

Managed Funds Association

The Voice of the Global Alternative Investment Industry

Washington, D.C. | New York | Brussels



June 3, 2022

Via Electronic Submission:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-21)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Notice 2022-21, Public Recommendations Invited on Items to be Included on the 2022-2023 Priority Guidance Plan

Managed Funds Association¹ (“MFA”) appreciates the opportunity to submit recommendations for items to be included on the 2022-2023 Priority Guidance Plan to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”). For the reasons discussed below, we respectfully request that guidance under Section 864(b)(2)(B),² related to the application of the commodities trading safe harbor to trading in cryptocurrency,³ be included in the 2022-2023 Priority Guidance Plan.

Cryptocurrencies have seen a rapid increase in interest in recent years from retail and institutional investors. High investor confidence and low correlations to other asset classes have led to demand from institutional investors, including pension plans, university endowments, charitable foundations, and others. To satisfy this demand, the alternative investment industry has begun to make significant crypto-related investments.⁴ However, barriers to entry remain, and, in a survey of the industry, regulatory uncertainty, including tax uncertainty, has been identified as the greatest obstacle to investing.⁵

In keeping with increasing demand, foreign governments have expressed ambitions to make their respective jurisdictions the “global hub for crypto-asset technology.”⁶ These governments are exploring

¹ MFA represents the global alternative investment industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA’s more than 150 member firms collectively manage nearly \$1.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risks, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

² Unless otherwise indicated, all “Section” or “§” references are to the Internal Revenue Code of 1986, as amended (the “Code” or “I.R.C.”).

³ We generically refer to “cryptocurrency,” “crypto,” “crypto-assets,” and “digital assets” interchangeably.

⁴ An annual study conducted by PwC indicates that “[a]round a fifth of hedge funds are investing in digital assets (21%)” and “[a]round a quarter of hedge fund managers who are not yet investing in digital assets confirmed that they are in late-stage planning to invest or looking to invest.” *3rd Annual Global Crypto Hedge Fund Report*, PRICEWATERHOUSECOOPERS LTD., at 4 (May 2021) (“**Crypto Hedge Fund Report**”), <https://www.pwc.com/gx/en/financial-services/pdf/3rd-annual-pwc-elwood-aima-crypto-hedge-fund-report-may-2021.pdf>.

⁵ “In terms of main obstacles to investing, regulatory uncertainty is by far the greatest barrier (82%)...64% of respondents said that if the main barriers were to be removed they would definitely start/accelerate their involvement/investment or potentially change their approach and become more involved.” *Id.*

⁶ See William James, *Sunak: I want to make Britain a global cryptoasset technology hub*, REUTERS (April 4, 2022), <https://www.reuters.com/article/britain-crypto-regulations-sunak/sunak-i-want-to-make-britain-a-global-cryptoasset-technology-hub-idUKS8N2V606U>.

ways of enhancing the competitiveness of their tax systems to encourage further development of the cryptocurrency markets in their jurisdictions, including issuing guidance.⁷

Members of Congress have proposed or introduced legislation to address the absence of statutory authority to regulate the cryptocurrency ecosystem. None have received serious consideration. Similarly, the Biden Administration and Congress have proposed or introduced legislation, with limited success, to account for the inapplicability of certain federal income tax statutes to cryptocurrency.⁸

Notably, in March, the Biden Administration issued the *Executive Order on Ensuring Responsible Development of Digital Assets* (the “**Executive Order**”), which aims to “reinforce United States leadership in the global financial system and in technological and economic competitiveness.”⁹ The Executive Order indicates that “[c]ontinued leadership in the global financial system will sustain United States financial power and promote United States economic interests.”¹⁰ The Executive Order calls on Treasury to submit a report which, in part, “addresses the conditions that would drive mass adoption of different types of digital assets...”¹¹

We believe that guidance from Treasury and the IRS addressing the federal income tax consequences of trading in cryptocurrency is prerequisite to mass adoption of different types of digital assets. Specifically, we believe that Treasury and the IRS should issue guidance providing that the commodities trading safe harbor broadly applies to trading in cryptocurrency. Such guidance meets the criteria specified in Notice 2022-21 and would further the policy goals of the Executive Order by promoting the competitiveness of U.S. capital markets at a time when other governments are actively pursuing similar safe harbor rules applicable to trading in cryptocurrency. We address these criteria in turn.

I. The recommended guidance would provide the necessary comfort level for the alternative investment industry to pursue investments in cryptocurrency.

Alternative investment funds with foreign or U.S. tax-exempt organization investors are frequently structured so that such persons are invested in a fund through an entity that is organized in a foreign jurisdiction and is treated as a corporation for federal income tax purposes. Investing through this “foreign feeder” allows tax-exempt organizations to avoid incurring unrelated business taxable income (“UBTI”) as a result of the fund’s borrowing, limits the risk that foreign investors will be treated as engaged in a U.S.

⁷ See, e.g., *Cryptoassets Manual*, HM REVENUE & CUSTOMS, <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual> (last updated Feb. 22, 2022); see also Part III.

⁸ On November 15, 2021, the “Infrastructure Investment and Jobs Act,” which expands certain information reporting provisions to “digital assets,” was enacted. Pub. L. No. 117-58, 135 Stat. 429 (2021).

On November 19, 2021, the House of Representatives passed the “Build Back Better Act,” which would expand the constructive sale and wash sale rules to “digital assets” and, to date, has been stalled in the Senate. See H.R. 5376, 117th Cong. (2021).

On March 28, 2022, the Biden Administration released its “Fiscal Year 2023 Budget,” which would expand, among others, the securities lending and elective mark-to-market rules to “digital assets.” OFFICE OF MGMT. & BUDGET, BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2023 (March 2022); see DEP’T OF THE TREASURY, GENERAL EXPLANATIONS OF THE ADMINISTRATION’S FISCAL YEAR 2023 REVENUE PROPOSALS (March 2022). The prospect of such proposals taking the form of viable legislation in this Congress is unclear.

⁹ Exec. Order No. 14,067, 87 Fed. Reg. 14,143,14,144 (March 9, 2022).

¹⁰ *Id.*

¹¹ *Id.* at 14,147.

trade or business, and limits the possibility that the fund’s trade or business activities will taint foreign investors’ unrelated income.

Funds typically commit to these investors that they will not knowingly make investments that would fall outside of the securities and commodities trading safe harbors. In our experience, uncertainty regarding the status of trading activity under the safe harbors has resulted, and will continue to result, in economically desirable transactions not being consummated out of concern that they would expose investors to unnecessary and serious tax risk, even though many believe that those activities should properly be within the parameters of the safe harbors.

Currently, the limited guidance supports the position that trading in Bitcoin and Ether qualifies under the commodities trading safe harbor.¹² As explained in relevant part elsewhere,¹³ this conclusion is based on the fact that cash-settled Bitcoin and Ether futures trade on Commodity Futures Trading Commission (“CFTC”)-regulated U.S. commodity exchanges, such as the Chicago Mercantile Exchange (“CME”).¹⁴ Indeed, “most crypto[-native] hedge funds trade Bitcoin ‘BTC’ (92%) followed by Ethereum ‘ETH’ (67%) ...”¹⁵ We believe that regulatory certainty is likely a factor, among others, and that guidance providing that the safe harbor broadly applies to trading in cryptocurrency would result in increased investment and liquidity in cryptocurrencies other than Bitcoin and Ether.

II. The recommended guidance reduces controversy involving the securities and commodities trading safe harbors and lessens the burden on taxpayers and the IRS.

Uncertainty regarding the status of trading activity under the securities and commodities trading safe harbors historically has invited controversy,¹⁶ whereas guidance establishing the parameters of the safe harbors comes at little to no cost to taxpayers and the IRS. Alternative investment funds are unlikely to purposefully run afoul of established guidelines because of the commitments they make to investors and the punitive downside risk associated with not respecting those guidelines. We believe that guidance providing that the commodities trading safe harbor broadly applies to trading in cryptocurrency would reduce controversy and lessen the enforcement burden on taxpayers and the IRS.

¹² See Rev. Rul. 73-158, 1973-1 C.B. 337 (providing that the word “commodities” in Section 864(b)(2)(B) is used in its ordinary financial sense and includes all products that are traded in and listed on commodity exchanges located in the U.S.).

¹³ See *Re: Report No. 1461 – Report on Cryptocurrency and Other Fungible Digital Assets*, N.Y. STATE BAR ASSOC. (April 18, 2022) (“**N.Y. State Bar Assoc. Report**”), <https://nysba.org/app/uploads/2022/04/1461-Report-on-Cryptocurrency-and-Other-Fungible-Digital-Assets.pdf>.

¹⁴ See P.L.R. 8540033 (July 3, 1985) (“The fact that trading in cash settlement futures contracts is regulated by the CFTC rather than the Securities and Exchange Commission is evidence that a cash settlement contract should be considered a commodity in the ordinary financial sense.”).

We note that “the fact that cryptocurrencies may be regulated under additional statutes such as...an ‘investment contract’ under the Securities Act of 1933, see 15 U.S.C. § 77b, does not mean that a cryptocurrency is not a ‘commodity’ within the meaning of the CEA...” *U.S. v. Reed*, No. 20-cr-500 (JGK) (S.D.N.Y. Feb. 28, 2022). The same concept – that an asset may be treated as both a security and a commodity – applies to the securities and commodities trading safe harbor. See P.L.R. 8807004 (Nov. 10, 1987).

¹⁵ Crypto Hedge Fund Report, at 4.

¹⁶ See, e.g., *YA Global Investments LP et al. v. Commissioner*, No. 14546-15; *Large Business and International Active Campaigns: Financial Services Entities engaged in a U.S. Trade or Business Campaign*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/businesses/corporations/lbi-active-campaigns> (last updated Feb. 28, 2022).

III. The recommended guidance relates to policy priorities with national and international significance.

As noted above, the Biden Administration and Congress have prioritized regulation of the cryptocurrency ecosystem despite facing significant legislative challenges. Market participants are equally invested in timely regulation to encourage participation in cryptocurrency markets. Treasury and the IRS have the authority, and historically have exercised such authority, to provide certainty to market participants trading in emerging asset classes and financial products.¹⁷

At the same time, foreign governments are actively addressing the most relevant questions to our industry. Of comparable effect to the commodities trading safe harbor, the U.K. has indicated that it will amend its Investment Management Exemption to include cryptocurrency.¹⁸ To that effect, the U.K. very recently opened a consultation to extend the Investment Management Exemption to trading in cryptocurrency and “provide certainty of tax treatment to UK investment managers and their non-UK resident investors who are seeking to include cryptoassets within their portfolios.”¹⁹ The U.K. anticipates that such guidance will encourage new crypto-asset investment management businesses to base themselves in the U.K. We believe it likely that other foreign jurisdictions, which have been active in cryptocurrency regulation, will move to include cryptocurrency in comparable regimes.²⁰

Although the U.S. currently leads among jurisdictions in which crypto-native fund managers are located, we expect this to change should “particular governments or authorities implement...policies to

¹⁷ See, e.g., “Trading Safe Harbors,” 63 Fed. Reg. 32,164 (June 12, 1998) (“Since the promulgation of these regulations, the use of derivative financial instruments has increased significantly. This is due in large measure to the overall expansion and growing sophistication of global capital markets. Although guidance concerning the tax treatment of derivatives...has been issued under other provisions of the Code..., the section 864(b) regulations have not been modernized to take into account the manner in which taxpayers customarily use derivative transactions.”).

We note that “Guidance concerning virtual currency” is included under the “General Tax Issues” heading on the 2021-2022 Priority Guidance Plan. We submit that the 2022-2023 Priority Guidance Plan should specify or add under the “International” and “Inbound Transactions” headings “Guidance under §864(b)(2)(B) concerning trading in cryptocurrency.”

¹⁸ Sally Hickey, *Fund managers to be allowed to hold crypto in portfolios*, FT ADVISER (April 5, 2022), <https://www.ftadviser.com/investments/2022/04/05/fund-managers-to-be-allowed-to-hold-crypto-in-portfolios/> (“In a speech on Monday (April 4), John Glen, economic secretary to the Treasury, told the Innovative Finance Global Summit that the government will be amending the Investment Management Exemption to include cryptoassets. The exemption enables non UK-residents to appoint UK based investment managers without having to pay UK tax. The inclusion of cryptoassets in this exemption would mean that income generated from funds holding crypto would not be taxable in the UK.”).

¹⁹ *Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes*, HM REVENUE & CUSTOMS, [https://www.gov.uk/government/consultations/expanding-the-investment-transactions-list-for-the-investment-management-exemption-and-other-fund-tax-regimes](https://www.gov.uk/government/consultations/expanding-the-investment-transactions-list-for-the-investment-management-exemption-and-other-fund-tax-regimes/expanding-the-investment-transactions-list-for-the-investment-management-exemption-and-other-fund-tax-regimes) (last updated May 23, 2022) (“**U.K. Investment Management Exemption Consultation**”).

The consultation is scheduled to close on July 18, 2022. A summary of responses together with a draft of any legislation or HMRC order will be published in Autumn 2022. We note that the generally accepted view is that the Investment Management Exemption applies to trading in exchange-traded futures on cryptocurrencies.

²⁰ In Hong Kong, the Unified Fund Exemption regime may provide offshore investment funds a profits tax exemption for “qualifying transactions” in specified assets, provided they meet certain criteria. See The Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019, No. 5, (2019); see also Departmental Interpretation and Practice Notes No. 39 (Revised) Profits Tax (March 2020) for the current treatment of digital tokens for purposes of the profits tax regime.

In Singapore, several fund schemes may provide offshore investment funds a tax exemption for “specified income” from “designated investments.” See Income Tax Act (Cap 134) s 13.

try and attract such fund managers to their jurisdictions.”²¹ Broadening the safe harbor to trading in cryptocurrency is expected to directly result in the retention and creation of highly qualified and compensated jobs located in the U.S. rather than other jurisdictions in which similar rules are already in place. Consistent with the policy goals of the Executive Order, we believe that guidance providing that the safe harbor broadly applies to trading in cryptocurrency would reinforce U.S. leadership in the cryptocurrency ecosystem.

IV. The recommended guidance involves issues for which guidance to date has been insufficient and for which there is no alternative.

Guidance related to the tax consequences of transacting in cryptocurrencies has been sparse and limited to facts which either have a retail focus or address the most rudimentary circumstances.²² The IRS will not issue letter rulings or determination letters considering whether an instrument or item is a commodity, a commodity is of a kind customarily dealt in on an organized commodity exchange, or a transaction is of a kind customarily consummated at an organized commodity exchange for purposes of the commodities trading safe harbor.²³ In the absence of both sufficient guidance and the ability to seek taxpayer-specific rulings, there is no alternative but to seek the recommended guidance.

V. The recommended guidance promotes sound tax administration; can be administered on a uniform basis; and can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

We recommend that the IRS issue guidance in the form of a Notice or Revenue Ruling providing, for purposes of the commodities trading safe harbor, that:

- (1) Cryptocurrencies, including those for which there is only a spot market, are “commodities;” and
- (2) Centralized exchanges which only facilitate cryptocurrency spot trading are “organized commodity exchanges.”

Specifically, we recommend that the guidance provide that Bitcoin, Ether, and substantially similar cryptocurrencies are presumptively commodities for purposes of the safe harbor.²⁴ The guidance should caution that the IRS may determine that a particular cryptocurrency does not possess essentially

²¹ Crypto Hedge Fund Report, at 32.

²² C.C.A. 2021-24-008 (June 8, 2021); C.C.A. 2021-14-020 (March 22, 2021); C.C.A. 2020-35-011 (Aug. 28, 2020); Rev. Rul. 2019-24, 2019-44 I.R.B. 1004; Notice 2014-21, 2014-1 I.R.B. 938; *see also* *Frequently Asked Questions on Virtual Currency Transactions*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions> (last updated March 23, 2022).

²³ Rev. Proc. 2022-7, 2022-1 I.R.B. 297.

²⁴ Insofar as previous rulings rely on the scope of CFTC regulation to determine what qualifies as a commodity for purposes of the safe harbor, the guidance should take a principles-based approach similar to that taken by courts interpreting the Commodity Exchange Act. *See CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 497-98 (D. Mass. 2018) (“Congress’ approach to defining ‘commodity’ signals an intent that courts focus on categories—not specific items...[T]he CEA only requires the existence of futures trading within a certain class (e.g. ‘natural gas’) in order for all items within that class (e.g. ‘West Coast’ natural gas) to be considered commodities.”); *see also CFTC v. McDonnell, et al.*, 287 F. Supp. 3d 213, 228 (E.D.N.Y. 2018) (“Virtual currencies can be regulated by CFTC as a commodity.”), *reconsideration denied*, 321 F. Supp. 3d 366 (E.D.N.Y. 2018); *In the Matter of: Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan*, CFTC Docket No. 15-29, 2015 WL 5535736 (Sep. 17, 2015) (“Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.”).

the same characteristics as Bitcoin and Ether and, therefore, is not considered a commodity.²⁵ The guidance may further include examples of cryptocurrencies which are not considered commodities for purposes of the safe harbor.²⁶ In any case, no inference should be drawn solely from use of the generic term “cryptocurrency,” and the guidance should express no opinion regarding the treatment of cryptocurrencies as commodities for purposes of other sections of the Code.

We also recommend that the guidance provide that centralized exchanges which only facilitate cryptocurrency spot trading are presumptively “organized commodity exchanges” for purposes of the safe harbor. As discussed above, trading spot Bitcoin and Ether on such exchanges likely qualifies under the safe harbor. We see no principled basis on which to exclude cryptocurrency spot trading on centralized exchanges from the safe harbor where a particular cryptocurrency is substantially similar to Bitcoin and Ether but does not underlie a listed futures contract on a CFTC-regulated U.S. commodity exchange. The guidance may require that a centralized exchange serve essentially the same financial purpose as a board of trade (or exchange) and is not, for example, “an informal self-regulating club.”²⁷

We appreciate that Treasury and the IRS may wish to defer to Congress or other agencies on the regulatory classification of cryptocurrency.²⁸ However, in effect, the determination of which cryptocurrencies qualify under the safe harbor currently rests on CFTC-regulated U.S. commodity exchanges self-certifying or voluntarily submitting to the CFTC for approval new derivative products. The connection between whether there is sufficient demand and liquidity for an exchange (such as the

²⁵ We note that the U.K. is considering a much broader definition of cryptocurrency:

HMRC is considering the adoption of a cryptoasset definition for the ITL which is similar to that proposed in the Crypto-Asset Reporting Framework published by the Organisation for Economic Co-operation and Development (OECD) in March 2022. That definition is currently subject to consultation but at the time of writing the proposed definition reads:

‘The term ‘Cryptoasset’ refers to a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.’

The OECD’s proposed definition is broad and HMRC would seek to refine such a definition to ensure that the inclusion of cryptoassets cannot be used to circumvent categories of assets currently excluded from the ITL. For example, we would want to exclude:

- transactions in land, including transactions of any nature which result in the acquisition of land
- cryptoassets that provide for the transfer of tangible assets or intangible assets not already included in the ITL

U.K. Investment Management Exemption Consultation, *supra* n.19.

²⁶ For example, the guidance may provide that “utility tokens,” digital tokens that can be used to purchase a good or service offered by its issuer, are not commodities for purposes of the safe harbor. *See* N.Y. State Bar Assoc. Report, at 2 (“Utility tokens are blockchain-based digital assets that have functionality in addition to serving as a digital representation of value, such as the ability to be redeemed for certain digital services or the ability to be deposited with an underlying software protocol in order to participate in certain activities (for example, blockchain data indexing) and receive related digital asset rewards.”).

Similarly, the U.K. is proposing to exclude “‘closed-loop cryptoassets’”. These are cryptoassets which are only intended for use within a closed permissioned network, for example for the purposes of purchasing goods or services. They can only be transacted by or to the issuer or participating merchant, and can only be redeemed for fiat currency by a participating merchant.” U.K. Investment Management Exemption Consultation, *supra* n.19.

²⁷ *See* P.L.R. 8813012 (Dec. 23, 1987) (implying that a market described as an informal self-regulating club was not an organized commodity exchange but holding that certain spot and forward transactions effected on such market were commodities of a kind customarily dealt in on an organized commodity exchange).

²⁸ We note that Treasury and the IRS need not wait for Congressional action in case it wishes to borrow from an existing definition of “digital asset” in the Code for purposes of issuing guidance under the safe harbor. *See* I.R.C. § 6045(g)(3)(D).

CME) to list a futures contract on a certain cryptocurrency and the determination that such cryptocurrency is a “commodity” in its “ordinary financial sense” of a kind customarily dealt in on and customarily consummated at an organized commodity exchange is tenuous. We think that it is only a matter of time until such exchanges list futures contracts on other cryptocurrencies. Yet, we firmly believe that U.S. leadership in the global financial system and in technological and economic competitiveness will suffer in the interim.

At a minimum, if Treasury and the IRS deem a limiting principle necessary, the guidance should provide that trading in cryptocurrencies underlying listed futures contracts on non-U.S. exchanges qualifies under the safe harbor. Such guidance finds support in previous rulings.²⁹ We see no policy reason why cryptocurrencies underlying futures contracts traded solely on non-U.S. exchanges, licensed and prudentially supervised by foreign regulators,³⁰ should not qualify under the safe harbor. The guidance should provide either that certain non-U.S. exchanges are “organized commodity exchanges” or that the cryptocurrency underlying futures contracts traded on such exchanges are “of a kind,” with Bitcoin and Ether, traded on an organized commodity exchange.

We note that there are other significant, unresolved questions regarding the federal income tax consequences of trading in cryptocurrency for which we believe administrative guidance is appropriate. We limit our recommendations in this letter to the commodities trading safe harbor, however, because we firmly believe that uncertainty regarding the status of trading activity under the safe harbor is a threshold issue with respect to greater institutional participation in cryptocurrency markets. As such, we believe that the spirit of the Executive Order mandates guidance under the safe harbor as a first priority.

We welcome the opportunity to discuss our views on related issues with Treasury and the IRS, including, among others, whether certain activities involving cryptocurrency (*e.g.*, staking, liquidity mining, yield farming) are in scope of the safe harbor and, if not, whether income from such activities is considered effectively connected to a U.S. trade or business (“ECI”); the classification and source of certain cryptocurrency income (*e.g.*, staking rewards) for purposes of the fixed, determinable, annual, and periodic (“FDAP”) income rules; the treatment of cryptocurrency as securities, commodities, or some other classification for purposes of other sections of the Code; etc.

* * *

We appreciate the opportunity to submit recommendations for items to be included on the 2022-2023 Priority Guidance Plan to Treasury and the IRS, and we would be pleased to meet with Treasury and

²⁹ See P.L.R. 8850041 (Sep. 19, 1988) (holding that futures, forwards, index futures, options, and spot contracts in certain currencies, some of which trade on non-U.S. exchanges, qualify under the safe harbor); *see also* P.L.R. 8527041 (April 8, 1985) (noting “that there is no requirement that such transactions in fact be consummated on an organized commodity exchange,” only that the transactions are of a kind customarily consummated at such a place).

³⁰ As of October 2021, seven cryptocurrency exchanges have received approval from Japan’s Financial Services Agency to register as Type I Financial Instrument Businesses, as designated under the Financial Instruments and Exchange Act, to engage in the trading, underwriting, and management of cryptocurrency derivatives, as well as operate derivatives trading systems. *Huobi Japan Successfully Registers as Type I Financial Instruments Business in Japan, Enabling it to Offer Derivatives Trading Services*, CISION PR NEWSWIRE (Oct. 18, 2021), <https://www.prnewswire.com/news-releases/huobi-japan-successfully-registers-as-type-i-financial-instruments-business-in-japan-enabling-it-to-offer-derivatives-trading-services-301402315.html>.

The list of “crypto-asset exchange service providers,” which are registered with Japan’s Financial Services Agency and fall under such definition in the Payment Services Act, is significantly longer. *See List of Registered Crypto-asset Exchange Service Providers*, FINANCIAL SERVICES AGENCY, https://www.fsa.go.jp/en/regulated/licensed/en_kasoutuka.pdf (last updated May 31, 2022).

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the IRS to discuss our comments. If Treasury and the IRS have questions or comments, please do not hesitate to contact Joseph Schwartz, Director and Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Jennifer W. Han

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