provides that BK may verify S's identity, S is BK's customer under paragraph (a)(2)(ii)(A) of this section.

(15) *Example 15: 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 its 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. 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 because SBK is a broker under paragraph (a)(1) of this section with respect to a sale of stock under paragraph (a)(9)(i) of this section. 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.

(16) *Example 16: Digital asset middleman and effect—(i) Facts.* J, an unmarried individual not otherwise exempt from reporting, enters into a contractual agreement with B, an individual not otherwise exempt from reporting, to exchange J's principal residence, Blackacre, which has a fair market value of \$225,000 for units of digital asset DE with a value of \$225,000. Prior to closing, J provides closing agent CA, who is a real estate reporting person under § 1.6045-4(e), 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). Prior to closing, B transfers the digital assets directly from B's wallet to J's wallet, and J certifies to the closing agent (CA) that J received the digital assets required to be paid under the contract.

(ii) *Analysis.* CA is performing services as a real estate reporting person 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. In addition, CA has actual knowledge that payment made to B included digital assets because the terms of the real estate contract provide for such payment. Accordingly, the closing services provided by CA are facilitative services under paragraph (a)(21)(iii)(B)(2) of this section, and 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 J under § 1.6045-4(a).

(17) *Example 17: 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 make 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.

(18) *Example 18: Broker and effect—(i) Facts.* Individual J is an artist in the business of creating and selling nonfungible tokens that reference J's digital artwork. To find buyers and to execute these transactions, J uses the services of P2X, an unrelated digital asset marketplace that provides a service for nonfungible token 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 newly created nonfungible token (DA-J) for 1,000 units of digital asset DE. Using the interface provided by P2X, J and K execute their exchange using an automatically executing contract, which automatically transfers DA-J to K and K's payment of DE units to J.

(ii) *Analysis.* Although J is a principal in the exchange of DA-J 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 created DA-J as part of J's business of creating and selling specified nonfungible tokens, J is also not acting in these transactions as a dealer as described in paragraph (a)(10)(i)(C) of this section, as an agent for another party as described in paragraph (a)(10)(i)(A) of this section, or as a digital asset middleman described in paragraph (a)(10)(i)(D) of this section. Accordingly, J is not a broker under paragraph (a)(1) of this section because J does not effect sales of digital assets on behalf of others under the definition of effect under paragraph (a)(10)(i) of this section.

(19) *Example 19: Broker, sale, and effect—(i) Facts.* HWP is a person that regularly provides hosted wallet services for customers. HWP does not operate a digital asset trading platform, but at the direction of its customers regularly executes customer exchange orders using the services of digital asset trading platforms. Individual L maintains digital assets with HWP. L places an order with HWP to exchange 10 units of digital asset DE held by L with HWP for 100 units of digital asset RN. To execute the order, HWP places the order with PRX, a person, as defined in section 7701(a)(1) of the Code, that operates a digital asset trading platform. HWP debits L's account for the disposed DE units and credits L's account for the RN units received in exchange.

(ii) *Analysis.* The exchange of L's DE units for RN units is a sale under paragraph (a)(9)(ii)(A)(2) of this section. HWP acts as an agent for L in this sale, and the nature of this

agency is such that HWP ordinarily would know the gross proceeds from the sale. Accordingly, HWP has effected the sale under paragraph (a)(10)(i)(A) of this section. Additionally, HWP is a broker under paragraph (a)(1) of this section because in the ordinary course of its trade or business, HWP stands ready to effect sales to be made by others. If PRX is also a broker, see the multiple broker rule in paragraph (c)(3)(iii)(B) of this section.

(20) *Example 20: Digital asset and security.* M owns 10 ownership units of a fund organized as a trust described in § 301.7701-4(c) of this chapter that was formed to invest in digital assets. M's units are held in a securities brokerage account and are not recorded using cryptographically secured distributed ledger technology. Although the underlying investments are comprised of one or more digital assets, M's investment is in ownership units of a trust, and the units are not themselves digital assets under paragraph (a)(19) of this section because transactions involving these units are not secured using cryptography and are not digitally recorded on a distributed ledger, such as a blockchain. The answer would be the same if the fund is organized as a C corporation or partnership.

(21) *Example 21: 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)(i) and (a)(9)(ii)(A)(3) 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.

(22) *Example 22: 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.

(23) *Example 23: 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. On the last Friday in June, Year 1, 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) *Exceptions—(i) Sales effected for exempt recipients—(A) In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(1) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by an S corporation as defined in section 1361(a);

(2) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(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;

(4) A foreign government, a political subdivision thereof, an international organization, or any wholly owned agency or instrumentality of the foregoing;

(5) A foreign central bank of issue as defined in § 1.895-1(b)(1) (*i.e.*, a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(6) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(7) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(8) A real estate investment trust (as defined in section 856);

(9) An entity registered at all times during the taxable year under the



Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*);

(10) A common trust fund (as defined in section 584(a));

(11) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization; or

(12) A U.S. digital asset broker as defined in paragraph (g)(4)(i)(A)(1) of this section other than an investment adviser registered either under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*) or with a state securities regulator and that investment adviser is not otherwise an exempt recipient in one or more of paragraphs (c)(3)(i)(B)(1) through (11) of this section.

(C) *Exemption certificate*—(1) *In general.* Except as provided in paragraph (c)(3)(i)(C)(2) or (3) of this section, a broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter); the broker's actual knowledge that the customer is a person described in paragraph (c)(3)(i)(B) of this section; or the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(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—

(i) The name of the customer contains the term *insurance company*, *indemnity company*, *reinsurance company*, or *assurance company*.

(ii) The name of the customer indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(iii) The broker receives a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that asserts that the customer is not an S corporation as defined in section 1361(a).

(iv) The broker receives a withholding certificate described in § 1.1441–1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

(3) *Limitation for U.S. digital asset brokers.* For sales of digital assets, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(12) of this section unless it obtains from that customer a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that the customer is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. The inclusion in this paragraph (c)(3)(ii) of a digital asset transaction is not intended to create an inference that the transaction is a sale of a digital asset under paragraph (a)(9)(ii) of this section. For this purpose, a sale is an excepted sale if it is—

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (*see* § 601.601(d)(2) of this chapter);

(B) A sale with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term *a sale subject to reporting under section 6045* for the term *an interest payment*);

(C) A sale of digital asset units withheld by the broker from digital assets received by the customer in any underlying digital asset sale to pay for the customer's digital asset transaction costs;

(D) A sale for cash of digital asset units withheld by the broker from digital assets received by the customer in a sale of digital assets for different digital assets (underlying sale) that is undertaken immediately after the underlying sale to satisfy the broker's obligation under section 3406 of the Code to deduct and withhold a tax with respect to the underlying sale;

(E) A disposition of a digital asset representing loyalty program credits or loyalty program rewards offered by a provider of non-digital asset goods or services to its customers, in exchange for non-digital asset goods or services from the provider or other merchants participating with the developer as part of the program, provided that the digital asset is not capable of being transferred, exchanged, or otherwise used outside the cryptographically secured distributed ledger network of the loyalty program;

(F) A disposition of a digital asset created and designed for use within a video game or network of video games in exchange for different digital assets also created and designed for use within that video game or video game network, provided the disposed of digital assets are not capable of being transferred, exchanged, or otherwise used outside of the video game or video game network;

(G) Except in the case of digital assets cleared or settled on a limited-access regulated network as described in paragraph (c)(8)(iii) of this section, a disposition of a digital asset representing information with respect to payment instructions or the management of inventory that does not consist of digital assets, within a cryptographically secured distributed ledger (or network of interoperable distributed ledgers) that provides access only to users of such information provided the digital assets disposed of are not capable of being transferred, exchanged, or otherwise used outside such distributed ledger or network; or

(H) A disposition of a digital asset offered by a seller of goods or provider of services to its customers that can be exchanged or redeemed only by those customers for goods or services provided by such seller or provider if the digital asset is not capable of being transferred, exchanged, or otherwise used outside the cryptographically secured distributed ledger network of the seller or provider and cannot be sold or exchanged for cash, stored-value cards, or qualifying stablecoins at a market rate inside the seller or provider's distributed ledger network.

(iii) *Multiple brokers*—(A) *In general.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(6), (7), or (11) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(B) *Special rule for sales of digital assets.* If more than one broker effects a sale of a digital asset on behalf of a customer, the broker responsible for first crediting the gross proceeds on the sale to the customer's wallet or account is required to report the sale. A broker that did not first credit the gross proceeds on the sale to the customer's wallet or account is not required to report the sale if prior to the sale that broker obtains a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that the



broker first crediting the gross proceeds on the sale is a person described in paragraph (c)(3)(i)(B)(12) of this section.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership, provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041, or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K-1 reporting requirements are satisfied.

(vi) *Money market funds—(A) In general.* No return of information is required with respect to a sale of shares in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2a-7).

(B) *Effective/applicability date.* Paragraph (c)(3)(vi)(A) of this section applies to sales of shares in calendar years beginning on or after July 8, 2016. Taxpayers and brokers (as defined in § 1.6045-1(a)(1)), however, may rely on paragraph (c)(3)(vi)(A) of this section for sales of shares in calendar years beginning before July 8, 2016.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (*i.e.*, obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1), with or without application of the *de minimis* rule. The preceding sentence does not apply to a debt instrument issued on or after January 1,

2014. For a short-term obligation issued on or after January 1, 2014, *see* paragraph (c)(3)(xiii) of this section.

(D) Demand obligations that also are callable by the obligor and that have no premium or discount. The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

(viii) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(ix) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than \$20.

(x) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred. The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

(xi) *Short sales—(A) In general.* A broker may not make a return of information under this section for a short sale of a security entered into on or after January 1, 2011, until the year a customer delivers a security to satisfy the short sale obligation. The return must be made without regard to the constructive sale rule in section 1259 or to section 1233(h). In general, the broker must report on a single return the information required by paragraph (d)(2)(i)(A) of this section for the short sale except that the broker must report the date the short sale was closed in lieu of the sale date. In applying paragraph (d)(2)(i)(A) of this section, the broker must report the relevant information regarding the security sold to open the short sale and the adjusted basis of the security delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) *Short sale closed by delivery of a noncovered security.* A broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term if the short sale is closed by delivery of a noncovered security and the return so indicates. A broker that chooses to report this information is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the broker indicates on the return that the short

sale was closed by delivery of a noncovered security.

(C) *Short sale obligation transferred to another account.* If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in § 1.6045A-1(b)(7)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares, units, or amounts sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (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 statement to the transferor also must include the transfer date, the name and contact information of the receiving broker, the name and contact information of the transferor, and sufficient information to identify the customer. If the customer subsequently closes the short sale obligation in the transferor's account with non-borrowed securities, the transferor must make the return of information required by this section. In that event, the transferor must take into account the information furnished under this paragraph (c)(3)(xi)(C) on the return unless the transferor knows that the information furnished under this paragraph (c)(3)(xi)(C) is incorrect or incomplete. A failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. *See* § 301.6724-1(a)(1) of this chapter.

(xii) *Cross reference.* For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, *see* paragraph (c)(7) of this section.

(xiii) *Short-term obligations issued on or after January 1, 2014.* No return of information is required under this section with respect to a sale (including a retirement) of a short-term obligation, as described in section 1272(a)(2)(C), that is issued on or after January 1, 2014.

(xiv) *Certain redemptions.* No return of information is required under this section for payments made by a stock transfer agent (as described in § 1.6045-1(b)(iv)) with respect to a redemption of stock of a corporation described in

section 1297(a) with respect to a shareholder in the corporation if—

(A) The stock transfer agent obtains from the corporation a written certification signed by a person authorized to sign on behalf of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of this paragraph (c)(3)(xiv), and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI) (as defined in § 1.6049–4(f)(10) or (14), respectively), or reporting Model 1 FFI (as defined in § 1.6049–4(f)(13)), in accordance with the requirements of § 1.1471–3(d)(4) (substituting the terms *stock transfer agent* and *corporation* for the terms *withholding agent* and *payee*, respectively) and validates that status annually;

(C) The stock transfer agent obtains a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. The paying agent may rely on the written certification until there is a change in circumstances or the paying agent knows or has reason to know that the statement is unreliable or incorrect. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payment.

(4) *Examples.* The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

(i) *Example 1.* P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to effect a sale of P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, who will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(6) of this section, to initiate the

sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

(ii) *Example 2.* Assume the same facts as in paragraph (c)(4)(i) of this section (the facts in *Example 1*) except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(6) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

(iii) *Example 3.* D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

(iv) *Example 4.* Assume the same facts as in paragraph (c)(4)(iii) of this section (the facts in *Example 3*) except that E, a federally registered investment adviser, instructs K to sell stock owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

(v) *Example 5.* Assume the same facts as in paragraph (c)(4)(iv) of this section (the facts in *Example 4*) except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required

to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

(vi) *Example 6.* F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

(vii) *Example 7.* On June 24, 2010, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into before January 1, 2011, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

(viii) *Example 8—(A) Facts.* On August 25, 2011, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on January 25, 2012, by purchasing stock of the same corporation in the account in which H opened the short sale and delivering the stock to satisfy H's short sale obligation. The stock H purchased is a covered security.

(B) *Analysis.* Because the short sale is entered into on or after January 1, 2011, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2012. M must report on a single return the relevant information for the sold stock, the adjusted basis of the purchased stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the short sale opening and closing transactions on a single return for taxable year 2012.

(ix) *Example 9—(A) Facts.* Assume the same facts as in paragraph (c)(4)(viii) of this section (the facts in *Example 8*) except that H also has an account with N, a broker, and satisfies the short sale obligation with M by borrowing stock of the same corporation from N and transferring custody of the borrowed stock from N to M. N indicates on the transfer statement that the transferred stock was borrowed in accordance with § 1.6045A–1(b)(7).

(B) *Analysis with respect to M.* Under paragraph (c)(3)(xi)(C) of this section, M may not file the return of information required under this section. M must furnish a statement to N that reports the gross proceeds from the short sale on August 25, 2011, the date of the sale, the quantity of shares sold, the CUSIP number or other security identifier number of the sold stock, the transfer date, the name and contact information of M and N, and information identifying H such as H's name and the account number from which H transferred the borrowed stock.

(C) *Analysis with respect to N.* N must report the gross proceeds from the short sale, the date the short sale was closed, the

adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this section when H closes the short sale in the account with N.

(x) *Example 10: Excepted sale of digital assets representing payment instructions—(A) Facts.* BNK is a bank that uses a cryptographically secured distributed ledger technology system (DLT) that provides access only to other member banks to securely transfer payment instructions that are not securities or commodities described in paragraph (c)(8)(iii) of this section. These payment instructions are exchanged between member banks through the use of digital asset DX. Dispositions of DX do not give rise to sales of other digital assets within the cryptographically secured distributed ledger (or network of interoperable distributed ledgers) and are not capable of being transferred, exchanged, or otherwise used, outside the DLT system. BNK disposes of DX using the DLT system to make a payment instruction to another bank within the DLT system.

(B) *Analysis.* BNK's disposition of DX using the DLT system to make a payment instruction to another bank within the DLT system is a disposition of a digital asset representing payment instructions that are not securities or commodities within a cryptographically secured distributed ledger that provides access only to users of such information. Because DX cannot be transferred, exchanged, or otherwise used, outside of DLT, and because the payment instructions are not dual classification assets under paragraph (c)(8)(iii) of this section, BNK's disposition of DX is an excepted sale under paragraph (c)(3)(ii)(G) of this section.

(xi) *Example 11: Excepted sale of digital assets representing a loyalty program—(A) Facts.* S created a loyalty program as a marketing tool to incentivize customers to make purchases at S's store, which sells non-digital asset goods and services. Customers that join S's loyalty program receive 1 unit of digital asset LY at the end of each month for every \$1 spent in S's store. Units of LY can only be disposed of within S's cryptographically secured distributed ledger (DLY) in exchange for goods or services provided by S or merchants, such as M, that have contractually agreed to provide goods or services to S's loyalty customers in exchange for a predetermined payment from S. Customer C is a participant in S's loyalty program and has earned 1,000 units of LY. C redeems 1,000 units of LY in exchange for non-digital asset goods in M's store.

(B) *Analysis.* Customer C's disposition of LY using the DLY system in exchange for non-digital asset goods in M's store is a disposition of a digital asset representing loyalty program credits in exchange for non-digital asset goods or services from M, a merchant participating with S's loyalty program. Because LY cannot be transferred, exchanged, or otherwise used outside of DLY, C's disposition of LY is an excepted sale under paragraph (c)(3)(ii)(E) of this section.

(xii) *Example 12: Multiple brokers—(A) Facts.* L, an individual who is not an exempt recipient, maintains digital assets with HWP, a U.S. corporation that provides hosted wallet services. L also maintains an account at CRX, a U.S. corporation that operates a digital asset trading platform and that also provides custodial services for digital assets held by L. L places an order with HWP to exchange 10 units of digital asset DE for 100 units of digital asset RN. To effect the order, HWP places the order with CRX and communicates to CRX that the order is on behalf of L. Prior to initiating the transaction, CRX obtains a certification from HWP on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that HWP is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section. CRX completes the transaction and transfers the 100 units of RN to HWP. HWP, in turn, credits L's account with the 100 units of RN.

(B) *Analysis.* HWP is the broker responsible for first crediting the gross proceeds on the sale to L's wallet. Accordingly, because CRX has obtained from HWP a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that HWP is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section, CRX is not required to make a return of information with respect to the sale of 100 units of RN effected on behalf of L under paragraph (c)(3)(iii)(B) of this section. In contrast, because HWP is the broker that credits the 100 units of RN to L's account, HWP is required to make a return of information with respect to the sale.

(xiii) *Example 13: Multiple brokers—(A) Facts.* The facts are the same as in paragraph (c)(4)(xii)(A) of this section (the facts in *Example 12*), except that CRX deposits the 100 units of RN into L's account with CRX after the transaction is effected by CRX. Thereafter, L transfers the 100 units of RN in L's account with CRX to L's account with HWP. Prior to the transaction, HWP obtained a certification from CRX on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that CRX is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section.

(B) *Analysis.* Under paragraph (c)(3)(iii)(B) of this section, despite being instructed by HWP to make the sale of 100 units of RN on behalf of L, CRX is required to make a return of information with respect to the sale effected on behalf of L because CRX is the broker that credits the 100 units of RN to L's account. In contrast, HWP is not required to make a return of information with respect to the sale effected on behalf of L because HWP obtained from CRX a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that CRX is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section.

(5) \* \* \*

(i) *In general.* A broker effecting closing transactions in regulated futures contracts shall report information with respect to regulated futures contracts

solely in the manner prescribed in this paragraph (c)(5). In the case of a sale that involves making delivery pursuant to a regulated futures contract, only the profit or loss on the contract is reported as a transaction with respect to regulated futures contracts under this paragraph (c)(5); such sales are, however, subject to reporting under paragraph (d)(2)(i)(A). The information required under this paragraph (c)(5) must be reported on a calendar year basis, unless the broker is advised in writing by an account's owner that the owner's taxable year is other than a calendar year and the broker elects to report with respect to regulated futures contracts in such account on the basis of the owner's taxable year. The following information must be reported as required by Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, or any successor form, with respect to regulated futures contracts held in a customer's account:

(A) The name, address, and taxpayer identification number of the customer.

(B) The net realized profit or loss from all regulated futures contracts closed during the calendar year.

(C) The net unrealized profit or loss in all open regulated futures contracts at the end of the preceding calendar year.

(D) The net unrealized profit or loss in all open regulated futures contracts at the end of the calendar year.

(E) The aggregate profit or loss from regulated futures contracts ((b) + (d) – (c)).

(F) Any other information required by Form 1099-B. See 17 CFR 1.33. For this purpose, the end of a year is the close of business of the last business day of such year. In reporting under this paragraph (c)(5), the broker shall make such adjustments for commissions that have actually been paid and for option premiums as are consistent with the books of the broker. No additional returns of information with respect to regulated futures contracts so reported are required.

\* \* \* \* \*

(8) *Special coordination rules for reporting digital assets that are dual classification assets—(i) General rule for reporting dual classification assets as digital assets.* Except in the case of a sale described in paragraph (c)(8)(ii), (iii), or (iv) of this section, 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, the broker must treat the transaction as set forth in paragraphs (c)(8)(i)(A) through (D). For purposes of this section, an asset described in this paragraph (c)(8)(i) is a dual classification asset.

(A) The broker must report the sale only as a sale of a digital asset under paragraph (a)(9)(ii) of this section and not as a sale under paragraph (a)(9)(i) of this section.

(B) The broker must treat the sale only as a sale of a specified security under paragraph (a)(14)(v) or (vi) of this section, as applicable, and not as a specified security under paragraph (a)(14)(i), (ii), (iii), or (iv) of this section.

(C) The broker must apply the reporting rules set forth in paragraphs (d)(2)(i)(B) through (D) of this section, as applicable, for the information required to be reported for such sale.

(D) For a sale of a dual classification asset that is treated as a tokenized security, the broker must report the information set forth in paragraph (c)(8)(i)(D)(3) of this section.

(1) A *tokenized security* is a dual classification asset that:

(i) Provides the holder with an interest in another asset that is a security described in paragraph (a)(3) of this section, other than a security that is also a digital asset; or

(ii) Constitutes an asset the offer and sale of which was registered with the U.S. Securities and Exchange Commission, other than an asset treated as a security for securities law purposes solely as an investment contract.

(2) For purposes of paragraph (c)(8)(i)(D)(1) of this section, a qualifying stablecoin is not treated as a tokenized security.

(3) In the case of a sale of a tokenized security, the broker must report the information set forth in paragraph (d)(2)(i)(B)(6) of this section, as applicable. In the case of a tokenized security that is a specified security under paragraph (a)(14)(i), (ii), (iii), or (iv) of this section, the broker must also report the information set forth in paragraph (d)(2)(i)(D)(4) of this section.

(ii) *Reporting of dual classification assets that constitute contracts covered by section 1256(b) of the Code.* For a sale of a digital asset on or after January 1, 2025, 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.

(iii) *Reporting of dual classification assets cleared or settled on a limited-access regulated network—(A) General rule.* The coordination rule of paragraph (c)(8)(i) of this section does not apply to any sale of a dual classification asset that is a digital asset solely because the sale of such asset is cleared or settled on a limited-access regulated network described in paragraph (c)(8)(iii)(B) of this section. In such case, the broker

must report such sale only as a sale under paragraph (a)(9)(i) of this section and not as a sale under paragraph (a)(9)(ii) of this section and must treat the sale as a sale of a specified security under paragraph (a)(14)(i), (ii), (iii), or (iv) of this section, to the extent applicable, and not as a sale of a specified security under paragraph (a)(14)(v) or (vi) of this section. For all other purposes of this section including transfers, a dual classification asset that is a digital asset solely because it is cleared or settled on a limited-access regulated network is not treated as a digital asset and is not reportable as a digital asset. *See* paragraph (d)(2)(i)(A) of this section for the information required to be reported for such a sale.

(B) *Limited-access regulated network.* For purposes of this section, a limited-access regulated network is described in paragraph (c)(8)(iii)(B)(1) or (2) of this section.

(1) A cryptographically secured distributed ledger, or network of interoperable cryptographically secured distributed ledgers, that provides clearance or settlement services and that either:

(i) Provides access only to persons described in one or more of paragraphs (c)(3)(i)(B)(6), (7), (10), or (11) of this section; or

(ii) Is provided exclusively to its participants by an entity that has registered with the U.S. Securities and Exchange Commission as a clearing agency, or that has received an exemption order from the U.S. Securities and Exchange Commission as a clearing agency, under section 17A of the Securities Exchange Act of 1934.

(2) A cryptographically secured distributed ledger controlled by a single person described in one of paragraphs (c)(3)(i)(B)(6) through (11) of this section that permits the ledger to be used solely by itself and its affiliates, and therefore does not provide access to the ledger to third parties such as customers or investors, in order to clear or settle sales of assets.

(iv) *Reporting of dual classification assets that are interests in money market funds.* The coordination rule of paragraph (c)(8)(i) of this section does not apply to any sale of a dual classification asset that is a share in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a–7). In such case, the broker must treat such sale only as a sale under paragraph (a)(9)(i) of this section and not as a sale under paragraph (a)(9)(ii) of this section. *See* paragraph (c)(3)(vi) of this section,

providing that no return of information is required for shares described in the first sentence of this paragraph (c)(8)(iv).

(v) *Example: Digital asset securities—(A) Facts.* Brokers registered under the securities laws of the United States have formed a large network (broker network) that maintains accounts for customers seeking to purchase and sell stock. The broker network clears and settles sales of this stock using a cryptographically secured distributed ledger (DLN) that provides clearance or settlement services to the broker network. DLN may not be used by any person other than a registered broker in the broker network.

(B) *Analysis.* DLN is a limited-access regulated network described in paragraph (c)(8)(iii)(B)(1)(i) of this section because it is a cryptographically secured distributed ledger that provides clearance or settlement services and that provides access only to brokers described in paragraph (c)(3)(i)(B)(6) of this section. Additionally, sales of stock cleared on DLN are sales of securities under paragraph (a)(9)(i) of this section and sales of digital assets under paragraph (a)(9)(ii) of this section. Accordingly, sales of stock cleared on DLN are described in paragraph (c)(8)(iii) of this section and the coordination rule of paragraph (c)(8)(i) of this section does not apply to these sales. Therefore, the sales of stock cleared on DLN are reported only under paragraph (a)(9)(i) of this section. *See* paragraph (d)(2)(i)(A) of this section for the method for reporting the information required to be reported for such a sale.

(d) \* \* \*

(2) *Transactional reporting—(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.* Except in the case of a sale of a qualifying stablecoin or a specified nonfungible token for which the broker reports in the manner set forth in paragraph (d)(10) of this section and subject to the exception described in paragraph (d)(2)(i)(C) of this section for sales of digital assets described in paragraph (a)(9)(ii)(D) of this section (sales effected by processors of digital asset payments), 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 Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, or any successor form, in the manner required by such form or instructions the following information:

(1) The name, address, and taxpayer identification number of the customer;

(2) The name and number of units of the digital asset sold;

(3) The sale date;

(4) 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);

(5) Whether the sale was for cash, stored-value cards, or in exchange for services or other property;

(6) In the case of a sale that is reported as a digital asset sale pursuant to the rule in paragraph (c)(8)(i) of this section and is described as a tokenized security in paragraph (c)(8)(i)(D) of this section, the broker must also report to the extent required by Form 1099-DA or instructions: the 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); any information required under paragraph (m) of this section (related to options); any information required under paragraph (n) of this

section (related to debt instruments); and any other information required by the form or instructions;

(7) 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 of such transfer in and the number of units transferred in by the customer;

(8) Whether the broker took into account customer-provided acquisition information from the customer or the customer's agent as described in paragraph (d)(2)(ii)(B)(4) of this section when determining the identification of the units sold (without regard to whether the broker's determination with respect to the particular unit sold was derived from the broker's own records or from that information); and

(9) Any other information required by the form or instructions.

(C) *Exception for certain sales effected by processors of digital asset payments.*

A broker is not required to report any information required by paragraph (d)(2)(i)(B) of this section with respect to a sale of a digital asset described in paragraph (a)(9)(ii)(D) of this section (sales effected by processors of digital asset payments) by a customer if the gross proceeds (after reduction for the allocable digital asset transaction costs) from all such sales of digital assets effected by that broker for the year by the customer do not exceed \$600. Gross proceeds from sales of qualifying stablecoins or specified nonfungible tokens that are reported in the manner set forth in paragraph (d)(10) of this section are not included in determining if this \$600 threshold has been met. For the rules applicable for determining who the customer is for purposes of calculating this \$600 threshold in the case of a joint account, *see* paragraph (d)(10)(v) of this section.

(D) *Acquisition information for sales of certain digital assets.* Except in the case of a sale of a qualifying stablecoin or a specified nonfungible token for which the broker reports in the manner set forth in paragraph (d)(10) of this section, for each sale described in paragraph (a)(9)(ii) of this section on or after January 1, 2026, of a covered security defined in paragraph (a)(15)(i)(H), (I), or (K) of this section that was acquired by the broker for the customer and held in the customer's account, for which a broker is required to make a return of information under paragraph (d)(2)(i)(B) of this section, the broker must also report the following information:

(1) The adjusted basis of the covered security sold calculated in accordance with paragraph (d)(6) of this section;

(2) The date such covered security was purchased, and whether any gain or loss with respect to the covered security sold is long-term or short-term in accordance with paragraph (d)(7) of this section;

(3) For purpose of determining the information required in paragraphs (d)(2)(i)(D)(1) through (2) in the case of an option and any asset delivered in settlement of an option, the broker must apply any applicable rules set forth in paragraph (m) of this section; and

(4) In the case of a sale that is reported as a digital asset sale pursuant to the rule in paragraph (c)(8)(i) of this section and is described as a tokenized security in paragraph (c)(8)(i)(D) of this section, *see* paragraphs (d)(6)(iii)(A)(2) and (d)(7)(ii)(A)(2) of this section regarding the basis and holding period adjustments required for wash sales, paragraph (d)(6)(v) of this section for rules regarding the application of the average basis method, paragraph (m) of this section for rules related to options, paragraph (n) of this section for rules related to debt instruments, and any other information required by the form or instructions.

(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) *Identification of digital assets sold, disposed of, or transferred.* For a specified security described in paragraph (a)(14)(v) of this section, a broker must determine the unit sold, disposed of, or transferred, if 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, disposed of, or transferred.

(1) *No identification of units by customer.* In the case of multiple units of the same digital asset that are held by a broker for a customer, if the customer does not provide the broker with an adequate identification of which units of a digital asset are sold, disposed of, or transferred by the date and time of the sale, disposition, or transfer, and the broker does not have adequate transfer-in date records and does not have or take into account customer-provided acquisition information as defined by paragraph (d)(2)(ii)(B)(4) of this section, then the broker must first report the sale, disposition, or transfer of units that were not acquired by the broker for the customer. After the disposition of all such units of digital assets, the broker must treat units as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset were acquired by the customer. See paragraph (d)(2)(ii)(B)(4) of this section for circumstances under which a broker may use information provided by the customer or the customer's agent to determine when units of a digital asset were acquired by the customer. If the broker does not receive customer-provided acquisition information with respect to digital assets that were transferred into the customer's account or otherwise does not take such information into account, the broker must treat those units as acquired as of the date and time of the transfer.

(2) *Adequate identification of units by customer.* Except as provided in paragraph (d)(2)(ii)(B)(3) of this section, when multiple units of the same digital asset are left in the custody of the broker, an adequate identification occurs if, no later than the date and time of the sale, disposition, or transfer, the customer specifies to the broker the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier that the broker designates as sufficiently specific to determine the units sold, disposed of, or transferred. For example, a customer's reference to the purchase date and time of the units to be sold may be designated by the broker as sufficiently specific to determine the units sold, disposed of, or transferred if no other unidentified units were purchased at that same purchase date and time or purchase price. To the extent permitted by paragraph (d)(2)(ii)(B)(4) of this section, a broker may take into account customer-provided acquisition information with respect to transferred-in digital assets for purposes of enabling a customer to make a sufficiently specific reference. A

standing order or instruction for the specific identification of digital assets is treated as an adequate identification made at the date and time of sale, disposition, or transfer. In the case of a broker that offers only one method of making a specific identification, such method is treated as a standing order or instruction within the meaning of the prior sentence.

(3) *Special rule for the identification of certain units withheld from a transaction.* Notwithstanding paragraphs (d)(2)(ii)(B)(1) and (2) of this section, in the case of a sale of digital assets in exchange for other digital assets differing materially in kind or in extent and for which the broker withholds units of the digital assets received for either the broker's obligation to deduct and withhold a tax under section 3406, or for payment of the customer's digital asset transaction costs as defined in paragraph (d)(5)(iv)(A) of this section, the customer is deemed to have made an adequate identification, within the meaning of paragraph (d)(2)(ii)(B)(2) of this section, for such withheld units as from the units received in the underlying transaction regardless of any other adequate identification within the meaning of paragraph (d)(2)(ii)(B)(2) of this section designating other units of the same digital asset as the units sold, disposed of, or transferred.

(4) *Customer-provided acquisition information for digital assets.* For purposes of identifying which units are sold, disposed of, or transferred under paragraph (d)(2)(ii)(A) of this section, a broker is permitted, but not required, to take into account customer-provided acquisition information. For purposes of this section, customer-provided acquisition information means reasonably reliable information, such as the date and time of acquisition of units of a digital asset, provided by a customer or the customer's agent to the broker no later than the date and time of a sale, disposition, or transfer. Reasonably reliable information includes purchase or trade confirmations at other brokers or immutable data on a public distributed ledger. Solely for purposes of penalties under sections 6721 and 6722, a broker that takes into account customer-provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. See § 301.6724–1(c)(6) of this chapter.

(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) *Gross proceeds from 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. A broker that chooses to report this information on either the Form 1099-B, or when available the Form 1099-DA, 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. See paragraph (d)(2)(iii)(A) of this section for the reporting of adjusted basis and the character of any gain or loss for the sale of a noncovered security that is a digital asset.

(iv) *Information from other parties and other accounts—*(A) *Transfer and issuer statements.* When reporting a sale of a covered security, 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. A broker may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the broker knows that the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. A failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. See § 301.6724–1(a)(1) of this chapter.

(B) *Other information with respect to securities.* Except in the case of a covered security that is described in paragraph (a)(15)(i)(H), (J), or (K) of this



section, a broker is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. For purposes of penalties under sections 6721 and 6722, a broker that takes into account information with respect to securities described in the previous sentence that is received from a customer or third party other than information furnished on a transfer statement or issuer statement is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. *See* § 301.6724–1(c)(6) of this chapter.

(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. The broker is only required to make this request once. If the broker does not receive a complete transfer statement after requesting it, the broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with this section when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(vi) *Reporting by other parties after a sale of securities—(A) Transfer statements.* If a broker receives a transfer statement indicating that a security is a covered security after the broker reports the sale of the security, the broker must file a corrected return within thirty days of receiving the statement unless the broker reported the required information on the original return consistently with the transfer statement.

(B) *Issuer statements.* If a broker receives or is deemed to receive an issuer statement after the broker reports the sale of a covered security, the broker must file a corrected return within thirty days of receiving the issuer statement unless the broker reported the required information on the original return consistently with the issuer statement.

(C) *Exception.* A broker is not required to file a corrected return under this paragraph (d)(2)(vi) if the broker receives the transfer statement or issuer statement more than three years after the broker filed the return.

(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) and (D) of this section (*Examples 3 and 4*) occur on or after January 1, 2026.

(A) *Example 1—(1) Facts.* On February 22, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an account held with F, a broker. On March 15, 2012, K purchases 100 shares of C stock for cash in an account with G, a different broker. Because K acquires the stock purchased on March 15, 2012, for cash in an account after January 1, 2012, under paragraph (a)(15) of this section, the stock is a covered security. K asks G to increase K's adjusted basis in the stock to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(2) *Analysis.* Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term. If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

(B) *Example 2—(1) Facts.* L purchases shares of stock of a single corporation in an account with F, a broker, on April 17, 1969, April 17, 2012, April 17, 2013, and April 17, 2014. In January 2015, L sells all the stock.

(2) *Analysis.* Under paragraph (d)(2)(i)(A) of this section, F must separately report the gross proceeds and adjusted basis attributable to the stock purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to the stock purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii)(A) of this section, F must also separately report the gross proceeds attributable to the stock purchased in 1969 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

(C) *Example 3: 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 \$9 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 September 1, Year 3, TP directs BEX to sell 10 units of DE but does not specify which units are to be sold and does not provide to BEX purchase date and time information with respect to the DE units transferred into TP's account with BEX. BEX has adequate transfer-in date records with respect to TP's transfer of the 10 units of DE on August 1, Year 3. 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, because BEX has adequate transfer-in date records with respect to TP's transfer of the 10 units of DE on August 1, Year 3, and because TP did not give BEX customer-provided acquisition information as defined by paragraph (d)(2)(ii)(B)(4) of this section with respect to the units transferred into TP's account at BEX, the units sold must be attributed to the earliest units of digital asset DE acquired by TP. Additionally, because TP did not give BEX customer-provided acquisition information, BEX must treat those units as acquired as of the date and time of the transfer (August 1, Year 3). 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. The DE units are digital assets that were acquired on or after January 1, 2026, for TP by a broker (BEX) providing custodial services, and, thus, constitute covered securities under paragraph (a)(15)(i)(j) of this section. Accordingly, in addition to the gross proceeds and other information required to be reported under paragraph (d)(2)(i)(B) of this section, BEX must also report the adjusted basis of the DE units sold, the date the DE units were purchased, and whether any gain or loss with respect to the DE units sold is long-term or short-term as required by paragraph (d)(2)(i)(D) of this section. Finally, because TP did not give BEX customer-provided acquisition information, TP will be required to treat different units as sold under the rules provided by § 1.1012–1(j)(3) from those units that BEX treats as sold under this section unless TP adopts a standing order to follow the ordering rule result required by BEX. *See* § 1.1012–1(j)(5)(iv) (*Example 4*).

(D) *Example 4: Ordering rule—(1) Facts.* The facts are the same as in paragraph (d)(2)(vii)(C)(1) of this section (the facts in *Example 3*), except on September 1, Year 3, TP's agent (CRX) provides BEX with purchase confirmations showing that the 10 units TP transferred into TP's account at BEX were purchased on August 1, Year 1. BEX neither knows nor has reason to know that the information supplied by CRX is incorrect and chooses to take this information into account for purposes of identifying which of the TP's units are sold, disposed of, or transferred.

(2) *Analysis.* Because 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, BEX must treat the units of digital asset DE sold as the earliest units of digital asset DE acquired by TP. The purchase confirmations (showing a purchase date of August 1, Year 1) for the 10 units that were transferred into TP's account at BEX constitute customer-provided acquisition information under paragraph (d)(2)(ii)(B)(4) of this section, which BEX is permitted, but not required, to take into account. Accordingly, BEX is permitted to treat the 10 units sold by TP as the 10 DE units TP purchased on August 1, Year 1 (and transferred into BEX's account on August 1, Year 3), because these were the earliest units of digital asset DE acquired by TP. The DE units are digital assets that were acquired on or after January 1, 2026, for TP by a broker (CRX) providing custodial services, and, thus, constitute covered securities under paragraph (a)(15)(i)(f) of this section. However, because these covered securities were not acquired and thereafter held by the selling broker (BEX), BEX is not required to report the acquisition information required by paragraph (d)(2)(i)(D) of this section. Finally, because TP provided the purchase information with respect to the transferred in units to BEX, the units determined as sold by BEX are the same units that TP must treat as sold under § 1.1012–1(j)(3)(i). See § 1.1012–1(j)(5)(iv) (*Example 4*).

\* \* \* \* \*

(4) *Sale date*—(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 of sale as the date when the transactions are recorded on the ledger. For sales of digital assets that are effected by a broker and recorded in the broker's books and records (commonly referred to as an *off-chain* transaction) and not directly on a distributed ledger or similar technology, the broker must report the date of sale as the date when the transactions are recorded on its books and records without regard to the date that the transactions may be later recorded on the distributed ledger or similar technology.

(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) and (B) of this section apply solely for purposes of this section.

(A) *Determining gross proceeds*. Except as otherwise provided in this section, gross proceeds from the sale of a digital asset are equal to the sum of the total cash 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)(C) of this section for a special rule setting forth how cascading digital asset transaction costs are to be allocated in certain exchanges of one digital asset for a different digital asset.

(1) *Determining fair market value*.

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)(B) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(A)(3) of this section.

(2) *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.

(3) *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.

(B) *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 processors of digital asset payments.* The amount of gross proceeds under paragraph (d)(5)(ii) of this section received by a party who sells a digital asset under paragraph (a)(9)(ii)(D) of this section (effected by a processor of digital asset payments) is equal to: the sum of the amount paid in cash, and the fair market value of the amount paid in digital assets by that processor to a second party, plus any digital asset transaction costs and other fees charged to the second party that are withheld (whether withheld from the digital assets transferred by the 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.

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

(B) *General allocation rule.* Except as provided in paragraph (d)(5)(iv)(C) of this section, 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 sale or disposition of the digital assets.

(C) *Special rule for allocation of certain cascading digital asset transaction costs.* In the case of a sale of one digital asset in exchange for another digital asset differing materially in kind or in extent (original transaction) and for which digital assets received in the original transaction are withheld to pay digital asset transaction costs, the total digital asset transaction costs paid by the taxpayer to effect both the original transaction and the disposition of the withheld digital assets are allocable exclusively to the disposition of digital assets in the original transaction.

(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 on or after January 1, 2025.

(A) *Example 1: Determination of gross proceeds when digital asset transaction costs paid in digital assets—(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)(A) 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 the value of the CM unit sold to pay the digital asset transaction cost to CRX and allocable to the sale of the DE units). 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). Accordingly, CRX must report gross proceeds of \$78 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 when digital asset transaction costs are withheld from transferred digital assets—(1) Facts.* K owns a total of 10 units of digital

asset A that K deposits with broker BEX that provides custodial services for digital assets. K directs BEX to effect the exchange of 10 units of K's 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 a fee of \$2 per transaction, which BEX withholds from the units of the digital asset A 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.

(2) *Analysis.* The withholding of 1 unit of digital asset A is a sale of a digital asset for BEX's services within the meaning of paragraph (a)(9)(ii)(C) of this section. Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$2. Under paragraph (d)(5)(iv)(C) of this section, TP must allocate such costs to the disposition of the 10 units of digital asset A. Under paragraphs (d)(5)(ii)(A) and (d)(5)(iv)(C) of this section, TP's gross proceeds from the sale of the 10 units of digital asset A is \$18, 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 the broker services received (\$2) as of the date and time of the transaction over the allocated digital asset transaction costs (\$2). Accordingly, BEX must report \$18 as gross proceeds from K's sale of 10 units of digital asset A.

(C) *Example 3: Determination of gross proceeds when digital asset transaction costs are withheld from acquired digital assets in an exchange of digital assets—(1) Facts.* The facts are the same as in paragraph (d)(5)(v)(B)(1) of this section (the facts in *Example 2*), except that BEX requires its payment be withheld from the units of the digital asset acquired. At the time of the transaction, BEX withholds 3 units of digital asset B, two units of which effect the exchange of digital asset A for digital asset B and one unit of which effects the disposition of digital asset B for payment of the transaction fees.

(2) *Analysis.* The withholding of 3 units of digital asset B is a disposition of digital assets for BEX's services within the meaning of paragraph (a)(9)(ii)(C) of this section. Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$3. Under paragraph (d)(5)(iv)(C) of this section, K must allocate such costs to the disposition of the 10 units of digital asset A. Under paragraphs (d)(5)(ii)(A) and (d)(5)(iv)(C) of this section, K's gross proceeds from the sale of the 10 units of digital asset A is \$17, 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 (\$3). K's gross proceeds from the sale of the 3 units of digital asset B used to pay digital asset transaction costs is \$3, which is the fair market value of BEX's services received at the time of the transaction. Accordingly, BEX must report \$17 as gross proceeds from K's sale of 10 units of digital asset A. Additionally, pursuant to paragraph (c)(3)(ii)(C) of this section, BEX is not required to report K's sale of the 3 withheld units of digital asset B because the 3 units of

digital asset B were units withheld from digital assets received by K to pay for K's digital asset transaction costs.

(D) *Example 4: Determination of gross proceeds—(1) Facts.* CPP, a processor of digital asset payments, 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. 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.* B paid \$20 of digital asset transaction costs as defined in paragraph (d)(5)(iv)(A) of this section. 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 withheld by CPP, reduced by the \$20 digital asset transaction costs as allocated under paragraph (d)(5)(iv)(B) of this section. 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).

(E) *Example 5: Determination of gross proceeds—(1) Facts.* STR, a U.S. merchant corporation, advertises that it accepts digital asset FE as payment for its merchandise that is not digital assets. Customers making purchases at STR using digital asset FE are directed to create an account with CXX, a processor of digital asset payments, 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 \$10,000. 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 5,000 units of FE to CXX, which, in turn, pays STR \$9,800 (\$10,000 less a 2% transaction fee equal to \$200).

(2) *Analysis.* Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CXX must report with respect to this sale is \$10,000, which is the sum of the amount in U.S. dollars paid by CPP to STR (\$9,800) plus the \$200 digital asset transaction costs

withheld from the payment due to STR. Because S does not have any digital asset transaction costs, the \$9,800 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).

(F) *Example 6: Determination of gross proceeds in a real estate transaction—(1) Facts.* J, an unmarried individual not otherwise exempt from reporting, enters into a contractual agreement with B, an individual not otherwise exempt from reporting, to exchange J's principal residence, Blackacre, which has a fair market value of \$300,000, for cash in the amount of \$75,000 and units of digital asset DE with a value of \$225,000. Prior to closing, B transfers the digital asset portion of the payment directly from B's wallet to J's wallet. At closing, J certifies to the closing agent (CA) that J received the DE units required to be paid under the contractual agreement. CA is also a real estate reporting person under § 1.6045-4, and a digital asset middleman under paragraph (a)(21) of this section with respect to the transaction.

(2) *Analysis.* CA is required to report on Form 1099-DA 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) *In general.* 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. Except as otherwise provided in paragraph (n) of this section, a broker is not required to consider customer elections. For rules related to the adjusted basis of a debt

instrument, see paragraph (n) of this section.

(ii) *Initial basis—(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. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2014. For rules related to options granted or acquired on or after January 1, 2014, see paragraph (m) of this section. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2014. A broker may not increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired 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. A broker must report the basis of identical stock (within the meaning of § 1.1012-1(e)(4)) by averaging the basis of each share if the stock is purchased 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 basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share in accordance with § 1.1012-1(c)(1)(ii).

(B) *Basis of transferred securities—(1) In general.* The initial basis of a security transferred to an account is generally the basis reported on the transfer statement (as described in § 1.6045A-1).

(2) *Securities acquired by gift.* If a transfer statement indicates that the security is acquired as a gift, a broker must apply the relevant basis rules for property acquired by gift in determining the initial basis, but is not required to adjust basis for gift tax. A broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section if the relevant basis rules for property

acquired by gift prevent recognizing both gain and loss, or if the relevant basis rules treat the initial basis of the security as its fair market value as of the date of the gift and the broker neither knows nor can readily ascertain this value. If the transfer statement did not report a date for the gift, the broker must treat the settlement date for the transfer as the date of the gift.

(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) or another digital asset differing materially in kind or extent, 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. 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)(B) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(A)(3) 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 another digital asset differing materially in kind or extent, see paragraph (d)(6)(ii)(C)(2) of this section. 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 a sale of one digital asset in exchange for another digital asset differing materially

in kind or extent, the total digital asset transaction costs paid by the customer are allocable to the digital assets disposed. In the case of a transaction described in paragraph (d)(5)(iv)(C) of this section, the digital asset transaction costs paid by the customer to acquire the digital assets received are allocable as provided therein.

(iii) \* \* \*

(A) *Securities in the same account or wallet*—(1) *In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities, other than covered securities reportable as digital assets after the application of paragraph (c)(8) 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). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the basis of the purchased covered security by the amount of loss disallowed on the sale transaction.

(2) *Special rules for covered securities that are also digital assets.* In the case of a purchase or sale of a tokenized security described in paragraph (c)(8)(i)(D) of this section that is a stock or security for purposes of section 1091, a broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities 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). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the basis of the purchased covered security by the amount of loss disallowed on the sale transaction.

(B) *Covered securities in different accounts or wallets.* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section if the covered securities are purchased and sold from different accounts or wallets, if the purchased covered security is transferred to another account or wallet before the wash sale, or if the covered securities are treated as held in separate accounts under § 1.1012-1(e). A covered security is not purchased in an account or wallet if it is purchased in another

account or wallet and transferred into the account or wallet.

\* \* \* \* \*

(v) *Average basis method adjustments.* For a covered security for which basis may be determined by the average basis method, a broker must compute basis using the average basis method if a customer validly elects that method for the covered securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. See § 1.1012-1(e). The previous sentence applies to any stock that is also a tokenized security described in paragraph (c)(8)(i)(D) of this section.

\* \* \* \* \*

(x) *Examples.* The following examples illustrate the rules of paragraph (d)(5) of this section and this paragraph (d)(6) 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 on or after January 1, 2026.

(A) *Example 1: Determination of gross proceeds and 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 cash 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.* Under paragraph (d)(2)(i)(B) of this section, CRX must report the gross proceeds from K's sale of 1 unit of CM. Additionally, because the units of CM were purchased in K's account at a broker providing custodial services for digital assets that are specified securities described in paragraph (a)(14)(v) of this section, the units of CM purchased by K are covered securities under paragraph (a)(15)(i)(I) of this section. Accordingly, under paragraphs (d)(2)(i)(D)(1) and (2) of this section, CRX must report K's adjusted basis in the 1 unit of CM and whether any gain or loss with respect to the

CM unit sold is long-term or short-term. 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 \$81 initial basis in DE, which is \$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 gross proceeds and 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.* K has digital asset transaction costs of \$2 as defined in paragraph (d)(5)(iv)(A) of this section, which is the value of 1 unit of CM. Under paragraph (d)(2)(i)(B) 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 a broker providing custodial services for digital assets that are specified securities described in paragraph (a)(14)(v) of this section, the units of DE and CM are covered securities under paragraph (a)(15)(i)(I) of this section, and, pursuant to paragraphs (d)(2)(i)(D)(1) and (2) of this section, CRX must report K's adjusted basis in the 10 units of DE and 1 unit of CM and whether any gain or loss with respect to those units is long-term or short-term. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of the DE units is \$98 (the fair market value of the 50 units of ST that K received less the \$2 digital asset transaction costs paid by K using 1 unit of CM), that is allocable to the sale of the DE units. Under this paragraph (d)(6), K's adjusted basis in the 10 units of DE is \$81 (which is \$80 plus the \$1 value of 1 unit of CM paid as a digital asset transaction cost for the purchase of the DE units), resulting in a long-term capital gain to K of \$17 (\$98–\$81). The gross proceeds from K's sale of the single unit of CM is \$2, and K's adjusted basis in the single unit of CM is \$1, resulting in a long-term capital gain to K of \$1 (\$2–\$1). 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 \$100.

(C) *Example 3: Determination of gross proceeds and basis when digital asset transaction costs are withheld from transferred digital assets—(1) Facts.* K has an account with digital asset broker BEX. On December 20, Year 1, K acquired 10 units of digital asset A, for \$2 per unit, and 100 units of digital asset B, for \$0.50 per unit. (Assume

that K did not incur any digital asset transaction costs on the units acquired on December 20, Year 1.) On July 20, Year 2, K directs BEX to effect the exchange of 10 units of digital asset A for 50 units of digital asset B. At the time of the exchange, each unit of digital asset A has a fair market value of \$5 per unit and each unit of digital asset B has a fair market value of \$1 per unit. For the exchange of 10 units of digital asset A for 50 units of digital asset B, BEX charges K a transaction fee equal to 2 units of digital asset B, which BEX withholds from the units of the digital asset B credited to K's account on July 20, Year 2. For the disposition of 2 units of digital asset B withheld, BEX charges an additional transaction fee equal to 1 unit of digital asset B, which BEX also withholds from the units of digital asset B credited to K's account on July 20, Year 2. K has a standing order with BEX for the specific identification of digital assets as from the earliest units acquired.

(2) *Reporting with respect to the disposition of the A units.* The withholding of 3 units of digital asset B is a disposition of digital assets for BEX's services within the meaning of paragraph (a)(9)(ii)(C) of this section. Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$3. Under paragraph (d)(5)(iv)(C) of this section, the exchange of 10 units of digital asset A for 50 units of digital asset B is the original transaction. Accordingly, BEX must allocate the digital asset transaction costs of \$3 exclusively to the disposition of the 10 units of digital asset A. Additionally, because the units of A are specified securities described in paragraph (a)(14)(v) of this section and were purchased in K's account at BEX by a broker providing custodial services for such specified securities, the units of A are covered securities under paragraph (a)(15)(i)(I) of this section, and BEX must report K's adjusted basis in the 10 units of A. Under paragraphs (d)(5)(ii)(A) and (d)(5)(iv)(C) of this section, K's gross proceeds from the sale of the 10 units of digital asset A is \$47, which is the excess of the fair market value of the 50 units of digital asset B received (\$50) as of the date and time of the transaction over the allocated digital asset transaction costs (\$3). Under this paragraph (d)(6), K's adjusted basis in the 10 units of A is \$20, resulting in a short-term capital gain to K of \$27 (\$47–\$20).

(3) *Reporting with respect to the disposition of the withheld B units.* K's gross proceeds from the sale of the 3 units of digital asset B used to pay digital asset transaction costs is \$3, which is the fair market value of the digital assets used to pay for such transaction costs. Pursuant to the special rule for the identification of units withheld from digital assets received in a transaction to pay a customer's digital asset transaction costs under paragraph (d)(2)(ii)(B)(3) of this section and regardless of K's standing order, the withheld units sold are treated as from the units received in the original (A for B) transaction. Accordingly, the basis of the 3 withheld units of digital asset B is \$3, which is the fair market value of the 3 units of digital asset B received. Finally, pursuant to paragraph (c)(3)(ii)(C) of this section, BEX is not required to report K's

sale of the 3 withheld units of digital asset B because the 3 units of digital asset B were units withheld from digital assets received by K to pay for K's digital asset transaction costs.

(D) *Example 4: Determination of gross proceeds and basis for digital assets—(1) Facts.* On August 26, Year 1, Customer P purchases 10 units of digital asset 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. On October 26, Year 2, 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.* Under paragraph (d)(5)(iv)(B) of this section, P has digital asset transaction costs of \$20 associated with the exchange of DE for FG which must be allocated to the sale of the DE units. For the transaction that took place on October 26, Year 2, 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 \$980 (the \$1,000 fair market value of FG received on the date and time of transfer, less all of the digital asset transaction costs of \$20 allocated to the sale). Under paragraph (d)(6)(ii)(C) of this section, the adjusted basis of P's DE units is equal to \$25, which is 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, because none of the \$20 transaction fee may be allocated under paragraph (d)(6)(ii)(C)(2) of this section to the acquisition of P's FG units.

(7) \* \* \*

(i) *In general.* In determining whether any gain or loss on the sale of a covered security is long-term or short-term within the meaning of section 1222 for purposes of this section, the following rules apply:

(A) A broker must consider the information reported on a transfer statement (as described in § 1.6045A–1).

(B) A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the covered 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.

(C) A broker is required to apply the relevant rules for property acquired from a decedent or by gift for all covered securities.

(ii) \* \* \*

(A) *Securities in the same account or wallet—(1) In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities, other than covered securities reportable as digital assets after the application of paragraph (c)(8) 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).

(2) *Special rules for covered securities that are also digital assets.* In the case of a purchase or sale of a tokenized security described in paragraph (c)(8)(i)(D) of this section that is a stock or security for purposes of section 1091, a broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities 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).

(B) *Covered securities in different accounts or wallets.* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section if the covered securities are purchased and sold from different accounts or wallets, if the purchased covered security is transferred to another account or wallet before the wash sale, or if the covered securities are treated as held in separate accounts under § 1.1012–1(e). A covered security is not purchased in an account or wallet if it is purchased in another account or wallet and transferred into the account or wallet.

\* \* \* \* \*

(9) *Coordination with the reporting rules for widely held fixed investment trusts under § 1.671–5.* Information required to be reported under section 6045(a) for a sale of a security or a digital asset in a widely held fixed investment trust (WHFIT) (as defined under § 1.671–5) and the sale of an interest in a WHFIT must be reported as provided by this section unless the information is also required to be reported under § 1.671–5. To the extent that this section requires additional information under section 6045(g), those requirements are deemed to be met through compliance with the rules in § 1.671–5.

(10) *Optional reporting methods for qualifying stablecoins and specified nonfungible tokens.* This paragraph (d)(10) provides optional reporting rules for sales of qualifying stablecoins as defined in paragraph (d)(10)(ii) of this

section and sales of specified nonfungible tokens as defined in paragraph (d)(10)(iv) of this section. A broker may report sales of qualifying stablecoins or report sales of specified nonfungible tokens under the optional method provided in this paragraph (d)(10) instead of under paragraphs (d)(2)(i)(B) and (D) of this section for some or all customers and may change its reporting method for any customer from year to year; however, the method chosen for a particular customer must be applied for the entire year of that customer's sales.

(i) *Optional reporting method for qualifying stablecoins—(A) In general.* In lieu of reporting all sales of qualifying stablecoins under paragraphs (d)(2)(i)(B) and (D) of this section, a broker may report designated sales of qualifying stablecoins, as defined in paragraph (d)(10)(i)(C) of this section, on an aggregate basis as provided in paragraph (d)(10)(i)(B) of this section. A broker reporting under this paragraph (d)(10)(i) is not required to report sales of qualifying stablecoins under this paragraph (d)(10)(i) or under paragraphs (d)(2)(i)(B) through (D) of this section if such sales are non-designated sales of qualifying stablecoins or if the gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales effected by that broker of qualifying stablecoins by the customer do not exceed \$10,000 for the year as described in paragraph (d)(10)(i)(B) of this section.

(B) *Aggregate reporting method for designated sales of qualifying stablecoins.* If a customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales effected by that broker of qualifying stablecoins exceed \$10,000 for the year, the broker must make a separate return for each qualifying stablecoin that includes the information set forth in this paragraph (d)(10)(i)(B). If the aggregate gross proceeds reportable under the previous sentence exceed \$10,000, reporting is required with respect to each qualifying stablecoin for which there are designated sales even if the aggregate gross proceeds for a particular qualifying stablecoin does not exceed \$10,000. A broker reporting under this paragraph (d)(10)(i)(B) must report the following information with respect to designated sales of each qualifying stablecoin on a separate Form 1099-DA or any successor form in the manner required by such form or instructions—

- (1) The name, address, and taxpayer identification number of the customer;
- (2) The name of the qualifying stablecoin sold;

(3) The aggregate gross proceeds for the year from designated sales of the qualifying stablecoin (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section);

(4) The total number of units of the qualifying stablecoin sold in designated sales of the qualifying stablecoin;

(5) The total number of designated sale transactions of the qualifying stablecoin; and

(6) Any other information required by the form or instructions.

(C) *Designated sale of a qualifying stablecoin.* For purposes of this paragraph (d)(10), the term *designated sale of a qualifying stablecoin* means: any sale as defined in paragraphs (a)(9)(ii)(A) through (D) of this section of a qualifying stablecoin other than a sale of a qualifying stablecoin in exchange for different digital assets that are not qualifying stablecoins. In addition, the term *designated sale of a qualifying stablecoin* includes the delivery of a qualifying stablecoin pursuant to the settlement of any executory contract which would be treated as a designated sale of the qualifying digital asset under the previous sentence if the contract had not been executory. Finally, the term *non-designated sale of a qualifying stablecoin* means any sale of a qualifying stablecoin other than a designated sale of a qualifying stablecoin as defined in this paragraph (d)(10)(i)(C).

(D) *Examples.* For purposes of the following examples, assume that digital asset WW and digital asset YY are qualifying stablecoins, and digital asset DL is not a qualifying stablecoin. Additionally, assume that the transactions set forth in each example include all sales of qualifying stablecoins on behalf of the customer during Year 1, and that no transaction costs were imposed on the sales described therein.

(1) *Example 1: Optional reporting method for qualifying stablecoins—(i) Facts.* CRX is a digital asset broker that provides services to customer K, an individual not otherwise exempt from reporting. CRX effects the following sales on behalf of K: sale of 1,000 units of WW in exchange for cash of \$1,000; sale of 5,000 units of WW in exchange for YY, with a value of \$5,000; sale of 10,000 units of WW in return for DL, with a value of \$10,000; and sale of 3,000 units of YY in exchange for cash of \$3,000.

(ii) *Analysis.* In lieu of reporting all of K's sales of WW and YY under paragraph (d)(2)(i)(B) of this section, CRX may report K's designated sales of WW and YY under the optional reporting method set forth in paragraph (d)(10)(i)(B) of this section. In this case, K's designated sales of qualifying stablecoins resulted in total gross proceeds of



\$9,000, which is the total of \$1,000 from sale of WW for cash, \$5,000 from the sale of WW in exchange for YY, and \$3,000 from the sale of YY for cash. Because K's designated sales of WW and YY did not exceed \$10,000, CRX is not required to make a return of information under this section for any of K's qualifying stablecoin sales. The \$10,000 of gross proceeds from the sale of WW for DL, which is not a qualifying stablecoin, is not included in this calculation to determine if the *de minimis* threshold has been exceeded because that sale is not a designated sale and, as such, is not reportable.

(2) *Example 2: Optional reporting method for qualifying stablecoins—(i) Facts.* The facts are the same as in paragraph (d)(10)(i)(D)(1)(i) of this section (the facts in *Example 1*), except that CRX also effects an additional sale of 4,000 units of YY in exchange for cash of \$4,000 on behalf of K.

(ii) *Analysis.* In lieu of reporting all of K's sales of WW and YY under paragraph (d)(2)(i)(B) of this section, CRX may report K's designated sales of WW and YY under the optional reporting method set forth in paragraph (d)(10)(i)(B) of this section. In this case, K's designated sales of qualifying stablecoins resulted in total gross proceeds of \$13,000, which is the total of \$1,000 from sale of WW for cash, \$5,000 from the sale of WW for YY, \$3,000 from the sale of YY for cash, and \$4,000 from the sale of YY for cash. Because K's designated sales of all types of qualifying stablecoins exceeds \$10,000, CRX must make two returns of information under this section: one for all of K's designated sales of WW and another for all of K's designated sales of YY.

(ii) *Qualifying stablecoin.* For purposes of this section, the term *qualifying stablecoin* means any digital asset that satisfies the conditions set forth in paragraphs (d)(10)(ii)(A) through (C) of this section for the entire calendar year.

(A) *Designed to track certain other currencies.* The digital asset is designed to track on a one-to-one basis a single convertible currency issued by a government or a central bank (including the U.S. dollar).

(B) *Stabilization mechanism.* Either:

(1) The digital asset uses a stabilization mechanism that causes the unit value of the digital asset not to fluctuate from the unit value of the convertible currency it was designed to track by more than 3 percent over any consecutive 10-day period, determined using Coordinated Universal Time (UTC), during the calendar year; or

(2) The issuer of the digital asset is required by regulation to redeem a unit of the digital asset at any time on a one-to-one basis for the same convertible currency that the digital asset was designed to track.

(C) *Accepted as payment.* The digital asset is generally accepted as payment by persons other than the issuer. A digital asset that satisfies the conditions

set forth in paragraphs (d)(10)(ii)(A) and (B) of this section that is accepted by a broker pursuant to a sale of another digital asset, or that is accepted by a second party pursuant to a sale effected by a processor of digital asset payments described in paragraph (a)(9)(ii)(D) of this section, meets the condition set forth in this paragraph (d)(10)(ii)(C).

(D) *Examples—(1) Example 1—(i) Facts.* Y is a privately held corporation that issues DL1, a digital asset designed to track the value of the U.S. dollar. Pursuant to regulatory requirements, DL1 is backed in full by U.S. dollars and other liquid short-term U.S. dollar-denominated assets held by Y, and Y offers to redeem units of DL1 for U.S. dollars at par at any time. Y's retention of U.S. dollars and other liquid short-term U.S. dollar-denominated assets as collateral and Y's offer to redeem units of DL for U.S. dollars at par at any time are intended to cause DL1 to track the U.S. dollar on a one-to-one basis. Broker B accepts DL1 as payment in return for sales of other digital assets.

(ii) *Analysis.* DL1 satisfies the three conditions set forth in paragraphs (d)(10)(ii)(A) through (C) of this section. First, DL1 was designed to track on a one-to-one basis the U.S. dollar, which is a single convertible currency issued by a government or a central bank. Second, DL1 uses a stabilization mechanism, as described in paragraph (d)(10)(ii)(B)(2) of this section, that pursuant to regulatory requirements requires Y to offer to redeem one unit of DL1 for one U.S. dollar at any time. Finally, because B accepts DL1 as payment for sales of other digital assets, DL1 is generally accepted as payment by persons other than Y. Accordingly, DL1 is a qualifying stablecoin under this paragraph (d)(10)(ii).

(2) *Example 2—(i) Facts.* Z is a privately held corporation that issues DL2, a digital asset designed to track the value of the U.S. dollar on a one-to-one basis that has a mechanism that is intended to effect that tracking. On April 28, Year X, Broker B effects the sale of units of DL2 for cash on behalf of customer C. During Year X, the unit value of DL2 did not fluctuate from the U.S. dollar by more than 3 percent over any consecutive 10-day period. Merchant M accepts payment in DL2 in return for goods and services in connection with sales effected by processors of digital asset payments.

(ii) *Analysis.* DL2 satisfies the three conditions set forth in paragraphs (d)(10)(ii)(A) through (C) of this section. First, DL2 was designed to track on a one-to-one basis the U.S. dollar, which is a single convertible currency issued by a government or a central bank. Second, DL2 uses a stabilization mechanism, as described in paragraph (d)(10)(ii)(B)(2) of this section, that results in the unit value of DL2 not fluctuating from the U.S. dollar by more than 3 percent over any consecutive 10-day period during the calendar year (Year X). Third, Merchant M accepts payment in DL2 in return for goods and services in connection with sales effected by processors of digital asset payments DL2 is generally accepted as

payment by persons other than Z. Accordingly, DL2 is a qualifying stablecoin under this paragraph (d)(10)(ii).

(iii) *Optional reporting method for specified nonfungible tokens—(A) In general.* In lieu of reporting sales of specified nonfungible tokens under the reporting rules provided under paragraph (d)(2)(i)(B) of this section, a broker may report sales of specified nonfungible tokens as defined in paragraph (d)(10)(iv) of this section on an aggregate basis as provided in this paragraph (d)(10)(iii). Other digital assets, including nonfungible tokens that are not specified nonfungible tokens, are not eligible for the optional reporting method in this paragraph (d)(10)(iii).

(B) *Reporting method for specified nonfungible tokens.* A broker reporting under this paragraph (d)(10)(iii) must report sales of specified nonfungible tokens if the customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all sales of specified nonfungible tokens exceed \$600 for the year. If the customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from such sales effected by that broker do not exceed \$600 for the year, no report is required. A broker reporting under this paragraph (d)(10)(iii)(B) must report on a Form 1099-DA or any successor form in the manner required by such form or instructions the following information with respect to the customer's sales of specified nonfungible tokens—

(1) The name, address, and taxpayer identification number of the customer;

(2) The aggregate gross proceeds for the year from all sales of specified nonfungible tokens (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section);

(3) The total number of specified nonfungible token sales;

(4) To the extent ordinarily known by the broker, the aggregate gross proceeds that is attributable to the first sale by a creator or minter of the specified nonfungible token; and

(5) Any other information required by the form or instructions.

(C) *Examples.* The following examples illustrate the rules of this paragraph (d)(10)(iii).

(1) *Example 1: Optional reporting method for specified nonfungible tokens—(i) Facts.* CRX is a digital asset broker that provides services to customer J, an individual not otherwise exempt from reporting. In Year 1, CRX sells on behalf of J, ten specified nonfungible tokens for a gross proceeds amount equal to \$1,500. CRX does not sell any other specified nonfungible tokens for J during Year 1.



(ii) *Analysis*. In lieu of reporting J's sales of the ten specified nonfungible tokens under paragraph (d)(2)(i)(B) of this section, CRX may report these sales under the reporting method set forth in this paragraph (d)(10)(iii). In this case, J's sales of the ten specified nonfungible tokens gave rise to total gross proceeds of \$1,500 for Year 1. Because the total gross proceeds from J's sales of the ten specified nonfungible tokens exceeds \$600, CRX must make a single return of information under this section for these sales.

(2) *Example 2: Optional reporting method for specified nonfungible tokens—(i) Facts*. The facts are the same as in paragraph (d)(10)(iii)(C)(1)(i) of this section (the facts in *Example 1*), except that the total gross proceeds from the sale of J's ten specified nonfungible tokens is \$500.

(ii) *Analysis*. Because J's sales of the specified nonfungible tokens result in total gross proceeds of \$500, CRX is not required to make a return of information under this section for J's sales of the specified nonfungible tokens.

(iv) *Specified nonfungible token*. For purposes of this section, the term *specified nonfungible token* means a digital asset that satisfies the conditions set forth in paragraphs (d)(10)(iv)(A) through (C) of this section.

(A) *Indivisible*. The digital asset cannot be subdivided into smaller units without losing its intrinsic value or function.

(B) *Unique*. The digital asset itself includes a unique digital identifier, other than a digital asset address, that distinguishes that digital asset from all other digital assets.

(C) *Excluded property*. The digital asset is not and does not directly or through one or more other digital assets that satisfy the conditions described in paragraphs (d)(10)(iv)(A) and (B) of this section, provide the holder with any interest in any of the following excluded property—

(1) A security under paragraph (a)(3) of this section;

(2) A commodity under paragraph (a)(5) of this section;

(3) A regulated futures contract under paragraph (a)(6) of this section;

(4) A forward contract under paragraph (a)(7) of this section; or

(5) A digital asset that does not satisfy the conditions described in paragraphs (d)(10)(iv)(A) and (B) of this section.

(D) *Examples*. The following examples illustrate the rules of this paragraph (d)(10)(iv).

(1) *Example 1: Specified nonfungible token—(i) Facts*. Individual J is an artist in the business of creating and selling digital assets that reference J's artwork. J creates a unique digital asset (DA-J) that represents J's artwork. The digital asset includes a unique digital identifier, other than a digital asset address, that distinguishes DA-J from all other digital assets. DA-J cannot be subdivided into smaller units.

(ii) *Analysis*. DA-J is a digital asset that satisfies the three conditions described in paragraphs (d)(10)(iv)(A) through (C) of this section. DA-J cannot be subdivided into smaller units without losing its intrinsic value or function. Additionally, DA-J includes a unique digital identifier that distinguishes DA-J from all other digital assets. Finally, DA-J does not provide the holder with any interest in excluded property listed in paragraphs (d)(10)(iv)(C)(1) through (5) of this section. Accordingly, DA-J is a specified nonfungible token under this paragraph (d)(10)(iv).

(2) *Example 2: Specified nonfungible token—(i) Facts*. K creates a unique digital asset (DA-K) that provides the holder with the right to redeem DA-K for 100 units of digital asset DE. Units of DE can be subdivided into smaller units and do not include a unique digital identifier, other than a digital asset address, that distinguishes one unit of DE from any other unit of DE. DA-K cannot be subdivided into smaller units and includes a unique digital identifier, other than a digital asset address, that distinguishes DA-K from all other digital assets.

(ii) *Analysis*. DA-K provides its holder with an interest in 100 units of digital asset DE, which is excluded property, as described in paragraph (d)(10)(iv)(C)(5) of this section, because DE units can be subdivided into smaller units and do not include unique digital identifiers that distinguish one unit of DE from any other unit of DE. Accordingly, DA-K is not a specified nonfungible token under this paragraph (d)(10)(iv).

(3) *Example 3: Specified nonfungible token—(i) Facts*. The facts are the same as in paragraph (d)(10)(iv)(D)(2)(i) of this section (the facts in *Example 2*) except that in addition to providing its holder with an interest in the 100 units of DE, DA-K also provides rights to or access to a unique work of art.

(ii) *Analysis*. Because DA-K provides its holder with an interest in excluded property described in paragraph (d)(10)(iv)(C)(5) of this section, it is not a specified nonfungible token under paragraph (d)(10)(iv) without regard to whether it also references property that is not excluded property.

(4) *Example 4: Specified nonfungible token—(i) Facts*. B creates a unique digital asset (DA-B) that provides the holder with the right to redeem DA-B for physical merchandise in B's store. DA-B cannot be subdivided into smaller units and includes a unique digital identifier, other than a digital asset address, that distinguishes DA-B from all other digital assets.

(ii) *Analysis*. DA-B is a digital asset that satisfies the three conditions described in paragraphs (d)(10)(iv)(A) through (C) of this section. DA-B cannot be subdivided into smaller units without losing its intrinsic value or function. Additionally, DA-B includes a unique digital identifier that distinguishes DA-B from all other digital assets. Finally, DA-B does not provide the holder with any interest in excluded property listed in paragraphs (d)(10)(iv)(C)(1) through (5) of this section. Accordingly, DA-B is a specified nonfungible token under this paragraph (d)(10)(iv).

(v) *Joint accounts*. For purposes of determining if the gross proceeds thresholds set forth in paragraphs (d)(10)(i)(B) and (d)(10)(iii)(B) of this section have been met for the customer, the customer is the person whose tax identification number would be required to be shown on the information return (but for the application of the relevant threshold) after the application of the backup withholding rules under § 31.3406(h)–2(a) of this chapter.

(11) *Collection and retention of additional information with respect to the sale of a digital asset*. A broker required to make an information return under paragraph (c) of this section with respect to the sale of a digital asset must collect the following additional information, retain it for seven years from the date of the due date for the information return required to be filed under this section, and make it available for inspection upon request by the Internal Revenue Service:

(i) The transaction ID as defined in paragraph (a)(24) of this section in connection with the sale, if any; and 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;

(ii) For each 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 transaction ID of such transfer in and the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred, if any.

(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 this paragraph (e) and paragraph (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 this paragraph (e) and paragraph (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 this paragraph (e) and paragraph (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) *Exempt foreign persons*—(1) *Brokers*. 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 as defined in paragraph (a)(9)(ii) of this section.

(i) 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 effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii), as made to a foreign payee in accordance with § 1.6049–5(d)(1), or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049–5(c) regarding rules applicable to documentation of foreign status shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with

the customer or received instructions with respect to the sale from the customer. The provisions in § 1.6049–5(c) regarding the definitions of *U.S. payor*, *U.S. middleman*, *non-U.S. payor*, and *non-U.S. middleman* shall also apply for purposes of this paragraph (g)(1)(i). The provisions of § 1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee*, respectively, and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Code. The provisions of § 1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee*, respectively. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes 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. The certification is not required if a broker receives documentary evidence under § 1.6049–5(c)(1) or (4).

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on, which is described in § 1.6049–5(b)(6), (7), (10), or (11) or the dividends on, which are described in § 1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) 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 effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked as described in § 1.1441–2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(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) *Applicable rules*—(i) *Joint owners*. Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g)(1)(i) or (g)(2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is*. For purposes of paragraph (g)(1) of this section, the determination of who the customer is shall be made on the basis of the provisions in § 1.6049–5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer*.

(iii) *Place of effecting sale*—(A) *Sale outside the United States*. 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. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(1) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(2) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States.* For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(1) The customer has opened an account with a United States office of that broker;

(2) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(3) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in § 1.6049–5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(4) The confirmation of the sale is mailed to a customer at an address in the United States; or

(5) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441–1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of § 1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under § 1.6049–5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman (as defined in § 1.6049–4(a) and (f)(4)), which payment the payor or middleman can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii), (iii) or (v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S.

branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. *See, however,* paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception of this paragraph (g)(3)(iv) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in § 1.1441–1(e)(5)(iii).

(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 person that effects sales of digital assets on behalf of others and that is—

(1) A U.S. payor or U.S. middleman as defined in § 1.6049–5(c)(5)(i)(A) that is not a foreign branch or office of such person, § 1.6049–5(c)(5)(i)(B) or (F) that is not a territory financial institution described in § 1.1441–1(b)(2)(iv).

(2) [Reserved]

(B) [Reserved]

(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)(i) 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 money services businesses.*

(iv) *Rules for non-U.S. digital asset brokers not conducting activities as money services businesses.*

(A) [Reserved]

(B) *Sale treated as effected at an office inside the United States—(1) [Reserved]*

(2) *U.S. indicia.* The U.S. indicia relevant for purposes of this paragraph (g)(4)(iv)(B) are as follows—

(i) 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;

(ii) An unambiguous indication of a U.S. place of birth for the customer; or

(v) [Reserved]

(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 (as applicable) 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 of documentary evidence (when permitted to be relied upon under paragraph (g)(4)(vi)(C) of this section), 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 (as applicable to the broker) 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—(i) In general.* 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 must 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 a broker has classified as an entity, the broker must 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. 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. Notwithstanding the 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 or reason to know that the customer is a U.S. person. For purposes of applying the presumption rules of this paragraph (g)(4)(vi)(A)(2), a broker must identify

its customer by applying the rules of § 1.6049-5(d)(1), substituting the terms *customer* and *broker* for the terms *payee* and *payor*, respectively.

(ii) *Presumption rule specific to U.S. digital asset brokers.* With respect to a customer that a U.S. digital asset broker has classified as an individual, the broker must treat the customer as a U.S. person.

(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. With respect to a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section, reason to know is limited to when the broker has any of the U.S. indicia set forth in paragraph (g)(4)(iv)(B)(2)(i) or (ii) of this section 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. 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 paragraph (g)(4)(iv)(B)(2)(i) or (ii) of this section on the withholding certificate or in the account information for a customer in the circumstances described in paragraphs (g)(4)(vi)(B)(1) and (2) of this section.

(1) *Collection of information other than U.S. place of birth—(i) In general.* With respect to any of the U.S. indicia described in paragraph (g)(4)(iv)(B)(2)(i) 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.

(ii) [Reserved]

(2) *Collection of information showing U.S. place of birth.* With respect to the U.S. indicia described in paragraph (g)(4)(iv)(B)(2)(ii) 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) [Reserved]

(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 in general.* 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. 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).

(i) *Presumption rule specific to U.S. digital asset brokers.* A U.S. digital asset broker 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). For purposes of applying the presumption rules referenced in the preceding sentence, a U.S. digital asset broker must identify its customer by applying the rules of § 1.6049–5(d)(1), substituting the terms *customer* and *U.S. digital asset broker* for the terms *payee* and *payor*, respectively. See § 1.1441–1(b)(3)(iii) for presumption rules relating to the U.S. or foreign status of a customer.

(ii) [Reserved]

(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 § 1.1441–5(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), 1.1441–5(d) (relating to partnership status as U.S. or foreign) and 1.1441–5(e)(6) (relating to the status of trusts and estates as U.S. or foreign). For purposes of applying the presumption rules referenced in the preceding sentence, a broker must identify its customer by applying the rules of § 1.6049–5(d)(1), substituting the terms *customer* and *broker* for the terms *payee* and *payor*, respectively. 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, 2027, that was held in an account established for the customer by a broker before January 1, 2026, 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 exchanges.* 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 this paragraph (g)(4).

(5) *Examples.* The application of the provisions of paragraphs (g)(1) through (3) of this section may be illustrated by the following examples:

(i) *Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section.

Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049–5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

(ii) *Example 2.* The facts are the same as in paragraph (g)(5)(i) of this section (the facts in *Example 1*) except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

(iii) *Example 3.* The facts are the same as in paragraph (g)(5)(ii) of this section (the facts in *Example 2*) except that FP is also the agent of A. The result is the same as in paragraph (g)(5)(ii) of this section (*Example 2*). Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049–5(c)(5)).

(iv) *Example 4.* The facts are the same as in paragraph (g)(5)(i) of this section (the facts in *Example 1*) except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

(v) *Example 5.* The facts are the same as in paragraph (g)(5)(iv) of this section (the facts in *Example 4*) except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

(vi) *Example 6.* The facts are the same as in paragraph (g)(5)(iv) of this section (the facts in *Example 4*) except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049–5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

(vii) *Example 7—(A) Facts.* Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(B) *Analysis with respect to Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042–S under § 1.1461–1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(C) *Analysis with respect to X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. *See* § 1.6049–5(c)(5). Under the presumptions described in § 1.6049–5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of § 1.1441–1(b)(3)(i) through (iii), with respect to the sales proceeds, to treat A as a partnership that is a U.S. non-exempt recipient because the presumption of foreign status for offshore obligations under § 1.1441–1(b)(3)(iii)(D) does not apply. *See* paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in § 1.1471–1(b)(47)) that is excepted from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the



payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (*see* paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under § 1.1441–1(b)(3)(iii)(D) does not apply. *See* § 1.6049–5(d)(2)(i).

(viii) *Example 8—(A) Facts.* The facts are the same as in paragraph (g)(5)(vii) of this section (the facts in *Example 7*) except that X is a foreign corporation that is not a U.S. payor under § 1.6049–5(c).

(B) *Analysis with respect to Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(C) *Analysis with respect to X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of § 1.6049–5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is not a U.S. payor under § 1.6049–5(c)(5). Therefore, X is not required to report the sale under paragraph (c)(2) 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 the Form 1099–DA, *Digital Asset Proceeds from Broker Transactions*, 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, this paragraph (m) applies to the option if it is granted or acquired on or after January 1, 2026.

\* \* \* \* \*

(n) \* \* \*

(6) \* \* \*

(i) *Sale.* A broker must report the amount of market discount that has accrued on a debt instrument as of the date of the instrument's sale, as defined in paragraph (a)(9)(i) of this section. *See* paragraphs (n)(5) and (n)(11)(i)(B) of this section to determine whether the amount reported should take into account a customer election under section 1276(b)(2). *See* paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of market discount. This paragraph (n)(6)(i) does not apply if the customer notifies the broker under the rules in paragraph (n)(5) of this section that the customer elects under section 1278(b) to include market discount in income as it accrues.

\* \* \* \* \*

(q) *Applicability dates.* Except as otherwise provided in paragraphs (d)(6)(ix), (m)(2)(ii), and (n)(12)(ii) of this section, and in this paragraph (q), this section applies on or after January 6, 2017. Paragraphs (k)(4) and (l) of this section apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2024. (For rules that apply after June 30, 2014, and before January 6, 2017, *see* 26 CFR 1.6045–1, as revised April 1, 2016.) Except in the case of a sale of digital assets for real property as described in paragraph (a)(9)(ii)(B) of this section, this section applies to sales of digital assets on or after January 1, 2025. In the case of a sale of digital assets for real property as described in paragraph (a)(9)(ii)(B) of this section, this section applies to sales of digital assets 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, 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” from 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 words “or digital asset” after the word “cash”;
- 8. Revising and republishing paragraphs (g) and (h)(1);
- 9. Adding paragraphs (h)(2)(iii) and (h)(3);
- 10. Revising paragraphs (i)(1) and (2), (i)(3)(ii), and (o);
- 11. In paragraph (r):
  - a. Redesignating *Examples 1* through *9* as paragraphs (r)(1) through (9), respectively;
  - b. In newly redesignated paragraph (r)(3), removing “section (b)(1)” and adding “paragraph (b)(1)” in its place;
  - c. Removing the heading in newly redesignated reserved paragraph (r)(5);
  - d. Revising newly redesignated paragraph (r)(7);
  - e. In the first sentence of newly redesignated paragraph (r)(8), removing “example (6)” and adding “paragraph (r)(6) of this section (the facts in *Example 6*)” in its place;
  - f. In the first sentence of newly redesignated paragraph (r)(9), removing “example (8)” and adding “paragraph (r)(8) of this section (the facts in *Example 8*)” in its place; and
  - g. Adding paragraph (r)(10).
- 12. Adding a sentence to the end of paragraph (s).

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

\* \* \* \* \*

(g) *Prescribed form.* Except as otherwise provided in paragraph (k) of this section, the information return required by paragraph (a) of this section shall be made on Form 1099-S, *Proceeds From Real Estate Transactions* or any successor form.

(h) \* \* \*

(1) *In general.* The following information must be set forth on the Form 1099-S required by this section:

(i) The name, address, and taxpayer identification number (TIN) of the transferor (see also paragraph (f)(2) of this section);

(ii) A general description of the real estate transferred (in accordance with paragraph (h)(2)(i) of this section);

(iii) The date of closing (as defined in paragraph (h)(2)(ii) of this section);

(iv) To the extent required by the Form 1099-S and its instructions, the entire gross proceeds with respect to the transaction (as determined under the rules of paragraph (i) of this section), and, in the case of multiple transferors, the gross proceeds allocated to the transferor (as determined under paragraph (i)(5) of this section);

(v) To the extent required by the Form 1099-S and its instructions, an indication that the transferor—

(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

(C) May receive, in connection with a contingent payment transaction, an amount of gross proceeds that cannot be determined with certainty using the method described in paragraph (i)(3)(iii) of this section and is therefore not included in gross proceeds under paragraphs (i)(3)(i) and (iii) of this section;

(vi) The real estate reporting person's name, address, and TIN;

(vii) In the case of a payment made to the transferor using digital assets, the name and number of units of the digital asset, and the date the payment was made;

(viii) [Reserved]

(ix) Any other information required by the Form 1099-S or its instructions.

(2) \* \* \*

(iii) *Digital assets.* For purposes of this section, a digital asset has the meaning set forth in § 1.6045-1(a)(19).

(3) *Limitation on information provided.* The information required in the case of payment made to the transferor using digital assets under paragraph (h)(1)(vii) of this section and the portion of any gross proceeds attributable to that payment required to be reported by paragraph (h)(1)(iv) of this section is not required unless the real estate reporting person has actual knowledge or ordinarily would know that digital assets were received by the transferor as payment. For purposes of this limitation, a real estate reporting person is considered to have actual knowledge that payment was made to the transferor using digital assets if the terms of the real estate contract provide for payment using digital assets.

(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 processor of digital asset payments as described in § 1.6045-1(a)(22), 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-S 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) of this section (the results in *Example 6*).

\* \* \* \* \*

(10) *Example 10: Gross proceeds (exchange involving digital assets)—(i) Facts.* K, an individual, agrees in a contract for sale to pay 140 units of digital asset DE with a total 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.* P has actual knowledge that payment was made to J using digital assets because the terms of the real estate contract provide for payment using digital assets. Accordingly, 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) on Form 1099-S, *Proceeds From Real Estate Transactions*. 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 on Form 1099-DA, *Digital Asset Proceeds from Broker Transactions*, 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, 2026.

■ **Par. 8.** Section 1.6045A-1 is amended by:

- 1. In paragraph (a)(1)(i), in the first sentence, removing “paragraphs (a)(1)(ii) through (v) of this section,” and adding “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 reportable as digital assets.* No transfer statement is required under paragraph (a)(1)(i) of this section with respect to a specified security, the sale of which is reportable as a digital asset after the application of the special coordination rules under § 1.6045-1(c)(8). A transferor that chooses to provide a transfer statement with respect to a specified security described in the preceding sentence that is a tokenized security described in § 1.6045-1(c)(8)(i)(D) that reports 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:

- 1. Revising paragraph (a)(1) introductory text;
- 2. Adding paragraph (a)(6);
- 3. Removing the word “and” from the end of paragraph (j)(5);
- 4. Removing the period from the end of paragraph (j)(6) and adding in its place “; and”;
- 5. Adding paragraph (j)(7).

The revision and additions read as follows:

**§ 1.6045B-1 Returns relating to actions affecting basis of securities.**

(a) \* \* \*

(1) *Information required.* Except as provided in paragraphs (a)(4) and (5) 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) *Reporting for certain specified securities that are digital assets.* Unless otherwise excepted under this section, an issuer of a specified security described in paragraph (a)(1) of this section is required to report under this section without regard to whether the specified security is also described in § 1.6045-1(a)(14)(v) or (vi). If a specified security is described in § 1.6045-1(a)(14)(v) or (vi) but is not also described in § 1.6045-1(a)(14)(i), (ii), (iii) or (iv), the issuer of that specified security is permitted, but not required, to report under this section. An issuer that chooses to provide the reporting and furnish statements for a specified security described in the previous sentence is not subject to penalties under section 6721 or 6722 of the Code for failure to report this information correctly.

\* \* \* \* \*

(j) \* \* \*

(7) Organizational actions occurring on or after January 1, 2025, that affect the basis of digital assets described in § 1.6045-1(a)(14)(v) or (vi) that are also described in one or more paragraphs of § 1.6045-1(a)(14)(i) through (iv).

■ **Par. 10.** Section 1.6050W-1 is amended by adding a sentence to the end of paragraph (a)(2), adding paragraph (c)(5), and revising paragraph (j) to 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 this paragraph (c), 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, the exchange is a sale of digital assets by the payee under § 1.6045–1(a)(9)(ii), and the payor is a broker under § 1.6045–1(a)(1) that effected the sale of such digital assets, 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).

(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. Additionally, CRX is a processor of digital asset payments as defined in § 1.6045–1(a)(22) and a broker under § 1.6045–1(a)(1). 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.

(3) *Analysis with respect to the reporting on P.* P's payment of 100 units of DE to CRX in return for the payment by CRX of \$1,000 in cash to S is a sale of the DE units as defined in § 1.6045–1(a)(9)(ii)(D) that is effected by CRX, a processor of digital asset payments and broker under § 1.6045–1(a)(1). 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 and 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.* CRX is an entity that owns and operates a digital asset trading platform and provides digital asset custodial services and digital asset broker services under § 1.6045–1(a)(1). CRX also exchanges on behalf of customers digital assets under § 1.6045–1(a)(19), including nonfungible 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 digital 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 representing goods or services, 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 that was effected by CRX. 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) that was effected by CRX. 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 31.3406–0 is amended by:

- 1. Revising the heading for the entry for § 31.3406(b)(3)–2;
- 2. Adding entries for §§ 31.3406(b)(3)–2(b)(6), 31.3406(g)–1(e)(1) and (2); and
- 3. Revising the entry for § 31.3406(g)–1(f).

The additions and revision read as follows:

### § 31.3406–0 Outline of the backup withholding regulations.

\* \* \* \* \*

*31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities, commodities, or digital assets by brokers.*

\* \* \* \* \*

(b) \* \* \*

(6) Amount subject to backup withholding in the case of reporting under § 1.6045–1(d)(2)(i)(C) and (d)(10) of this chapter.

(i) Optional reporting method for sales of qualifying stablecoins and specified nonfungible tokens.

(A) In general.

(B) Backup withholding on non-designated sales of qualifying stablecoins.

(1) In general.

(2) Non-qualifying events.

(ii) Applicable threshold for sales by processors of digital asset payments.

\* \* \* \* \*

*§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.*

\* \* \* \* \*

(e) \* \* \*

(1) Reportable payments other than gross proceeds from sales of digital assets.

(2) Reportable payments of gross proceeds from sales of digital assets.

(i) [Reserved]

(ii) [Reserved]

(f) Applicability date.

\* \* \* \* \*

■ **Par. 13.** Section 31.3406(b)(3)–2 is amended by revising the section heading and adding paragraphs (b)(6) and (c) 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.

\* \* \* \* \*

(b) \* \* \*

(6) *Amount subject to backup withholding in the case of reporting under § 1.6045–1(d)(2)(i)(C) and (d)(10) of this chapter—(i) Optional reporting method for sales of qualifying stablecoins and specified nonfungible tokens—(A) In general.* The amount subject to withholding under section 3406 for a broker that reports sales of digital assets under the optional method for reporting qualifying stablecoins or specified nonfungible tokens under § 1.6045–1(d)(10) of this chapter is the amount of gross proceeds from designated sales of qualifying stablecoins as defined in § 1.6045–1(d)(10)(i)(C) of this chapter and sales of specified nonfungible tokens without regard to the amount which must be paid to the broker's customer before reporting is required.

(B) *Backup withholding on non-designated sales of qualifying stablecoins—(1) In general.* A broker is not required to withhold under section 3406 on non-designated sales of qualifying stablecoins as defined under § 1.6045–1(d)(10)(i)(C) of this chapter.

(2) *Non-qualifying events.* In the case of a digital asset that would satisfy the definition of a non-designated sale of a qualifying stablecoin as defined under § 1.6045–1(d)(10)(i)(C) of this chapter for a calendar year but for a non-qualifying event during that year, a broker is not required to withhold under section 3406 on such sale if it occurs no later than the end of the day that is 30 days after the first non-qualifying event with respect to such digital asset during such year. A *non-qualifying event* is the first date during a calendar year on which the digital asset no longer satisfies all three conditions described in § 1.6045–1(d)(10)(ii)(A) through (C) of this chapter to be a qualifying stablecoin. For purposes of this paragraph (b)(6)(i)(B)(2), the date on which a non-qualifying event has occurred with respect to a digital asset and the date that is no later than 30 days after such non-qualifying event must be determined using Coordinated Universal Time (UTC).

(ii) *Applicable threshold for sales by processors of digital asset payments.* For purposes of determining the amount subject to withholding under section

3406, the amount subject to reporting under section 6045 is determined without regard to the minimum gross proceeds which must be paid to the customer under § 1.6045–1(d)(2)(i)(C) of this chapter before reporting is required.

(c) *Applicability date.* This section applies to reportable payments made on or after January 1, 2025. For the rules applicable to reportable payments made prior to January 1, 2025, see § 31.3406(b)(3)–2 in effect and contained in 26 CFR part 1 revised April 1, 2024.

■ **Par. 14.** 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—(1) Reportable payments other than gross proceeds from sales of digital assets.* 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). The exception to backup withholding described in the preceding sentence does 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.

(2) [Reserved]

(f) *Applicability date.* This section applies to payments made on or after January 1, 2025. (For payments made before January 1, 2025, *see* § 31.3406(g)–1 in effect and contained in 26 CFR part 1 revised April 1, 2024.)

■ **Par. 15.** 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, 2026.

**PART 301—PROCEDURE AND ADMINISTRATION**

■ **Par. 16.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 17.** Section 301.6721–1 is amended by revising paragraph (h)(3)(iii) and adding a sentence to the end of paragraph (j) to read as follows:

**§ 301.6721–1 Failure to file correct information returns.**

\* \* \* \*

(h) \* \* \*

(3) \* \* \*

(iii) Section 6045(a) or (d) of the Code (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; Form 1099–DA, *Digital Asset Proceeds from Broker Transactions* 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); and

\* \* \* \*

(j) \* \* \* Paragraph (h)(3)(iii) of this section applies to returns required to be filed on or after January 1, 2026.

■ **Par. 18.** Section 301.6722–1 is amended by revising paragraph (e)(2)(viii) and adding a sentence to the end of paragraph (g) to read as follows:

**§ 301.6722–1 Failure to furnish correct payee statements.**

\* \* \* \*

(e) \* \* \*

(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; Form 1099–DA, *Digital Asset Proceeds From Broker Transactions*, 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);

\* \* \* \*

(g) \* \* \* Paragraph (e)(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.*

Approved: June 17, 2024.

**Aviva R. Aron-Dine,**  
*Acting Assistant Secretary of the Treasury (Tax Policy).*

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