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[VIA ELECTRONIC SUBMISSION]
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Re: Form 1099-DA

To Whom It May Concern:

SIFMA[1] appreciates the opportunity to provide comments regarding new Form 1099-DA, Digital Asset Proceeds From Broker Transactions, and its accompanying instructions, as well as on certain aspects of Treasury Regulations Section 1.6045-1. Our primary concern is the risk of implementing an entirely new, quite complex form and set of rules for digital assets when the transaction involves securities, which historically have been reported on Form 1099-B. We also have a number of other suggestions relating to particular instructions or boxes on the form.

I. Executive Summary

As further discussed, SIFMA submits the following requests:

- The IRS should permit brokers to report sales of tokenized securities for cash on the Form 1099-B
- If the government will mandate 1099-DA reporting, a two-year transition period is needed.
- Rules surrounding limited access regulated networks (LARN) participation, classification, and usage require clarification.

II. Sales of tokenized securities for cash should be reportable on Form 1099-B

[1]SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

The regulations refer to digitized versions of securities as "dual classification assets"[2] that fall into the subcategory of "tokenized securities,"[3] such as a digital asset representing an interest in a stock or bond. As the wash sale example on page 8 of the draft Form 1099-DA instructions makes clear, these assets are subject to longstanding rules regarding cost basis reporting for specified securities, even in 2025, when the cost basis rules do not yet generally apply to digital assets.

The instructions should generally permit brokers to report sales of tokenized securities for cash under those same longstanding rules – on Form 1099-B. We believe this will give the government all the information it needs to enforce the law. Indeed, Form 1099-DA duplicates many boxes from Form 1099-B for the purpose of obtaining information that otherwise would not be reported for digital assets. Permitting reporting on Form 1099-B would allow brokers who do not engage in other digital asset transactions to avoid the risks associated with implementing a new tax form, such as misreporting. Traditional brokers have legacy systems, any changes come with compliance risk no matter how nominal the change is. The Form 1099-DA changes will be substantive changes, akin to the kind of changes needed for FATCA or cost basis reporting. Changes on a legacy system come with a significant risk that the system will not operate as intended and may produce reports out of compliance with these new requirements. The government will receive the same cost basis information on Form 1099-B as it would on a Form 1099-DA, so the risk of forcing Form 1099-DA adoption does not seem justified.[4]

In the alternative, if the government mandates Form 1099-DA reporting of tokenized securities despite the unnecessary burden on traditional securities brokers, brokers should be allowed a two-year transition period during which they may report sales of tokenized securities for cash on Form 1099-B or -DA, at the broker's option. This will provide additional time for brokers to make required systems changes and provide continuity of information reporting that brokerage clients expect. Clients are accustomed to receiving wash sale and cost basis reporting to assist with income tax return preparation. If brokers are not prepared to deliver a 1099-DA with wash sale and cost basis information in 2025 and 2026 this can lead to a negative client experience in addition to impacting the accuracy of their income tax returns. The IRS will also receive less relevant tax information to take into account in determining a client's taxable income. Further, the transition period will allow for thoughtful consideration of fact patterns for which clarifications may be required. For example:

- Should a digitally native token be treated the same as a token over a traditional security (see LARN discussion below)?

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[2] Treas. Reg. § 1.6045-1(c)(8).

[3] Treas. Reg. § 1.6045-1(c)(8)(i)(D)(1).

[4] This would not prevent the government from writing regulations that treat tokenized securities as digital assets for the purpose of IRC § 6045A(d), which requires an information return to be filed with the IRS if a digital asset is transferred, but not to another broker.

- Where the token is created to track ownership of a security, does it matter whether the token represents the primary record of ownership (the golden source) as a matter of law, or merely a secondary record that would not control over an issuer's or transfer agent's books and records?

III. Modification of Limited-Access Regulated Network Rules

In the event that the IRS rejects the above request to indefinitely permit Form 1099-B reporting for sales of tokenized securities for cash, we ask that the IRS and Treasury strongly consider modifications to the rules regarding limited-access regulated networks ("LARNs"). Dual classification assets that are cleared or settled on a LARN are treated as sales under the traditional Form 1099-B rules, and not as sales of digital assets under the regulations as revised.[5] However, as outlined below, the LARN rules lack clarity, are unnecessarily restrictive, and present significant risks to brokers who participate in a LARN.

The regulations use imprecise language to describe a LARN. The regulations establish three types of LARNs: a LARN that "provides access" only to certain types of exempt recipients,[6] a LARN that is "provided" by a registered clearing agency or by an entity that has received an exemption under section 17A of the Securities Exchange Act,[7] or a blockchain that is "used" only by affiliates of the entity that controls it and "does not provide access to the ledger to third parties such as customers or investors."[8] The words "provide" and "use" may have been meant to convey that only certain persons would be able to clear and settle transactions on the LARN, and it seems appropriate that customers not be able to transact directly on the LARN or transfer tokens into their own wallets.

However, the blockchain underlying the LARN is also a source of information about transactions in the market and may be valuable to customers and other third parties (e.g. fund managers, transfer agents, etc.,) who want to use that information to reconcile against their own records. Future developments may provide other uses for the blockchain that do not involve transacting on it. The government should clarify the language in the regulations to permit a LARN to allow non-transactional access to its blockchain without invalidating its status as a LARN. Alternatively, the government should issue guidance that interprets "provide" and "use" to limit these terms to clearing and settling transactions, and not to access for informational or other purposes. Such guidance would be consistent with the statement in the preamble to the final regulations that "Treasury and the IRS agree that it is not appropriate to disrupt reporting on dual classification assets that are treated as digital assets solely because distributed ledger

[5] Treas. Reg. § 1.6045-1(c)(8)(iii)(A).

[6] Treas. Reg. § 1.6045-1(c)(8)(iii)(B)(1)(i).

[7] Treas. Reg. § 1.6045-1(c)(8)(iii)(B)(1)(ii)

[8] Treas. Reg. § 1.6045-1(c)(8)(iii)(B)(2).

technology is used to facilitate the processing, clearing, or settlement of orders between regulated financial entities."[9]

Another issue that needs clarification is the kind of dual classification asset that qualifies for the LARN exception. The regulation states that it must be a digital asset "solely because the sale of such asset is cleared or settled on a [LARN]."[10] This seems to say that digitally native issued securities or securities that are tokenized outside the LARN, or that are capable of clearance and settlement outside a single LARN, would not qualify for the LARN exception, even if they do clear and settle on a LARN. It is unclear why such a distinction should be made; in essence, the token is merely a security, and Form 1099-B reporting would adequately enable the IRS to ensure that the correct amount of tax is paid when such an asset is sold for cash.

In addition, the regulations unnecessarily restrict who can participate in a LARN. The first type of LARN is permitted to provide access only to securities and commodities dealers, futures commission merchants, common trust funds, and banks and bank-like financial institutions.[11] It is not clear why the participants in this type of LARN are restricted only to these types of entities. We anticipate that other regulated entities may want access to LARNs and that the restriction of participants to just a few types of exempt recipients will prevent these participants from gaining the benefits of new technologies.

Finally, the regulations present unnecessary risks to participants in a LARN that they cannot control. Presumably, the LARN exception applies only so long as the LARN continues to qualify. The first type of LARN is particularly vulnerable to one of its participants ceasing to qualify as one of the approved participant types, or the LARN's inadvertent admission of a participant who does not qualify. Accordingly, the government should provide an orderly process for LARN status to be preserved in such cases if the disqualified participant is promptly removed after discovery. Moreover, to the extent LARN status is not preserved, members who had nothing to do with the disqualification should be given sufficient time (at a minimum, until the end of the year following disqualification) to either implement Form 1099-DA or exit the LARN, and should be permitted to continue reporting on Form 1099-B in the meantime.

IV. Comments regarding Form 1099-DA boxes and instructions

Box 1a, Code for digital asset. The draft instructions require brokers to use codes published by the Digital Token Identification Foundation (DTIF). DTIF is not subject to IRS jurisdiction and is not obligated to make its data accessible to all or to do so without charge. DTIF also is not legally obligated to continue to update and publish its data. There does not appear to have been any consideration of alternatives to using digital token identifiers published by DTIF. Requiring both a code and a name in box 1b presents the risk of mismatches and

[9] TD 10000, 89 Fed. Reg. 56480, 56488 (July 9, 2024).

[10] Treas. Reg. § 1.6045-1(c)(8)(iii)(A).

[11] Treas. Reg. § 1.6045-1(c)(8)(iii)(B)(1)(i) (cross-referencing Treas. Reg. § 1.6045-1(c)(3)(i)(B)(6), (7), (10), and (11))

confusion. If a code is required, it should be a well-established standard that is actually used by brokers in the field, not imposed by the IRS through instructions.

Box 1c, Number of units. Depending on the token type and the size of the sale, 10 decimal places may be insufficient to accurately report the number of units sold. It is our understanding that 18 decimal places are standard for ETH and most ERC-20 tokens. Using only 10 decimal places may result in reporting 0.0000000000 tokens were sold, when in fact 0.000000000012643468 tokens were sold.

Box 7, Checkbox for cash proceeds. The instructions for Box 7 say the box should be checked "even if you have combined the reporting of an underlying transaction with the report of the transaction to pay broker fees, as described in *How many forms to file for each transaction*, earlier." The cross-reference contains no such description, but the instructions may have meant to refer to the language two paragraphs above that heading, which refers to such fees. The cross-reference should be corrected.

Box 8, Check if broker relied on customer provided acquisition information. This box will significantly complicate implementation of broker systems because brokers will need to distinguish between lots for which information was provided by the customer and those for which no outside information was provided, store that information, and then flow that information into the Form 1099-DA when particular lots are sold. Moreover, the instructions are vague about when the box is required to be checked, saying only that it should be checked when "you relied on customer-provided acquisition information to identify which digital assets were sold, exchanged, or otherwise disposed of." It is not clear what to do in the following example: A customer tells the broker that Lot A of 10 units of Token X was purchased on Date 1, and the broker maintains an additional lot of 12 units of Token X for the customer (Lot B) that the broker purchased for the customer on Date 2. A FIFO sale of 10 units of Token X would dispose of Lot A, and presumably the box would be checked. The fact that the remaining shares are considered purchased on Date 2 could be interpreted to be the result of reliance on customer provided information about Lot A. Should a subsequent sale of Lot B have the box checked, or not? Moreover, there is no similar requirement for securities brokers who rely on customer information to report on Form 1099-B. The IRS has not explained why this information is necessary. The box should be removed from the form.

Box 10, Checkboxes for noncovered security reason. This box provides three possible reasons for a digital asset to be treated as noncovered: (1) the broker did not provide custodial services for it, (2) the broker provided custodial services, and it was transferred to broker, or (3) the broker provided custodial services, and it was acquired before 2026. This is not an exhaustive list, however, because digital assets also would be noncovered if they were acquired for an exempt recipient or exempt foreign person, or were owned by a foreign flow-through entity or intermediary. While Form 1099-DA reporting may be rare in these instances, it is possible, and the checkboxes do not seem to incorporate these possibilities. The instructions or the form should clarify what to do in the event that none of the checkboxes applies, or more than one checkbox applies. Moreover, there is no equivalent box for noncovered securities reported on

Form 1099-B and it is unclear why the information is necessary for every sale of a noncovered security that is a digital asset. This box should be removed from the form.

Boxes 12a and 12b, Relating to transfers in. Similar to Boxes 8 and 10, we do not think that it is appropriate to require brokers to routinely report this information since it is not relevant to the computation of tax liability and appears to be useful only in the enforcement context. If the IRS believes this information is essential, it should be handled like wallet addresses and hash IDs, and brokers should instead be required to retain the information for production to the IRS when legally required.

Page 5 of instructions. The heading "Dual classification assets that are not tokenized securities" begins a section about dual classification assets that are tokenized securities. The word "not" should be removed.

V. Conclusion

SIFMA appreciates your consideration of our comments regarding Form 1099-DA and the final regulations, and welcomes the opportunity to discuss the issues in this submission with you and your colleagues. Please do not hesitate to contact P.J. Austin (paustin@sifma.org) or our outside advisors, Tara Ferris (tara.ferris@ey.com), Jonathan Jackel (jonathan.jackel@ey.com), Seth Poloner (seth.poloner@ey.com) and Ryan Blewitt (ryan.blewitt@ey.com).

Respectfully Submitted,

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