



June 20, 2024

*VIA ELECTRONIC SUBMISSION  
and email (pra.comments@irs.gov)*

Andres Garcia  
Internal Revenue Service  
Room 6526  
1111 Constitution Avenue NW  
Washington, DC 20224

**Re: Comment on Digital Asset Proceeds From Broker Transactions**

To Whom It May Concern:

Consensys Software Inc. (“Consensys”) writes to comment on the draft Form 1099-DA (the “Draft Form”) to provide our perspective that the information required under the proposed regulations and on the Draft Form is overly broad and imposes a costly compliance burden, particularly for a blockchain software provider. This letter echoes many of the concerns and objections raised in our comment letter on the proposed digital asset reporting regulations (the “Proposed Regulations”) dated November 13, 2023, “IRS Proposed Rulemaking REG-122793-19, Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions”. Most notably, we believe the Draft Form further illustrates the need for a delay in the effective date of any reporting requirements that would pertain to a software developer like Consensys as well as the need for a multiple broker rule. Fundamentally, we must echo our overarching concern expressed in our November 2023 letter that certain aspects of the regulations (and now, too, the Draft Form) do not sufficiently consider the burden on the would-be broker, which currently includes entities that do not traditionally have any reporting obligations. We must also reemphasize the acute burden and cost to the tens of millions of taxpayers receiving this form.

First, with respect to the issue of the rule’s effective date, we are months away from the filing deadlines for the first reporting year proposed in the regulations. But we lack finalized regulations, a final form, complete instructions to the form (as discussed below) and any regulation addressing broker-to-broker reporting of transfers (which we currently lack any technical ability to perform). It is simply impossible to implement a successful reporting program, whatever the scope, without final guidance that details all the requirements for reporting. The task is also impossible if industry is not afforded sufficient time to build infrastructure for, establish processes around, and test the reporting program, all of which must be accomplished while also maintaining day-to-day operations. It bears repeating that Consensys and similar software companies have no institutional experience in performing such reporting activities because we, for good reason, have never been deemed to be transaction intermediaries.

This issue of the timing of rule effectiveness puts to the side the critical fact that many of the requirements in the Proposed Regulations and reflected in the Draft Form are not even possible to satisfy given the current technological state of our industry. For instance, the Draft Form has not been published with instructions for brokers, presenting an insurmountable challenge when asked to create a plan to implement the Draft Form. Said simply, it is unclear how to report in several boxes of the Draft Form. To create a reporting procedure without such information would require us essentially to guess.

The omission of instructions also plainly limits our ability to offer constructive comments to the Draft Form, which limits our ability to provide useful feedback to the IRS. In sum, it is not self-evident what the IRS is proposing based on the four corners of the form, particularly with respect to certain entries, and thus we are unfortunately not in a position to give you comprehensive feedback without broker instructions, and we very much want an opportunity to comment meaningfully.

Second, our November 2023 comments concerning the lack of a multiple broker rule are properly repeated here. This omission impedes the objectives of the regulations to increase taxpayer compliance and close the supposed tax gap. Under the proposed regulations, a single transaction could be reported by multiple stakeholders due to the definition of broker being overly broad and the lack of any rules to determine a primary reporting responsibility.

This concern is very important when we are considering the Draft Form. As presented, this approach will result in taxpayers and the IRS receiving multiple Forms 1099-DA with no means for identifying that such forms relate to the same reportable transaction, or for that matter which of numerous forms controls if the information across such forms does not match perfectly. This will inevitably result in taxpayer confusion and undue expense for both the taxpayer and brokers to identify the amount subject to reporting. It also risks the IRS unnecessarily pursuing taxpayers for underreporting or misreporting.

Third, the Draft Form includes boxes that increase the broker's compliance burden without furthering taxpayer compliance. These boxes include reporting the broker type, digital asset codes, "Explanation if no recipient TIN", and the explanation for why a digital asset is not a covered security. These fields are not required on Form 1099-B reporting for securities brokers, and therefore it does not seem appropriate to impose these burdens on digital asset brokers or taxpayers in understanding the meaning of these boxes. Of particular note is that the "explanation if no recipient TIN" provides a free text field that presents a unique complexity for brokers, including the inability to automate completion of the field.

It cannot be more emphatically stated that providing software developers now proposed to be brokers (for the limited purposes of tax reporting) with a form that requires manual inputs to complete would single-handedly destroy U.S. companies that publish blockchain user interfaces like self-custody wallets. This is because of not only the crushing costs of building a man-power operation to accommodate such a requirement but also the fact that such a process would necessitate slowing down the internet-speed blockchain ecosystem to crawl to allow transactions to be manually reported on. Furthermore, the IRS requires backup withholding in the absence of a TIN, so it is unclear why this box is needed. Again, without proposed

instructions for the broker, it is difficult to estimate the degree to which burden is increased, but there is no doubt that it would be increased substantially.

Lastly, the Draft Form does not address the data privacy concerns raised by the industry but instead lays them bare. Specifically, the Draft Form requires the reporting of wallet addresses and does not include an allowance to truncate the address. Reporting wallet addresses along with other personally identifiable information (“PII”) presents serious security issues for taxpayers, and it is unclear what security measures the IRS is putting in place to protect such information. It’s also unclear precisely how burdensome or expensive it would be for software developers to introduce data security safeguards that they previously have not needed because they have never collected such data.

As we are sure the IRS understands, identifying wallet addresses on the same form as the taxpayer’s name, address, and other PII would tell anyone who came into possession of the form precisely how much in crypto assets the taxpayer owns and where that taxpayer resides. It could, through blockchain analytics, also tell the tale of that person’s transactions as long as that wallet address has been in existence. Short of the private key for a particular wallet address, there is no more sensitive information in all of the crypto asset space. In our view, effectively creating a library of every US crypto user’s wallet addresses and identities, including physical address, is extremely dangerous. The IRS cannot proceed with such an approach without thoroughly considering all operational requirements to prevent these incredibly serious risks from materializing.

All this speaks further to the need for a delay in the rule’s effective date as the industry would need to perform data privacy assessments to carry out this requirement and not run afoul of duties to customers and obligations under various data privacy laws. The need for new security measures is apparent especially with respect to sensitive information that may need to be shared with third-party reporting vendors, as such data sharing arrangements are very complicated to initiate and maintain, in no small part because the information involved pertains to persons from various jurisdictions around the world. We request the IRS consider avoiding these data privacy issues by reassessing the need to report wallet address or other sensitive information. The IRS should also offer additional guidance on data protection, such as providing electronic delivery as the default means to deliver Forms 1099-DA to customers (as opposed to paper mailing).

We respectfully submit these limited comments and hope additional instructions and guidance are released to allow us to comment more fully. Consensys stands ready to engage with the IRS to the extent we can assist or provide further input while the IRS considers how best to finalize the Draft Form and the proposed amendments.

Respectfully Submitted,

CONSENSYS SOFTWARE INC.

By:

William C. Hughes