

UNITED STATES DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TELECONFERENCE PUBLIC HEARING ON PROPOSED  
REGULATIONS

"GROSS PROCEEDS AND BASIS REPORTING BY BROKERS AND  
DETERMINATION OF AMOUNT REALIZED AND BASIS FOR  
DIGITAL ASSET TRANSACTIONS"

[REG-122793-19]

Washington, D.C.

Monday, November 13, 2023

1 PARTICIPANTS:

2 Speakers:

3 JESSALYN DEAN  
Ledgible

4 WILLIAM ENTRIKEN  
5 Phor

6 LAWRENCE ZLATKIN  
CoinBase Global, Inc.

7 GINA MOON  
8 Ozone Networks, Inc d/b/a OpenSea

9 SHEHAN CHANDRASEKERA  
CoinTracker

10 MARISA T. COPPEL  
11 Blockchain Association

12 LINDSEY CARPENTER  
National Taxpayers Union Foundation

13 RYAN LEVERETT  
14 Self

15 CARLO D'ANGELO  
DeFi Defense Law

16 TAVARUS BLACKMON  
17 Tavarus Blackmon Art

18 RORY RAWLINGS  
Blu Canary Capital, LLC

19 SEAN MCELROY  
20 KEVIN KIRBY  
Fenwick & West LLP

21 \* \* \* \* \*

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 MODERATOR: I am the moderator of  
4 today's hearing. Panelists at today's hearing  
5 include counsel with the IRS Office of Chief  
6 Counsel Procedure and Administration, and  
7 attorneys with the Treasury Department's Office of  
8 Tax Policy. Our hearing will have 13 speakers who  
9 previously requested to speak at today's hearing.  
10 Each speaker will have 10-minutes to present their  
11 comments. At 1-minute prior to the end of each  
12 speaker's 10-minute period, the operator assigned  
13 to this call will cut in to warn the speaker that  
14 only 1-minute of speaking time remains. The  
15 operator will then mute the speaker's microphone  
16 when the 10-minute period allotted to that speaker  
17 has ended. The panel members may then either pose  
18 questions to that speaker or turn to the next  
19 speaker. With that, the first speaker is Jessalyn  
20 Dean from Legible.

21 MS. DEAN: Thank you. Can you confirm  
22 that you can hear me?

1                   MODERATOR: I can hear you.

2                   MS. DEAN: Great. Good morning,  
3 everyone. I'm Jessalyn Dean and I'm the Vice  
4 President of Tax Information Reporting at Legible.  
5 On behalf of the team at Legible and our CEO  
6 Calcanti (phonetic), we're thankful for the  
7 opportunity to participate in the legislative  
8 process of tax reporting over digital assets.  
9 Crypto and other digital assets are currently  
10 facing the unprecedented prospect of 1099 tax  
11 reporting over transactions where substantive tax  
12 law about those transactions is still unsettled.  
13 In contrast, the traditional financial services  
14 industry has had the benefit of decades of largely  
15 settled substantive tax law before being required  
16 to layer 1099 tax reporting on top of those  
17 transactions.

18                   The traditional financial services  
19 industry has also been given far more time to  
20 implement various components of tax reporting  
21 while the digital assets industry is being given a  
22 shockingly short window to stand up their entire

1 operating models. Indeed, gross proceeds  
2 reporting on Form 109 B was in place for 20 years  
3 before cost basis information was required to be  
4 reported by traditional securities brokers.  
5 Though native crypto tokens and NFTs are facing  
6 the brunt of the short implementation window  
7 offered by the IRS, a subset of digital assets  
8 called tokenized securities and tokenized real  
9 estate already have existing tax reporting  
10 obligations to comply with tokenizing of  
11 securities and real estate creates a digital  
12 receipt of ownership but does not necessarily  
13 create new financial products. Because of this,  
14 some of the largest names in traditional financial  
15 services are embracing tokenization, even where  
16 they have shied away from native crypto tokens and  
17 related services.

18 Longstanding, heavily regulated  
19 financial institutions are entering the  
20 tokenization market in order to leverage  
21 blockchain technology to innovate back-office  
22 infrastructure and shareholder record keeping.

1 Names you can find in the news offering tokenized  
2 financial products in the U.S. include Wisdom Tree  
3 and Franklin Templeton, and abroad include  
4 Deutsche Bank and HSBC, increasing speed of  
5 transactions, increasing efficiency, and reducing  
6 costs to investors. Tokenization is not just the  
7 future of blockchain technology; it is here today  
8 in the types of products that the IRS and  
9 taxpayers are already familiar with and are  
10 subject to existing tax reporting requirements. I  
11 will address the remainder of my remarks to two  
12 categories of tokenized financial products, 1940  
13 Act Mutual Funds and real estate.

14 1940 Act Mutual Funds, particularly  
15 subchapter C-Corporations and subchapter M:RICs,  
16 today fall under existing 60/45 broker  
17 regulations. Sales or exchanges of these mutual  
18 funds are reportable on 1099B reporting the  
19 proceeds and basis information. Reporting of  
20 gross proceeds on sales or exchanges of mutual  
21 funds dates back to the 1980s, and in 2011, mutual  
22 funds began reporting cost basis information in

1 addition to gross proceeds.

2 One very important exception to Form  
3 1099B reporting is given to money market funds  
4 whose stable value means that it is bought and  
5 sold at the same price and therefore not reported  
6 at all on Form 1099B, though it may optionally be  
7 reported. This exception gives relief to the IRS  
8 and to the taxpayer having to process large  
9 volumes of unnecessary data for transactions  
10 resulting in zero gain or loss. The proposed  
11 regulations for digital assets will require  
12 tokenized mutual funds by default to be reported  
13 on a Form 1099DA. Recognizing that this is double  
14 reporting on a Form 1099B, the IRS has proposed a  
15 coordinating regulation so that sales or exchanges  
16 of tokenized mutual funds would only be reportable  
17 on the Form 1099DA and reporting on the B would  
18 end.

19 We at Legible strongly disagree with  
20 this proposal and insist that 1940 Act Mutual  
21 Funds that are already reportable on a Form 1099B  
22 should remain so. The Tokenized Mutual fund

1 industry is dominated today by traditional  
2 financial institutions. Though the proposed  
3 regulations for tax reporting on digital assets  
4 were largely written with a distrust of the  
5 digital assets industry, there is zero evidence to  
6 indicate that tokenized and highly regulated  
7 mutual funds offer any heightened risks of  
8 noncompliance with tax obligations when compared  
9 to their non-tokenized mutual fund counterparts.  
10 This is because today most of these tokenized  
11 mutual funds do not yet allow for transfers to  
12 self-hosted private wallets, peer to peer trading,  
13 indirect investment through omnibus accounts, or  
14 even broker to broker transfers.

15 Most alarmingly, the proposed  
16 regulations requiring Form 1099DA reporting  
17 instead of the B reporting, would cause tokenized  
18 money market funds to lose their exception to  
19 reporting and would therefore create a real  
20 de-incentivization to the mutual fund industry to  
21 tokenize their mutual funds. For many decades,  
22 shareholder record keepers have invested



1 significant amounts of their operating budget into  
2 software and infrastructure that is adapted to  
3 these existing 1099B tax form structures. The  
4 cost to these brokers would be enormous to  
5 overhaul their cost basis and 1099 reporting  
6 software and infrastructure for a specific subset  
7 of their mutual funds, even though they are  
8 economically identical to and regulated in the  
9 same way as their non-tokenized counterparts.

10           These costs would include shifting  
11 tokenized mutual funds from reporting on the B to  
12 the DA and to start reporting sales or exchanges  
13 of money market funds which were exempted under  
14 the B rules. In return for such enormous costs to  
15 these brokers, the IRS would receive no additional  
16 volume of transaction reporting compared to today,  
17 nor would they see an increased compliance rate by  
18 taxpayers that are already receiving Forms 1099B  
19 for these products. Next, I would like to address  
20 tokenized real estate.

21           In the proposed regulations, the IRS has  
22 spent considerable time addressing real estate

1 transactions that involve digital assets.  
2 However, the explanation of provisions, the text  
3 of the proposed regulations, and the examples all  
4 fail to capture and address the reality of most  
5 real estate transactions that leverage blockchain  
6 technology. In the U.S., the tokenization of real  
7 estate is complex in that it could result in a  
8 number of different legal structure outcomes.  
9 Sales of single pieces of real estate are commonly  
10 sold as NFTs, but they still have an LLC  
11 interposed as the owner of the real estate, since  
12 in all cases we are aware of an NFT cannot hold  
13 legal title to real estate in the U.S. Where real  
14 estate is being sold as fractional ownership,  
15 there is typically a partnership or LLC interposed  
16 as the owner of the real estate for the same  
17 reason that I just mentioned, but also to make  
18 partial ownership changes smoother.

19           Even where a partnership or LLC  
20 agreement has not been legally drafted, most every  
21 tax accountant would agree that a group of  
22 unrelated parties agreeing to pool their money

1 together to purchase and hold real estate is a  
2 default partnership for tax purposes under the  
3 Internal Revenue Code. Another possible structure  
4 outcome is that a REIT is formed, a real estate  
5 investment trust, and shares of the REIT are then  
6 tokenized. This is the case with the most often  
7 quoted use case of real estate tokenization, the  
8 Aspen Coin, which tokenized fractional ownership  
9 of a ski resort in Colorado. However, in the  
10 structure outcome, there is no partnership or LLC,  
11 and instead you have a tokenized security which  
12 falls under existing 1099B reporting that I  
13 discussed in my earlier remarks.

14           So, why does all of this matter? I  
15 mentioned that the IRS has failed to capture and  
16 address the reality of most real estate  
17 transactions that leverage blockchain technology.  
18 This is because investors in tokenized real estate  
19 are not buying and selling tokens representing  
20 ownership interests in real estate. They are  
21 buying and selling tokens, representing ownership  
22 interests in LLCs or partnerships, and where an

1       LLC or partnership exists for tax purposes, then  
2       Form 1065 and Schedule K1 reporting will follow  
3       the cost basis rules of interest in an LLC or  
4       partnership.

5                   OPERATOR: Excuse the interruption. You  
6       have one more minute remaining.

7                   MS. DEAN: Thank you. The cost basis  
8       rules of interest in an LLC partnership for tax  
9       purposes are complex and will never be information  
10      that is available to digital asset brokers. Not  
11      only is Form 1099DA reporting therefore completely  
12      inappropriate for these transactions, but it will  
13      lead to double reporting due to the absence of a  
14      coordinating regulation with Schedule K1  
15      reporting. This double reporting will create  
16      meaningless cost basis information and  
17      reconciliation nightmares with Schedule K1 for the  
18      taxpayers. We therefore insist that transactions  
19      involving tokenized real estate where Schedule K1  
20      reporting applies should be exempted from the VA  
21      reporting in the proposed REGs. My comments are  
22      now complete, and I thank you for your time.

1                   MODERATOR: Anyone on the panel have any  
2 questions? Okay, thank you. The next speaker  
3 will be William Entriken from Phor.

4                   MR. ENTRIKEN: Hello everybody, this is  
5 Will Entriken. Can you hear me?

6                   MODERATOR: Yes, we can. Thank you.

7                   MR. ENTRIKEN: Great. So, hi, I'm Will  
8 Entriken. Brief intro, I am the lead author of  
9 this document called ERC 721, which is the  
10 beginning of NFTs, which is a target of this  
11 regulation here. I've also worked with -- I'm a  
12 contributor to NIST, the National Institute of  
13 Science and Technology, the Standards and  
14 Technology, and apart for the paper that they've  
15 written defining what are tokens, blockchain  
16 tokens. And I've also worked with other  
17 governments on their crypto regulation. I have a  
18 horse in this race, and I have some opinions here,  
19 and I've given pretty extensive comments, but I  
20 just have a couple to share on this phone call.  
21 And I've got the next 10 years of lawsuits that  
22 are coming against this regulation, all tabulated

1 for you for everybody to see. Three points.

2 First, the IRS recognizes that a lot of  
3 these tokens are used for payments, and I was  
4 surprised to see how many people are actually  
5 using the crypto credit cards. It's crazy. And I  
6 love the estimates that are in this paper. So,  
7 whereas we recognize that these tokens are meant  
8 to be used for payments, the IRS does not have  
9 authority to require disclosure of some of these  
10 payments. Itemized disclosure, we're talking  
11 about every time you swipe your card, disclosing  
12 that to the IRS.

13 Just a couple examples. When you buy a  
14 gun, does the IRS have authority to require every  
15 purchase of a gun to be reported? No. Does the  
16 IRS have authority to require every purchase of an  
17 abortion to be reported? No. I just picked a  
18 couple. But there's a lot of special classes of  
19 purchases that there are existing laws where this  
20 regulation goes against them. So, if this  
21 regulation comes out as is, that's going to be a  
22 problem. So, we should more carefully think about

1 what types of things are going to be required for  
2 tax reporting because there are lots of  
3 specialized classes of purchases and uses of money  
4 that are already special cased and there are no  
5 special cases in this regulation.

6 Point number two, talking about my car.  
7 So, today, got my car out and I put gas in it; I'm  
8 going to drive to work. Put some gas in there.  
9 Driving to work. Now, as you know, gas is a  
10 marketable security. You can get futures against  
11 it. You can buy it on the market. There's a  
12 market price. You can watch it all day. There's  
13 even one time the price of gas went negative.  
14 That was crazy during COVID, right? But when  
15 you're driving your car, when you put gas in your  
16 car, there's a specific reason you're putting gas  
17 in your car. You're using it to drive. I'm using  
18 it to drive. Using it to drive. When's the last  
19 time you got in your car? You're like, okay, do  
20 you have an app on your phone to track the price  
21 of gas as you're driving? No, of course, nobody  
22 does that. So, when you put gas in your car, you

1 are using it to drive.

2           However, under this proposed regulation,  
3 as you're driving, every time you put your foot on  
4 the gas, you will be reporting that, that's a  
5 reportable transaction because it's not gas, it's  
6 a security, and that's inappropriate. In fact,  
7 every atom of gas that is being used and you've  
8 got Avogadro's number, is probably the first time  
9 it's coming up in IRS tax call. But it does apply  
10 because every time you burn one molecule of gas,  
11 that is now a market of security that you have to  
12 recognize gain on before you put it in your car to  
13 drive that one. I don't know, I don't know what  
14 the physical distance a car drives on one atom of  
15 gas, but that's obviously ridiculous.

16           However, but for some definition of car  
17 and gas and drive, it does require you to report  
18 every one of these transactions. And so, here's  
19 a, obviously, this is a stablecoin, this is a car  
20 analogy for stablecoins and transaction fees.  
21 There's a lot of individual transactions that are  
22 using these things. So, I want to propose a



1 really simple rubric that we can use here for this  
2 regulation. And the regulation is if you buy a  
3 token, if you buy a thing, an asset, digital  
4 asset, not digital asset, including gas, right.

5           If you buy an asset and the intention at  
6 the time that you bought it was to use it, not to  
7 sell it. And at the time that you use the thing,  
8 it was for the intentional purpose, the original  
9 purpose. And during that time, if there was no  
10 material, I'm going to leave that word undefined  
11 because the regulation likewise should do the  
12 same. If there's no material gain or loss at that  
13 time, then should not be reportable. Likewise,  
14 applying the stablecoins. If you bought a  
15 stablecoin because you wanted to use it for  
16 something and you use it for something and there's  
17 no material gain or loss, that's not reportable.  
18 If you use to buy a gun, it's not reportable.

19           However, now, if you do buy a stablecoin  
20 or gas for your car or whatever, and then you use  
21 it, but there is a material gain, well, then maybe  
22 some tax regulation applies. But in a lot of

1 cases, the IRS has already recognized that these  
2 assets are being used for payment purposes,  
3 payment on cash value. So, that can be like a  
4 stablecoin or payment for amount of go in your  
5 car, whereas that's more like gas. People are  
6 buying these things with the intention of using  
7 them. So, that's something that the regulation  
8 should make sense of because that's how the  
9 existing world works today. And the existing tax  
10 regulation works today.

11           Number three, final point. The IRS has  
12 put out a lot of regulation here, and obviously  
13 there's not a lot of law to go on. So, we've got  
14 a couple words in the text, the Jobs act, and then  
15 we've got all this regulation to kind of implement  
16 that. And we're trying to guess right? We have  
17 to guess what was their intention, how does this  
18 make sense? Now in the regulation, there's only  
19 one discernible motivation that I found, and the  
20 motivation was to reduce the tax gap. Okay, so  
21 we're trying to reduce the tax cap. We've got  
22 this one sentence basically from the Jobs Act, go

1 regulate crypto. And then we've got 80 pages of  
2 IRS regulation. And are we on the mark? Maybe.  
3 But there's a huge category of digital assets that  
4 none of this is focused on. And in fact, it's  
5 much larger than NFTs.

6 Anything that Coinbase is selling, any  
7 of these things, and it is credit card points.  
8 Credit card points is a digital asset as  
9 recognized under this regulation. Let's review.  
10 Credit card points are basically like cash. They  
11 can be converted to other types. So, you can get,  
12 you've got a Chase credit card, you can transfer  
13 those to American miles points. Let's say you can  
14 go to Iberia points, which you can get for a  
15 plane, or you donate as cash value, plane trips,  
16 food. You can use these points for all different  
17 types of things. Are they on a distributed  
18 ledger? You bet you there's different ledgers  
19 across all the different credit card points. And  
20 the points are transferable. They have cash  
21 value? Absolutely. Do they go up and down in  
22 value? Absolutely. Can use them for cash, for

1 services and goods? Absolutely. Do more than 100  
2 million people use them? Yes. So, that's more  
3 than 10 times larger than the market for crypto as  
4 currently articulated by this regulation.

5 So, I want us all to be successful here.  
6 I want us to reduce the tax gap. These are good  
7 goals. I want us to follow the law. And the way  
8 we do that is specifically focus. There's an  
9 elephant in the room. We're focusing on the mouse  
10 here. So, let's focus on the elephant. Let's  
11 look at these credit card points and just consider  
12 how these are going to follow in here, because  
13 otherwise we're missing the whole point. We're  
14 reducing the legitimacy of this regulation  
15 relation. If there's such a large animal here  
16 that we're not even focused on and we're just  
17 leaving it, that's it for me. Thank you.

18 MODERATOR: Anyone on the panel have any  
19 questions?

20 PANELIST: Yes. Thank you for your  
21 comments. Question for you.

22 MR. ENTRIKEN: Yeah.

1                   PANELIST: In your second remark, you  
2 suggested that there should be no reporting if a  
3 digital asset is used for its intended purpose and  
4 there's no material gain or loss. My question is,  
5 would that also address your first comment?

6                   MR. ENTRIKEN: Yes, mostly. I can't  
7 really imagine a situation where people are buying  
8 a digital asset and then later selling it for an  
9 abortion. That's kind of weird. But just  
10 helping, just, I'm trying to help you guys out.  
11 If that does happen and you don't want a lawsuit  
12 over it, you might want to have some carve outs on  
13 top of the carve out for, you know, intended use  
14 cases of stablecoins, slash, things purchased for  
15 a specific purpose.

16                   MODERATOR: Thank you. Does anybody  
17 else have any questions? Okay, thank you. The  
18 next speaker will be Lawrence Zlatkin from  
19 Coinbase Global, Inc.

20                   MR. ZLATKIN: Good morning, ladies and  
21 gentlemen. My name is Lawrence Zlatkin. I'm the  
22 Vice President of Tax at Coinbase. Coinbase

1 welcomes the opportunity to respond in this public  
2 hearing to the proposed regulations on broker  
3 reporting for digital asset transactions.  
4 Coinbase operates the largest and most trusted  
5 platform in the United States for customers to  
6 buy, sell, hold, and manage digital assets. We're  
7 dedicated to working openly and constructively  
8 with tax authorities and regulators, both in the  
9 United States and globally, to promote compliance  
10 with applicable regulatory and tax laws.

11           Coinbase submitted an initial comment  
12 letter on October 12th describing certain thematic  
13 and policy considerations related to the proposed  
14 regulations. We followed up with a second  
15 submission on November 10th with 15 constructive  
16 recommendations that we believe would greatly  
17 improve the regulations.

18           The statutory changes made in 2021 in  
19 the Infrastructure Act were intended to create  
20 parity in tax reporting for digital assets and  
21 existing financial investment assets, as confirmed  
22 by the accompanying legislative history. We

1 strongly urge the IRS and Treasury to return to  
2 its legislative mandate and propose regulations  
3 for digital asset tax reporting that are  
4 symmetrical with traditional finance. By seeking  
5 to expand broker reporting obligations to the sale  
6 or exchange of assets that are not used for  
7 financial or investment purposes, in many cases  
8 resulting in no gain or loss, and to persons who  
9 only indirectly facilitate digital asset sales,  
10 the IRS has proposed rules that will challenge the  
11 agency and its drive towards modernization and  
12 efficiency. Moreover, the rules raise serious  
13 privacy and policy concerns that should be  
14 addressed in a more considered and separate set of  
15 regulations or by Congress in the first instance.

16 In our comments today to the proposed  
17 regulations, we make seven overarching  
18 observations. First, as we have emphasized  
19 earlier, the proposed regulations lack parity with  
20 financial services. The Infrastructure Act  
21 expanded the tax reporting architecture to digital  
22 asset brokers in a manner similar to the

1 traditional financial services entities that serve  
2 as the benchmark for broker reporting. Congress  
3 carefully crafted the legislative language and it  
4 was not intended to cover any and all persons who  
5 facilitate and participate in the digital asset  
6 economy.

7           The Infrastructure Act expands the  
8 definition of intermediary in section 6045 to  
9 include, quote, any person who for consideration  
10 is responsible for regularly providing any service  
11 effectuating transfers of digital assets on behalf  
12 of another person, end quote. The plain language  
13 of this provision speaks for itself. Congress  
14 wanted people who regularly engage in transfers of  
15 digital assets on behalf of another person for  
16 consideration to file returns that facilitate the  
17 accurate reporting and collection of taxes on such  
18 transfers. The word effectuate, as prescribed in  
19 the legislative text, is defined as quote, to  
20 cause or bring about something, to put something  
21 into effect or operation, end quote. Effectuating  
22 a transaction requires direct rather than



1 tangential involvement.

2           The proposed regulations far exceed  
3 Congressional authorization. Treasury and the IRS  
4 have interpreted broker to cover industry  
5 participants that do not effectuate transactions  
6 in digital assets. The rules inappropriately  
7 assign broker status for reporting purposes to  
8 certain industry participants based on the theory  
9 that they indirectly effectuate transfers of  
10 digital assets. This overbroad definition of  
11 broker captures persons that may contribute or  
12 give rise to a transaction even if they do not  
13 effectuate it.

14           The Treasury Department and the IRS have  
15 interpreted intermediary to include industry  
16 participants that do not deal in digital assets.  
17 The rules improperly grant intermediary status to  
18 certain industry players for reporting purposes on  
19 the theory that they indirectly influence the  
20 transfer of digital assets. This overly broad  
21 definition of an intermediary includes persons who  
22 may participate in or lead to a transaction even

1 if they do not perform it, such as providing an  
2 automated market maker system; providing services  
3 to discover the most competitive buy and sell  
4 prices; providing noncustodial wallets that allow  
5 users to access trading platforms; providing  
6 services that allow access to the Internet,  
7 including browsers and Internet service providers.  
8 Including persons within these broad categories of  
9 activity stretches the meaning of the statute  
10 beyond the breaking point. None of these  
11 activities directly effectuates digital asset  
12 transactions.

13           Second, the proposed regulations will  
14 create duplicative, burdensome, and fundamentally  
15 unadministerable reporting by expanding the  
16 universe of brokers in the scope of digital  
17 assets. To include any and all persons who  
18 facilitate the digital asset economy, the IRS and  
19 taxpayers will be bombarded with data, including  
20 data related to payments and transactions without  
21 any gain or loss.

22           According to the IRS Project Director,

1 the agency now expects to receive an astonishing 8  
2 billion -- 8 billion 1099 DA reports annually.  
3 The proposed expansion of the digital asset  
4 reporting regime will detract from the ability of  
5 the IRS and taxpayers to focus on relevant and  
6 appropriate compliance where genuine tax liability  
7 is created. The proposed regulations also  
8 introduce unnecessary reporting burdens through  
9 overly expensive transaction reporting  
10 requirements. Of particular note, the proposed  
11 regulations expressly include a requirement to  
12 report all stablecoin transaction activities.  
13 However, when a stablecoin is by design a payment  
14 instrument with a one-to-one peg to reserve assets  
15 denominated in U.S. dollars, the same stablecoin  
16 can be transferred from person to person without  
17 any gain or loss.

18 The IRS should exempt stablecoin  
19 transactions stablecoin issuers from these  
20 reporting requirements. Failure to include --  
21 exclude payment stablecoins from reporting  
22 requirements will lead to vastly overburdensome

1       ineffective and inefficient reporting. Tax  
2       reporting when there is no gain or loss, including  
3       stablecoins, will result in expansive but  
4       low-value reporting and should be excluded from  
5       the reporting regime.

6               Third, the proposed regulations require  
7       the reporting of data related to everyday use  
8       cases for digital assets and to digital assets  
9       that are nonfinancial in character. This includes  
10      the use of digital assets for everyday uses, such  
11      as the purchase of a cup of coffee, or everyday  
12      payments of the grocery store, or visits to the  
13      doctor. This expansion of the broker reporting  
14      regime increases government oversight over  
15      taxpayer activity and intrudes unnecessarily into  
16      the private lives of ordinary Americans in ways  
17      that are largely unconnected to tax. The IRS  
18      should not police every digital asset transaction  
19      just because of the potential for taxable gain.  
20      The broker reporting regime should not be extended  
21      to digital asset transactions where there is no  
22      gain, such as payments, and where the assets are

1 non-financial in character.

2 Fourth, the proposed regulations stifle  
3 growth in the digital asset ecosystem by imposing  
4 rules to directly challenge the use cases for  
5 digital assets. The regulations go beyond the  
6 scope of reporting taxpayer gains on financial  
7 assets and impose burdens that suggest the  
8 government is using tax reporting as a tool for  
9 deciding which technology should succeed in  
10 today's economy. This is an inappropriate  
11 interpretation and application of the code.

12 Fifth, imposed regulations are a missed  
13 opportunity to leverage blockchain technology to  
14 ensure taxpayer compliance. The rulemaking  
15 process should be an important opportunity to  
16 develop new ways to leverage blockchain technology  
17 to create a modernized and more efficient tax  
18 reporting regime. Blockchain technology has the  
19 potential to offer new and alternative tax  
20 reporting and compliance systems that will achieve  
21 the twin goals of transparency and efficiency.

22 Sixth, the proposed regulations impose

1 an unrealistic timeline for implementation. They  
2 require reporting entities to develop a new and  
3 complex reporting regime from the ground up in  
4 little over a year from the end of this comment  
5 period and likely less than a year from the date  
6 the regulations are finalized. This contrasts  
7 sharply with the more than five- year timeline  
8 afforded to financial institutions to comply with  
9 the 2008 tax basis reporting regulations, even  
10 though financial institutions were already  
11 reporting gross proceeds, had preexisting  
12 infrastructure in place, and did not have to build  
13 new systems from the ground up.

14           And seventh, the cost estimates and  
15 economic burden analysis in the proposed  
16 regulations are conclusory and fundamentally  
17 flawed. As I mentioned earlier, the IRS's Project  
18 Director for Digital Assets admitted that the  
19 Treasury and IRS's estimates are off by orders of  
20 magnitude and that the IRS is not equipped to  
21 handle the flood of reporting. The IRS now  
22 expects to receive an astonishing 8 billion 1099

1 DA reports annually, a more than 55,000 percent  
2 increase over what Treasury and the IRS estimated  
3 in the proposed regulations just a few months ago.

4 Under your own cost assumption, the  
5 volume of reports would mean annual reporting  
6 costs of \$76 billion and startup costs of \$419  
7 billion; almost half a trillion dollars, amounting  
8 to approximately a third of the global crypto  
9 market cap. The IRS Project Director also  
10 acknowledged that 8 billion 1099 DAs would  
11 approximately double the amount of all 1099s the  
12 IRS currently receives annually, and that the  
13 IRS's current technology cannot handle the volume  
14 of reporting. The IRS's Director's comments  
15 underscored the inadequacy of the Treasury and the  
16 IRS's cost-benefit analysis and drive home the  
17 need for Treasury and the IRS to slow down,  
18 reconsider the scope of the regulations, and  
19 resubmit them for meaningful public comment after  
20 publishing the draft 1099 DA.

21 Ultimately, we do not think that  
22 reporting every digital asset transaction was

1 intended by the infrastructure --

2 OPERATOR: Excuse the interruption. You  
3 have one more minute. Thank you.

4 MR. ZLATKIN: It does not promote  
5 effective and efficient tax reporting. We would  
6 recommend starting with the more than 90 percent  
7 of the digital economy that is similar to the  
8 existing reporting system, financial and  
9 investment assets. Building from the ground up  
10 requires a strong foundation.

11 We greatly appreciate your consideration  
12 of our comments proposed, provided in this  
13 hearing, and we would be happy to discuss these  
14 and other tax policy issues or technological  
15 questions with you. We view our mission to  
16 provide proactive engagement on tax policy  
17 initiatives around the world, and look forward to  
18 hearing back from you and helping you develop  
19 constructive tax rules for the digital assets  
20 ecosystem.

21 MODERATOR: Thank you. I have a  
22 question. Is your testimony that we should not be



1 requiring reporting for digital assets that are  
2 not financial in nature? My question for you is:  
3 Is it feasible, slash, administrable for brokers  
4 to review each digital asset to determine if the  
5 asset is a financial-in-nature digital asset?

6 MR. ZLATKIN: I believe it is, and I  
7 believe we could work on something that would  
8 definitely fit that paradigm.

9 MODERATOR: Thank you. We have one  
10 other question.

11 PANELIST: Yes. You proposed that there  
12 should not be reporting with respect to  
13 stablecoins. Do you have a suggestion for how the  
14 term stablecoin would be defined?

15 MR. ZLATKIN: Yes, actually, in our  
16 second comment letter we did provide a rubric for  
17 being able to evaluate that which was both  
18 objective and subjective. We tried to align it  
19 towards a one-to-one peg for a six month or longer  
20 period. And we also provided a proposal for a  
21 safe harbor where the IRS itself could evaluate  
22 whether stablecoins were like mutual funds. and

1 they don't really deviate from one-to-one peg, and  
2 so therefore they would include it on the list.  
3 But the list could also be inclusive and therefore  
4 also exclude a stablecoin that fell outside of the  
5 realm of what would otherwise be considered  
6 stable. But it's in our second comment letter  
7 that we submitted on Friday.

8 MODERATOR: Great, thank you. Does  
9 anybody else on the panel have any questions?  
10 Thank you. Okay. The next speaker will be Gina  
11 Moon from Ozone Networks doing business as  
12 OpenSea. Gina?

13 MS. MOON: Thank you for having OpenSea  
14 here today to share our thoughts with you on the  
15 proposed broker regulations and NFTs. I'm Gina  
16 Moon, General Counsel for OpenSea. So, OpenSea is  
17 an NFT Explorer and web3 marketplace for NFTs on  
18 public blockchain. We do not take control of our  
19 users NFTs or cryptocurrency. Users use their own  
20 self-hosted wallets to buy and sell NFTs from one  
21 another in peer-to-peer transactions using public  
22 blockchain. And OpenSea does not execute the

1 transactions. And we obtain the final details of  
2 an NFT transaction from the public blockchain only  
3 after that transaction is executed.

4 As a reminder of what NFTs are: They  
5 are identifiable data units in a data  
6 infrastructure environment. The blockchain.  
7 Unlike fungible tokens, they each have a unique  
8 token ID that can be used to track the individual  
9 NFT transaction history, and they also have  
10 associated metadata and content that travels with  
11 the NFT. NFTs can represent rights to a  
12 collectible, to art, to music, serve as a  
13 membership pass, or a ticket to a concert. They  
14 can be used to track vehicle registrations, as  
15 video game items, and many other things. This is  
16 because NFTs are blank slates. They're like  
17 pieces of paper. They can be used to represent a  
18 variety of things. And they can also be used to  
19 represent rights to financial instruments such as  
20 a stock, bond, debt, note, or currency. This is  
21 not a common usage of NFTs at present.

22 NFTs do not have a market price the way

1       that cryptocurrencies may have on a crypto  
2       exchange. And NFTs in the same collection may  
3       have significantly different resale prices, not  
4       just because their content is different, but  
5       because of their unique ownership history.

6               So, turning to the broker regulations  
7       with respect to the digital asset definition, the  
8       statutory definition for digital asset in 6045, as  
9       amended, governs only those things that are a  
10      representation of value. Although collectible and  
11      similar NFTs may have value, as do many consumer  
12      items, they are not representations of value. So,  
13      the plain language definition of digital asset in  
14      the statute indicates that Congress viewed digital  
15      asset to mean a type of financial instrument.  
16      6045(g)(3)(d) also was amended to include digital  
17      assets in a list of financial instruments. And  
18      digital asset is placed after securities,  
19      commodities, and debt notes, but before the  
20      category of and any other financial instrument.

21              Again, indicating digital assets in the  
22      statute refers to types of financial instruments.

1 The look-through analysis the IRS proposed in  
2 Notice 2023-27 earlier this year is well suited to  
3 differentiate what should and should not be  
4 reportable as a digital asset. The approach in  
5 the proposed regulations contravenes this  
6 look-through approach in that notice. Consistency  
7 across Code provisions is critical to reducing  
8 confusion both by taxpayers and reporting  
9 entities. Subjecting only financial instrument  
10 NFTs to broker reporting is consistent with other  
11 regulatory frameworks as well, such as status  
12 approach to virtual assets, DAC8, and OECD CARF,  
13 which have identified that investment and payment  
14 NFTs are different than collectible NFTs and other  
15 types of NFTs we've discussed today. Consistency  
16 across regulatory regimes will also help to reduce  
17 taxpayer confusion and allow for better reporting  
18 by entities.

19 With respect to the broker definition in  
20 the regulations, by including indirect  
21 facilitative services, the proposed regulations  
22 include far more in the parameters of digital

1       asset middleman than what is included in the  
2       statutory language for broker. In practice, this  
3       broad definition of broker will result in  
4       duplicative reporting, the collection reporting of  
5       the same information by multiple parties in the  
6       NFT ecosystem. For example, if a user accesses a  
7       website or multiple websites to discover the most  
8       competitive buy and sell prices for an NFT, and  
9       then engages in a peer-to-peer NFT transaction  
10      using a self-hosted wallet that is able to link to  
11      external websites, which most do, then, arguably,  
12      the websites providing the buy/sell prices and the  
13      self-hosted wallet will all have to collect the  
14      user's data and report the transaction on a Form  
15      1099 DA. This will cause taxpayer confusion  
16      because they will receive numerous 1099 DAs, some  
17      of which will be duplicative and overlapping,  
18      which could lead to double taxation and reporting  
19      mismatches. This creates burden on the taxpayer  
20      to reconcile their returns and ensure their  
21      records with the IRS are accurate, but it also  
22      adds to the burden of the IRS to ensure tax

1 compliance.

2           The proposed regulations also open the  
3 possibility of significant risk to the privacy and  
4 security of taxpayer PII, personally identifying  
5 information. In addition to name, address, and  
6 Social Security number, brokers are now required  
7 to collect, store and report the user's crypto  
8 wallet address to the government, which will  
9 enable both the information collector and the  
10 government to track the entire transaction history  
11 of that individual, regardless of whether other  
12 transactions in that history are required to be  
13 reported. And the definition of digital asset  
14 middleman is broad enough to deem multiple  
15 entities as brokers due to their direct or  
16 indirect involvement. So, taxpayers will now need  
17 to share that sensitive PII with multiple entities  
18 for the same transaction.

19           For NFTs, this is equivalent of wanting  
20 to sell a concert poster on Craigslist, but being  
21 required to share your name, your home address,  
22 Social Security number, and entire Venmo history

1 with Craigslist, Venmo, and the IRS. This poses  
2 meaningful privacy and security risks, and  
3 building secure systems to collect and store the  
4 sensitive data requires substantial investment in  
5 maintenance. But many companies in the nascent  
6 NFT space are startups with limited resources to  
7 make such an investment. And as we've seen with  
8 the history of data breaches and hacks, even large  
9 institutions have challenges in protecting this  
10 type of sensitive information. And because there  
11 is no threshold for reporting this sensitive  
12 information has to be turned over. Even for low  
13 value consumer transactions.

14 Notably, from April 1 to October 1 of  
15 this year, the median NFT transaction value was  
16 \$37.09. Twenty-five percent of NFTs sold for less  
17 than \$25; and 82 percent sold for less than \$500.  
18 This means if these weren't NFT sales but Beanie  
19 Babies sales on eBay, many of these sales wouldn't  
20 be eligible to receive 99 (phonetic).

21 So what to do? We believe that  
22 narrowing the definition of digital asset to



1       exclude NFTs that do not represent financial  
2       instruments and removal of the indirect service  
3       providers from the digital asset middleman  
4       definition in the proposed regs will enable  
5       taxpayers and the IRS to obtain the information  
6       they need for tax compliance and enforcement  
7       without needlessly subjecting taxpayer PII to  
8       security and privacy risks.

9               Because of their unique identifiers on  
10       NFTs, taxpayers are already able to trace them and  
11       their gains and losses with public blockchain  
12       data. Further, there are a number of software  
13       solutions out there already that are available for  
14       taxpayers to calculate their taxes based on this  
15       publicly available data. However, if a reporting  
16       regime is deemed necessary despite this publicly  
17       available information, one should be created or  
18       extended that is appropriate for NFT. A regime  
19       similar to 6050W, for example, which requires  
20       aggregate gross proceeds reporting above a  
21       threshold amount would be more appropriate to  
22       achieve the IRS enforcement needs for

1 non-custodial platforms and NFTs that are not  
2 financial instruments.

3 So, to conclude, we appreciate you  
4 having OpenSea here today, and we appreciate being  
5 able to share our point of view with you, and  
6 we're available to answer any questions.

7 MODERATOR: Thank you. Does anyone on  
8 the panel? I do not. Anybody else have any?  
9 Okay, thank you very much.

10 Our next speaker will be Shehan  
11 Chandrasekera, if I pronounced that correctly.  
12 From -- I'm sorry, from CoinTracker. I apologize.

13 MR. CHANDRASEKERA: Hello, everyone.  
14 Good morning. My name is Shehan Chandrasekera and  
15 I am the head of tax at CoinTracker, and thank you  
16 for the opportunity to participate in this hearing  
17 today. In the next few minutes, I would like to  
18 give you a quick introduction to CoinTracker, a  
19 problem caused by these proposed regulations which  
20 will negatively impact brokers, taxpayers, and  
21 even the IRS, and a potential solution we have for  
22 that.

1                   So, let me give you a quick introduction  
2                   to CoinTracker first. We are the industry-leading  
3                   digital asset transaction aggregator in the U.S.  
4                   Our tool allows taxpayers to seamlessly connect  
5                   their cryptocurrency exchanges and wallets,  
6                   reconcile activity, and calculate capital gains  
7                   and losses and ordinary income items. We have  
8                   been in the business since 2017 and have produced  
9                   over 1 million Form 8949s for U.S. taxpayers  
10                  dealing with digital assets. As a company, we are  
11                  deeply committed to helping taxpayers comply with  
12                  digital asset taxes along with the upcoming  
13                  information reporting regime.

14                  So, speaking of regulations, first and  
15                  foremost, we are pleased that the Treasury has  
16                  provided clarity on digital asset broker reporting  
17                  regulations. We think that information reporting  
18                  is a powerful tool and it will drive compliance,  
19                  especially for taxpayers who use a single broker  
20                  or platform. However, if implemented as proposed,  
21                  the broker regulations will likely generate a  
22                  significant amount of incomplete and inaccurate

1 data, ensure data gaps for all stakeholders in the  
2 chain. So, that includes brokers, the IRS, and  
3 taxpayers, and we are very concerned about this.

4 At a high level these data gaps, again,  
5 which affect everyone in the chain, are caused by  
6 the following three factors. Number one, digital  
7 asset transfers between custodial brokers and  
8 noncustodial brokers or unhosted wallets. I want  
9 to emphasize that this factor will create  
10 permanent data gaps in information reports as  
11 noncustodial brokers have no visibility into cost  
12 basis.

13 Number two, transactions not addressed  
14 by 1099-DAs, such as loans, wrapping, and et  
15 cetera.

16 Number three, the transition period  
17 brokers have to comply with regulations, which is  
18 from now until the regulations are implemented in  
19 the future.

20 So, these three factors will lead to  
21 significant data gaps in information reports for a  
22 number of years, as I mentioned earlier. So, let

1 me give you a simple example to show how these  
2 data gaps, specifically related to transfers,  
3 create problems for all key stakeholders involved:  
4 Taxpayers, brokers, and even the IRS.

5 Say I purchased one Ether from a  
6 custodial broker for \$1,000, transferred that coin  
7 to an unhosted wallet, and then connected my  
8 unhosted wallet to a noncustodial broker and  
9 disposed of the coin for \$5,000. By the way, this  
10 is a very common scenario in the crypto space we  
11 see every day. So, in this case, as the taxpayer,  
12 I will receive a Form 1099-DA with just \$5,000  
13 worth of proceeds. It will not have a cost basis  
14 or data acquired, which is crucial for me to  
15 figure out my correct tax liability on Form 1040.  
16 In this situation, the average taxpayer will most  
17 likely file an inaccurate 8949 with Ether missing  
18 and overstated or an understated cost basis.  
19 Overall, taxpayers will face a complicated and  
20 time-consuming tax filing experience, leading to a  
21 lower compliance.

22 The problems just don't end with

1 taxpayers. Most brokers will have no option other  
2 than filing incomplete, inaccurate, and  
3 duplicative information reports. In fact, this is  
4 also highlighted by many other index stakeholders  
5 through Commence (phonetic).

6 Finally, the IRS will have to process a  
7 substantial amount of incomplete and inaccurate  
8 data submitted through both information reports  
9 and Form 8949s filed by the taxpayers.

10 Zooming into the taxpayer problem, this  
11 problem has lasted for a long time and we are very  
12 familiar with this problem as a company and  
13 taxpayers have used tools like CoinTracker to  
14 reconcile missing cost basis for a number of  
15 years. On a related note, you might think that  
16 the upcoming 6045 safe regulations will solve the  
17 missing cost basis issue. Unfortunately, that  
18 will likely not be the case. Let me explain why.

19 Going back to our example, I transferred  
20 one Ether from a custodial broker to my unhosted  
21 wallet. In this case, my coin just goes to an  
22 Ethereum address. My unhosted wallet only

1 controls the address, so it is not technologically  
2 feasible for the custodial brokers to determine  
3 whether the destination address is a broker or not  
4 and issue a transfer statement accordingly. So,  
5 brokers will continue to have gaps in the 1099 due  
6 to transfers. As a result, a traditional finance  
7 like broker-to-broker cost basis transfer system  
8 will only cover a small percentage of transfers  
9 happening in the digital asset space, i.e., only  
10 transfers between custodial brokers.

11 So, what's the solution we are  
12 proposing? Our solution relies on the following  
13 key principle. In the digital asset space, the  
14 true cost basis always lives with the taxpayer.  
15 Transaction aggregators like CoinTracker have  
16 access to this key source of truth data. So, we  
17 are asking the industry to leverage this crucial  
18 data aggregators have to supplement the gaps in  
19 information reporting. Of course, user consent,  
20 you know, will be required for this data sharing.  
21 Specifically, we have two recommendations.

22 Recommendation number one, we recommend

1 that you promulgate rules, either by updating  
2 language under Section 6045 or issuing separate  
3 guidance, so brokers can use data source from  
4 digital asset transaction aggregators when certain  
5 data points are missing from the internal records  
6 of the broker.

7 Recommendation number two, brokers who  
8 take reasonable measures to ensure the accuracy of  
9 this external data should be relieved from any  
10 accuracy related penalties under Section 6721 and  
11 Section 6722 when producing information reports.

12 So, going back to my example, with this  
13 approach, the noncustodial broker will be able to  
14 know the cost, basis and data acquired through my  
15 transaction aggregator software and issue a  
16 complete and accurate 1099-DA. So, to get a  
17 complete 1099-DA, the taxpayer could use any  
18 transaction aggregator who meets a certain common  
19 (phonetic) standard. This is not a  
20 CoinTracker-specific solution.

21 So, if you enhance the proposed  
22 information reporting with transaction aggregator



1 data like this, we believe that it will increase  
2 digital asset tax compliance, it will decrease the  
3 burden on brokers and taxpayers, and the IRS will  
4 receive higher quality digital asset transaction  
5 data. All these benefits come from simply having  
6 complete and accurate data in the system, and we  
7 would love to work with the Service and the  
8 broader industry to make this happen.

9 I want to note that the solution we are  
10 proposing here is just a step towards a  
11 blockchain-based solution in the future. As  
12 crypto becomes more mainstream, we can see an  
13 opportunity to verify tax compliance at the wallet  
14 itself by issuing a service token to essentially  
15 mark wallets that have successfully remedied taxes  
16 related to digital asset transactions. Most  
17 importantly, we can do this by using zero  
18 knowledge proofs and frameworks like Ethereum  
19 attestation service, while also preserving the  
20 privacy of wallet holders, which is very, very  
21 important.

22 So, to recap, we believe that the

1 traditional broker information reporting will work  
2 great for taxpayers who use a single custodial  
3 broker platform, which is a shrinking segment of  
4 the market. However, to effectively and  
5 efficiently increase tax compliance for  
6 multi-wallet exchange users, which is the majority  
7 of this phase, we strongly believe that your  
8 proposed information reporting regime must be  
9 enhanced by leveraging transaction aggregated  
10 data. As we pointed out earlier, this will lead  
11 to more complete and accurate information reports.  
12 If you do not rely on transaction aggregated data,  
13 all stakeholders in the chain, taxpayers, brokers,  
14 and even the IRS, will end up with a large  
15 quantity of incomplete, inaccurate, duplicative,  
16 and unactionable data.

17 We hope you take our comments into  
18 consideration when finalizing proposed regulations  
19 or issuing any future guidance. Thank you for  
20 your time.

21 PANELIST: Okay, so I have a question.  
22 Really two questions. One is in your transaction

1 aggregator system that you described, where in  
2 your hypothetical does -- where do we get the  
3 basis information? Is it put into the aggregator  
4 by the custodial broker in your hypothetical or is  
5 it put into the aggregator by the customer itself?  
6 That's my first question.

7 And my second question is, are you  
8 planning to submit written comments in addition to  
9 the outline that you've submitted today?

10 MR. CHANDRASEKERA: Yeah. So, right now  
11 taxpayers are connecting all the wallets and  
12 exchanges they have to CoinTracker, reconcile the  
13 activity, and produce the Form 8949 to be filed  
14 with the 1040. But after information reporting,  
15 taxpayers will also be able to notify about  
16 missing cost basis information from CoinTracker to  
17 their brokers so the broker can issue a more  
18 complete 1099-DA. That's what we are envisioning  
19 and we're having conversation with brokers on  
20 that.

21 To answer your second question, yes, we  
22 did formally submit our commit letter. It was

1 submitted over the weekend. It hasn't been posted  
2 yet, so hopefully we will see it in the next week.

3 MODERATOR: We have one other question.

4 PANELIST: Public articles indicate that  
5 different aggregators can come up with different  
6 answers for the amount of gain or loss, which  
7 suggests that they are pulling different basis  
8 information. Do you have suggestions, if your  
9 proposal were adopted, do you have suggestions for  
10 ensuring that the information that brokers receive  
11 from different aggregators is consistent?

12 MR. CHANDRASEKERA: Yeah, great  
13 question. I think there's a couple of ways we can  
14 go about it. In the initial stages, brokers can  
15 do some type of internal test to make sure that  
16 the data that they're getting is reliable. In the  
17 long run, even IRS could consider introducing  
18 standards similar to how the IRS introduced  
19 standards to become a qualified e-file provider.  
20 So, those type of standards could be introduced in  
21 the aggregation industry. So everybody knows same  
22 input results in the same output, and the outputs

1 are consistent across all the aggregators.

2 MODERATOR: Anybody else have any  
3 questions? Thank you.

4 Our next speaker will be Jake Chervinsky  
5 from Blockchain Association.

6 MS. COPPEL: Hi, it's actually Marisa  
7 Coppel from Blockchain Association. I subbed  
8 myself in last week.

9 MODERATOR: Apologies, apologies. So  
10 sorry.

11 MS. COPPEL: No worries. Yeah, no  
12 worries at all. So, my name is Marisa Coppel.  
13 I'm senior counsel at the Blockchain Association.  
14 And I first want to thank you for including me on  
15 the agenda today and also for engaging with  
16 stakeholders on this very important issue. We  
17 plan to file our comment letter shortly after this  
18 hearing, and although I'm going to spend my time  
19 today discussing some of our most pressing issues,  
20 there are several others described in detail in  
21 our letter that I, unfortunately, will not have  
22 time to address here.

1                   Our letter addresses issues related to  
2                   centralized entities, some of which operate in a  
3                   similar manner to traditional middlemen or  
4                   intermediaries. They arguably fall within the  
5                   definition of a broker. In our letter, we suggest  
6                   several modifications to the proposal as applied  
7                   to these entities, including increasing the time  
8                   to comply, reducing the breadth and reporting  
9                   requirements, and refraining from applying the  
10                  regulations to NFTs and stablecoins.

11                  But I would like to spend my time today  
12                  discussing how this proposal impacts DeFi and  
13                  noncustodial wallet software developers. I will  
14                  first discuss how the proposal is over broad and  
15                  exceeds Treasury statutory authority by pulling in  
16                  participants who are not intermediaries or  
17                  middlemen. I will then discuss why the proposal  
18                  does not comport with APA requirements and would  
19                  lead to constitutional rights violations.

20                  This proposal sweeps in parties whose  
21                  only means of compliance would be to abandon the  
22                  decentralized technology that makes them unique.

1 This construction will drive all U.S.-based  
2 decentralized projects abroad or out of existence,  
3 full stop. Compliance with this proposal would  
4 require centralization where none exists.

5 It is also wholly unclear as to whether  
6 certain participants have a reporting requirement  
7 at all. The language is vague, which would  
8 further make compliance impossible and will make  
9 it far more challenging for the IRS to achieve its  
10 goal of increasing compliance with tax reporting.

11 The proposal's definition of "broker"  
12 should be limited to centralized entities who can  
13 collect such information. This is what Congress  
14 intended when it initially set forth the clarified  
15 definition two years ago, and this is how the tax  
16 code's broker reporting rules have functioned  
17 historically. While the IIJA was under  
18 consideration, Congress proposed a broader  
19 formulation of the definition of "broker," which  
20 explicitly included any decentralized exchange or  
21 peer-to-peer marketplace, but Congress ultimately  
22 rejected that language.

1                   Fast forward to now. In this proposal,  
2                   the IRS seems to have improperly read that  
3                   language back into the definition of a broker by  
4                   creating cascading expansive terms in a way that  
5                   dramatically departs from the concept of a  
6                   middleman and the rules applicable to traditional  
7                   assets. In particular, the proposed regulations  
8                   significantly expand the term "effect" and thereby  
9                   revise the definition of "broker" beyond the  
10                  statutory definition.

11                  The proposal's definition of digital  
12                  asset middleman, for instance, pulls in any person  
13                  providing a facilitative service who would be in a  
14                  position to know the identity of a party that  
15                  makes the sale and the nature of the transaction.  
16                  This includes those who provide a service that  
17                  directly or indirectly effectuates a sale of  
18                  digital assets.

19                  The terms "indirectly" and "in a  
20                  position to know" would likely include developers  
21                  of both decentralized finance and noncustodial  
22                  wallet software who are incapable of complying



1 with the broker reporting rules. Both types of  
2 software merely allow users to either connect and  
3 transact with one another or with a smart contract  
4 itself. This software does not effectuate  
5 transactions like a broker, and developers of such  
6 software certainly do not have access to the  
7 information required for reporting. But this  
8 proposal fails to recognize the value of both  
9 decentralized and noncustodial software.

10           Decentralized technology eliminates the  
11 intermediary or the traditional middleman who  
12 necessarily carries risk. There is cybersecurity  
13 risks and data breach risks of holding so much  
14 sensitive data under one person's control. And  
15 there are risks centered around fraud and  
16 mismanagement. And when you look at transaction  
17 functionality, it's often slow, cumbersome, and  
18 inefficient, and expensive. DeFi, however,  
19 eliminates risks of failure under one point of  
20 control. It's more efficient and costs less for  
21 the user. Similarly, noncustodial wallet software  
22 enables users to hold custody of their assets

1 themselves. These users are the only ones who  
2 have access to these assets, which reduces risk of  
3 abuse, fraud, or insecurity of middlemen. This  
4 proposal would destroy all of that value.

5           Given the impossible nature of  
6 compliance, these software developers will be  
7 forced to either shut down their projects, move  
8 outside the U.S., or so fundamentally change the  
9 nature of their project that it eliminates the  
10 benefits of decentralized and noncustodial  
11 technology entirely. Congress did not express an  
12 intent to destroy DeFi. These issues are so  
13 profound as to raise significant constitutional,  
14 APA, and statutory authority questions.

15           The APA requires a reviewing court to  
16 set aside agency action that is arbitrary,  
17 capricious, an abuse of discretion, or otherwise  
18 not in accordance with law, contrary to  
19 constitutional right, in excess of statutory  
20 jurisdiction, or unsupported by substantial  
21 evidence. This proposal, if finalized, would fail  
22 each requirement.

1                   When you look at the language of the  
2                   proposal, it's clear that it goes far beyond what  
3                   Congress intended in the IIJA, and there's no  
4                   ambiguity in the term "brokers" that could  
5                   authorize the sweeping approach that Treasury has  
6                   taken. Given the impact on DeFi and noncustodial  
7                   wallet software in the U.S., clear congressional  
8                   authorization would be required before Treasury  
9                   would have the authority to require such  
10                  reporting.

11                  Treasury has also not supported the  
12                  proposal with substantial evidence or quantifies  
13                  the costs or benefits as required by the APA. On  
14                  the cost side, Treasury, one, vastly  
15                  underestimates the cost of compliance by  
16                  centralized parties and, two, fails to grapple  
17                  altogether with the likelihood that the  
18                  finalization of this proposal would force software  
19                  developers to shut down their projects or move  
20                  overseas. Nor does the proposal estimate the  
21                  burden on Treasury to process billions of new  
22                  filings.

1           On the benefit side, the proposal fails  
2           to quantify the supposed tax gap or the benefits  
3           that third party reporting would bring in closing  
4           that gap. The proposal also treats digital and  
5           nondigital assets differently, without  
6           justification, which meets the test for arbitrary  
7           and capricious agency action.

8           Further, the vagueness problems also  
9           require that the proposal, if passed in current  
10          form, be set aside under the APA.

11          An agency's exercise of its statutory  
12          authority must be reasonable and reasonably  
13          explained. It's certainly not here. Even putting  
14          aside the serious statutory authority and APA  
15          concerns, the proposal also raises several  
16          constitutional concerns that would likely lead a  
17          court to invalidate it.

18          First, the definitions are  
19          unconstitutionally vague and fail to provide  
20          adequate notice in accordance with due process,  
21          since they leave many digital asset participants  
22          with no clear understanding of whether they are

1 subject to the reporting requirements.

2           Second, the proposal raises serious  
3 privacy concerns that violate the Fourth  
4 Amendment. DeFi and noncustodial wallet software  
5 provides a way for users to transact in digital  
6 assets without having to divulge sensitive  
7 personal information to a centralized entity that  
8 could be vulnerable to security breaches and  
9 hacks.

10           Third, linking wallet addresses to  
11 personal identities would create a serious and  
12 permanent privacy issue, comparable to having a  
13 lifetime of credit card transactions published  
14 online.

15           Lastly, the proposal would compel  
16 developers to writing new code imposing  
17 content-based compelled speech. Because the  
18 proposal is not narrowly tailored, it is likely to  
19 be struck down as contrary to the First Amendment.

20           Given these issues, I urge Treasury to  
21 adopt in the finalized regulations a staged  
22 approach that first focuses on centralized trading

1 platforms. Centralized trading platform reporting  
2 alone would achieve the IRS's goal of improved tax  
3 compliance, especially given that the vast  
4 majority of trading volume (inaudible).

5 OPERATOR: Excuse the interruption. You  
6 have one minute remaining.

7 MS. COPPEL: Thanks. After that, we  
8 recommend Treasury work with DeFi participants to  
9 find workable solutions that do not hinder the  
10 development of this technology that is already  
11 changing for the better the way our financial  
12 system functions. The U.S. prides itself on  
13 fostering innovation and also protecting civil  
14 liberties. We hope that you consider how this  
15 proposal can keep those American values intact  
16 rather than destroy them. Thank you very much.

17 PANELIST: Thank you. I have a  
18 question. I've asked this before, but I'd like to  
19 also ask you. Do you believe that the --

20 MS. COPPEL: Sure.

21 PANELIST: Do you believe it's  
22 administratively feasible for brokers to review

1       each NFT transaction to determine which are  
2       financial in nature?

3                   MS. COPPEL: Yes, I think so. I think  
4       we are aligned with Lawrence at Coinbase on that.  
5       I mean, I would first argue that the definition of  
6       broker just needs to be narrowed, but assuming  
7       that it applies only to centralized entities, I  
8       think that that would be possible. But I, you  
9       know, I would say that the centralized entities  
10      themselves are more of the expert on like how the  
11      tech would work to achieve that.

12                  PANELIST: I thank you. We have -- Yes,  
13      we have another question. You stated earlier that  
14      the regulations would require a decentralized  
15      finance or decentralized exchanges to abandon  
16      decentralization. Can you talk in more detail  
17      about why that is? Is it the diligence  
18      requirements? Is it the reporting requirements?  
19      Is it something else? All of the above.  
20      Something different?

21                  MS. COPPEL: Yes for sure. And we  
22      definitely go into more detail in this in our

1 letter, which we'll publish, or we'll file it  
2 shortly after this, but I'll give a few examples.  
3 So, one is there's obviously a ton of information  
4 that needs to be collected in order to do this  
5 reporting. And if there's no specific person that  
6 is like either owns or controls the software that  
7 users are using in DeFi, there's no way to collect  
8 that information. And then even if there was a  
9 way to collect that information, how would that  
10 information be stored? So, it raises some  
11 security concerns given that, like the information  
12 is sensitive personal information, and there  
13 wouldn't be any way to actually organize, like how  
14 who would be responsible for collecting it and  
15 then how they would actually store it or fill out  
16 the required forms.

17           And then another example, and this one  
18 more so applies to the non-custodial wallet  
19 software providers. So, the software allows a  
20 user to hold custody of their own assets. And  
21 they're the only ones that have access to their  
22 assets. So, it would be impossible for the



1 software developer to, like, reach into a  
2 customer's wallet and do, for example, backup  
3 withholding.

4 And then also related to both of them,  
5 there would be no way for these developers to  
6 gather the information as to which transactions  
7 are happening, when you know where they're being,  
8 what, where the digital assets are being sent, or  
9 who sent send them, sent them. It would just be  
10 impossible to collect that because they don't have  
11 a means of like storing that information and then  
12 being able to access it.

13 PANELIST: You know, I have one other  
14 question. I guess you are agreeing that a  
15 custodial brokers would be covered. I guess I  
16 have a question whether your custodial broker  
17 members would prefer reporting on NFTs. Let's say  
18 that are non-financial NFTs under a different  
19 regime, say like a 650 cap W when they are also  
20 reporting the pay for transaction under 645? Are  
21 you saying that your members would prefer the two  
22 separate recordings? Right. The NFT dispositions

1 under one section, but the pay for dispositions  
2 under this section? Or is that something -- Yes.

3 MS. COPPEL: Yeah, I would have to look  
4 at the sections and talk to our members before I  
5 express a position as to what our members would  
6 prefer, but I'm happy to do that if that would be  
7 helpful.

8 PANELIST: Yes. That would be very  
9 helpful. Thank you.

10 MS. COPPEL: Yeah.

11 MODERATOR: Anybody else have any  
12 questions? No. Okay. The next speaker will be  
13 Lindsay Carpenter from the National Taxpayers  
14 Union Foundation.

15 MS. CARPENTER: Thank you so much. Good  
16 morning, everybody. My name is Lindsay Carpenter  
17 and I'm an attorney with National Taxpayers Union  
18 Foundation. I would just like to start off by  
19 thanking everyone for not only hosting this  
20 commentary period, but allowing us to participate  
21 in the legislative process. We at National  
22 Taxpayers Union Foundation has have been a leader

1 in developing responsible tax administration for  
2 nearly five decades, and cryptocurrency is no  
3 exception. We strive to offer practical, actual  
4 recommendations about how our tax system should  
5 function and really lend research and other assets  
6 that are really helpful in developing tax  
7 administration that not only helps the  
8 taxpayers, but also is functional for the IRS.

9 So, from that, turning to this IRS  
10 cryptocurrency and digital asset proposed  
11 regulation, we believe that really the overarching  
12 underlying tone of this proposed regulation is the  
13 reason that it's not really practical to be  
14 applied right now or will not function in the way  
15 the IRS intended. And that really lies on the  
16 basis that the IRS in this, in this proposed  
17 regulation, is attempting to treat cryptocurrency  
18 almost exactly the same, more or less with the  
19 traditional financial market.

20 And it's really happening in a very  
21 rushed manner as well. What needs to happen at  
22 the outset is that the IRS and the Department of

1 Treasury needs to get together a group of people  
2 who are experts in cryptocurrency and experts in  
3 the traditional financial market, and from there,  
4 have a sandboxing session from which they can  
5 propose regulations which are helpful to  
6 taxpayers, helpful to the IRS, and does not harm  
7 the growth of the cryptocurrency industry.

8           So, just as a brief back history, the  
9 cryptocurrency differs from the traditional  
10 financial market in that it's multifunctional.  
11 The traditional financial market, you have stocks  
12 and you have those other assets which are traded  
13 on the New York Stock Exchange. But  
14 cryptocurrency can be treated as cash, can be  
15 treated as stock and can be treated as other  
16 financial assets, not just stock. Not only that,  
17 but cryptocurrency is instantly traded through the  
18 internet.

19           There is no time that the trading stock  
20 market, if you were to call that, were to shut  
21 down. Cryptocurrency is global in nature. It's not  
22 dependent per se on a state specific, country

1 specific trading platform or dollar value. And  
2 the means of trading differs significantly from  
3 that of the traditional financial market, just  
4 because that is essentially on the internet. In  
5 other words, cryptocurrency is the next step in  
6 evolution of the financial system.

7           And until 2009, the world really hasn't  
8 seen a financial asset institution such as  
9 cryptocurrency. And because of that manner, there  
10 needs to be regulations which specifically  
11 recognize that cryptocurrency, although it is,  
12 yes, an asset of a financial system, it's the next  
13 step. It's the next evolution. So, we need  
14 proposed regulations which acknowledge this and  
15 also have functionality to be applied to this  
16 purely internet.

17           Next step evolution of cryptocurrency.  
18 These regulations simply aren't it. In these  
19 regulations there's multiple attempts to apply  
20 traditional market notions to this digital asset  
21 transaction, cryptocurrency market that's  
22 occurring. In other words, it's akin to trying to

1 fit a square peg into a round hole.

2 What's needed is specific cryptocurrency  
3 regulations and not just regulations as tax  
4 regulations, but there needs to be some level of  
5 regulations on the crypto market itself before a  
6 tax is applied. That's one significant  
7 characteristic of what's -- the IRS is attempting  
8 to do here with tax administration versus the  
9 traditional financial market. In the traditional  
10 financial market.

11 There was some regulation of the market  
12 itself to ensure protection of taxpayers, to  
13 ensure protection of businesses and investors from  
14 any amount of fraud or proxy schemes before  
15 taxation was implemented. Likewise, there needs  
16 to be something similar with the cryptocurrency  
17 market. So, regulation when I'm stating that is  
18 not just encompass taxation policy, but also  
19 encompasses pure policy for the cryptocurrency  
20 regulation. That being said, we at NTUF agree  
21 with the IRS and the Department of Treasury that  
22 there does need to be some taxation regulation

1 with the cryptocurrency market and general  
2 regulation as a whole.

3           But these proposed regulations simply  
4 are not it because, simply stated, these  
5 regulations are premature. First and foremost,  
6 there needs to be a regulatory scheme for the  
7 cryptocurrency industry so that investors  
8 platform, cryptocurrency platforms and business  
9 investors as well aren't confused and bogged down  
10 by various litigation schemes that are both state  
11 specific, national specific and international  
12 specific.

13           Once we're able to secure a standardized  
14 level of regulation for the cryptocurrency  
15 industry, then it would be more applicable and  
16 beneficial to the IRS and Department of Treasury  
17 to apply a tax regulation scheme. Simplifying  
18 regulation scheme at this level wouldn't function  
19 the way that that it's intended to function,  
20 simply because there is no set regulation these  
21 the current cryptocurrency platforms are having  
22 try to juggle the differences between

1 international, state and domestic regulations,  
2 while also introducing these regulations would be  
3 too burdensome on the emerging cryptocurrency  
4 sector.

5           And that's that also leads into my  
6 second point and critique of these regulations is  
7 that both the cryptocurrency infrastructure and  
8 the IRS own infrastructure is not ready for what's  
9 going to happen if these proposed regulations  
10 would be enacted, as they are simply stated, the  
11 current cryptocurrency infrastructure, although  
12 they would be able to acclimate to these  
13 regulations, giving only one year to do so is not  
14 reasonable or fair to ask. It's going to take an  
15 extended period of time for the cryptocurrency  
16 infrastructure to consult with their attorneys,  
17 consult with their CPAs and consult with their  
18 investors, try to figure out what is the most  
19 applicable way to abide by these regulations, and  
20 build that infrastructure into their current  
21 platforms.

22           Build that structure into the



1        cryptocurrency. Asking for this to be implemented  
2        by 2025 is simply not feasible. Moreover, the IRS  
3        own infrastructure is not ready for what will  
4        happen if these regulations are to be implemented.  
5        Currently, as of November 4th of this year, the  
6        IRS has 1 million unprocessed IRS returns, and  
7        that is before the implementation of these  
8        policies, which, according to one IRS director, is  
9        expected to increase to almost double what is  
10       being seen right now.

11                    Matter of fact, the IRS director  
12        furthered that the IRS technology, the way it is  
13        today, will not support the data and volume that  
14        will come out of these proposals out of proposed  
15        regulations dealing with digital assets. In other  
16        words, in order for the IRS to really be able to  
17        benefit from a taxation of the cryptocurrency and  
18        for the cryptocurrency industry to be able to  
19        comply with the IRS, there needs to be more time  
20        for both sides.

21                    The IRS needs time to build up its  
22        infrastructure to reboot its computers and

1       technology system, to be able to process not only  
2       more tax returns, but also to step into the  
3       digital asset cryptocurrency future market, but  
4       also the cryptocurrency industry needs time to be  
5       able to build up the infrastructure to abide with  
6       these regulations.

7                       Third, as well is that with the current  
8       growth of the cryptocurrency market, which we are  
9       seeing an unprecedented expansion of not only job  
10      opportunities and money and investors flowing  
11      through this financial sector, but implementing  
12      these regulations as a whole would greatly slow  
13      down the cryptocurrency market, because, again,  
14      these regulations try to apply the traditional  
15      financial market ideology towards cryptocurrency.

16                      And although there are some  
17      similarities, to a certain extent, there needs to  
18      be regulations that recognize the digital aspect  
19      of cryptocurrency, the faster facet of  
20      cryptocurrency, and make regulations that apply  
21      specifically to cryptocurrency characteristics  
22      instead of just trying to apply a traditional

1 financial market ideology. Our third critique is  
2 our second critique, pardon me, is that these  
3 proposed regulations, as they are, they harm  
4 taxpayers.

5 I think we've heard from all the  
6 speakers today, is that the regulations are overly  
7 broad, somewhat overly broad means in exchanges  
8 that the taxpayers likely will suffer either  
9 double taxation or over taxation if these  
10 regulations are implemented as possible. One  
11 sector that that we were particularly concerned  
12 with is that is the aspect of only allowing of  
13 taxing asset to asset transfer, transfer taxation  
14 within the cryptocurrency market.

15 And that's first and foremost because  
16 cryptocurrency market, because it's not regulated  
17 as a whole, is extremely volatile and open to  
18 Ponzi schemes. We've seen this over the past ten  
19 years. What this means is that taxpayers are  
20 suffering massive losses, which they may not  
21 suffer inside of a traditional stock market  
22 exchange, just because of the regulations that are

1 in place. For instance, with the New York stock  
2 market to stop any Ponzi schemes that aren't in  
3 place with the cryptocurrency market.

4 So under this current taxation scheme is  
5 that if you're if under the regulations, you're  
6 going to tax the value gained from one digital  
7 asset, such as an ether exchange for another  
8 digital asset of Bitcoin, or vice versa, is that  
9 hypothetically, in such a scenario, if there is a  
10 massive loss for one crypto asset exchange for  
11 another crypto asset, that's a Ponzi scheme, well  
12 then these investors could be facing millions of  
13 dollars of losses.

14 Oftentimes under the current IRS scheme,  
15 investors are only allowed a \$30,000 deduction for  
16 year. This could perpetually set taxpayers into  
17 only being allowed to deduct what is a massive  
18 lawsuit of a Ponzi scheme a little fraction of  
19 each year, perhaps for the rest of their lifetime.  
20 What this means is that there needs to be a lot  
21 more protection for taxpayers in a market. That's  
22 --

1 OPERATOR: Excuse the interruption. You  
2 have one more minute remaining. Thank you.

3 MS. CARPENTER: -- volatile. So, all in  
4 all, the purpose of this is that the current  
5 regulations, as they are, they're going to  
6 increase litigation risk. They're vague and  
7 ambiguous. The other portions of the regulation  
8 as well really tend to cabin. What is an emerging  
9 industry, as a traditional stock. Because of  
10 that, we need to focus on sandboxing a group of  
11 experts to make regulations that are beneficial to  
12 all of the parties involved. We thank you for  
13 allowing us to be a part of this process, and are  
14 here to help with any recommendations.

15 MODERATOR: Thank you does anybody on  
16 the panel have any questions? No. Okay. The  
17 next speaker will be Ryan Leverette.

18 MR. LEVERETTE: Hello? Can you guys  
19 hear me?

20 MODERATOR: Yes, we sure can. Thank  
21 you.

22 MR. LEVERETTE: Hi. So, first of all, I

1       feel maybe a little bit out of place as a --  
2       testifying here because I'm really just a taxpayer  
3       and also a tax preparer at a small tax firm. But  
4       I want to thank you for the opportunity to testify  
5       today. So, as I said, my name is Ryan Leverette.  
6       I work as a tax preparer.

7                 We primarily deal with individual and  
8       small business taxpayers. So, my comment is  
9       primarily focused on how this the proposed  
10      rulemaking would affect the average taxpayer. So  
11      first, I'm requesting that the 1099 digital asset  
12      form that's created. I'm requesting that it would  
13      have a similar look and similar information that's  
14      provided as the existing 1099B. This would make  
15      it easier for taxpayers to determine their actual  
16      taxable gain from the sale of digital assets, and  
17      it would make it easier for tax preparers upon the  
18      implementation of this form.

19                I'm also asking that this proposed  
20      rulemaking regulation continue forward, as the  
21      rules will ensure that brokers and other  
22      stakeholders will be forced to become more secure

1 and better regulated. As it stands now, the  
2 Cryptospace has seen too many instances of  
3 dishonest or shady companies, most famously FTX,  
4 that have taken advantage of the loose regulations  
5 around the space to con their clients and  
6 investors out of their money and digital assets.

7 This proposed rulemaking would be a good  
8 step in the direction of reining in the Wild West  
9 of digital assets, as it exists now. Digital  
10 assets are defined primarily as digital assets  
11 securities, or I should say, digital assets that  
12 are securities are defined by the Securities and  
13 Exchange Commission as a digital asset security  
14 and as such are, I think, should be regulated in  
15 the same manner as a traditional security, and  
16 therefore the tax treatment and reporting  
17 requirements should be in line with that of a  
18 traditional security.

19 I'm also asking that the IRS and  
20 Treasury Department continue forward with their  
21 proposals to expand requirements for reporting,  
22 particularly with respect to the proposed

1 expansion of reporting requirements as a tax  
2 preparer. The required reporting of basis and  
3 sale price of digital assets would make tracking,  
4 tracking the taxability of a transaction much  
5 easier for the average taxpayer, as it would  
6 ensure that taxpayers and those who prepare their  
7 tax returns are aware of the cost and sale price  
8 at every potential taxable transaction.

9 Too often, we receive inaccurate or  
10 incomplete information from taxpayers, as  
11 taxpayers are unaware of their basis in a digital  
12 asset, or they are unaware that a transaction was  
13 a taxable event and therefore failed to report  
14 that a transaction occurred. Once again, thank  
15 you for letting me testify. I yield the rest of  
16 my time.

17 MODERATOR: Thank you. Do we have any  
18 questions? Yes, we have one.

19 PANELIST: Thank you. Do you plan to  
20 submit a written comment?

21 MR. LEVERETTE: I am happy to submit  
22 what I wrote out as a written comment. Yes.



1                   MODERATOR: Thank you.

2                   MR. LEVERETTE: Yes.

3                   MODERATOR: Anybody else have any  
4 questions? Okay. Our next speaker will be Carlo  
5 D'Angelo from DUI Defense Law.

6                   MR. D'ANGELO: Yes. Good morning and  
7 thank you for giving me the opportunity to speak  
8 on this very important proposed digital asset  
9 broker regulation. By introduction, my name is  
10 Carlo D'Angelo and I am a criminal defense  
11 attorney, former law professor, and an advocate  
12 and user of blockchain technologies. My law  
13 practice focuses on areas of digital asset crime,  
14 as well as KYC and AML compliance in the crypto  
15 sector.

16                   I'm here today because as a lawyer,  
17 deeply involved in the digital asset sector, I  
18 have serious concerns regarding the IRS Treasury's  
19 proposed reporting requirements as currently  
20 drafted. These proposed regulations require  
21 consumers to disclose sensitive personal  
22 identifying information to any qualifying digital

1       asset broker in order to effectuate digital asset  
2       transactions.

3               These digital asset brokers, who fall  
4       outside the scope of traditionally regulated  
5       securities brokers, would then be required to  
6       collect, store and pass on that KYC. Know your  
7       customer information to the IRS in the form of a  
8       special 1099DA reporting form. It is my humble  
9       belief that, if approved in its current form,  
10      these proposed asset reporting requirements  
11      significantly burden growth and innovation in the  
12      digital asset sector and expose consumers to very  
13      serious data privacy risks.

14              Stated simply, these proposed  
15      regulations pose an existential threat to the  
16      future of crypto and DeFi in the United States.  
17      Although these proposed IRS Treasury regulations  
18      seek to enhance tax compliance in the United  
19      States digital asset sector, it is my humble  
20      belief that they do so at the expense of personal  
21      taxpayer, user data and privacy.

22              These regulations impose an

1       unprecedented and frankly, what I believe to be an  
2       unworkable asset reporting regime on both  
3       consumers and qualifying brokers. That goes far  
4       beyond any regulatory framework ever proposed to  
5       date. The government's concerns regarding tax  
6       reporting compliance in the crypto sector are very  
7       similar to those previously raised with respect to  
8       the reporting of qualifying cash transactions.

9                 If, however, the United States were to  
10       impose analogous reporting regulations on cash as  
11       proposed in these regulations for digital assets,  
12       then every qualifying retail cash broker, quote  
13       unquote, would be required to collect sensitive  
14       consumer privacy information for every cash  
15       transaction, regardless of the amount of that cash  
16       exchanged. Because as we know from reading these  
17       regulations, it applies to all digital asset  
18       transactions, regardless of the cost basis that  
19       that apply to the definitions stated in the  
20       proposed regulation.

21                 This would create an overly expansive  
22       and unmanageable surveillance mechanism for

1 consumer cash transactions. In the analogy that  
2 I'm providing, burdening both consumers and the  
3 retail sector. Imposing this type of reporting  
4 regime on the digital asset sector creates  
5 identical concerns regarding privacy data, and  
6 puts such information in the hands of non-  
7 traditional brokers who are not yet equipped to  
8 manage the collection and storage of such highly  
9 sensitive information, especially when we're  
10 considering the DeFi and the decentralized aspect  
11 of qualifying digital asset brokers.

12 While I understand the government has a  
13 substantial and justifiable interest in creating  
14 an accurate digital asset data tax reporting  
15 regulatory system, the current proposed regulatory  
16 solution does so at the expense of jeopardizing  
17 consumer data. The problem with the current  
18 proposed solution is that it attempts to apply  
19 traditional 1099 reporting solutions to a new and  
20 technologically innovative, non- traditional asset  
21 class.

22 Rather than turning to traditional 1099

1 reporting options, I would submit that the  
2 blockchain itself offers a viable and workable  
3 solution that can vastly mitigate these privacy  
4 concerns. I'm currently working to build a  
5 protocol to assist digital asset brokers in  
6 compliance with these proposed regulations once  
7 they go into effect, and I believe that a  
8 component of this compliance measure will be  
9 something along the lines of a zero knowledge  
10 proof identity verification technology. Such a  
11 system would verify KYC information from users  
12 without revealing the actual data to the digital  
13 asset brokers that would preserve user privacy.  
14 In such a scenario where the blockchain is  
15 utilized to verify identity as opposed to  
16 completing this 1099 proposed form, a unique zero  
17 knowledge identity token could be generated for  
18 each consumer.

19 That token could confirm the consumer's  
20 identity and verify compliance with data reporting  
21 requirements without exposing the sensitive data  
22 to the digital asset broker platform. The

1 consumer in that scenario could simply share their  
2 unique identity token with the digital asset  
3 broker at the time of the transaction. The  
4 digital asset broker would only capture the  
5 Consumer Identity token users identification  
6 number and not the underlying privacy data.

7           The digital asset broker would then  
8 share that privacy token ID with the IRS on a form  
9 1099, which is specially crafted for purposes of  
10 that particular identity token. Instead of  
11 transmitting the consumer's sensitive data as the  
12 counterparty to this privacy token protocol. The  
13 IRS would have exclusive access to the consumer's  
14 encrypted user information in order to verify the  
15 identity of the consumer and their token ID on  
16 that 1099 form, without having to expose that  
17 information to any potential third-party data  
18 breach.

19           This framework ensures accurate tax  
20 reporting, as the IRS being the sole authorized  
21 entity to access the encrypted underlying KYC data  
22 from the zero knowledge proof provider can use

1       that unique token ID for identity confirmation and  
2       tax compliance purposes.

3               Such a system would also eliminate the  
4       danger of consumers providing such sensitive  
5       information to illicit actors, or to legitimate  
6       digital asset brokers, who may lack sufficient  
7       means to store and manage such data. I believe  
8       that this innovative approach not only aligns with  
9       the regulatory intent of ensuring tax compliance,  
10      but also significantly mitigates the privacy and  
11      data security risks for individuals involved in  
12      digital asset transactions.

13              This proposed sort of a solution would  
14      present a balanced pathway fostering a privacy  
15      centric environment, which would, I think, fulfill  
16      the decentralized ethos of cryptocurrency and  
17      blockchain technology while also fulfilling tax  
18      reporting obligations, thus promoting a robust and  
19      sustainable digital asset ecosystem in the United  
20      States. I'm keenly interested in sharing more  
21      details about such proposed solutions, and having  
22      a constructive dialogue with Treasury regarding

1       how to bring compliance into this new and  
2       innovative technological asset trading regime, and  
3       I welcome the opportunity to share further  
4       thoughts and answer any questions that you have.  
5       I humbly thank you for the time to speak here  
6       today, and I would yield the rest of my time.

7               MODERATOR: Thank you. I have one  
8       question about your innovative approach, your  
9       proposed innovative approach. Could you explain  
10      how the customer would get the payee statement? I  
11      understand that the broker would send the token ID  
12      number to the IRS, and presumably the IRS would  
13      have some key to use that ID number to know who  
14      the person is. But how would the customer  
15      actually get their statement?

16              MR. D'ANGELO: I think there would need  
17      to be some kind of a hybrid approach to this  
18      because as is normally the case with tax  
19      reporting, it is a self reporting requirement. So  
20      I think the taxpayer themselves would have to  
21      through a crypto Ponzi tracking program have to  
22      monitor their purchases and have to make sure that



1       their purchases in the end reconcile with what is  
2       being recorded by the digital asset broker via the  
3       1099 form.

4                   I think what potentially is a problem  
5       with the way this is currently structured and I  
6       understand the Treasury obviously is trying to  
7       adapt to this law that was passed in the 21 Job  
8       and Infrastructure Act and trying the best they  
9       can to implement it, but I think the concern is if  
10      you have a pile of 1099 digital asset recording  
11      forms from the broker, IRS generally can't do much  
12      with that until the taxpayer actually makes their  
13      tax payment.

14                   And then as I understand it they would  
15      have to reconcile those two documents. So I think  
16      this might allow a double review whereas  
17      traditionally speaking the taxpayer would pay,  
18      would file their return and then if their return  
19      does not match up with what has been provided by  
20      the asset broker, I think that's what would  
21      trigger further inquiry.

22                   MODERATOR: Yes, so there are a couple

1 of question. One is can you give us a sense of  
2 how close to real world implementation the  
3 identity token you've described is or similar  
4 privacy tokens that we understand others are  
5 working on? And the other question is would you  
6 envision that the use of the privacy token be  
7 something that a customer would use voluntarily or  
8 would you envision this being required in some  
9 way?

10 MR. D'ANGELO: I think there could be a  
11 couple of approaches to it. The IRS already has a  
12 very robust identity verification system in place  
13 when it comes to processing tax payments via their  
14 on line portal. I think what it would take is a  
15 willingness to think outside of traditional forms  
16 of technology when it comes to verification and  
17 consider working with blockchain technology  
18 providers. To answer the other part of your  
19 question, I've been in contact with several zero  
20 knowledge proof providers, some are very far along  
21 including something that Coin Base has recently  
22 launched through their platform base which

1 provides a component of identity verification.

2           So I think the technology is very close.  
3 What's always been a hindrance is the  
4 computational power that it requires to create  
5 these zero knowledge proofs, but as we are  
6 starting to see more lean and cost effective  
7 Layer2 solutions such as what Coin Base is  
8 providing with their base token, I think we're  
9 going to see accelerated growth and expansion of  
10 this as a means of enhancing identification via  
11 blockchain technology.

12           MODERATOR: Okay, anybody else? Any  
13 questions, no? Oh, yes!

14           PANELIST: Do you have any concerns that  
15 taxpayers might find it burdensome to monitor  
16 their own transaction?

17           MR. D'ANGELO: I think as someone who  
18 could well speak in this case, I think those  
19 concerns already respectfully exist because as it  
20 stands right now given the current recording  
21 regime that we're under, the taxpayer is required  
22 to identify whether they transacted in any digital

1       asset transactions in the tax year on their tax  
2       form. Then they are required to have to go in and  
3       look at each of their transactions and reconcile  
4       them. So I think that burden already to an extent  
5       largely exists. I think what this regulation is  
6       trying to accomplish at its core is to make sure  
7       that there is consistent recording across all  
8       digital asset traders.

9                I think it does add another layer of  
10       burden, but I think considering the burden that  
11       individuals are currently experiencing in trying  
12       to keep track of their digital asset reporting and  
13       tax compliance, I think this might ultimately  
14       prove to be an enhancement mechanism through zero  
15       knowledge proofs to try and bridge that gap while  
16       also preserving the decentralized nature and the  
17       DeFi protocols that a lot of the previous speakers  
18       have advocated for.

19               MODERATOR: Anyone else? Okay, thank  
20       you. The next speaker will be Tavarus Blackmon,  
21       Tavarus Blackmon Art.

22               MR. BLACKMON: Gents, everybody, dear

1 members of the Office of the Treasury, thank you  
2 for accepting our request to offer public comment  
3 regarding the Rule Making Regulation 12279319  
4 where a use case aka in every person or more  
5 simply a small business, I will be speaking on  
6 behalf of Tavarus Blackmon Art, LLP, a partnership  
7 with my wife, E.J. Cord, a micro small  
8 organization with a subsidiary Blackmonster Music,  
9 which is a production company, website Desktop  
10 Publish Manuscript, audio archive and pending U.S.  
11 patent and trademark registration.

12 I am also speaking on behalf of the  
13 interests of the entity's Creative Foundations and  
14 art products and services organization and pending  
15 U.S. patent and trademark registration and Art  
16 Musical Space, a web based virtual gallery, artist  
17 archive and fine art e-commerce solution. And Art  
18 Space is also the brokerage to the art consultants  
19 of the U.C. Davis Health Art Collection having  
20 placed several diverse artists into their art  
21 school. I am also an educator in the CSU system  
22 at CSU Sacramento, or Sac State.

1                   My position is lecturer within the Art  
2                   Department. I am under a renewal annual contract.  
3                   I work with undergraduate art majors and non art  
4                   majors from vast disciplines and colleges from  
5                   within the university and instruct beginning  
6                   drawing, intermediate drawing, and digital art.

7                   Having earned an MA and BA from CSUS  
8                   System in Studio Art I went forth to earn a second  
9                   Masters Degree, internal MSA from the R1 U.C.  
10                  Davis. U.C. Davis ranks among the top 10 public  
11                  colleges in the country, top 5 agricultural  
12                  programs in the country, and top 15 art programs  
13                  across the country. I was named charter member of  
14                  the U.C. Davis Art and Art History Department  
15                  Board and am a member of the Department's Advisory  
16                  Board of Directors.

17                  I am also the Diversity, Equity, and  
18                  Inclusion Committee Chair at Ridge Division, a  
19                  wage certified non-profit org art center and  
20                  admission, San Francisco. I am also on the  
21                  Territorial Committee and an advisory member  
22                  working between Bay area and greater Northern

1 California regions. In 2022 and '24 I was a  
2 volunteer nominated with the Access MoMA and SECA  
3 Award.

4 Finally, I'm a paid volunteer and  
5 organizational vendor with the city of Sacramento,  
6 have worked as a consultant to the city and sound  
7 music cities as music census for the city of  
8 Sacramento, the Guaranteed Basic Income for Artist  
9 Grant administered by the city of Sacramento and  
10 the National Endowment for the Arts, and a  
11 volunteer to the panelist with the California Art  
12 Council which grants non- profit organizations and  
13 creative development grant.

14 Further, I've been a recipient of the  
15 UCLA Graduate Diversity Fellowship which I did not  
16 accept, the U.C. Davis Provo Scholarship, the  
17 Friedman Gadbury Award, the Friedman Nelson Award  
18 in Painting, the Headlands Center for the Arts  
19 Graduate Fellowship, the KALA Art Institute Paint  
20 and Arts Award administered by the Sustainable Art  
21 Foundation, the KALA Art Institute Artists in  
22 Residence, the Caldera Center for the Art, Artists

1 in Residence, the Territorial Fellowship at Group  
2 Division and between 2020 and current, we have  
3 been the recipient of grants from the City of  
4 Sacramento, the California Arts Council, the  
5 Sacramento Office of Art and Culture, and the  
6 Sacramento Office of Economic Development  
7 Innovation.

8 Finally, we have had the honor to judge  
9 for the Golden One Center, the California State  
10 Fair, Painting and Drawing Category, the City of  
11 Lathrop Mayor's Art Show, and recently had our  
12 work exhibited in Mayor Steinberg's Art Gallery.

13 We have been outspoken in regards to the  
14 development of policy and rule making, Tavarus  
15 Blackmon Art, LLP provided public comment to the  
16 Treasury, IRS, USCL, and USPTL, and the  
17 responsible development of digital assets.  
18 Recently we provided public comments on the AI in  
19 regard to President Biden's Executive Order on AI.  
20 Governor Newsome's Executive Order on AI, and  
21 regarding crypto, this Reg 122793-19 which, you  
22 know, we're grateful to be able to do present our



1 position in Web3, specifically regarding this Reg  
2 and potential rule making.

3 We can neither parcel all the  
4 transactions nor manipulate our data. We do not  
5 employ legal counsel. We do not employ  
6 development or marketing teams. My wife makes the  
7 meals, feeds our children, takes care of the  
8 house, and I'm kind of left to my devices to play  
9 and disrupt formally and critically the fields of  
10 art and technology now Web3 development with the  
11 support of my family.

12 The result is we have a vast eco systems  
13 spanning Web2 platforms, Web3 assets, IRL fine  
14 art, and managing the archives of digital file and  
15 caretaker of our art collection. And specifically  
16 with regard to this Reg, there are but a few  
17 points which we would like to make which are the  
18 following:

19 Web3 and the U.S.'s response to Web3  
20 technological development have thrust our culture  
21 and economy forward into the unknown while having  
22 experiential position of an infrastructure that is

1 deep, rich, and composable yet without the  
2 underlying framework of policy to facilitate the  
3 small business's successful entrance into what has  
4 been called the future of the Internet.

5 In addition to this which is not exactly  
6 failing, for example, you know, we are excited to  
7 be at the cutting edge and the tip of this new  
8 economy and technology, but it has not been a  
9 communal pleasure trip. It has been a cutthroat  
10 process of having our unique tokens viewable and  
11 our data accessible, cross chain and in cross  
12 platforms.

13 The current proposal much in the nature  
14 of Web3 is rich and deep. Unlike Web3, however,  
15 the Reg does not have a composable component once  
16 passed as law. And our inability to fully consume  
17 the information on the Reg leads us deprived. We  
18 would like to respond in a way that moves  
19 discussion and policy forward, helps to secure the  
20 blockchain for all participants and expressly  
21 uphold the tentative decentralization and  
22 permission less nets.

1                   Okay, as far as the broker definition,  
2 we do not fully understand the definition as it is  
3 described. We can only state that and work as an  
4 IRL fine art broker and virtual gallery owner. We  
5 facilitate and will trade and transact with our  
6 own collectibles and digital assets to our own  
7 entities and third parties. If we are asked to  
8 file and provide information as a broker our aid  
9 to sell and disposition of crypto to a third  
10 party, we will provide required information on the  
11 collector to the IRS.

12                   We will not conduct business with  
13 anonymous collectors. We support Web3 in all of  
14 its endeavors and believe in security for  
15 participants. However, as we are a nominal public  
16 figure and professional artists, we must request  
17 transparency from collectors and holders regarding  
18 the legal collection of data during the  
19 disposition of our digital assets.

20                   We don't necessarily agree with previous  
21 statements by the USCL and USPTL regarding digital  
22 assets. Digital assets are real tangible objects.

1 Further, the convertible nature of the digital  
2 files makes them not only tangible, but also a  
3 physical representation, but value phase change.  
4 The ad con and value is a very novel economic  
5 device and further walk through mechanics make  
6 future phase change part of the contract and  
7 metadata.

8 For this reason a close and intimate  
9 look at digital assets on the blockchain is  
10 merited. We do not feel we have had enough time  
11 to process a proposed definition, and in light of  
12 accessibility and inclusivity please consider  
13 restating the definition in a way that can be read  
14 naturally. Thank you for your consideration on  
15 that matter.

16 The reporting regulations for brokers, I  
17 just want to state that, you know, our income in  
18 2022 was only \$140,000. You know I had to work  
19 super hard day in and day out around the clock to  
20 do that. The broker definition in the proposal  
21 certainly is robust. We can only respond by  
22 asking, you know, if a broker does not know they

1 are a broker are they still a broker? And with  
2 what diagnostic could that be determined? I read  
3 the definition of policy and I am still unsure  
4 with regards to my organization specifically.

5 To simply state one should seek legal  
6 advice, it bars them from equity. And I'm sure  
7 that instead of simply seeking advice where it  
8 might be needed, the resource or support could be  
9 provided.

10 Please reconsider methods of advancing  
11 this technology by making the rule making process  
12 more accessible to members of the wider crypto and  
13 burgeoning crypto community. For example, as an  
14 educator, my students are not engaging with the  
15 city or national concerns especially this policy  
16 topic. Please develop methods to make reg and  
17 rule making a process of inclusion and not simply  
18 a delineation of cross reference entries. Thank  
19 you for your consideration on that topic.

20 Establishing the 1099DA, thank you to  
21 the fellow panelists who have provided comments on  
22 this. Like I said I'm not an attorney, I'm a fine

1 artist and business owner. In the normal  
2 operation of my organization which is to mine or  
3 mint entity tokens, we've used Turbo Tax, Zen  
4 Ledger, Tax Bit, Token Tax, Crypto Tax Calculator,  
5 Coin Tracker and Koinly, however, we were not  
6 provided accurate or real time data for our  
7 collection and transaction.

8 OPERATOR: Excuse the interruption; you  
9 have one more minute remaining.

10 MR. BLACKMON: In regards to this, it's  
11 been difficult to successfully reconcile our tax  
12 liability. As a stakeholder with the DFPI, they  
13 referred us to the Sacramento Small Business  
14 Development Center who could not provide an update  
15 or resource on how to file. We were referred to  
16 the IRS and the Miscellaneous Unit that was not  
17 able to provide our organization with support.  
18 Our comment is public. It has been published.  
19 You can look at that on the Regulation.Gov  
20 website.

21 I have a few more points here that I did  
22 want to mention, especially the EOA minting laws

1 and our position is not clearly defined as yet by  
2 the proposal, but determination in point of  
3 taxation we feel is we are not dominion and holder  
4 of the ethereum that we secured on the blockchain,  
5 however, only the entity token that we cannot  
6 actually pay tax before we've been paid ourselves.

7 As far as the topic of --

8 MODERATOR: Okay, thank you.

9 MR. BLACKMON: Hello?

10 MODERATOR: Yeah, hold on. Does anybody  
11 have any questions? I apologize, that was the  
12 ending of your 10 minutes. I appreciate your  
13 participation. The next speaker will be Rory  
14 Rawlings, Blu Canary Capital. Mr. Rawlings, are  
15 you there? Operator, are you there?

16 MR. RAWLINGS: You're not hearing me?  
17 Can you hear me?

18 MODERATOR: Yes, is this Mr. Rawlings?

19 MR. RAWLINGS: Yes, I'm sorry; I was  
20 having a problem with my connection.

21 MODERATOR: No worries, we can hear you  
22 now. You may begin now, thank you.

1                   MR. RAWLINGS: Very good. Good morning.  
2                   I appreciate the opportunity to provide public  
3                   comments on this very important issue. Today is  
4                   déjà vu for me.

5                   In 2006 I was invited to testify before  
6                   a congressional hearing on a similar issue, the  
7                   difficulty of complying with the tax, at the time  
8                   sales tax for e-commerce. A growing amount of  
9                   business activity was moving from Main Street to  
10                  the Internet and it was largely untaxed. It was  
11                  the early days of what we now call Web 2 and the  
12                  discussion centered on indirect taxation.

13                  In contrast today we see business  
14                  activity shifting to a new financial  
15                  infrastructure called Web3 or blockchain. The  
16                  matter at hand is the direct taxation of digital  
17                  assets.

18                  I am a serial entrepreneur having  
19                  co-founded Avalera, the leader in automated  
20                  indirect taxation that recently went private from  
21                  the New York Stock Exchange. My latest venture is  
22                  Blu Canary Capital, a venture studio. We start



1 new companies and acquire early stage companies to  
2 put them on a growth trajectory with our team of  
3 seasoned executives. We recently acquired FINN  
4 (phonetic) a relatively unknown Web3 tax company  
5 for one very specific reason, the SIM tax engine.  
6 It has global scale. It was designed and tuned  
7 for Web3 bases determination at the extreme scale  
8 of modern exchanges in high frequency trading.

9           Most of the comments I have heard,  
10 excuse me, most of the comments I have read or  
11 heard today relate to the difficulty and  
12 complexity of determining and reporting the tax  
13 basis for digital assets. It is a uniquely  
14 challenging area of tax in a decentralized eco  
15 system that calls for a unique solution, but we  
16 confronted an issue of similar complexity in 2006.

17           Obviously, e-commerce taxation has been  
18 solved even though it was once considered  
19 intractable thanks in part to a company I founded  
20 in 1999. Today tax collection for Internet fails  
21 as ubiquitous. It is not controversial. Some of  
22 the lessons from that era can be applied to this

1 situation as well.

2 The origin of that solution was the  
3 streamline sales tax or SST initiative that began  
4 in March 2000. SST had three original tenants  
5 that apply to Web3 taxation today. These three  
6 tenants will resolve the majority of the  
7 complaints concerning these new regulations.

8 Number 1: All tax determination,  
9 reporting, and returns were done by a third party  
10 certified tax service called a certified service  
11 provider or CSP.

12 Number 2: The CSP systems were audited  
13 for accuracy before being certified thereby  
14 eliminating the need for post transaction audits  
15 while at the same time eliminating tax  
16 determination in reporting mistakes.

17 Number 3: Due to the outside cost  
18 burden on some businesses and the additional  
19 revenue collected by the taxing authority, said  
20 taxing authority should pay the service provider  
21 directly eliminating the cost in labor burden of  
22 complying with the exceptionally difficult tax.

1                   I recommend the IRS create a small  
2                   commission with both IRS and industry participants  
3                   tasked with defining, the creation, and management  
4                   of certified tax service providers following the  
5                   three tenants above that satisfies both government  
6                   and industry. I think everyone on this call and  
7                   everyone involved with digital asset taxation  
8                   agree that it is difficult to understand let alone  
9                   comply.

10                  There are problems including among other  
11                  things over reporting and bases determination.  
12                  Quite a few well respected institutions are  
13                  calling for a delay so the industry can compile a  
14                  rational response everyone can live with. No one  
15                  wants to be non-compliant. No one wants to stifle  
16                  innovation, but we don't need to accept tax  
17                  avoidance in the Web3 world either.

18                  Technical solutions such as FINN already  
19                  exist and can be certified as accurate by IRS  
20                  auditors. As with inter- jurisdictional Internet  
21                  taxation in the early 2000s, digital asset bases  
22                  determination is a complex problem requiring

1 direct IRS intervention by providing third party  
2 determination and reporting at no cost to the  
3 broker in the middle.

4 As I did with complex issues surrounding  
5 Internet taxation in the early 2000s, I will make  
6 myself available to further the cause of tax  
7 compliance without creating an undue burden on  
8 those who have to comply. Thank you.

9 MODERATOR: Do you have any questions?

10 PANELIST: Do you plan to submit a  
11 written comment and also is there a resource that  
12 you can suggest that we could look at to  
13 understand how the system you described worked?

14 MR. RAWLING: I will definitely provide  
15 my comments. And sure, I can certainly point you  
16 in the direction of some resources.

17 MODERATOR: Thank you. Anything else?  
18 Okay, the next speaker will be Sean McElroy from  
19 Fenwick & West.

20 MR. MCELROY: Thank you. I'm Sean  
21 McElroy, a tax attorney at Fenwick & West, and I'm  
22 speaking today with Kevin Kirby, a regulatory

1 attorney at Fenwick & West. Together with the  
2 Fenwick blockchain team, we've advised hundreds of  
3 clients on tax and regulatory issues relating to  
4 blockchain technology. We're thankful for the  
5 opportunity to discuss proposed broker  
6 regulations, and we hope to offer what we think  
7 are productive comments and potentially helpful  
8 solutions. First, we want to say that we  
9 emphasize with the tasks the treasury and the IRS  
10 has here. The IRS itself has said these  
11 regulations will more than double the number 1099s  
12 to be filed, and we understand the major tax  
13 compliance issues that are at stake here.

14 But we fear that proposed regulations  
15 are, on the whole, a lose-lose proposition. In  
16 our view, many portions of proposed regulations  
17 will not promote tax reporting and compliance and  
18 instead will impose undue and in many cases  
19 impossible burdens on enterprises using an  
20 emergent technology that holds immense promise for  
21 Americans and for people around the world. To  
22 that end, we encourage Treasury and the IRS to

1 proceed carefully and intentionally in  
2 implementing broker reporting requirements and  
3 applying them to virtual currency transactions.  
4 Before turning it over to my colleague Kevin  
5 Kirby, I want to highlight just a few of the key  
6 points that we have raised in our written comment  
7 letter, which was submitted over the weekend.

8           First, we recommend the proposed  
9 regulations reconsider the extraordinarily broad  
10 definition of broker. This definition goes far  
11 beyond any reasonable interpretation of what a  
12 broker is. In doing so, we also want to note that  
13 there is not a one size fits all solution to the  
14 problem of cryptocurrency reporting. Different  
15 solutions and different regulations are likely  
16 needed for, say, centralized exchanges and  
17 decentralized exchanges.

18           We thus recommend that any final  
19 regulations limit the definition of broker to  
20 entities which directly effectuate transactions.  
21 The entity that Congress sought to bring into  
22 parity with existing financial reporting entities,

1 indirect providers of services, cannot, by any  
2 reasonable interpretation of that term, be said to  
3 effectuate transactions.

4           Second, we recommend that the final  
5 regulations embrace a principle of technology  
6 neutrality. This is a principle that Treasury and  
7 the IRS have embraced with the emergence of the  
8 internet over the past half century.

9           As many others have said today, we  
10 believe that rules applicable to brokers of  
11 blockchain assets should be a parity with existing  
12 rules for current financial services providers.  
13 We do not wish to create any favorable regime for  
14 cryptocurrency, but we also don't believe it  
15 should be a disfavorable regime for cryptocurrency  
16 transactions.

17           Third, we recommend that the proposed  
18 regulations be redrafted to better consider the  
19 nature of decentralized finance. This is  
20 particularly important given the impossibility of  
21 implementing a centralized broker regime to  
22 decentralized financial transactions. DFI

1 applications allow users to interact directly with  
2 counterparties in many instances. We urge  
3 Treasury to take the time to investigate the best  
4 way and to study how we can efficiently obtain the  
5 necessary tax reporting information, but not  
6 imposing an impossible to meet burden that would  
7 destroy DFI application.

8           This is not a solution that is  
9 accomplished well by forcing 20th century broker  
10 reporting rules to implement an industry ride by  
11 entities who are not brokers. We also recommend  
12 that developers of DFI applications, those writing  
13 the software, should be expressly excluded from  
14 being digital asset middlemen under the  
15 regulation. There is no sense in which merely  
16 writing software could be said to affect  
17 transactions merely by creating a new technology.

18           Finally, as discussed in our letter, we  
19 believe that there are potential solutions, such  
20 as a blockchain based tax ID number, that could be  
21 privately associated transactions that would  
22 provide a blockchain based solution to tax



1 reporting. And we believe that Treasury should  
2 take the time to really understand how it can use  
3 this technology and incorporate blockchain  
4 technology in its own systems to better serve the  
5 American public and create a reporting regime that  
6 works with the nature of the transaction.

7           And fourth, even for brokers in  
8 cryptocurrency assets under a narrow definition,  
9 we still believe there's a significant problem  
10 under the regulations with unnecessary and  
11 duplicative reporting that would emerge in any  
12 regime like this.

13           First, we think that stablecoins should  
14 not in the ordinary course give rise to gain or  
15 loss, and we recommend that the final regulations  
16 remove stablecoin from the definition of digital  
17 assets, or at least remove brokers reporting  
18 obligations with respect to stablecoin, for  
19 stablecoin transactions. We believe that doing so  
20 would have an added benefit as supporting the U.S.  
21 dollars of preferred fiat currency throughout the  
22 cryptocurrency industry.

1                   Second, we strongly encourage that at  
2                   the very least, Treasury put into effect a  
3                   multiple broker rules prevent multiple individuals  
4                   reporting on the same transaction. We believe  
5                   that the 8 billion figure that's incited is likely  
6                   much smaller than the number that would actually  
7                   end up needing to be reported under this rule, and  
8                   having a multiple broker rule that would ensure  
9                   that only one person is responsible for filing a  
10                  1099 with respect to any specific transaction.  
11                 What we think would help mitigate some of the  
12                 unnecessary reporting. And with that, I turn over  
13                 to my colleague Kevin Kirby.

14                 MODERATOR: You know what, it may be  
15                 that your colleague, we've treated him as a  
16                 separate speaker, so he won't run out of because  
17                 you all asked for two separate 10-minute blocks so  
18                 let's first see if we have any questions for Mr.  
19                 McElroy. I had one question, which was you  
20                 requested that we employ some sort of a multiple  
21                 broker rule. And the question for you is, who  
22                 would you suggest be in the circumstance where

1 multiple brokers are involved in a transaction,  
2 who would you suggest be the broker that's  
3 required to report number one and number two, how  
4 would each of the brokers know that there's other  
5 brokers involved in the transaction to know that  
6 somebody else is picking up the reporting and that  
7 neither of the brokers are picking up the  
8 reporting?

9 MR. MCELROY: Absolutely. So, as  
10 outlined in our letter, we believe that the  
11 definition of broker should be limited to  
12 effectively centralized exchanges and those that  
13 effectuate transactions. And a simple broker  
14 reporting rule would be that if there is a  
15 transaction reported on a centralized exchange,  
16 any other potential brokers under these rules  
17 would be exempted from any type of requirement if  
18 there is a transaction on there, but somebody is  
19 providing the indirect services, which again, we  
20 believe should not be included in this. But if  
21 somebody's providing indirect services relating to  
22 a transaction that they know is going to be

1 reported on a centralized exchange, connecting a  
2 wallet to a centralized exchange, for example.  
3 But you could think of many different types of  
4 individual and many types of entities that would  
5 be involved in that transaction. They should be  
6 allowed to say, we're not a broker because this is  
7 being carried out on a centralized exchange.

8 MODERATOR: Thank you. Do we have any  
9 other questions? Okay, so then I'm going to  
10 introduce the other person from Fenwick & West  
11 separately, as our final speaker will be Kevin  
12 Kirby, also from Fenwick & West.

13 MR. KIRBY:: Hi everyone. Can you hear  
14 me?

15 MODERATOR: I can hear you. Thank you.

16 MR. KIRBY:: Great. Thanks for  
17 entertaining two speakers here. Part of the value  
18 add of the Fenwick blockchain team is our ability  
19 to bring a cross functional approach to legal  
20 matters. So, we wanted to do so here. I'm not a  
21 tax lawyer, and in fact, I started my career as a  
22 banking lawyer at the OCC, the Office of the

1 Comptroller of the Currency. And today I assist  
2 clients with regulatory matters in consumer  
3 financial services and AML/CFT.

4 I wanted to specifically highlight an  
5 opportunity for regulatory coherence that would  
6 come from aligning the broker reporting  
7 requirements with international standards for  
8 detecting and preventing illicit financial  
9 activities. Believe any regulatory approach to a  
10 new technology should be as clear as possible. To  
11 avoid the potential for stifling innovation, the  
12 IRS should seek to ensure maximum clarity about  
13 who is a broker and thus has a reporting  
14 obligation. We suggest that Treasury refine the  
15 definition of broker in the proposed regulations  
16 to comport with the guidance issued by the  
17 Financial Action Task Force, FATF, with respect to  
18 its anti-money laundering and counterterrorist  
19 financing standards.

20 Consistent with its approach to  
21 combating financial crimes in the traditional  
22 financial system, FATF identified virtual asset

1 service providers as those platforms that are  
2 capable of monitoring cryptocurrency transactions  
3 conducted through their systems. The term was  
4 defined broadly and according to function rather  
5 than to any specific technology. The associated  
6 guidance suggests its drafters had a sophisticated  
7 understanding of blockchain technology and  
8 appreciated the importance of a nuanced approach  
9 for imposing regulations on this new industry.  
10 FATF describes virtual asset service providers as  
11 any natural or legal person who, as a business,  
12 conducts one or more of the following activities  
13 or operations for or on behalf of another natural  
14 or legal person.

15 Exchange between virtual assets and fiat  
16 currencies, exchange between one or more forms of  
17 virtual assets, transfer of virtual assets  
18 safekeeping and or administration of virtual  
19 assets, or instruments enabling control over  
20 virtual assets and participation in and provision  
21 of financial services related to an issuer's offer  
22 and or sale of a virtual asset. Treasury cites

1       this guidance approvingly in the preamble to the  
2       proposed regulations and in its DFI risk  
3       assessment from earlier this year. Adopting a  
4       rule for tax reporting that would be harmonious  
5       with the FATF guidance also increases the  
6       likelihood that U.S. tax reporting regime would be  
7       consistent with that of other OECD countries,  
8       mitigating the risk of cross border arbitrage and  
9       facilitating international cooperation.

10               Thus, we urge Treasury to align the  
11       definition of broker with the definition of vast  
12       as outlined by FATF, or to articulate reasonable  
13       and clear instances of departure from such  
14       guidance. This approach would present a more  
15       workable outcome to many businesses as it would  
16       closely track the scope of intermediary regulation  
17       under market, prudential and anti-money laundering  
18       regulatory regimes. That's the balance of my  
19       time, thanks.

20               MODERATOR: Do we have any questions?

21       No, okay.

22               PANELIST: Thank you for your comments.

1 Am I right in understanding that the VASP  
2 definition would include decentralized platforms,  
3 or is that not correct?

4 MR. KIRBY:: Thanks for the question.  
5 The FATF guidance actually has a very good  
6 discussion of what is and out of scope and has  
7 some thoughtful articulation of DFI and the  
8 activities surrounding it. So, as a category, it  
9 doesn't say that DFI applications are in scope or  
10 out, but rather draws lines around the notion of  
11 control over virtual assets on behalf of another  
12 person, which I think is helpful.

13 PANELIST: So, as you may be aware, the  
14 proposed regulations also have rules that look to  
15 control. Do you view those rules as different  
16 from the FATF rules.

17 MR. KIRBY:: As proposed, it looked like  
18 the broker definition was quite a bit broader than  
19 what we find in the FATF guidance, and that gives  
20 rise to concerns that there might be some  
21 contradiction or inconsistencies between the two.  
22 And hence we're urging that in any final



1 regulation, treasury articulates the similarities  
2 and also differences between FATF guidance so that  
3 we can understand better how these two regulatory  
4 regimes interplay.

5 PANELIST: I have a question, a follow  
6 up on that. We have not received your written  
7 comments yet. Do your written comments describe  
8 the circumstances under which you think somebody  
9 would be a broker under these proposed regs, but  
10 not under the FATF rules?

11 MR. KIRBY:: We submitted them over the  
12 weekend, as Sean mentioned, and I'll make sure  
13 that if we have an opportunity to clarify that  
14 exact question, we can follow up with an answer  
15 for that.

16 PANELIST: Great. Thank you.

17 MODERATOR: Do we have any other  
18 questions? No. Thank you. So, this concludes  
19 the hearing. The IRS Office of Chiefs Counsel and  
20 the Treasury Department would like to thank  
21 everyone for attending today's hearing, especially  
22 our speakers who took the time to provide comments

1       today. And this concludes the hearing. Thank you  
2       very much.

3                               (Whereupon, at 12:03 p.m., the  
4                               PROCEEDINGS were adjourned.)

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DISTRICT OF COLUMBIA

I, Nate Riveness, notary public in and  
for the District of Columbia, do hereby certify  
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