Reg. 1.6045-1(a)(9)(i)

Returns of Information of brokers and barter exchanges

§1.6045-1 Returns of information of brokers and barter exchanges.

(a) *Definitions*. The following defin - tions apply for purposes of this section and §§1.6045-2 and 1.6045-4.

(1) *Broker*. The term *broker* means any person (other than a person who is required to report a transaction under section 6043 of the Code), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, or a person that regularly offers to redeem digital assets that were created or issued by that person. A broker also includes a real estate reporting person under §1.6045-4(e) who (without regard to any exceptions provided by §1.6045-4(c) and (d)) would be required to make an information return with respect to a real estate transaction under §1.6045-4(a). However, with respect to a sale (including a redemption or retirement) effected

at an office outside the United States under paragraph (g)(3)(iii) of this section (relating to sales other than sales of digital assets) or under paragraph (g)(4) of this section (relating to sales of digital assets), a broker includes only a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5). In addition, a broker does not include an international organization described in §1.6049-4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

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

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

(B) A principal in the sale;

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

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

(ii) *Special rules for payment transactions involving digital assets*. In addition to the persons defined as customers in paragraph (a)(2)(i) of this section, the term *customer* includes:

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

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

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

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

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

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

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

(ii) An interest in a trust;

(iii) An interest in a partnership;

(iv) A debt obligation;

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

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

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

(viii) A securities futures contract.

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

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

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

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

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

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

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

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

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

(iii) An executory contract that—

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

(B) Is not a regulated futures contract.

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

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

the delivery as a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for U.S. dollars is not a sale. The term *sale* does not include entering into a contract that requires delivery of personal property or an interest therein, the initial grant or purchase of an option, or the exercise of a purchased call option for physical delivery (except for a contract described in section 988(c)(5)). For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under section 475 or 1296 are not sales.

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

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

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

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

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

(C) *Dispositions of digital assets for certain services*. The term *sale* also includes any disposition of a digital asset in consideration for any services provided by a broker that is a real estate reporting person defined in §1.6045-4(e) with respect to real property or is in the business of effecting sales of property described in paragraph (a)(9)(i), paragraphs (a)(9)(ii)(A) and (B), or paragraph (a)(9)(ii)(D) of this section.

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

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

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

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

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

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

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

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

(12) *Cash*. The term *cash* means United States dollars or any convertible foreign currency that is issued by a government or a central bank, whether in physical or digital form.

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

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

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

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

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

(iv) Any securities futures contract;

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

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

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

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

(A) A specified security described in paragraph (a)(14)(i) of this section acquired for cash in an account on or after

January 1, 2011, except stock for which the average basis method is available under §1.1012-1(e).

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

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

(D) A specified security described in paragraphs (a)(14)(ii) and (n)(3) of this section acquired for cash in an account on or after January 1, 2016.

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

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

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

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

(I) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

(18) *Securities futures contract*. For purposes of this section, the term *securities futures contract* means a contract described in section 1234B(c) whose underlying asset is described in paragraph (a)(14)(i) of this section and which is entered into on or after January 1, 2014.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) *Special rule for digital asset transfers pursuant to paragraph (a)(22)(i)(A) of this section*. For purposes of paragraph (a)(22)(i)(A) of this section, the transfer of a digital asset from one party to a second party, such as a vendor of goods or services, pursuant to a processor agreement between that second person and a payment processor must be treated as if the digital asset was paid by the first party to the payment processor in exchange for cash or a different digital asset paid to the second party.

(iii) *Processor agreement*. For purposes of paragraph (a)(22)(ii) of this section, the term *processor agreement* means an agreement between a payment processor and a second party, such as a vendor of goods or services, that in order to facilitate

one party's payment to that second party provides for the temporary fixing of the exchange rate to be applied to the digital asset received by that second party from the first party as payment in a transaction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) A clearing organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) *Analysis*. CPP is a digital asset payment processor within the meaning of paragraph (a)(22) of this section because CPP, in the ordinary course of its business, effects payments from customers (Z's purchasers) in exchange for digital assets paid to a second person (Z) pursuant to a processor agreement that provides for the temporary fixing of the exchange rate to be applied to the digital assets received by the retailer (Z). Such transactions are treated for purposes of paragraph (a)(22)(i) of this section as if R paid the digital assets to CPP in exchange for cash or different digital assets. R's payment of digital assets directly to Z pursuant to a temporarily fixed exchange rate of DE for cash is a sale of the digital assets within the meaning of paragraph (a)(9)(ii)(D) of this section because the transaction is treated for purposes of paragraph (a)(22)(i) of this section as if R paid the digital assets to CPP in exchange for cash or different digital assets. R's payment of digital assets directly to Z pursuant to the temporarily fixed exchange rate of DE for cash is a sale without regard to whether Z, after the payment is made, decides to exchange the digital assets pursuant to that fixed exchange rate. R is CPP's customer under paragraph (a)(2)(ii)(A) of this section because R is the person who is treated as transferring digital assets to a digital asset payment processor in a sale as defined in paragraph (a)(9)(ii)(D) of this section. Finally, the transfer of DE units by R to Z pursuant to CPP's instructions may also be a third party network transaction under §1.6050W-1(c) subject to reporting under §1.6050W-1(a) if CPP is a third party settlement organization under the definition in §1.6050W-1(c)(2).

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

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

(15) *Example 15: Broker*. The facts are the same as in paragraph (b)(12)(i) of this section (the facts in *Example 12*), except that Z accepts digital asset DE from its purchasers directly without the services of CPP or any other digital asset payment processor. To pay for the merchandise R purchases on Z's website, R is directed by Z to transfer 15 units of DE directly to Z's digital asset address. Z is not a broker under the definition of paragraph (a)(1) of this section because Z does not stand ready as part of its trade or business to effect sales as defined in paragraph (a)(9) of this section made by others. That is, the sales that Z is in the business of conducting are of property that is not subject to reporting under section 6045.

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

fee, to Bank MAB, which amount Bank MAB pays, less its processing fee, to M.

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

(17) *Example 17: Effect and digital asset middleman*—(i) *Facts*. P2X, a business that is jointly operated by several individuals, created a website that regularly provides online services to customers in order to match would-be sellers of digital assets with would-be buyers. As part of this business, P2X directs matched buyers and sellers to use automatically executing contracts to settle the desired exchange without any additional services from P2X. The software underlying the automatically executing contracts was originally developed and then open-sourced by Z, a person unrelated to P2X. Z does not maintain the software and does not receive any fee when transactions are settled using the software. Customers undertaking transactions using the automatically executing contracts are charged a small percentage of the transaction value as a fee that is transferred to unrelated persons (miners) who validate transactions on the applicable blockchains. Additionally, P2X has modified the software so that buyers and sellers using P2X's platform are charged an additional 1% transaction fee, which is automatically taken from the accounts of buyers and sellers and transferred to P2X when transactions are executed.

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

(iii) *Analysis with respect to Z*. Although the software developed by Z that underlies the automatically executing contracts facilitates sales of digital assets on P2X's platform, Z is not in a position to know the identity of the parties that make sales using these contracts within the meaning of paragraph (a)(21)(ii)(A) of this section because Z open-sourced the software and has no connection to P2X. As a result, Z does not have the power to set or change the terms under which its software can be used. Accordingly, Z is not a digital asset middleman within the meaning of paragraph (a)(21) of this section.

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

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

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

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

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

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

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

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

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

fees charged by the unrelated non-custodial trading platforms.

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

(23) *Example 23: Digital asset middleman*—(i) *Facts*. The facts are the same as in paragraph (b)(22)(i) of this section (the facts in *Example 22*), except S does not provide the S-Trade digital asset trading service, with wallet connection services, or with direct platform access to any digital asset trading platform that facilitates the purchase or sale of digital assets. S-Wallet users seeking to make exchanges of digital assets from their S-Wallets at one of these unrelated non-custodial trading platforms must initiate the trade on the unrelated trading platform, which in turn will provide the functionality for users of S-Wallets to trade digital assets held in their S-Wallets using the services of that unrelated trading platform. Trades using these unrelated trading platforms are completed directly from the users' S-Wallets using automatically executing contracts that deduct and pay a 0.9% transaction fee to the non-custodial trading platforms. The unrelated trading platforms do not pay compensation to S for the wallet connection service these platforms provide to S-Wallet users in making trades on the unrelated trading platforms.

(ii) *Analysis*. Because the software licensed by S provides S-Wallet users solely with the ability to control digital assets directly from their S-Wallets, S does not provide S-Wallet users with a facilitative service as described in paragraph (a)(21)(iii)(A) of this section. Accordingly, S is a not acting as a digital asset middleman under paragraph (a)(21) of this section with respect to sale transactions made by S-Wallet users on unrelated trading platforms.

(24) *Example 24: Digital asset middleman and effect*—(i) *Facts*. SBK is in the business of effecting sales of stock and other securities on behalf of customers. To open an account with SBK, each customer must provide SBK with their name, address, and tax identification number. SBK accepts 20 units of digital asset DE from Customer P as payment for 10 shares of AB stock. Additionally, P pays SBK an additional 1 unit of digital asset DE as a commission for SBK's services.

(ii) *Analysis*. SBK's acceptance of 20 units of DE as payment for the AB stock is a facilitative service under paragraph (a)(21)(iii)(B) of this section because the payment is for property (the AB stock) that when sold would constitute a sale under paragraph (a)(9)(i) of this section by a broker that is in the business of effecting sales of stock and other securities. Because SBK is a broker under paragraph (a)(1) of this section with respect to any type of sale under paragraph (a)(9) of this section, SBK's acceptance of 1 unit of DE as payment for SBK's commission is also a facilitative service under paragraph (a)(21)(iii)(B) of this section. Additionally, SBK is in a position to know, under paragraphs (a)(21)(ii)(A) and (B) of this section, P's identity and the nature of P's transaction involving the 20 units of DE and the commission payment. Accordingly, SBK is acting as a digital asset middleman to effect P's sale of 10 units of DE in return for the AB stock and P's sale of 1 unit of DE as payment for SBK's commission under paragraphs (a)(10)(i)(D) and (a)(21) of this section.

(25) *Example 25: Digital asset middleman and effect*—(i) *Facts*. B is an individual that purchases real estate from individual S in exchange for cash and 1,000 units of digital asset DE. The transaction is a real estate transaction under §1.6045-4(b) and is closed by closing attorney CA, who is a real estate reporting person under §1.6045-4(e). As part of performing its services as closing attorney, CA requests the name, address, and tax identifica ion number from both B and S.

(ii) *Analysis*. The closing services provided by CA are facilitative services under paragraph (a)(21)(iii)(B) of this section because CA is performing services as a real estate reporting person as defined in §1.6045-4(e) with respect to a real estate transaction in which the real estate buyer (B) pays digital assets in full or partial consideration for the real estate. As part of its services in closing the real estate transaction, CA is in a position to know B's identity and the nature of B's real estate transaction under paragraphs (a)(21)(ii)(A) and (B) of this section. Accordingly, CA is acting as a digital asset middleman under paragraph (a)(21) of this section to effect B's sale of 1,000 DE units under paragraph (a)(10)(i)(D) of this section. These conclusions are not impacted by whether or not CA is required to report the sale of the real estate by S under §1.6045-4(a).

(26) *Example 26: Digital asset and cash*—(i) *Facts*. Y is a privately held corporation that issues DL, a digital representation of value designed to track the value of the U.S. dollar. DL is backed in part or in full by U.S. dollars held by Y, and Y offers to redeem units of DL for U.S. dollars at par at any time. Transactions involving DL utilize cryptography to secure transactions that are digitally recorded on a cryptographically secured distributed ledger called the DL blockchain. CRX is a digital asset broker that also provides hosted wallet services for its customers seeking to make trades of digital assets using CRX. R is a customer of CRX. R exchanges 100 units of DL for $100 in cash from CRX. CRX does not record this transaction on the DL blockchain, but instead records the transaction on CRX's own centralized private ledger.

(ii) *Analysis*. DL is not cash under paragraph (a)(12) of this section because it is not issued by a government or central bank. DL is a digital asset under paragraph (a)(19) of this section because it is a digital representation of value that is recorded on a cryptographically secured distributed ledger. The fact that CRX recorded R's transaction on its own private ledger and not on the DL blockchain does not change this conclusion.

(27) *Example 27: Digital asset and security*. M owns 10 units of a fund that was formed to invest in digital assets. M's units of the fund are held in a securities brokerage account and are not recorded using cryptographically secured distributed ledger technology. Although the fund's underlying investments are comprised of one or more digital assets, M's investment is in units of the fund, which are not digital assets under paragraph (a)(19) of this section because transactions involving these fund units are not secured using cryptography and are not digitally recorded on a distributed ledger, such as a blockchain.

(28) *Example 28: Forward contract, closing transaction, and sale*—(i) *Facts*. On February 24, Year 1, J contracts with broker CRX to sell J's 10 units of digital asset DE to CRX at an agreed upon price, with delivery under the contract to occur at 4 pm on March 10, Year 1. Pursuant to this agreement, J delivers the 10 units of DE to CRX, and CRX pays J the agreed upon price in cash.

(ii) *Analysis*. Under paragraph (a)(7)(iii) of this section, the contract between J and CRX is a forward contract. J's delivery of digital asset DE pursuant to the forward contract is a closing transaction described in paragraph (a)(8) of this section that is treated as a sale of the underlying digital asset DE under paragraph (a)(9)(ii)(A)(*3*) of this section. Pursuant to the rules of paragraphs (a)(9)(ii)(A)(*3*) and (a)(9)(i) of this section, CRX may treat the delivery of DE as a sale without separating the profit or loss on the forward contract from the profit or loss on the delivery.

(29) *Example 29: Digital asset*—(i) *Facts*. On February 7, Year 1, J purchases a regulated futures contract on digital asset DE through futures commission merchant FCM. The contract is not recorded using cryptographically secured distributed ledger technology. The contract expires on the last Friday in June, Year 1. On May 1, Year 1, J enters into an offsetting closing transaction with respect to the regulated futures contract.

(ii) *Analysis*. Although the regulated futures contract's underlying assets are comprised of digital assets, J's investment is in the regulated futures contract, which is not a digital asset under paragraph (a)(19) of this section because transactions involving the contract are not secured using cryptography and are not digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain. When J disposes of the contract, the transaction is a sale of a regulated futures contract covered by paragraph (a)(9)(i) of this section.

(30) *Example 30: Closing transaction and sale*—(i) *Facts*. On January 15, Year 1, J purchases digital asset DE through Broker. On March 1, Year 1, J sells a regulated futures contract on DE through Broker. The contract expires on the last Friday in June, Year 1, at an exercise price of $5,000 for the contract. On the last Friday in June, Year 1, the fair market value of the DE covered by the regulated futures contract is $5,050. J delivers the DE in settlement of the regulated futures contract.

(ii) *Analysis*. J's delivery of the DE pursuant to the regulated futures contract is a closing transaction described in paragraph (a)(8) of this section that is treated as a sale of the regulated futures contract under paragraph (a)(9)(i) of this section. In addition, under paragraph (a)(9)(ii)(A)(*3*) of this section, J's

delivery of digital asset DE pursuant to the settlement of the regulated futures contract is a sale of the underlying digital asset DE.

(c) * * *

(3) * * *

(i) * * *

(B) * * *

(*3*) The United States or a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

* * * * *

(C) * * *

(*2*) *Limitation for corporate customers*. For sales of covered securities acquired on or after January 1, 2012, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(*1*) of this section based on the indicators of corporate status described in §1.6049-4(c)(1)(ii)(A). However, for sales of all securities and for sales of digital assets, a broker may treat a customer as an exempt recipient if one of the following applies—

* * * * *

(8) *Special coordination rules for certain information returns relating to digital assets* – (i) *Digital assets that constitute securities or commodities*. For any sale of a digital asset under paragraph (a)(9)(ii) of this section that also constitutes a sale under paragraph (a)(9)(i) of this section of a security not described in paragraph (c)(8)(iii) of this section or of a commodity, the broker must report the sale only as a sale of a digital asset under paragraph (a)(9)(ii) of this section. *See* paragraph (d)(2)(i)(B) of this section for the information required to be reported for such a sale.

(ii) *Digital assets that constitute real estate*. For any transaction involving a sale of a digital asset under paragraph (a)(9)(ii) of this section that also constitutes a sale of reportable real estate under §1.6045-4(b)(2) that is subject to reporting under §1.6045-4(a), the broker must report the transaction as a sale only of reportable real estate under §1.6045-4(b)(2).

(iii) *Digital assets that constitute contracts covered by section 1256(b)*. For a sale of a digital asset that is also a contract covered by section 1256(b), the broker must report the sale only under paragraph (c)(5) of this section including, as appropriate, the application of the rules in paragraph (m)(3) of this section.

(iv) *Examples*. The following examples illustrates the rules of this paragraph (c)(8):

(A) *Example 1: Digital asset securities—*(*1*) *Facts*. Digital asset broker CRX effects on behalf of its customers sales of DSK, which is a security within the meaning of paragraph (a)(3) of this section. Transactions involving DSK are recorded on a cryptographically secured distributed ledger called the DSK blockchain. L is an individual customer of CRX that is not otherwise exempt from reporting. Using CRX's services, L exchanges 100 units of DSK for $200 in cash. CRX does not record this transaction on the DSK blockchain, but instead records the transaction on CRX's private ledger.

(*2*) *Analysis*. DSK is both a security under paragraph (a)(3) of this section and a digital asset under paragraph (a)(19) of this section. L's sale of 100 units of DSK for $200 in cash constitutes a sale of securities for cash under paragraph (a)(9)(i) of this section and a sale of digital assets in exchange for cash under paragraph (a)(9)(ii)(A)(*1*) of this section. Accordingly, pursuant to the coordination rule set forth in paragraph (c)(8)(i) of this section, CRX is required to report this transaction as a sale of digital assets under paragraph (a)(9)(ii) of this section and not as a sale of securities.

(B) *Example 2: Digital asset representing real estate—*(*1*) *Facts*. Digital asset broker CRX effects on behalf of its customers sales of tokenized real estate interests, including RE, which is a digital representation of value representing a partial ownership interest in a physical building in City X. Transactions involving RE are recorded on a cryptographically secured distributed ledger called the Z blockchain. S is an individual customer of CRX that is not otherwise exempt from reporting. S sells 1 unit of RE for $20,000 in cash to another customer of CRX, Individual B. The transfer of the RE token from S's digital asset address to B's digital asset address is recorded on the Z blockchain.

(*2*) *Analysis*. RE is both an interest in reportable real estate under §1.6045-4(b)(2) and a digital asset under paragraph (a)(19) of this section. Although the sale of the RE unit by L to B for $20,000 in cash constitutes a sale of a digital asset in exchange for cash under paragraph (a)(9)(ii)(A)(*1*) of this section, L's sale of the RE unit also constitutes a real estate transaction under §1.6045-4(b)(1) that is subject to reporting under §1.6045-4(a). Accordingly, pursuant to the coordination rule set forth in paragraph (c)(8)(ii) of this section, CRX is required to report this transaction as a sale of a reportable real estate interest under §1.6045-4(a) and not as a sale of a digital asset.

(C) *Example 3: Digital asset representing real estate—*(*1*) *Facts*. The facts are the same as in paragraph (c)(8)(iv)(B) of this section (the facts in *Example 2*), except that S's sale of the RE token to B is for $500 instead of $20,000 in cash.

(*2*) *Analysis*. Although RE constitutes both an interest in reportable real estate under §1.6045-4(b)(2) and a digital asset under paragraph (a)(19) of this section, S's sale of RE is for a total consideration of less than $600. Pursuant to the *de minimis* transaction rule under §1.6045-4(c)(1)(iii), the sale of RE is not subject to reporting under §1.6045-4(a). Accordingly, CRX is required to report this transaction as a sale of a digital asset under paragraph (c) of this section.

(d) * * *

(2) * * *

(i) *Required information* – (A) *General rule for sales described in paragraph (a)(9)(i) of this section*. Except as provided in paragraph (c)(5) of this section, for each sale described in paragraph (a)(9)(i) of this section for which a broker is required to make a return of information under this section, the broker must report on Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form, the name, address, and taxpayer identification number of the customer, the property sold, the Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222 of the Code), the gross proceeds of the sale, the sale date, and other information required by the form in the manner and number of copies required by the form. In addition, for a sale of a covered security on or after January 1, 2014, a broker must report on Form 1099-B whether any gain or loss is ordinary. *See* paragraph (m) of this section for additional rules related to options and paragraph (n) of this section for additional rules related to debt instruments. *See* paragraph (c)(8) of this section for rules related to sales of securities or sales of commodities under paragraph (a)(9)(i) of this section that are also sales of digital assets under paragraph (a)(9)(ii) of this section.

(B) *Required information for digital asset transactions*. For each sale of a digital asset described in paragraph (a)(9)(ii) of this section for which a broker is required to make a return of information under this section, the broker must report on the form prescribed by the Secretary the

name, address, and taxpayer identification number of the customer; the name and number of units of the digital asset sold; the sale date and time; the gross proceeds amount (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section); the transaction ID as defined in paragraph (a)(26) of this section in connection with the sale, if any; the digital asset address as defined in paragraph (a)(20) of this section (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale, if any; whether the sale was for cash, stored-value cards, or in exchange for services, or other property; and any other information required by the form in the manner and number of copies required by the form or instructions. In the case of any sale described in the previous sentence that is also described in paragraph (c)(8)(i) of this section, the broker must also report any information required under paragraph (d)(2)(i)(A) of this section to the extent required by the form or instructions. For each such sale of a digital asset that was held by the broker in a hosted wallet on behalf of a customer and was previously transferred into an account at the broker (transferred-in digital asset), the broker must also report the date and time of such transfer in; the transaction ID of such transfer in, if any; the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred, if any; and the number of units transferred in by the customer. If a sale of a digital asset gives rise to digital asset transaction costs that are paid using digital assets, the sale of the digital asset to pay for the digital asset transaction costs must also be reported as a sale.

(C) *Acquisition information for sales of certain digital assets*. For each sale described in paragraph (a)(9) of this section on or after January 1, 2026, of a covered security defined in paragraph (a)(15)(i)(H), (J), or (K) of this section, for which a broker is required to make a return of information under paragraph (d)(2)(i) of this section, the broker must also report the adjusted basis of the covered security sold calculated in accordance with paragraph (d)(6) of this section, the date and time such covered security was purchased, and whether any gain or loss with respect to the covered security sold is long-term or short-term (within the meaning of section 1222).

(ii) *Specific identification of specified securities* – (A) *In general*. Except as provided in §1.1012-1(e)(7)(ii), for a specified security described in paragraph (a)(14)(i) of this section sold on or after January 1, 2011, or for a specified security described in paragraph (a)(14)(ii) of this section sold on or after January 1, 2014, a broker must report a sale of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identific tion of the security to be sold. *See* §1.1012-1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of securities in the account for which the broker does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

(B) *Specific identification of digital assets*. For a specified security described in paragraph (a)(14)(v) of this section, a broker must report a sale of less than the entire position in an account of such specified security that was acquired on different dates or at different prices consistently with the adequate identification of the digital asset to be sold. *See* §1.1012-1(j)(3)(ii) for rules relating to the identification of units sold, exchanged, or transferred. If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of the earliest units of the digital asset purchased within or transferred into the customer's account at the broker. Units of a digital asset are transferred into the customer's account as of the date and time of the transfer.

(iii) *Penalty relief for reporting information not subject to reporting* – (A) *Noncovered securities*. A broker is not required to report adjusted basis and the character of any gain or loss for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. A broker that chooses to report this information for a noncovered security is not subject to penalties under section 6721 or 6722 of the Code for failure to report this information correctly if the return identifies the sale as a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii)(A), a broker must treat a security for which a broker makes the single-account election described in §1.1012-1(e)(11)(i) as a covered security.

(B) *Digital assets sold before applicability date*. A broker is not required to report the gross proceeds from the sale of a digital asset as described in paragraph (a)(9)(ii) of this section if the sale is effected prior to January 1, 2025, or the adjusted basis and the character of any gain or loss with respect to a sale of a covered security described in paragraph (a)(15)(i)(H), (J), or (K) of this section if the sale is effected prior to January 1, 2026. A broker that chooses to report this information on either the Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," or when available the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section is not subject to penalties under section 6721 or 6722 for failure to report this information correctly.

(iv) * * *

(A) *Transfer and issuer statements for securities*. When reporting a sale of a covered security other than a digital asset described in paragraph (a)(19) of this section, a broker must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement (as described in §1.6045A-1) and all information furnished or deemed furnished on an issuer statement (as described in §1.6045B-1), unless the statement is incomplete or the broker has actual knowledge that it is incorrect. * * *

(B) *Other information with respect to securities*. * * *

(v) *Failure to receive a complete transfer statement for securities*. A broker that has not received a complete transfer statement as required under §1.6045A-1(a)(3) for a transfer of a specified security described in paragraphs (a)(14)(i) through (iv) of this section must request a complete statement from the applicable person effecting the transfer unless, under §1.6045A-1(a), the transferor has no duty to furnish a transfer statement for the transfer. * * *

(vi) *Reporting by other parties after a sale of securities* -- * * *

(vii) *Examples*. The following examples illustrate the rules of this paragraph (d)(2). Unless otherwise indicated, all events and transactions described in paragraphs (d)(2)(vii)(C) through (F) of this section (*Examples 3* through *6*) occur after the applicability date set forth in paragraph (q) of this section.

* * * * *

(C) *Example 3: Reporting required by broker providing hosted wallet services*—(*1*) *Facts*. TRX is a digital asset broker that also provides hosted wallet services. As part of TRX's regular operations, TRX does not record customer purchases of DE on the DE blockchain, but instead holds all digital assets in a TRX omnibus account. TRX, in turn, keeps a centralized record on which it allocates digital assets held on behalf of each of its customers. K, an individual not otherwise exempt from reporting, purchases 100 units of digital asset DE in a hosted wallet account at TRX. On March 9, Year 1, K directs TRX to transfer the 100 units to CRX, another digital asset broker that owns and operates a digital asset trading platform and provides hosted wallet services. CRX does not record customer purchases of DE on the DE blockchain, but instead holds all digital assets in a CRX omnibus account and keeps a centralized record on which it allocates digital assets held on behalf of each of its customers. The transaction ID of this transfer to CRX is kbcsj123. The digital asset address from which the units were transferred is 2hh77100. K directs CRX to sell the 100 units of DE on April 1, Year 1. CRX does not record K's sale on the DE blockchain, but instead reallocates the 100 units of DE previously allocated to K back to CRX's omnibus account.

(*2*) *Analysis*. Under paragraph (d)(2)(i)(B) of this section, CRX is required to make a return of information with respect to K's sale of 100 units of DE. CRX must report the gross proceeds from the sale, the date (April 1, Year 1) and time of the sale, the name of the digital asset (DE) sold, and the number of units (100) sold, and any other information required by the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section. CRX is not required to report the transaction ID of the sale transaction or the digital asset address from which the units were transferred because CRX did not record K's sale on the DE blockchain (and therefore there is no transaction ID or digital asset address in connection with the sale). Because K previously transferred the DE units treated as sold into K's account at CRX, paragraph (d)(2)(i)(B) of this section requires that CRX also report the transaction ID (kbcsj123) associated with the transferred-in digital assets, the digital asset address (2hh77100) from which the digital assets were transferred, and the date (March 9, Year 1) and time the units were transferred to CRX.

(D) *Example 4: Reporting required by broker not providing hosted wallet services*—(*1*) *Facts*. J, an individual not otherwise exempt from reporting, purchases 500 units of digital asset DE in an unhosted wallet. Of these 500 units purchased, 350 are held at digital asset address 1ss9925 and 150 are held at digital asset address 2tt8875. On April 28, Year 1, J exchanges all 500 units of DE for 500 units of ST using the services of P2X, a digital asset broker that effects sales of digital assets directly between customers by providing customers with access to automatically executing contracts. The transaction ID of J's exchange is ghj789.

(*2*) *Analysis*. Under paragraph (d)(2)(i)(B) of this section, P2X is required to make a return of information with respect to J's sale of 500 units of DE. P2X must report the gross proceeds from the sale, the date (April 28, Year 1) and time of the sale, the name of the digital asset (DE) sold, the number of units (500) sold, and any other information required by the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section. Additionally, P2X must also report the transaction ID (ghj789) of the sale transaction and the digital asset addresses (350 units from 1ss9925 and 150 units from 2tt8875) from which the digital assets were transferred.

(E) *Example 5: Reporting required by real estate reporting person*—(*1*) *Facts*. J, an unmarried individual not otherwise exempt from reporting, agrees to exchange with B, an individual not otherwise exempt from reporting, J's principal residence, Blackacre, which has a fair market value of $225,000 for digital assets with a value of $225,000. Prior to closing, J provides CA with the certifications required under §1.6045-4(c)(2)(iv) (to exempt the transaction from reporting under §1.6045-4(a) due to Blackacre being J's principal residence). At closing, B transfers the digital assets directly from B's wallet to J's wallet. CA is the closing attorney and real estate reporting person under §1.6045-4 with respect to the transaction.

(*2*) *Analysis*. Although CA is not required to file an information report with respect to the gross proceeds received by J as a result of the exception to reporting provided under §1.6045-4(c)(2), CA is required to report on the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section the gross proceeds received by B ($225,000) in exchange for B's sale of digital assets in this transaction because B's exchange of digital assets for Blackacre is a sale under paragraph (a)(9)(ii)(B) of this section and CA is a broker under paragraph (a)(1) of this section notwithstanding the exception from reporting to J.

(F) *Example 6: Ordering rule*—(*1*) *Facts*. On August 1, Year 1, TP opens a hosted wallet account at CRX, a digital asset broker that owns and operates a digital asset trading platform, and purchases within the account 10 units of digital asset DE for $1 per unit. On January 1, Year 2, TP opens a hosted wallet account at BEX, another digital asset broker that owns and operates a digital asset trading platform, and purchases within this account 20 units of digital asset DE for $5 per unit. On August 1, Year 3, TP transfers the digital asset units held in TP's hosted wallet account with CRX into TP's hosted wallet account with BEX. On August 3, Year 3, TP directs BEX to sell 10 units of DE but does not specify which units are to be sold. BEX effects the sale on TP's behalf for $10 per unit.

(*2*) *Analysis*. TP did not make an adequate identification of the units to be sold in a sale of DE units that was less than TP's entire position in digital asset DE. Therefore, BEX must treat the units of digital asset DE sold according to the ordering rule provided in paragraph (d)(2)(ii)(B) of this section. Pursuant to that rule, the units sold must be attributed to the earliest units of digital asset DE purchased within or transferred into TP's account. Accordingly, the 10 units sold must be attributed to 10 of the 20 DE units purchased by TP on January 1, Year 2, in the BEX account because based on the information known to BEX these units were purchased prior to the date (August 1, Year 3) when TP transferred the other units purchased at CRX into the account.

* * * * *

(4) *Sale date and time* – (i) *In general*. For sales of property that are reportable under this section other than digital assets, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

(ii) *Special rules for digital asset sales*. For sales of digital assets that are effected when digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain or similar technology, the broker must report the date and time of sale as the date and time when the transactions are recorded on the ledger. For sales of digital assets that are effected on a system outside of a blockchain, the broker must report the date and time of sale as the date and time when the transactions are recorded on that outside system without regard to the date and time that the transactions may be later recorded on a blockchain. Unless otherwise specified on the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section or its instructions, all dates and times reported with respect to a digital asset transaction should be set forth in hours, minutes, and seconds using Coordinated Universal Time (UTC).

(iii) *Examples*. The following examples illustrate the rules of this paragraph (d)(4). Unless otherwise indicated, all events and transactions in the following examples occur after the applicability date set forth in paragraph (q) of this section.

(A) *Example 1: Digital assets sale date and time*—(*1*) *Facts*. J, an individual not otherwise exempt from reporting, purchases 500 units of digital asset DE in an unhosted wallet. On April 28, Year 1, J initiates an exchange of these 500 units of DE for 500 units of ST using the services of P2X, a digital asset broker that effects sales of digital assets by providing customers with access to automatically executing contracts. The completed exchange is recorded on the DE blockchain at 10:00:00 a.m. UTC on April 28, Year 1.

(*2*) *Analysis*. Under paragraph (d)(4) of this section, the date and time P2X must report with respect to J's sale is April 28, Year 1, at 10:00:00 a.m. UTC because that is the time the sale transaction was recorded on the DE distributed ledger.

(B) *Example 2: Digital assets sale date and time*—(*1*) *Facts*. The facts are the same as in paragraph (d)(4)(iii)(A)(*1*) of this section (the facts in *Example 1*), except J initiates the exchange on December 31, Year 1, at 10:00:00 p.m. Eastern Standard Time (EST), which is the time zone J was in at the time of the exchange. The completed exchange is recorded on the DE blockchain at 3:00:00 a.m. UTC on January 1, Year 2.

(*2*) *Analysis*. Under paragraph (d)(4) of this section, P2X must report the date and time of the transaction using UTC time. Because the transaction was recorded at 3:00:00 a.m. UTC on January 1, Year 2, P2X must report J's sale in calendar year of Year 2 as of that UTC date and time and not in calendar year of Year 1.

(C) *Example 3: Digital assets sale date and time*—(*1*) *Facts*. TRX is a digital asset broker that also provides hosted wallet services. As part of TRX's regular operations, TRX does not record customer purchases of DE on the DE blockchain, but instead holds all digital assets in a TRX omnibus account. TRX, in turn, keeps a centralized record on which it allocates digital assets held on behalf of each of its customers. On January 1, Year 1, K, an individual not otherwise exempt from reporting, purchases 100 units of digital asset DE in a hosted wallet account at TRX. On March 9, Year 4, K directs TRX to sell, and TRX sells, the 100 units of DE. TRX does not record K's sale on the DE blockchain, but instead debits from K's account the 100 units of DE previously allocated to K's account. TRX's records reflect that this debit was recorded on March 9, Year 4, at 10:45:00 a.m. UTC.

(*2*) *Analysis*. Under paragraph (d)(4) of this section, the date and time TRX must report with respect to K's sale is March 9, Year 4, at 10:45:00 a.m. UTC because that is the time the sale transaction was recorded on TRX's internal records.

(D) *Example 4: Information reporting required*—(*1*) *Facts*. The facts are the same as in paragraph (d)(4)(iii)(C)(*1*) of this section (the facts in *Example 3*), except TRX keeps its records using Eastern Standard Time (EST), and those records reflect that the debited units associated with K's transaction was recorded on March 9, Year 4, at 9:45:00 a.m. EST.

(*2*) *Analysis*. Under paragraph (d)(4) of this section, TRX must convert the time recorded in its records using EST into UTC time. Because 9:45:00 a.m. EST on March 9, Year 4, is equivalent to 2:45:00 p.m. UTC, the date and time TRX must report with respect to K's sale is March 9, Year 4, at 2:45:00 p.m. UTC.

(5) *Gross proceeds* – (i) *In general*. Except as otherwise provided in paragraph (d)(5)(ii) of this section with respect to digital asset sales, for purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any qualified stated interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction (other than a closing transaction related to an option) that results in a loss, gross proceeds are the amount debited from the customer's account. For sales before January 1, 2014, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For sales on or after January 1, 2014, a broker must reduce gross proceeds by the amount of commissions and transfer taxes related to the sale of the security. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2014, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired on or after January 1, 2014, or for the treatment of an option granted or acquired on or after January 1, 2014, *see* paragraph (m) of this section. A broker must report the gross proceeds of identical stock (within the meaning of §1.1012-1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(ii) *Sales of digital assets*. The rules contained in paragraphs (d)(5)(ii)(A) through (D) of this section apply solely for purposes of this section.

(A) *In general*. Except as otherwise provided in this section, gross proceeds from the sale of a digital asset are equal to the sum of the total amount in U.S. dollars paid to the customer or credited to the customer's account from the sale plus the fair market value of any property or services received (including services giving rise to digital asset transaction costs), reduced by the amount of digital asset transaction costs, as defined and allocated under paragraph (d)(5)(iv) of this section. In the case of a debt instrument issued in exchange for the digital asset and subject to §1.1001-1(g), the amount realized attributable to the debt instrument is determined under §1.1001-7(b)(1)(iv) rather than by reference to the fair market value of the debt instrument. *See* paragraph (d)(5)(iv) of this section for a special rule setting forth how digital asset transaction costs are to be allocated in an exchange of one digital asset for a different digital asset. Fair market value is measured at the date and time the transaction was effected. Except as provided in the next sentence, in determining the fair market value of services or property received or credited in exchange for a digital asset, the broker must use a reasonable valuation method that looks to contemporaneous evidence of value, such as the purchase price of the services, goods or other property, the exchange rate, and the U.S. dollar valuation applied by the broker to effect the exchange. In determining the fair market value of services giving rise to digital asset transaction costs, the broker must look to the fair market value of the digital assets used to pay for such transaction costs. In determining the fair market value of a digital asset, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator as defined in paragraph (d)(5)(ii)(D) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(C) of this section.

(B) *Consideration value not readily ascertainable*. When valuing services or property (including digital assets) received in exchange for a digital asset, the value of what is received should ordinarily be identical to the value of the digital asset exchanged. If there is a disparity between the value of services or property received and the value of the digital asset exchanged, the gross proceeds received by the customer is the fair market value at the date and time the transaction was effected of the services or property, including digital assets, received. If the broker or digital asset data aggregator, in the case of digital assets, reasonably determines that the fair

market value of the services or property received cannot be determined with reasonable accuracy, the fair market value of the received services or property must be determined by reference to the fair market value of the transferred digital asset at the time of the exchange. *See* §1.1001-7(b)(4). If the broker or digital asset data aggregator, in the case of a digital asset, reasonably determines that neither the value of the received services or property nor the value of the transferred digital asset can be determined with reasonable accuracy, the broker must report that the received services or property has an undeterminable value.

(C) *Reasonable valuation method for digital assets*. A reasonable valuation method for digital assets is a method that considers and appropriately weighs the pricing, trading volumes, market capitalization and other factors relevant to the valuation of digital assets traded through digital asset trading platforms. A valuation method is not a reasonable valuation method for digital assets if it, for example, gives an underweight effect to exchange prices lying near the median price value, an overweight effect to digital asset trading platforms having low trading volume, or otherwise inappropriately weighs factors associated with a price that would make that price an unreliable indicator of value.

(D) *Digital asset data aggregator*. A digital asset data aggregator is an information service provider that provides valuations of digital assets based on any reasonable valuation method.

(iii) *Digital asset transactions effected by digital asset payment processors*. The amount of gross proceeds under paragraph (d)(5)(ii) of this section received by a party who sells a digital asset through a digital asset payment processor is equal to: the sum of the amount paid in cash, or the fair market value of the amount paid in digital assets by that digital asset payment processor to a second party, plus any digital asset transaction costs withheld (whether withheld from the digital assets transferred by the first party or withheld from the amount due to the second party); and reduced by the amount of digital asset transaction costs paid by or withheld from the first party, as defined and allocated under the rules of paragraph (d)(5)(iv) of this section. For purposes of this paragraph (d)(5)(iii), if a digital asset payment processor transfers digital assets to a second person pursuant to a processor agreement that temporarily fixes the exchange rate in a transaction described in paragraph (a)(22)(ii) of this section, the fair market value of the amount paid in digital assets is the amount determined by reference to the fixed exchange rate

(iv) *Allocation of digital asset transaction costs*. The term digital asset transaction costs means the amount paid in cash or property (including digital assets) to effect the disposition or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions. Except as provided in the following sentence, in the case of a sale or disposition of digital assets, the total digital asset transaction costs paid by the customer are allocable to the disposition of the digital assets. In an exchange of one digital asset for another digital asset differing materially in kind or in extent, one-half of any digital asset transaction costs paid by the customer in cash or property to effect the exchange is allocable to the disposition of the transferred digital asset and the other half of such costs is allocable to the acquisition of the received digital asset.

(v) *Examples*. The following examples illustrate the rules of this paragraph (d)(5). Unless otherwise indicated, all events and transactions in the following examples occur after the applicability date set forth in paragraph (q) of this section.

(A) *Example 1: Determination of gross proceeds—(1) Facts*. CRX, a digital asset broker, buys, sells, and exchanges various digital assets for cash or different digital assets on behalf of its customers. For this service, CRX charges a transaction fee equal to 1 unit of CRX's proprietary digital asset CM per transaction. Using the services of CRX, customer K, an individual not otherwise exempt from reporting, purchases 15 units of CM and 10 units of digital asset DE. On April 28, Year 1, when the CM units have a value of $2 per unit, the DE units have a value of $8 per unit, and digital asset ST units have a value of $0.80 per unit, K instructs CRX to exchange K's 10 units of DE for 100 units of digital asset ST. CRX charges K one unit of CM as a transaction fee for the exchange.

(*2*) *Analysis*. Under paragraph (d)(5)(iv) of this section, K has digital asset transaction costs of $2, which is the value of 1 CM unit. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds amount that CRX must report from K's sale of the 10 units of DE is equal to the fair market value of the 100 units of ST that K received (less one-half of the value of the CM unit sold to pay the digital asset transaction cost to CRX). The fair market value of the 100 units of ST at the date and time the transaction was effected is equal to $80 (the product of $0.80 and 100 units). One-half of such costs ($1) is allocable to the sale of the DE units. Accordingly, CRX must report gross proceeds of $79 from K's sale of the 10 units of DE. CRX must also report the gross proceeds from K's sale of one CM unit to pay for CRX's services. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of one unit of CM is equal to the fair market value of the digital assets used to pay for such transaction costs. Accordingly, CRX must report $2 as gross proceeds from K's sale of one unit of CM.

(B) *Example 2: Determination of gross proceeds—(1) Facts*. CPP, a digital asset payment processor, offers debit cards to its customers who hold digital asset FE in their accounts with CPP. The debit cards allow CPP's customers to use digital assets held in accounts with CPP to make payments to merchants who do not accept digital assets. CPP charges its card holders a 2% transaction fee for purchases made using the debit card and sets forth in its terms and conditions the process CPP will use to determine the exchange rate provided at the date and time of its customers' transactions. CPP has issued a debit card to B, an individual not otherwise exempt from reporting, who wants to make purchases using digital assets. B transfers 1,000 units of FE into B's account with CPP. B then uses the debit card to purchase merchandise from a U.S. retail merchant STR for $1,000. An exchange rate of 1 FE = $2 USD is applied to effect the transaction, based on the exchange rate at that date and time and pursuant to B's account agreement. To settle the transaction, CPP removes 510 units of FE from B's account equal to $1,020 ($1,000 plus a 2% transaction fee equal to $20). CPP then pays STR $1,000 in cash.

(*2*) *Analysis*. Under paragraph (d)(5)(iv) of this section, B paid digital asset transaction costs of $20. Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CPP must report with respect to B's sale of the 510 units of FE to purchase the merchandise is $1,000, which is the sum of the amount of cash paid by CPP to STR plus the $20 digital asset transaction costs withheld by CPP, reduced by the $20 digital asset transaction costs as allocated under paragraph (d)(5)(iv). CPP's payment of cash to STR is also a payment card transaction under §1.6050W-1(b) subject to reporting under §1.6050W-1(a).

(C) *Example 3: Determination of gross proceeds—(1) Facts*. STR, a U.S. retail corporation, advertises that it accepts digital asset FE as payment for its merchandise. Customers making purchases at STR using digital asset FE are directed to create an account with digital asset payment processor CXX, which, pursuant to a preexisting agreement with STR, accepts digital asset FE in return for payments in cash made to STR. CXX charges a 2% transaction fee, which is paid by STR and not STR's customers. S, an individual not otherwise exempt from reporting, seeks to purchase merchandise from STR for $1,000. To effect payment, S is directed by STR to CXX, with whom S has an account. An exchange rate of 1 FE = $2 USD is applied to effect the purchase transaction. Pursuant to this exchange rate, S then transfers 500 units of FE to CXX, which, in

turn, pays STR $980 ($1,000 less a 2% transaction fee equal to $20).

(*2*) *Analysis*. Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CXX must report with respect to this sale is $1,000, which is the sum of the amount in U.S. dollars paid by CPP to STR ($980) plus the $20 digital asset transaction costs withheld from the payment due to STR. Under paragraph (d)(5)(iv) of this section, S has no allocable digital asset transaction costs. Therefore, the $980 amount is not reduced by any digital asset transaction costs charged to STR because that fee was not paid by S. In addition, CXX's payment of cash to STR (plus the withheld transaction fee) may be reportable under §1.6050W-1(a) as a third party network transaction under §1.6050W-1(c) if CXX is a third party settlement organization under the definition in §1.6050W-1(c)(2).

(D) *Example 4: Determination of gross proceeds in a real estate transaction—*(*1*) *Facts*. J, an unmarried individual not otherwise exempt from reporting, agrees to exchange with B, an individual not otherwise exempt from reporting, J's principal residence, Blackacre, which has a fair market value of $300,000 for cash in the amount of $75,000 and digital assets with a value of $225,000. At closing, B transfers the digital assets directly from B's wallet to J's wallet. CA is the closing attorney, real estate reporting person under §1.6045-4, and broker under paragraph (a)(1) of this section with respect to the transaction.

(*2*) *Analysis*. CA is required to report on the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section the gross proceeds received by B in exchange for B's sale of digital assets in this transaction. The gross proceeds amount to be reported under paragraph (d)(5)(ii)(A) of this section is equal to $225,000, which is the $300,000 value of Blackacre less $75,000 that B paid in cash. In addition, under §1.6045-4, CA is required to report on Form 1099-S the $300,000 of gross proceeds received by J ($75,000 cash and $225,000 in digital assets) as consideration for J's disposition of Blackacre.

(6) * * *

(i) * * * For purposes of this section, the adjusted basis of a specified security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the specified security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions or events occurring outside the account except for an organizational action taken by an issuer of a specified security other than a digital asset during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in §1.6045B-1) furnished or deemed furnished to the broker. * * *

(ii) * * *

(A) *Cost basis for specified securities acquired for cash*. For a specified security acquired for cash, the initial basis generally is the total amount of cash paid by the customer or credited against the customer's account for the specified security, increased by the commissions, transfer taxes, and digital asset transaction costs related to its acquisition. * * *

* * * * *

(C) *Digital assets acquired in exchange for property* – (*1*) *In general*. This paragraph (d)(6)(ii)(C) applies solely for purposes of this section. For a digital asset acquired in exchange for property that is not a debt instrument described in §1.1012-1(h)(1)(v), the initial basis of the digital asset is the fair market value of the digital asset received at the time of the exchange, increased by any digital asset transaction costs allocable to the acquisition of the digital asset pursuant to the rules under paragraph (d)(6)(ii)(C)(*2*) of this section. The fair market value of the digital asset received must be determined using a reasonable valuation method as of the date and time the exchange transaction was effected. In valuing the digital asset received, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator as defined in paragraph (d)(5)(ii)(D) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(C) of this section. If the broker or digital asset data aggregator reasonably determines that the fair market value of the digital asset received cannot be determined with reasonable accuracy, the fair market value of the digital asset received must be determined by reference to the property transferred at the time of the exchange. If the broker or digital asset data aggregator reasonably determines that neither the value of the digital asset received nor the value of the property transferred can be determined with reasonable accuracy, the fair market value of the received digital asset must be treated as zero. For a digital asset acquired in exchange for a debt instrument described in §1.1012-1(h)(1)(v), the initial basis of the digital asset attributable to the debt instrument is the amount determined under §1.1012-1(h)(1)(v).

(*2*) *Allocation of digital asset transaction costs*. Except as provided in the following sentence, in the case of an acquisition of digital assets, the total digital asset transaction costs paid by the customer are allocable to the digital assets received. In an exchange of one digital asset for a different digital asset differing materially in kind or in extent, one-half of the total digital asset transaction costs paid by the customer in cash or property to effect the exchange is allocable to the disposition of the transferred digital asset and one-half of such costs is allocable to the acquisition of the received digital asset for the purpose of determining basis.

(iii) * * *

(A) * * * A broker must apply the wash sale rules under section 1091 of the Code if both the sale and purchase transactions are of covered securities described in paragraphs (a)(15)(i)(A) through (G) of this section with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter). * * *

* * * * *

(x) *Examples*. The following examples illustrate the rules of paragraphs (d)(5) and (6) of this section as applied to digital assets. Unless otherwise indicated, all events and transactions in the following examples occur using the services of CRX, an entity that owns and operates a digital asset trading platform and provides digital asset broker and hosted wallet services. In performing these services, CRX holds and records all customer purchase and sale transactions using CRX's centralized omnibus account. CRX does not record any of its customer's purchase or sale transactions on the relevant cryptographically secured distributed ledgers. Additionally, unless otherwise indicated, all events and transactions in the following examples occur after the applicability date for reporting acquisition information set forth in paragraph (d)(2)(i)(C) of this section.

(A) *Example 1: Determination of basis in digital assets—*(*1*) *Facts*. As a digital asset broker, CRX generally charges transaction fees equal to 1 unit of CRX's proprietary digital asset CM per transaction. CRX does not, however, charge transaction fees for the purchase of CM. On March 9, Year 1, K, an individual not otherwise exempt from reporting,

purchases 20 units of CM for $20 in K's account at CRX. A week later, on March 16, Year 1, K uses CRX's services to purchase 10 units of digital asset DE for $80 in cash. To pay for CRX's transaction fee, K directs CRX to debit 1 unit of CM (worth $1 at the time of transfer) from K's account.

(*2*) *Analysis*. The units of CM purchased by K are covered securities under paragraph (a)(15)(i) of this section because they were purchased in K's account at CRX by a broker (CRX) providing hosted wallet services. Accordingly, under paragraphs (d)(2)(i)(B) and (C) of this section, CRX must report the disposition by K of 1 unit of CM as a sale by K. The gross proceeds from that sale is equal to the fair market value of the CM units on March 16, Year 1 ($1), and the adjusted basis of that unit is equal to the amount K paid in cash for the CM unit on March 9, Year 1 ($1). This reporting is required regardless of the fact that there is $0 of gain or loss associated with this sale. Additionally, K's adjusted basis in the 10 units of DE acquired is equal to the initial basis in DE, $80 plus the $1 value of 1 unit of CM paid as a digital asset transaction cost for the purchase of the DE units.

(B) *Example 2: Determination of basis in digital assets*—(*1*) *Facts*. The facts are the same as in paragraph (d)(6)(x)(A)(*1*) of this section (the facts in *Example 1*), except that on June 12, Year 2, K instructs CRX to exchange K's 10 units of DE for 50 units of digital asset ST. CRX effects this exchange using its own omnibus account holdings of ST at an exchange rate of 1 DE = 5 ST. The total value of the 50 units of ST received by K is $100. K directs CRX to debit 1 CM unit (worth $2 at the time of the transfer) from K's account to pay CRX for the transaction fee.

(*2*) *Analysis*. Under paragraph (d)(5)(iv) of this section, K has digital asset transaction costs of $2, which is the value of 1 unit of CM. Under paragraphs (d)(2)(i)(B) and (C) of this section, CRX must report the gross proceeds from K's exchange of DE for ST (as a sale of K's 10 units of DE) and the gross proceeds from K's disposition of 1 unit of CM for CRX's services. Additionally, because the units of DE and CM were purchased in K's account at CRX by a broker (CRX) providing hosted wallet services, the units of DE and CM are covered securities under paragraph (a)(15)(i) of this section, and CRX must report K's adjusted basis in the 10 units of DE and 1 unit of CM. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of the DE units is $99 (the fair market value of the 50 units of ST that K received less one-half of the $2 digital asset transaction costs paid by K, or $1, paid in CM), that is allocable to the sale of the DE units. The gross proceeds from K's sale of the single unit of CM is $2. Under paragraph (d)(6) of this section, K's adjusted basis in the 10 units of DE is $81, resulting in a long-term capital gain to K of $18 ($99 - $81). K's adjusted basis in the ST units under paragraph (d)(6)(ii)(C) of this section is equal to the initial basis in ST, which is $101.

(C) *Example 3: Basis reporting for digital assets*—(*1*) *Facts*. On August 26, 2023, Customer P purchases 10 units of DE for $2 per unit in cash in an account at CRX. CRX charges P a fixed transaction fee of $5 in cash for the exchange. DE is a digital representation of value, the transfer of which is recorded on Blockchain DE, a cryptographically secured distributed ledger. On October 26, 2027, P directs CRX to exchange P's 10 units of DE for units of digital asset FG. At the time of the exchange, CRX determines that each unit of DE has a fair market value of $100 and each unit of FG has a fair market value of $50. As a result of this determination, CRX effects an exchange of P's 10 units of DE for 20 units of FG. CRX charges P a fixed transaction fee of $20 in cash for the exchange.

(*2*) *Analysis*. DE is a digital asset under paragraph (a)(19) of this section because it is a digital representation of value that is recorded on a cryptographically secured distributed ledger and, therefore, a specified security under paragraph (a)(14)(v) of this section. Because the 10 units of DE that P exchanged for FG through CRX were acquired in an account at CRX on August 26, 2023, which is after January 1, 2023, these units are covered securities under paragraph (a)(15)(i)(J) of this section. Under paragraph (d)(5)(iv) of this section, P has digital asset transaction costs of $20. For the transaction that took place on October 26, 2027, under paragraph (d)(2)(i)(B) of this section, CRX must report the amount of gross proceeds from the sale of DE in the amount of $990 (the $1,000 fair market value of FG received on the date and time of transfer, less one-half of the digital asset transaction costs of $20, or $10 allocated to the sale). CRX must also report the $10 digital asset transaction costs allocated to the sale. Additionally, CRX must also report the adjusted basis of P's DE units under paragraph (d)(2)(i)(C) of this section because they are covered securities. Under paragraph (d)(6)(ii)(C) of this section, the adjusted basis of P's DE units is equal to $25, which is the $20 paid in cash for the 10 units increased by the $5 digital asset transaction costs allocable to that purchase. Finally, P's adjusted basis in the 20 units of FG is equal to the fair market value of the FG received, $1,000, plus one-half of the $20 transaction fee, or $10, which is allocated under paragraph (d)(6)(ii)(C)(*2*) of this section to the acquisition of P's FG units.

* * * * *

(e) * * *

(2) * * *

(iii) *Coordination rules for exchanges of digital assets made through barter exchanges*. Exchange transactions involving the exchange of one digital asset held by one customer of a broker for a different digital asset held by a second customer of the same broker must be treated as a sale under paragraph (a)(9)(ii) of this section subject to reporting under paragraphs (c) and (d) of this section, and not as an exchange of personal property through a barter exchange subject to reporting under paragraphs (e) and (f) of this section, with respect to both customers involved in the exchange transaction. In the case of an exchange transaction that involves the transfer of a digital asset for personal property or services that are not also digital assets, if the digital asset payment also is a reportable payment transaction subject to reporting by the barter exchange under §1.6050W-1(a)(1), the exchange transaction must be treated as a reportable payment transaction and not as an exchange of personal property through a barter exchange subject to reporting under paragraphs (e) and (f) of this section with respect to the member or client disposing of personal property or services. Additionally, an exchange transaction described in the previous sentence must be treated as a sale under paragraph (a)(9)(ii)(D) of this section subject to reporting under paragraphs (c) and (d) of this section and not as an exchange of personal property through a barter exchange subject to reporting under paragraphs (e) and (f) of this section with respect to the member or client disposing of the digital asset. Nothing in this paragraph (e)(2)(iii) may be construed to mean that any broker is or is not properly classified as a barter exchange.

* * * * *

(g) * * *

(1) * * * No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under paragraphs (g)(1)(i) through (iii) or paragraph (g)(4) of this section. *See* paragraph (a)(1) of this section for when a person is not treated as a broker under this section for a sale effected at an office outside the United States. *See* paragraphs (g)(1)(i) through (g)(3) of this section for rules relating to sales as defined in paragraph (a)(9)(i) of this section and *see* paragraph (g)(4) of this section for rules relating to sales of digital assets.

* * * * *

(2) *Barter exchanges*. No return of information is required by a barter exchange under the rules of paragraphs (e) and (f) of this section with respect to a client or a member that the barter exchange may treat as an exempt foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) * * *

(iii) * * *

(A) * * * For purposes of this paragraph (g), a sale as defined in paragraph (a)(9)(i) of this section (relating to sales other than sales of digital assets) is considered to be

effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. * * *
* * * * *

(4) *Rules for sales of digital assets*. The rules of this paragraph (g)(4) apply to a sale of a digital asset as defined in paragraph (a)(9)(ii) of this section. *See* paragraph (a)(1) of this section for when a person is treated as a broker under this section with respect to a sale of a digital asset. *See* paragraph (c) of this section for rules requiring brokers to report sales. *See* paragraph (g)(1) of this section providing that no return of information is required to be made by a broker effecting a sale of a digital asset for a customer who is considered to be an exempt foreign person under this paragraph (g)(4).

(i) Definitions. The following definitions apply for purposes of this section.

(A) *U.S. digital asset broker*. A *U.S. digital asset broker* is a U.S. payor or U.S. middleman as defined in §1.6049-5(c)(5), other than a controlled foreign corporation within the meaning of §1.6049-5(c)(5)(i)(C), that effects sales of digital assets on behalf of others.

(B) *CFC digital asset broker*. A *CFC digital asset broker* is a controlled foreign corporation within the meaning of §1.6049-5(c)(5)(i)(C) that effects sales of digital assets on behalf of others.

(C) *Non-U.S. digital asset broker*. A *non-U.S. digital asset broker* is a non-U.S. payor or non-U.S. middleman as defined in §1.6049-5(c)(5) that effects sales of digital assets on behalf of others.

(D) *Conducting activities as a money services business*. A CFC digital asset broker or a non-U.S. digital asset broker is conducting activities as a money services business (conducting activities as a money services business (MSB)) under this paragraph (g)(4) with respect to its sales of digital assets, except as provided in the next sentence, if it is registered with the Department of the Treasury under 31 CFR 1022.380 or any successor guidance as an MSB, as defined in 31 CFR 1010.100(ff) or any successor guidance. Notwithstanding any registration as an MSB described in the preceding sentence, solely for purposes of this paragraph (g)(4), CFC digital asset brokers and non-U.S. digital asset brokers may not be treated as conducting activities as an MSB with respect to any sale of a digital asset that is effected by that broker on behalf of a customer at a foreign kiosk to the extent provided in paragraph (g)(4)(i)(E) of this section.

(E) *Foreign kiosk*. A *foreign kiosk* means a physical electronic terminal that is located outside the United States and is owned or operated by a CFC digital asset broker or a non-U.S. digital asset broker that is not required under the Bank Secrecy Act to implement an anti-money laundering program (AML program), file reports, or otherwise comply with requirements for MSBs under the Bank Secrecy Act with respect to sales effected on behalf of its customers at the foreign kiosk.

(ii) *Rules for U.S. digital asset brokers* – (A) *Place of effecting sale*. For purposes of this section, a sale of a digital asset that is effected by a U.S. digital asset broker is considered a sale effected at an office inside the United States

(B) *Determination of foreign status*. A U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a sale effected at an office inside the United States provided that, prior to the payment to such customer of the gross proceeds from the sale, the broker has a beneficial owner withholding certificate described in §1.1441-1(e)(2)(i) that the broker may treat as valid under §1.1441-1(e)(2)(ii) and that satisfies the requirements of paragraph (g)(4)(vi) of this section. Additionally, a U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a sale effected at an office inside the United States under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(*2*) of this section. A beneficial owner withholding certificate provided by an individual must include a certifi ation that the beneficial owner has not been, and at the time the certificate is furnished reasonably expects not to be, present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. *See* paragraphs (g)(4)(vi)(A) through (D) of this section for additional rules applicable to withholding certificates, when a broker may rely on a withholding certificate, presumption rules that apply in the absence of documentation, and rules for customers that are joint account holders. *See* paragraph (g)(4)(vi)(E) of this section for the extent to which a U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow through entity or certain U.S. branches. *See* paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(iii) *Rules for CFC digital asset brokers not conducting activities as MSBs*. This paragraph (g)(4)(iii) applies to CFC digital asset brokers that are not conducting activities as MSBs. *See* paragraph (g)(4)(v) of this section for rules applicable to CFC digital asset brokers that are conducting activities as MSBs.

(A) *Place of effecting sale*. For purposes of this section, a sale of a digital asset that is effected by a CFC digital asset broker subject to the rules of this paragraph (g)(4)(iii) is considered to be effected at an office outside the United States. *See* §31.3406(g)-1(e) of this chapter for an exception to backup withholding on gross proceeds from a sale of a digital asset effected at an office outside the United States by a CFC digital asset broker unless the broker has actual knowledge that the payee is a U.S. person.

(B) *Determination of foreign status*. A CFC digital asset broker subject to the rules of this paragraph (g)(4)(iii) may treat a customer as an exempt foreign person with respect to a sale provided that, prior to the payment to such customer of the gross proceeds from the sale, the broker has either a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section or the documentary evidence described in §1.1471-3(c)(5)(i) to support the customer's foreign status, pursuant to the requirements of paragraph (g)(4)(vi) of this section. Additionally, a CFC digital asset broker may treat the customer as an exempt foreign person with respect to a sale under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(*2*) of this section. *See* paragraphs (g)(4)(vi)(A) through (D) of this section for additional rules applicable to withholding certificates and documentary evidence, when a broker may rely

on documentation, presumption rules that apply in the absence of documentation, and rules for customers that are joint account holders. *See* paragraph (g)(4)(vi)(E) of this section for the extent to which a CFC digital asset broker subject to the rules of this paragraph (g)(4)(iii) may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow-through entity or certain U.S. branches. *See* paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(iv) *Rules for non-U.S. digital asset brokers not conducting activities as MSBs*. This paragraph (g)(4)(iv) applies to non-U.S. digital asset brokers that are not conducting activities as MSBs. *See* paragraph (g)(4)(v) of this section for rules applicable to non-U.S. digital asset brokers that are conducting activities as MSBs.

(A) *Sale outside the United States*. For purposes of this section and except as provided in paragraph (g)(4)(iv)(B) of this section, a digital asset sale that is effected by a non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) is considered to be effected at an office outside the United States.

(B) *Sale treated as effected at an office inside the United States as a result of U.S. indicia*. For purposes of this section, a sale that is otherwise considered to be effected at an office outside the United States under paragraph (g)(4)(iv)(A) of this section by a non-U.S. digital asset broker must nevertheless be considered to be effected by that broker at an office inside the United States if, before the sale is effected, the broker collects documentation or has other information that is part of the broker's account information for the customer (including information collected with respect to the customer pursuant to the broker's compliance with applicable AML program requirements that show any of the following indicia (referred to in this paragraph (g)(4) as U.S. indicia)):

(*1*) A customer's communication with the broker using a device (such as a computer, smart phone, router, or server) that the broker has associated with an Internet Protocol (IP) address or other electronic address indicating a location within the United States;

(*2*) A permanent residence address (as defined in §1.1441-1(c)(38)) in the U.S. or a U.S. mailing address for the customer, a current U.S. telephone number and no non-U.S. telephone number for the customer, or the broker's classifica ion of the customer as a U.S. person in its records;

(*3*) Cash paid to the customer by a transfer of funds into an account maintained by the customer in the United States, or cash deposited with the broker by a transfer of funds from such an account, or if the customer's account is linked to a bank or financial account maintained within the United States. For purposes of the preceding sentence, an account maintained by the customer in the United States includes an account at a bank or financial institution maintained within the United States but does not include an international account as defined in §1.6049-5(e)(4)

(*4*) One or more digital asset deposits into the customer's account at the broker were transferred from, or one or more digital asset withdrawals from the customer's account were transferred to, a digital asset broker that the broker knows or has reason to know to be organized within the United States, or the customer's account is linked to a digital asset broker that the broker knows or has reason to know to be organized within the United States; or

(*5*) An unambiguous indication of a U.S. place of birth for the customer.

(C) *Consequences of treatment as sale effected at an office inside the United States*. If a non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) is required to treat a sale as effected at an office inside the United States pursuant to paragraph (g)(4)(iv)(B) of this section, the broker is required to report the sale to the extent required by paragraph (c) of this section unless the broker determines the customer is an exempt foreign person. *See*, however, §31.3406(g)-1(e) of this chapter for an exception to backup withholding on gross proceeds from a sale of a digital asset effected by a non-U.S. digital asset broker that is not conducting activities as an MSB unless the broker has actual knowledge that the payee is a U.S. person. The broker can treat the customer as an exempt foreign person if it obtains documentation permitted under paragraph (g)(4)(iv)(D) of this section and applies the rules of paragraphs (g)(4)(vi)(A) through (D) of this section with respect to the documentation, or when the broker may treat the customer as an exempt foreign person under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(*2*) of this section. In applying paragraph (g)(4)(vi)(B) (relating to reliance on beneficia owner withholding certificates) or (C) of this section (relating to reliance on documentary evidence), however, the broker is not required to treat documentation as incorrect or unreliable solely as a result of the U.S. indicia that required the broker to obtain such documentation with respect to a customer. *See* paragraph (g)(4)(vi)(E) of this section for the extent to which a non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow-through entity or certain U.S. branches. *See* paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(D) *Type of documentation that may be obtained where there are U.S. indicia – (1) Collection of U.S. indicia other than U.S. place of birth*. A non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) that is considered to effect a sale at an office inside the United States under paragraph (g)(4)(iv)(B) of this section due to the collection of a document or possession of other information showing any of the U.S. indicia that is described in paragraphs (g)(4)(iv)(B)(*1*) through (*4*) of this section may treat the customer as an exempt foreign person provided that, prior to the payment to such customer, the broker has either a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer, or both—

(*i*) The documentary evidence described in §1.1471-3(c)(5)(i) to support the customer's foreign status; and

(*ii*) A written representation from the customer stating that: "I, the account owner represent and warrant that I am not a U.S. person for purposes of U.S. Federal income tax and that I am not acting for, or on behalf of, a U.S. person. I understand that a false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If my tax status changes and I become a U.S. citizen or a resident, I agree to notify [insert broker's name] within 30 days."

(*2*) *Collection of information showing U.S. place of birth*. A non-U.S. digital asset broker subject to the rules of this paragraph (g)(4)(iv) that is considered to effect a sale at an office inside the United States due to the collection of a document or possession of information showing the U.S. indicia that is described in paragraph (g)(4)(iv)(B)(*5*) of this section with respect to a customer may treat the customer as an exempt foreign person if it obtains documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing the customer's citizenship in a country other than the United States and either—

(*i*) A copy of the customer's Certificate of Loss of Nationality of the United States; or

(*ii*) A valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer and a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(v) *Rules for CFC digital asset brokers and non-U.S. digital asset brokers conducting activities as MSBs*. A CFC digital asset broker or a non-U.S. digital asset broker that is conducting activities as an MSB as described in paragraph (g)(4)(i)(D) of this section with respect to a sale of a digital asset must apply the rules in paragraph (g)(4)(ii) of this section to that sale as if that broker were a U.S. digital asset broker to determine the location where the sale is effected and the foreign status of the customer.

(vi) *Rules applicable to brokers that obtain or are required to obtain documentation for a customer and presumption rules* – (A) *In general*. Paragraph (g)(4)(vi)(A)(*1*) of this section describes rules applicable to documentation permitted to be used under this paragraph (g)(4) to determine whether a customer may be treated as an exempt foreign person. Paragraph (g)(4)(vi)(A)(*2*) of this section provides presumption rules that apply if the broker does not have documentation on which the broker may rely to determine a customer's status. Paragraph (g)(4)(vi)(A)(*3*) of this section provides a grace period for obtaining documentation in circumstances where there are indicia that a customer is a foreign person. Paragraph (g)(4)(vi)(A)(*4*) of this section provides rules relating to blocked income. Paragraph (g)(4)(vi)(B) of this section provides rules relating to reliance on beneficial ownership withholding certificates to determine whether a customer is an exempt foreign person. Paragraph (g)(4)(vi)(C) of this section provides rules relating to reliance on documentary evidence to determine whether a customer is an exempt foreign person. Paragraph (g)(4)(vi)(D) of this section provides rules relating to customers that are joint account holders. Paragraph (g)(4)(vi)(E) of this section provides special rules for a customer that is a foreign intermediary, a flow-through entity, or certain U.S. branches. Paragraph (g)(4)(vi)(F) of this section provides a transition rule for obtaining documentation to treat a customer as an exempt foreign person.

(*1*) *Documentation of foreign status*. A broker may treat a customer as an exempt foreign person when the broker obtains valid documentation permitted to support a customer's foreign status as described in paragraph (g)(4)(ii), (iii) or (iv) of this section that the broker can reliably associate (within the meaning of §1.1441-1(b)(2)(vii)(A)) with a payment of gross proceeds, provided that the broker is not required to treat the documentation as unreliable or incorrect under paragraph (g)(4)(vi)(B) or (C) of this section. For rules regarding the validity period of a withholding certificate or documentary evidence, retention of documentation, electronic transmission of documentation, information required to be provided on a withholding certificate, who may sign a withholding certificate, when a substitute withholding certificate may be accepted, and general reliance rules on documentation (including when a prior version of a withholding certificate may be relied upon), the provisions of §§1.1441-1(e)(4)(i) through (ix) and 1.6049-5(c)(1)(ii) apply, with the following modifications

(*i*) The provisions in §1.1441-1(e)(4)(i) through (ix) apply by substituting the terms "broker" and "customer" for the terms "withholding agent" and "payee," respectively, and disregarding the fact that the provisions under §1.1441-1 apply only to amounts subject to withholding under chapter 3 of the Code;

(*ii*) The provisions of §1.6049-5(c)(1)(ii) (relating to general requirements for when a payor may rely upon and must maintain documentary evidence with respect to a payee) apply by substituting the terms "broker" and "customer" for the terms "payor" and "payee," respectively;

(*iii*) To apply §1.1441-1(e)(4)(viii) (reliance rules for documentation), the reference to §1.1441-7(b)(4) through (6) is replaced by the provisions of paragraph (g)(4)(vi)(B) or (C) of this section, as applicable, and the reference to §1.1441-6(c)(2) is disregarded; and

(*iv*) To apply §1.1441-1(e)(4)(viii) (reliance rules for documentation) and (ix) (certificates to be furnished to a withholding agent for each obligation unless an exception applies), the provisions applicable to a financial institution apply to a broker described in this paragraph (g)(4) whether or not it is a financial institution

(*2*) *Presumption rules*. If a broker is not permitted to treat a customer as an exempt foreign person under paragraph (g)(4)(vi)(A)(*1*) of this section because the broker has not collected the documentation permitted to be collected under this paragraph (g)(4) or is not permitted to rely on the documentation it has collected, the broker must determine the classification of a customer (as an individual, entity, etc.) by applying the presumption rules of §1.1441-1(b)(3)(ii), except that references in §1.1441-1(b)(3)(ii)(B) to exempt recipient categories under section 6049 are replaced by the exempt recipient categories in paragraph (c)(3)(i) of this section. With respect to a customer that the broker has classified as an individual, a broker that is a U.S. digital asset broker or that is a CFC digital asset broker or a non-U.S. digital asset broker that in each case is conducting activities as an MSB must treat the customer as a U.S. person. A broker that is a CFC digital asset broker or a non-U.S. digital asset broker that in each case is not conducting activities as an MSB is required to treat a customer that it has classified as an individual as a U.S. person only when the broker has documentation or other information that is part of the broker's account information for the customer (including information collected with respect to the customer pursuant to the broker's compliance with applicable AML program requirements) or a withholding certific te that show any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section.

With respect to a customer that the broker has classified as an entity, the broker must determine the status of the customer as U.S. or foreign by applying §§1.1441-1(b)(3)(iii)(A) and 1.1441-5(d) and (e)(6), except that §1.1441-1(b)(3)(iii)(A)(*1*)(*iv*) does not apply. Notwithstanding the preceding provisions of this paragraph (g)(4)(vi)(A)(*2*), a broker may not treat a customer as a foreign person under this paragraph (g)(4)(vi)(A)(*2*) if the broker has actual knowledge that the customer is a U.S. person. For presumption rules to treat a payment as made to an intermediary or flow-through entity and whether the payment is also treated as made to an exempt foreign person, *see* paragraph (g)(4)(vi)(E) of this section.

(*3*) *Grace period to collect valid documentation in the case of indicia of a foreign customer*. If a broker has not obtained valid documentation that it can reliably associate with a payment of gross proceeds to a customer to treat the customer as an exempt foreign person, or if the broker is unable to rely upon documentation under the rules described in paragraph (g)(4)(vi)(A)(*1*) of this section or is required to treat documentation obtained for a customer as unreliable or incorrect (after applying paragraphs (g)(4)(vi)(B) and (C) of this section), the broker may apply the grace period described in §1.6049-5(d)(2)(ii) (generally allowing in certain circumstances a payor to treat an account as owned by a foreign person for a 90 day period). In applying §1.6049-5(d)(2)(ii), references to "securities described in §1.1441-6(c)(2)" are replaced with "digital assets."

(*4*) *Blocked income*. A broker may apply the provisions in paragraph (g)(1)(iii) of this section to treat a customer as an exempt foreign person when the proceeds are blocked income as described in §1.1441-2(e)(3).

(B) *Reliance on beneficial ownership withholding certificates to determine foreign status*. For purposes of determining whether a customer may be treated as an exempt foreign person under this section, except as otherwise provided in this paragraph (g)(4)(vi)(B), a broker may rely on a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section unless the broker has actual knowledge or reason to know that the certificate is unreliable or incorrect. Reason to know is limited to when the broker has in its account opening file or other files pertaining to the account (account information), including documentation collected for purposes of an AML program or the beneficial owner withholding certificate, any of the U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section. A broker will not be considered to have reason to know that a certificate is unreliable or incorrect based on documentation collected for an AML program until the date that is 30 days after the account is opened. A broker may rely, however, on a beneficial owner withholding certificate notwithstanding the presence of any of the U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section on the withholding certificate or in the account information for a customer in the following circumstances:

(*1*) With respect to any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(*1*) through (*4*) of this section, the broker has in its possession for a customer who is an individual documentary evidence establishing foreign status (as described in §1.1471-3(c)(5)(i)) that does not contain a U.S. address and the customer provides the broker with a reasonable explanation (as defined in §1.1441-7(b)(12)) from the customer, in writing, supporting the claim of foreign status. Notwithstanding the preceding sentence, in a case in which the broker classified an individual customer as a U.S. person in its account information, the broker may treat the customer as an exempt foreign person only if it has in its possession documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States. In the case of a customer that is an entity, the broker may treat the customer as an exempt foreign person if it has in its possession documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country. Additionally, regardless of whether the customer is an individual or an entity, a broker may rely on a beneficial owner withholding certificate for purposes of this paragraph (g)(4)(vi)(B)(*1*) when—

(*i*) The broker is a non-U.S. person;

(*ii*) The broker is required to report the payment made to the customer annually on a tax information statement that is filed with the tax authority of the country where the customer is resident as part of that country's resident reporting requirements; and

(*iii*) That country has a tax information exchange agreement or income tax treaty in effect with the United States.

(*2*) With respect to the U.S. indicia described in paragraph (g)(4)(iv)(B)(*5*) of this section, the broker has in its possession documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and the broker has in its possession either a copy of the customer's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(C) *Reliance on documentary evidence to determine foreign status*. For purposes of treating a customer as an exempt foreign person under this section, except as otherwise provided in this paragraph (g)(4)(vi)(C), a broker may rely on documentary evidence described in §1.1471-3(c)(5)(i) (when the broker is otherwise permitted to do so under paragraph (g)(4)(iii)(B) or (g)(4)(iv)(B) of this section) unless the broker has actual knowledge or reason to know that the documentary evidence is unreliable or incorrect. Reason to know is limited to when the broker has in its account opening files or other files pertaining to the account, including documentation collected for purposes of an AML program, any of the U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section. A broker will not be considered to have reason to know that documentary evidence is unreliable or incorrect based on documentation collected for an AML program until the date that is 30 days after the account is opened. A broker may rely, however, on documentary evidence notwithstanding the presence of any of U.S. indicia set forth in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section on the documentary evidence or in the account information for a customer in the following circumstances:

(*1*) With respect to any of the U.S. indicia described in paragraphs (g)(4)

(iv)(B)(*1*) through (*4*) of this section, the broker has in its possession for a customer who is an individual additional documentary evidence establishing foreign status (as described in §1.1471-3(c)(5)(i)) that does not contain a U.S. address and the customer provides the broker with a reasonable explanation (as defined in §1.1441-7(b)(12)), in writing, supporting the claim of foreign status. In the case of a customer that is an entity, the broker may treat the customer as an exempt foreign person if the broker has in its possession documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country. In lieu of the documentary evidence or documentation described in this paragraph (g)(4)(vi)(C)(*1*), a broker may treat a customer (regardless of whether an individual or entity) as an exempt foreign person if—

(*i*) The broker has in its possession a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer that contains a permanent residence address (as defined in §1.1441-1(c)(38)) outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the customer provides a reasonable explanation in writing or additional documentary evidence sufficient to establish the customer's foreign status); or

(*ii*) The broker is a non-U.S. person and the conditions specified in paragraphs (g)(4)(vi)(B)(*1*)(*ii*) and (*iii*) of this section are satisfied

(*2*) With respect to the U.S. indicia described in paragraph (g)(4)(iv)(B)(*5*) of this section, the broker has in its possession documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and either—

(*i*) A copy of the customer's Certificate of Loss of Nationality of the United States; or

(*ii*) A valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer and a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(D) *Joint owners*. In the case of amounts paid to customers that are joint account holders for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (g)(4), such amounts are presumed made to U.S. payees who are not exempt recipients (as defined in paragraph (c)(3)(i)(B) of this section) when the conditions of paragraph (g)(3)(i) of this section are met.

(E) *Special rules for customer that is a foreign intermediary, a flow-through entity, or certain U.S. branches* – (*1*) *Foreign intermediaries*. For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a foreign intermediary (as defined in §1.1441-1(c)(13)) by reliably associating (under §1.1441-1(b)(2)(vii)) a payment of gross proceeds with a valid foreign intermediary withholding certificate described in §1.1441-1(e)(3)(ii) or (iii), without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each account holder. A broker that is a U.S. digital asset broker and a non-U.S. digital asset broker or a CFC digital asset broker that in each case is conducting activities as an MSB, that does not have a valid foreign intermediary withholding certificate or a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer applies the presumption rules in §1.1441-1(b)(3)(ii)(B) (which would presume that the entity is not an intermediary). A broker that is a non-U.S. digital asset broker or a CFC digital asset broker that in each case is not conducting activities as an MSB may alternatively determine the status of a customer as an intermediary by presuming that the entity is an intermediary to the extent permitted by §1.1441-1(b)(3)(ii)(C) (providing rules treating certain payees as not benefici l owners), without regard to the requirement in §1.1441-1(b)(3)(ii)(C) that any documentation be furnished with respect to an offshore obligation, and applying §1.1441-1(b)(3)(ii)(C) by substituting the references to exempt recipient categories under section 6049 with the exempt recipient categories in paragraph (c)(3)(i) of this section. *See* §1.1441-1(b)(3)(iii) for presumption rules relating to the U.S. or foreign status of a customer that is presumed to be an intermediary. In the case of a payment of gross proceeds from a sale of a digital asset that a broker treats as made to a foreign intermediary under this paragraph (g)(4)(vi)(E)(*1*), the broker must treat the foreign intermediary as an exempt foreign person except to the extent required by paragraph (g)(3)(iv) of this section (rules for when a broker is required to treat a payment as made to a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section and for reporting that may be required by the foreign intermediary).

(*2*) *Foreign flow-through entities*. For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a foreign flow-through entity (as defined in §1.1441-1(c)(23)) by reliably associating (under §1.1441-1(b)(2)(vii)) a payment of gross proceeds with a valid foreign flow-through withholding certificate described in §1.1441-5(c)(3)(iii) (relating to nonwithholding foreign partnerships) or (e)(5)(iii) (relating to foreign simple trusts and foreign grantor trusts that are nonwithholding foreign trusts), without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each partner. A broker may alternatively determine the status of a customer as a foreign flow-through entity based on the presumption rules in §§1.1441-1(b)(3)(ii)(B) (relating to entity classification) and 1.1441-5(d) (relating to partnership status as U.S. or foreign) and (e)(6) (relating to the status of trusts and estates as U.S. or foreign). In the case of a payment of gross proceeds from a sale of a digital asset that a broker treats as made to a foreign flow-through entity under this paragraph (g)(4)(vi)(E)(*2*), the broker must treat the foreign flow-through entity as an exempt foreign person except to the extent required by §1.6049-5(d)(3)(ii) (rules for when a broker is required to treat a payment as made to a U.S. person other than an exempt recipient (substituting "exempt recipient under §1.6045-1(c)(3)" for "exempt recipient described in §1.6049-4(c)")).

(*3*) *U.S. branches that are not beneficial owners*. For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a U.S. branch (as described in §1.1441-1(b)(2)(iv)) that

is not a beneficial owner (as defined in §1.1441-1(c)(6)) of a payment of gross proceeds by reliably associating (under §1.1441-1(b)(2)(vii)) the payment with a valid U.S. branch withholding certificate described in §1.1441-1(e)(3)(v) without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each person for whom the branch receives the payment. If a U.S. branch certifies on a U.S. branch withholding certificate described in the preceding sentence that it agrees to be treated as a U.S. person under §1.1441-1(b)(2)(iv)(A), the broker provided the certificate must treat the U.S. branch as an exempt foreign person. If a U.S. branch does not certify as described in the preceding sentence on its U.S. branch withholding certificate, the broker provided the certificate must treat the U.S. branch as an exempt foreign person except to the extent required by paragraph (g)(3)(iv) of this section (rules for when a broker is required to treat a payment as made to a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section and for reporting that may be required by the U.S. branch). In a case in which a broker cannot reliably associate a payment of gross proceeds made to a U.S. branch with a U.S. branch withholding certificate described in §1.1441-1(e)(3)(v) or a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section, *see* paragraph (g)(4)(vi)(E)(*1*) of this section for determining the status of the U.S. branch as a beneficial owner or intermediary.

(F) *Transition rule for obtaining documentation to treat a customer as an exempt foreign person*. Notwithstanding the rules of this paragraph (g)(4) for determining the status of a customer as an exempt foreign person, for a sale of a digital asset effected before January 1, 2026, that was held in an account established for the customer by a broker before January 1, 2025, the broker may treat the customer as an exempt foreign person provided that the customer has not previously been classified as a U.S. person by the broker, and the information that the broker has in the account opening files or other files pertaining to the account, including documentation collected for purposes of an AML program, includes a residence address for the customer that is not a U.S. address.

(vii) *Barter exchanges*. No return of information is required by a barter exchange under the rules of paragraphs (e) and (f) of this section with respect to a client or a member that the barter exchange may treat as an exempt foreign person pursuant to the procedures described in paragraph (g)(4) of this section.

* * * * *

(6) *Examples*. The application of the provisions of paragraph (g)(4) of this section with respect to sales of digital assets may be illustrated by the following examples. All events and transactions in the following examples occur after the applicability date set forth in paragraph (q) of this section.

(i) *Example 1: Foreign digital asset broker conducting activities as an MSB*—(A) *Facts*. Foreign corporation (FKS) owns and operates several digital asset kiosks physically located within the United States. FKS is not a controlled foreign corporation within the meaning of §1.6049-5(c)(5)(i)(C). In addition to the digital asset kiosks located in the United States, FKS owns and operates an online digital asset trading platform and provides digital asset hosted wallet services for online customers who want to purchase, hold, and exchange various digital assets for cash or other digital assets. FKS does not own or operate kiosks located outside of the United States. FKS is registered as a money service business (MSB) with the Department of the Treasury.

(*1*) *Customer L: No withholding certificate*. L, an individual who is a non-U.S. resident visiting the United States, utilizes one of FKS's digital asset kiosks located in the United States in order to effect a sale of digital asset DE for cash. L has not previously done business with FKS and does not hold digital assets in an online account with FKS. L represents to FKS that L is a foreign individual. FKS requests a beneficial owner withholding certificate from L as part of FKS's procedures for effecting transactions with customers that use FKS's digital asset kiosks located in the United States. L does not provide FKS with a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section. FKS executes the sale of L's DE on behalf of L and pays the gross proceeds to L.

(*2*) *Customer L: Withholding certificate*. The facts are the same as in paragraph (g)(6)(i)(A)(*1*) of this section, except that prior to the payment of sale proceeds, L provides FKS with a beneficial owner withholding certifi ate described in paragraph (g)(4)(ii)(B) of this section that FKS may treat as valid under §1.1441-1(e)(2)(ii) and that satisfies the requirements of paragraph (g)(4)(vi) of this section.

(*3*) *Customer J*. J is an individual that opened an account with FKS to use FKS's online digital asset trading platform. As part of performing FKS's account opening procedures FKS collected from J a copy of a driver's license issued by country Y and a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section. Shortly after opening J's account, FKS obtains information showing that J's communications to FKS come from an IP address located within the United States that becomes part of FKS's account file for J. After obtaining the information described in the preceding sentence, FKS effects a sale of digital asset DE for cash on behalf of J, and credits the gross proceeds to J's account with FKS.

(B) *Broker's status and requirements*. FKS is a non-U.S. digital asset broker under paragraph (g)(4)(i)(C) of this section because it is a non-U.S. payor under §1.6049-5(c)(5) that effects sales of digital assets on behalf of customers. Because FKS is registered as an MSB with the Department of the Treasury, FKS is conducting activities as an MSB under paragraph (g)(4)(i)(D) of this section with respect to its sales of digital assets. As a result, FKS is subject to the requirements of a U.S. digital asset broker under paragraph (g)(4)(ii) of this section with respect to those sales rather than the requirements of a non-U.S. digital asset broker under paragraph (g)(4)(iv) of this section (which apply to a non-U.S. digital asset broker not conducting activities as an MSB). Moreover, FKS is subject to the requirements of paragraph (g)(4)(ii) of this section with respect to all sales of digital assets it effects for its customers because FKS does not own or operate any digital asset kiosks physically located outside of the United States. *See* paragraphs (g)(4)(i)(D) and (E) of this section.

(C) *Broker's obligation to report* – (*1*) *Customer L: No withholding certificate*. Because FKS must apply the requirements of paragraph (g)(4)(ii) of this section with respect to L's sale, FKS must make an information return for the sale under section 6045 unless FKS can treat L as an exempt recipient under paragraph (c)(3) of this section (which applies to only certain specified entities) or as an exempt foreign person. Because FKS has not collected documentation for L on which FKS may rely to treat L as an exempt foreign person, FKS must apply the presumption rules in paragraph (g)(4)(vi)(A)(*2*) of this section. FKS presumes that L is an individual because L appears to be an individual based on L's name in the customer file. As an individual, L cannot be treated as an exempt recipient under paragraph (c)(3) of this section. Because FKS has classified L as an individual and FKS is a non-U.S. digital asset broker conducting activities as an MSB that is subject to the rules in paragraph (g)(4)(ii) of this section with respect to L's sale, FKS must treat L as a U.S. person under the presumption rule applicable to individuals described in paragraph (g)(4)(vi)(A)(*2*) of this section. Thus, FKS may not treat L as an exempt foreign person with respect to L's sale of digital asset DE and must make an information return for the sale under section 6045. *See* paragraph (r) of this section for cross references to requirements for backup withholding under section 3406 that may apply to a sale required to be reported under section 6045. In connection with applying the requirements for backup withholding, because sales of DE effected by FKS for L are considered effected at an office inside the United States under paragraph (g)(4)(ii)(B) of this section, FKS may not apply the exception to backup withholding provided in §31.3406(g)-1(e) of this chapter to the sale effected on behalf of L.

(*2*) *Customer L: Withholding certificate*. As provided in paragraph (g)(4)(ii)(B) of this section, FKS may treat L as an exempt foreign person because FKS has a valid withholding certificate for L described in paragraph (g)(4)(ii)(B) of this section that satisfies the requirements of paragraph (g)(4)(vi) of this section. Accordingly, FKS is not required to make an information return under section 6045 with respect to L's sale.

(*3*) *Customer J*. As described in paragraph (g)(6)(i)(B) of this section, FKS must apply the requirements of paragraph (g)(4)(ii) of this section with respect to J's sale. Although FKS collected a valid beneficial owner withholding certificate with respect to J in accordance with paragraph (g)(4)(ii)(B) of this section, FKS has reason to know that the withholding certificate is incorrect or unreliable because FKS has U.S. indicia described in paragraph (g)(4)(iv)(B)(*1*) of this section in J's account file. FKS may continue to rely on the withholding certificate if FKS obtains from J documentary evidence establishing foreign status (as described in §1.1471-3(c)(5)(i)) that does not contain a U.S. address and a reasonable explanation (as defined in §1.1441-7(b)(12)) from J, in writing, supporting the claim of foreign status. Alternatively, FKS may rely on the withholding certifi ate if FKS reports J to country Y and the conditions specified in paragraphs (g)(4)(vi)(B)(*1*)(*ii*) and (*iii*) of this section are satisfied. FKS has a driver's license for J issued by country Y but does not have the reasonable explanation. FKS does not report J to country Y or satisfy the other conditions in paragraphs (g)(4)(vi)(B)(*1*)(*ii*) and (*iii*) of this section. Therefore, FKS may not rely on the beneficial owner withholding certificate to treat J as an exempt foreign person. However, FKS may rely on the grace period described in paragraph (g)(4)(vi)(A)(*3*) of this section (which in turn references the requirements of §1.6049-5(d)(2)(ii)) to treat J as an exempt foreign person for a 90-day period because FKS has a withholding certificate for J that is no longer reliable (other than because the validity period has expired), provided that the remaining balance of J's account with FKS is equal to or greater than the statutory backup withholding rate applied to the amount of gross proceeds credited to the account. *See* §1.6049-5(d)(2)(ii). The 90-day grace period begins on the date that the withholding certificate may no longer be relied upon because of the communications from a U.S. IP address. If the sale is effected after the end of the grace period, FKS must apply the presumption rules in paragraph (g)(4)(vi)(A)(*2*) of this section. FKS must presume that J is an individual because FKS has a driver's license for J. As an individual, J cannot be treated as an exempt recipient under paragraph (c)(3) of this section. FKS must treat J as a U.S. person under the presumption rules applicable to individuals in paragraph (g)(4)(vi)(A)(*2*) of this section. Thus, FKS may not treat J as an exempt foreign person with respect to J's sale of digital asset DE and must make an information return for the sale under section 6045. *See* paragraph (r) of this section for cross references to requirements for backup withholding under section 3406 that may apply to a sale required to be reported under section 6045. In connection with applying the requirements for backup withholding, because sales of DE effected by FKS for J are considered effected at an office inside the United States under paragraph (g)(4)(ii)(B) of this section, FKS may not apply the exception to backup withholding provided in §31.3406(g)-1(e) of this chapter to the sale effected on behalf of J.

(ii) *Example 2: Foreign digital asset broker registered as MSB effecting sales at digital asset kiosks located outside the United States*—(A) *Facts*. The facts are the same as in paragraph (g)(6)(i)(A) of this section (the facts in *Example 1*), except that FKS also effects sales of digital assets for customers through digital asset kiosks physically located in country Y that FKS owns and operates. FKS is not required to implement an AML program, file reports, or otherwise comply with requirements for MSBs under the Bank Secrecy Act with respect to sales effected at digital asset kiosks physically located in country Y that FKS owns and operates.

(*1*) *Customer C*. C, an individual, utilizes a digital asset kiosk operated by FKS in country Y to sell C's digital asset DE for cash. C does not have any interaction with other parts of FKS's business (such as FKS's online digital asset trading platform or hosted wallet service). As part of FKS's documentation procedures, including the performance of local country AML program requirements, FKS collects from C a copy of C's driver's license issued by country Y and a copy of C's passport issued by country Y. FKS does not have in its account file for C any document or other information with respect to C showing any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section.

(*2*) *Customer K*. K, an individual, utilizes a digital asset kiosk operated by FKS in country Y to sell K's digital asset DE for cash. As part of FKS's documentation procedures, including the performance of local country AML program requirements, FKS collects from K an address in country Y, a copy of K's driver's license issued by country Y, and a copy of K's U.S. passport that indicates a place of birth for K in the United States.

(B) *Broker's status and requirements*. As indicated in paragraph (g)(6)(i)(B) of this section (*Example 1*), FKS is a non-U.S. digital asset broker under paragraph (g)(4)(i)(C) of this section that is conducting activities as an MSB under paragraph (g)(4)(i)(D) of this section. As a result, FKS is subject to the requirements of paragraph (g)(4)(ii) of this section except with respect to sales it effects through foreign kiosks that are described in paragraph (g)(4)(i)(E) of this section since FKS is not required under the Bank Secrecy Act to implement an AML program, file reports, or otherwise comply with requirements for MSBs under the Bank Secrecy Act with respect to sales effected at the kiosks. Accordingly, FKS is subject to the requirements of a non-U.S. digital asset broker under paragraph (g)(4)(iv) of this section with respect to sales that it effects through its foreign kiosks.

(C) *Broker's obligation to report* – (*1*) *Customer C*. Because FKS is subject to the requirements of paragraph (g)(4)(iv) of this section with respect to C's sale at FKS's foreign kiosk and because none of the documents or other information in FKS's account file for C include any of the U.S. indicia described in paragraphs (g)(4)(iv)(B)(*1*) through (*5*) of this section, FKS may treat the sale of digital asset DE on behalf of C as effected at an office outside the United States under paragraph (g)(4)(iv)(A) of this section. Accordingly, FKS is not considered a broker under paragraph (a)(1) of this section with respect to the sale, and FKS is therefore not required to make an information return under section 6045 with respect to C's sale. The result would be the same regardless of whether FKS collected documentation for C, provided that information in the account file does not show U.S. indicia.

(*2*) *Customer K*. FKS is subject to the requirements of paragraph (g)(4)(iv) of this section with respect to K's sale at FKS's foreign kiosk. FKS collected an unambiguous indication of a U.S. place of birth for K (that is, K's U.S. passport showing a U.S. place of birth) in performing its documentation procedures. Accordingly, FKS has U.S. indicia described in paragraph (g)(4)(iv)(B)(*5*) of this section as part of its account information for K and must treat K's sale of DE as effected inside the United States under paragraph (g)(4)(iv)(B) of this section. As a result, FKS is treated as a broker under paragraph (a)(1) of this section with respect to K's sale and must apply the requirements of paragraph (g)(4)(iv)(C) of this section to determine whether it must report K's sale under section 6045. Under paragraph (g)(4)(iv)(D)(*2*) of this section, FKS may treat K as an exempt foreign person if FKS collects, prior to making the payment to K, documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing K's citizenship in a country other than the United States and either a copy of K's Certificate of Loss of Nationality of the United States, or both a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for K and a reasonable written explanation of K's renunciation of U.S. citizenship or the reason K did not obtain U.S. citizenship at birth. FKS does not have the documentary evidence described in the preceding sentence for K. FKS must therefore apply the presumption rules in paragraph (g)(4)(vi)(A)(*2*) of this section to determine whether it may treat K as an exempt foreign person. FKS must presume that K is an individual because FKS has a driver's license for K. As an individual, K cannot be treated as an exempt recipient under paragraph (c)(3) of this section. FKS must treat K as a U.S. person under the presumption rules applicable to individuals in paragraph (g)(4)(vi)(A)(*2*) of this section because FKS has U.S. indicia associated with K's account information. Therefore, FKS must make an information return under section 6045 with respect to K's sale. However, FKS has no obligation to backup withhold on the proceeds from the sale based on the exemption under §31.3406(g)-1(e) of this chapter, unless FKS has actual knowledge that K is a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section.

(iii) *Example 3: CFC digital asset broker that is not conducting activities as an MSB*—(A) *Facts*. Corporation G (GFC) is a controlled foreign corporation under §1.6049-5(c)(5)(i)(C) that operates a business as an online digital asset broker. Several of GFC's customers have online accounts with GFC through which they effect sales of digital assets. GFC does not register as an MSB with the Department of the Treasury.

(B) *Broker's status and requirements*. Because GFC is a controlled foreign corporation under §1.6049-5(c)(5)(i)(C) that effects sales of digital assets on behalf of customers, GFC is a CFC digital

asset broker as defined in paragraph (g)(4)(i)(B) of this section. Because GFC does not register as an MSB with the Department of the Treasury, GFC is not conducting activities as an MSB under paragraph (g)(4)(i)(D) of this section. As a result, GFC is subject to the requirements of a CFC digital asset broker under paragraph (g)(4)(iii) of this section with respect to sales of digital assets it effects for its customers.

(C) *Broker's obligation to report*. Because GFC is subject to the requirements of a CFC digital asset broker under paragraph (g)(4)(iii) of this section, GFC must make an information return for the sales it effects for its customers under section 6045 unless GFC can treat a customer as an exempt recipient under paragraph (c)(3) of this section or an exempt foreign person. Under paragraph (g)(4)(iii)(B) of this section, GFC may treat a customer (other than a foreign intermediary, foreign flow through entity, or certain U.S. branches) as an exempt foreign person by obtaining with respect to the customer either a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section or the documentary evidence described in §1.1471-3(c)(5)(i) supporting the customer's foreign status and upon which GFC may rely, pursuant to the requirements of paragraph (g)(4)(vi) of this section. If GFC does not obtain the withholding certificate or documentary evidence described in the preceding sentence prior to a customer's sale, GFC may be permitted under a presumption rule as provided in paragraph (g)(4)(vi)(A)(*2*) of this section to treat a customer as an exempt foreign person (unless GFC has actual knowledge that the customer is a U.S. person). GFC may, instead of applying the earlier-described provisions of this paragraph (g)(6)(iii)(C), treat a customer as a foreign intermediary, foreign flow through entity, or certain U.S. branches and an exempt foreign person when it is permitted to do under paragraph (g)(4)(vi)(E) of this section. As GFC's sales are considered effected at an offic outside of the United States under paragraph (g)(4)(iii)(A) of this section, GFC has no obligation to backup withhold on the proceeds from a reportable sale based on the exemption under §31.3406(g)-1(e) of this chapter, unless GFC has actual knowledge that customer is a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section.

* * * * *

(j) *Time and place for filing; cross-references to penalty and magnetic media filing requirements*. Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before February 28 of the following calendar year with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For a digital asset sale effected prior to January 1, 2025, for which a broker chooses under paragraph (d)(2)(iii)(B) of this section to file an information return, Form 1096 and the Form 1099-B, "Proceeds From Broker and Barter Exchange Transactions," or if available the form prescribed by the Secretary pursuant to paragraph (d)(2)(i)(B) of this section, must be filed on or before February 28 of the calendar year following the year of that sale. *See* paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), *see* §301.6721-1 of this chapter. *See* §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

(m) * * *

(1) *In general.* This paragraph (m) provides rules for a broker to determine and report the information required under this section for an option that is a covered security under paragraph (a)(15)(i)(E) or (H) of this section.

(2) * * *

(ii) * * *

(C) Notwithstanding paragraph (m)(2)(i) of this section, if an option is an option on a digital asset or an option on derivatives with a digital asset as an underlying property, paragraph (m) of this section applies to the option if it is granted or acquired on or after January 1, 2023.

* * * * *

(q) *Applicability date.* Except as otherwise provided in this paragraph (q) or paragraphs (m)(2)(ii) and (n)(12)(ii) of this section, this section applies on or after January 6, 2017. (For rules that apply after June 30, 2014, and before January 6, 2017, see §1.6045-1 in effect and contained in 26 CFR part 1, as revised April 1, 2016.) For sales of digital assets, this section applies on or after January 1, 2025. For assets that are commodities pursuant to the Commodity Futures Trading Commission's certification procedures described in 17 CFR 40.2, this section applies to sales of such commodities on or after January 1, 2025, without regard to the date such certification procedures were undertaken.

(r) *Cross-references*. For provisions relating to backup withholding for reportable transactions under this section, *see* §31.3406(b)(3)-2 of this chapter for rules treating gross proceeds as reportable payments, §31.3406(d)-1 of this chapter for rules with respect to backup withholding obligations, and §31.3406(h)-3 of this chapter for the prescribed form for the certification of information required under this section.

Par. 7. Section 1.6045-4 is amended by:

1. Revising the section heading and paragraph (b)(1);
2. Removing the period at the end of paragraph (c)(2)(i) and adding a semicolon in its place;
3. Removing the word "or" at the end of paragraph (c)(2)(ii);
4. Removing the period at the end of paragraph (c)(2)(iii) and adding "; or" in its place;
5. Adding paragraph (c)(2)(iv);
6. Revising paragraph (d)(2)(ii)(A);
7. In paragraphs (e)(3)(iii)(A) and (B), adding the language "or digital asset" after the language "cash", wherever it appears;
8. Revising paragraphs (h)(1)(v)(A) and (B);
9. Redesignating paragraphs (h)(1)(vii) and (viii) as paragraphs (h)(1)(viii) and (ix), respectively, and adding new paragraph (h)(1)(vii);
10. Adding paragraph (h)(2)(iii);
11. Revising paragraphs (i)(1) and (2), (i)(3)(ii), and (o);
12. In paragraph (r), redesignating *Examples 1* through *9* as paragraphs (r)(1) through (9), respectively;
13. In newly designated paragraph (r)(3), removing "section (b)(1)" and adding "paragraph (b)(1)" in its place;
14. Removing and reserving newly designated paragraph (r)(5);
15. Revising newly designated paragraph (r)(7);
16. In newly designated paragraph (r)(8), removing "example (6)" and adding "paragraph (r)(6) of this section (the facts in *Example 6*)" in its place;
17. In newly designated paragraph (r)(9), removing "example (8)" and adding "paragraph (r)(8) of this section (the facts in *Example 8*)" in its place;
18. Adding paragraph (r)(10); and
19. In paragraph (s), adding a sentence to the end of the paragraph.

The revisions and additions read as follows:

§1.6045-4 Information reporting on real estate transactions.

* * * * *

(b) * * *

(1) *In general*. A transaction is a *real estate transaction* under this section if the transaction consists in whole or in part of the sale or exchange of *reportable real estate* (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services. The term *sale or exchange* shall include any transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of a principal residence is a real estate transaction under this section even though the transferor may be entitled to the special exclusion of gain up to $250,000 (or $500,000 in the case of married persons filing jointly) from the sale or exchange of a principal residence provided by section 121 of the Code.

* * * * *

(c) * * *

(2) * * *

(iv) A principal residence (including stock in a cooperative housing corporation) provided the reporting person obtain from the transferor a written certification consistent with guidance that the Secretary has designated or may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter). If a residence has more than one owner, a real estate reporting person must either obtain a certifi ation from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification. The certification must be retained by the reporting person for four years after the year of the sale or exchange of the residence to which the certificati n applies. A reporting person who relies on a certification made in compliance with this paragraph (c)(2)(iv) will not be liable for penalties under section 6721 of the Code for failure to file an information return, or under section 6722 of the Code for failure to furnish a payee statement to the transferor, unless the reporting person has actual knowledge or reason to know that any assurance is incorrect.

(d) * * *

(2) * * *

(ii) * * *

(A) The United States or a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, a political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; or

* * * * *

(h) * * *

(1) * * *

(v) * * *

(A) Received (or will, or may, receive) property (other than cash, consideration treated as cash, and digital assets in computing gross proceeds) or services as part of the consideration for the transaction; or

(B) May receive property (other than cash and digital assets) or services in satisfaction of an obligation having a stated principal amount; or

* * * * *

(vii) In the case of a payment made to the transferor using digital assets, the name and number of units of the digital asset, the date and time the payment was made, the transaction identification as defined in §1.6045-1(a)(26) and the digital asset address (or addresses) as defined in §1.6045-1(a)(20) into which the digital assets are transferred;

* * * * *

(2) * * *

(iii) *Digital assets*. For purposes of this section, a digital asset has the meaning set forth in §1.6045-1(a)(19).

(i) * * *

(1) *In general*. Except as otherwise provided in this paragraph (i), the term *gross proceeds* means the total cash received, including cash received from a digital asset payment processor as described in §1.6045-1(a)(22)(i), consideration treated as cash received, and the value of any digital asset received by or on behalf of the transferor in connection with the real estate transaction.

(i) *Consideration treated as cash*. For purposes of this paragraph (i), consideration treated as cash received by or on behalf of the transferor in connection with the real estate transaction includes the following amounts:

(A) The stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future (including any obligation having a stated principal amount that may be satisfied by the delivery of property (other than cash) or services);

(B) The amount of any liability of the transferor assumed by the transferee as part of the consideration for the transfer or of any liability to which the real estate acquired is subject (whether or not the transferor is personally liable for the debt); and

(C) In the case of a contingent payment transaction, as defined in paragraph (i)(3)(ii) of this section, the maximum determinable proceeds, as defined in paragraph (i)(3)(iii) of this section.

(ii) *Digital assets received*. For purposes of this paragraph (i), the value of any digital asset received means the fair market value in U.S. dollars of the digital asset actually received. Additionally, if the consideration received by the transferor includes an obligation to pay a digital asset to, or for the benefit of, the transferor in the future, the value of any digital asset received includes the fair market value, as of the date and time the obligation is entered into, of the digital assets to be paid as stated principal under such obligation. The fair market value of any digital asset received must be determined based on the valuation rules provided in §1.6045-1(d)(5)(ii).

(iii) *Other property*. Gross proceeds does not include the value of any property (other than cash, consideration treated as cash, and digital assets) or services received by, or on behalf of, the transferor in connection with the real estate transaction. *See* paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099 required by this section in cases in which the transferor receives (or will, or may, receive) property (other than cash, consideration treated as cash, and digital assets) or services as part of the consideration for the transfer.

(2) *Treatment of sales commissions and similar expenses*. In computing gross proceeds, the total cash, consideration treated as cash, and digital assets received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such as sales commissions, amounts

paid or withheld from consideration received to effect the digital asset transfer as described in §1.1001-7(b)(2), expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) * * *

(ii) *Contingent payment transaction*. For purposes of this section, the term *contingent payment transaction* means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash, consideration treated as cash under paragraph (i)(1)(i)(A) of this section, or digital assets under paragraph (i)(1)(ii) of this section is subject to a contingency.

* * * * *

(o) *No separate charge.* A reporting person may not separately charge any person involved in a real estate transaction for complying with any requirements of this section. A reporting person may, however, take into account its cost of complying with such requirements in establishing its fees (other than in charging a separate fee for complying with such requirements) to any customer for performing services in the case of a real estate transaction.

* * * * *

(r) * * *

(7) *Example 7: Gross proceeds (contingencies)*. The facts are the same as in paragraph (r)(6) of this section (the facts in *Example 6*), except that the agreement does not provide for adequate stated interest. The result is the same as in paragraph (r)(6) (the results in *Example 6*).

* * * * *

(10) *Example 10: Gross proceeds (exchange involving digital assets)*—(i) *Facts*. K, an individual, agrees to pay 140 units of digital asset DE with a fair market value of $280,000 to J, an unmarried individual who is not an exempt transferor, in exchange for Whiteacre, which has a fair market value of $280,000. No liabilities are involved in the transaction. P is the reporting person with respect to both sides of the transaction.

(ii) *Analysis*. With respect to the payment by K of 140 units of digital asset DE to J, P must report gross proceeds received by J of $280,000 (140 units of DE). Additionally, to the extent K is not an exempt recipient under §1.6045-1(c) or an exempt foreign person under §1.6045-1(g), P is required to report gross proceeds paid to K, with respect to K's sale of 140 units of digital asset DE, in the amount of $280,000 pursuant to §1.6045-1.

(s) * * * The amendments to paragraphs (b)(1), (c)(2)(iv), (d)(2)(ii), (e)(3)(iii), (h)(1)(v) through (ix), (h)(2)(iii), (i)(1) and (2), (i)(3)(ii), (o), and (r) of this section apply to real estate transactions with dates of closing occurring on or after January 1, 2025.

Par. 8. Section 1.6045A-1 is amended by:

1. In paragraph (a)(1)(i), removing the language "paragraphs (a)(1)(ii) through (v) of this section," and adding the language "paragraphs (a)(1)(ii) through (vi) of this section," in its place; and

2. Adding paragraph (a)(1)(vi).

The addition reads as follows:

§1.6045A-1 Statements of information required in connection with transfers of securities.

(a) * * *

(1) * * *

(vi) *Exception for transfers of specified securities that are digital assets*. No transfer statement is required under paragraph (a)(1)(i) of this section with respect to a specified security that is also a digital asset as defined in §1.6045-1(a)(19). A transferor that chooses to provide a transfer statement reporting some or all of the information described in paragraph (b) of this section is not subject to penalties under section 6722 of the Code for failure to report this information correctly.

* * * * *

Par. 9. Section 1.6045B-1 is amended by revising paragraph (a)(1) introductory text and adding paragraph (a)(6) to read as follows:

§1.6045B-1 Returns relating to actions affecting basis of securities.

(a) * * *

(1) * * * Except as provided in paragraphs (a)(3) through (6) of this section, an issuer of a specified security within the meaning of §1.6045-1(a)(14)(i) through (iv) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

* * * * *

(6) *Exception for specified securities that are digital assets*. No reporting is required under this paragraph (a) with respect to a specified security that is also a digital asset as defined in §1.6045-1(a)(19). An issuer that chooses to provide the reporting and furnish statements described in this section is not subject to penalties under section 6721 or 6722 of the Code for failure to report this information correctly.

* * * * *

Par. 10. Section 1.6050W-1 is amended by:

1. Adding a sentence to the end of paragraph (a)(2);

2. Adding paragraph (c)(5); and

3. Revising paragraph (j).

The additions and revision read as follows:

§1.6050W-1 Information reporting for payments made in settlement of payment card and third party network transactions.

(a) * * *

(2) * * * In the case of a third party settlement organization that has the contractual obligation to make payments to participating payees, a payment in settlement of a reportable payment transaction includes the submission of instructions to a purchaser to transfer funds directly to the account of the participating payee for purposes of settling the reportable payment transaction.

* * * * *

(c) * * *

(5) *Coordination with information returns required under section 6045 of the Code* – (i) *Reporting on exchanges involving digital assets*. Notwithstanding the provisions of paragraph (c) of this section, the reporting of a payment made in settlement of a third party network transaction in which the payment by a payor is made using digital assets as defined in §1.6045-1(a)(19) or the goods or services provided by a payee are digital assets must be as follows:

(A) *Reporting on payors with respect to payments made using digital assets*. If a payor makes a payment using digital assets and the exchange of the payor's digital assets for goods or services is a sale of digital assets by the payor under §1.6045-1(a)(9)(ii), the amount paid to the payor in settlement of that exchange is subject to the rules as described in §1.6045-1 (including any exemption from reporting under §1.6045-1) and not this section.