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CRS for Crypto:

Demystifying the OECD's Proposed Crypto-Asset Reporting Framework

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Introduction

There is a global concern from regulatory authorities that digital assets and cryptocurrencies (“Crypto-Assets”) inherently pose significant risk to tax transparency and compliance. In addition to an expanded scope of intermediaries involved in transactions that may fall outside of current reporting rules, the decentralized nature of distributed ledger technology presents unique challenges to tax reporting and compliance. Holders of Crypto-Assets can transact without intermediary involvement using personal wallets, exchanging through decentralized finance (“DeFi”) protocols or by other means without the limitation of jurisdictional borders. In response to these compliance concerns, the Organisation for Economic Co-operation and Development (“OECD”) has designed the Crypto-Asset Reporting Framework (“CARF”), releasing the draft rules and commentary in a public consultation document.¹ In addition to Crypto-Asset reporting rules, the document also includes proposed amendments to the Common Reporting Standard (“CRS”), expanding the scope and coordinating reporting rules with CARF. Once finalized, these rules can be transposed into domestic law by participating jurisdictions, obligating intermediaries to report information to tax authorities.

While some of the CRS amendments impact the digital asset industry, the focus of this article is to provide an organized synopsis of the CARF proposal, which is broad-reaching and is certain to be impactful across all facets of the digital asset industry. CARF requires reporting on cryptocurrencies, including stablecoins, derivatives issued in the form of Crypto-Assets, and non-fungible tokens (“NFTs”) that represent value,² excluding certain Closed-Loop Crypto Assets and Central Bank Digital Currencies (“CBDCs”) (each described below).³ Intermediaries—termed “Reporting Crypto-Asset Service Providers” under CARF—with due diligence and reporting obligations include centralized exchanges, whether acting as broker or as market maker, brokers and dealers of Crypto-Assets, operators of Crypto-Asset automated teller machines (“ATMs”), and certain DeFi platforms.⁴ The reporting rules require transactional reporting of exchanges, retail payments, and other transfers including transfers to wallets or other non-intermediaries,⁵ and reportable Crypto-Asset Users are identified through self-certifications.⁶

The public consultation document, published on March 22, 2022, provided a public comment period, which closed on April 29. The comment period and subsequent public consultation meeting on May 23, 2022, resulted in significant feedback from industry members,⁷ and it is expected that the OECD will digest the relevant feedback and publish final rules by the end of 2022. The OECD has indicated that these rules and commentary are the first building block of CARF and plans to publish building block two—a framework of bilateral or multilateral competent authority agreements

for automatic information exchange between participating jurisdictions—and building block three—technical solutions to support the information exchange—in the future.^{8,9}

The CARF rules and commentary are organized in the following four sections: section I: Obligations of Reporting Crypto-Asset Service Providers, section II: Reporting Requirements, section III: Due Diligence Procedures, and section IV: Defined Terms. As outlined in the CARF introduction, the rules and commentary address (i) Crypto-Asset scope, (ii) intermediary scope, (iii) reportable transactions and information required to be reported, and (iv) due diligence procedures to identify reportable users,¹⁰ and the application of the rules can be better understood using these categorizations.

A. Crypto-Asset Scope

The term “Crypto-Asset” is defined by CARF as “a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.”¹¹ This definition, which uses language similar to the digital asset definition used in Code Sec. 6045,¹² broadly covers a wide array of Crypto-Assets. The purpose of the broad definition is to target assets that can be held and transferred without intermediary involvement.¹³ It is intended to include assets in scope of the Financial Action Task Force (“FATF”) Recommendations on virtual assets and virtual asset service providers¹⁴ to ensure alignment with anti-money laundering (“AML”) and “know your customer” (“KYC”) obligations,¹⁵ although the definition of virtual asset used in the FATF Recommendations is different from the definition used by the OECD.¹⁶

The CARF Crypto-Asset definition is limited to digital representations of value, excluding general uses of cryptographic technology not involving digital representations of value from inclusion as Crypto-Assets. The commentary provides two examples of technology that would be excluded from scope—an inventory management system used to track product delivery and a record of ownership such as a real estate ledger where the record is not a method of ownership conveyance.¹⁷ This exclusion will allow for continued innovation of distributed ledger technologies that do not have investment or tax relevancy. A “digital representation of value” includes both (i) a right to value that can be digitally exchanged and (ii) a token that can be digitally exchanged which represents claims or rights to membership against a person or a right to property or other rights. The examples include an acquisition and subsequent redemption of a “Crypto-Derivative,” a smart contract representing a leveraged interest in an underlying Crypto-Asset, in exchange for stablecoins, noting that reporting would be required for the acquisitions and dispositions of both the Crypto-Derivative and the stablecoins. NFTs

are also explicitly included in the definition of Crypto-Asset to the extent they represent ownership rights.¹⁸

The reporting rules focus on “Relevant Crypto-Assets,” a term which excludes CBDCs—any digital Fiat Currency issued by a Central Bank—and Closed-Loop Crypto-Assets. A “Closed-Loop Crypto-Asset” is defined as a Crypto-Asset that

1. is issued as a means of payment with Participating Merchants for the purchase of goods or services;
2. can only be transferred by or to the issuer or a Participating Merchant; and
3. can only be redeemed for Fiat Currency by a Participating Merchant redeeming with the issuer.¹⁹

A Participating Merchant is a person agreeing, whether contractually or otherwise, to accept a Closed-Loop Crypto-Asset as a means of payment for specified goods or services. The commentary further defines Closed-Loop Crypto Assets as

Crypto-Assets which can only be exchanged or redeemed within a fixed network or environment for specified goods and services, such as food, book, travel and restaurant vouchers ... [including] digital goods and services, such as digital music, games, books or other media, as well as tickets, software applications and online subscriptions.²⁰

The elements that may characterize a Closed-Loop Crypto Asset include restricting users’ redemption rights to specified goods or services, whether those restrictions are imposed through a permissioned blockchain or through embedded features in the Crypto-Asset; a limitation of redemption rights to allow only Participating Merchants to redeem the Crypto-Asset for fiat or other Relevant Crypto-Assets; or customer identification mechanisms to ensure the acquiring and redeeming user is the same person.²¹ CARF includes these exemptions because CBDCs and Closed-Loop Crypto Assets are viewed as presenting a low risk of tax evasion, and the public consultation questions include a request for submission of other existing types of Crypto-Assets that might similarly pose low risk and should be excluded. Other questions on Crypto-Asset scope include whether the scope is appropriate in general, whether Closed-Loop Crypto-Assets are correctly defined, and whether the scope of NFTs subject to reporting under CARF aligns with the FATF Recommendations with respect to NFTs.²²

B. Intermediary Scope

The framework imposes requirements on “Reporting Crypto-Asset Service Providers,” defined as “any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such Exchange Transactions, or by making available a trading platform.”²³ While similar to the amended broker definition in Code Sec. 6045, the CARF definition does not limit its application to persons “regularly” providing services,²⁴ although the commentary notes that the phrase “as a business” excludes persons effectuating Exchange Transactions “on a very infrequent basis for non-commercial reasons.”²⁵ It also does not limit the scope of services to those performed for consideration,²⁶ requiring only that the person carries out the service of Effectuating Transactions as a business, whether (i) acting as a principal, (ii) acting as an intermediary, or (iii) through establishment of a trading platform.²⁷ As with Crypto-Assets, the intermediary scope is meant to encompass persons within the scope of “virtual asset service providers” under the FATF Recommendations for AML/KYC alignment,²⁸ including centralized exchanges, brokers and dealers, operators of Crypto-Asset ATMs, and DeFi platforms.²⁹ The commentary provides the following examples of persons qualifying as Reporting Crypto-Asset Service Providers when acting as counterparties or intermediaries:

- Dealers buying and selling Relevant Crypto-Assets to customers;
- Crypto-Asset ATM operators;
- Exchanges that act as “market makers,” finding a buyer and a seller of a Relevant Crypto-Asset and taking a commission for their services in the form of a bid-ask spread;
- Crypto-Asset brokers; and
- Intermediaries subscribing Relevant Crypto-Assets to resell and distribute such assets to customers.³⁰

It also expounds on the inclusion of persons making available a trading platform—i.e. DeFi platforms—defining a “trading platform” as “any software program or application that allows users to effectuate (either partially or in their entirety) Exchange Transactions.”³¹ The persons considered to make available a trading platform are those that have sufficient influence or control over the platform or have sufficient knowledge to comply with the due diligence and reporting obligations of CARF. This includes instances where the person is subject to AML/KYC rules and regulations consistent with the FATF Recommendations or where the platform provider can develop or amend the software or protocol governing conditions controlling Exchange Transactions.³²

The commentary notes several types of persons transacting in Relevant Crypto-Assets in a business capacity that do not qualify as Reporting Crypto-Asset Service Providers.

- Although performed on behalf of customers, an investment fund's Crypto-Asset investment activity would not qualify as effectuating Exchange Transactions because the investors cannot transact on their own behalf.
- A person that is solely engaged in validating distributed ledger transactions is excluded from the scope of CARF even where they are paid for such service.
- Solely creating or issuing a Relevant Crypto-Asset is not a service effectuating Exchange Transactions.
- Persons making available a platform solely allowing users to make posts for purchases and sales of Crypto-Assets are not effectuating Exchange Transactions and, therefore, not in scope.
- Persons solely creating or selling software that facilitates Exchange Transactions on behalf of customers are not considered Reporting Crypto-Asset Service Providers provided they are not also using the software to provide a service effectuating Exchange Transactions on behalf of customers.³³

A person that would otherwise qualify as a Reporting Crypto-Asset Service Provider is only in scope if it has sufficient nexus to a jurisdiction that has adopted CARF ("participating jurisdiction"). The rules impose due diligence and reporting requirements on a person that:

1. Qualifies as a tax resident in a participating jurisdiction;
2. Is incorporated or organized under the laws of a participating jurisdiction and either has a legal personality in that jurisdiction or has a tax filing obligation (including information returns) with respect to its income in that jurisdiction;
3. Is managed from a participating jurisdiction; or
4. Has a regular place of business in a participating jurisdiction.³⁴

The rules also apply Relevant Transactions effectuated through a branch based in a participating jurisdiction. To prevent duplicative reporting in instances where a service provider may be required to report in multiple participating jurisdictions, CARF includes a hierarchy for determining in which jurisdiction a service provider should report. This hierarchy follows the order of the above nexus rules, prioritizing reporting in a partner jurisdiction with which an entity or individual has the strongest connection and exempting a service provider from reporting redundantly in another partner jurisdiction.³⁵ For instance, a Reporting Crypto-Asset Service Provider that qualifies as a tax resident of Jurisdiction A and is managed from Jurisdiction B would only be required to perform due diligence and reporting in Jurisdiction A provided A and B are partner jurisdictions—i.e., jurisdictions that exchange information with one another.

The public consultation questions on intermediary scope include whether the scope is appropriate in general; whether there are circumstances where multiple intermediaries would be required to report on the same transaction by the same customer and, in such a case, which intermediary is in the best position to report; and whether the nexus rules will capture all relevant intermediaries, or, if not, how to address this potential concern.³⁶

C. Reportable Transactions and Information

Reporting Crypto-Asset Service providers are responsible to report Relevant Transactions of Relevant Crypto-Assets.³⁷ Relevant Transactions are grouped into three categories: (1) Exchange Transactions, (2) Reportable Retail Payment Transaction, and (3) other Transfers. These categories are defined as follows:

1. 1) The term "Exchange Transaction" means any:
 - a) exchange between Relevant Crypto-Assets and Fiat Currencies and
 - b) exchange between one or more forms of Relevant Crypto-Assets.³⁸
2. The term "Reportable Retail Payment Transaction" means a Transfer of Relevant Crypto-Assets in consideration of goods or services.³⁹
3. The term "Transfer" means a transaction that moves a Relevant Crypto-Asset from or to the Crypto-Asset address or account of one Crypto-Asset User, other than one maintained by the Reporting Crypto-Asset Service Provider on behalf of the same Crypto-Asset User, where, based on the knowledge available to the Reporting Crypto-Asset Service Provider at the time of transaction, the Reporting Crypto-Asset Service Provider cannot determine the transaction is an Exchange Transaction.⁴⁰

These categories are aimed at capturing tax-relevant information, requiring reporting of acquisitions and disposals of Crypto-Assets in exchange for Fiat Currencies and other Relevant Crypto-Assets or, where there is a transfer of Crypto-Assets off-platform, reporting of the transfer because of the potential for tax avoidance. The rules require reporting of the initial purchase of a Relevant Crypto-Asset, thereby capturing the tax basis in the asset. Where there is an exchange of Relevant Crypto-Assets, two Exchange Transactions will be reported with respect to each customer of the service provider that is a Reportable Person: the disposal of the Relevant Crypto-Asset and the acquisition of the new Relevant Crypto-Asset.⁴¹

A Relevant Transaction qualifies as a Reportable Retail Payment Transaction when a Reporting Crypto-Asset Service Provider is involved in the transfer of a Relevant Crypto-Asset between a customer and a merchant. The reporting requirement is imposed on the service provider, not the merchant, and the service provider is required to treat both the customer and the merchant as Reportable Users.⁴² This reporting categorization will be limited to transfers of Relevant Crypto-Assets the fair market value ("FMV") of which exceeds the reporting threshold specified by the jurisdiction imposing the reporting requirement. A retail payment transaction that would otherwise be reportable but for application of the de minimis threshold should be reported only as a Transfer to the

merchant.⁴³ The public consultation questions ask for feedback on the proposed Reportable Retail Payment Transaction rules, including input on what information is available to Reporting Crypto-Asset Service Providers on customers of merchants where the customer does not have a relationship with the service provider, what challenges are presented in collecting relevant information, and how to overcome those challenges. The questions also ask for input on the de minimis threshold, specifically whether an exclusion of reporting transactions under the threshold (rather than including them in the reporting of Transfers) would reduce compliance burdens and how to avoid intentional circumvention of the rules through splitting transactions into amounts below the threshold.⁴⁴ Any other transfers of Relevant Crypto-Assets on behalf of a customer effectuated by a Reporting Crypto-Asset Service Provider are categorized as Transfers. The rules and commentary reference the following non-exhaustive examples of reportable transfers:

- Transfers where the Reporting Crypto-Asset Service Provider does not have actual knowledge of part of the transaction, preventing it from reporting it as an Exchange Transaction because of the missing information.⁴⁵
- Transfers by a user to an account with another reporting Crypto-Asset Service Provider.
- Retail payment transactions below the de minimis threshold.⁴⁶
- Receipt of an airdrop facilitated by a Reporting Crypto-Asset Service Provider, whether resulting from a hard fork or other reason.⁴⁷
- Income from staking.⁴⁸
- The disbursement, reimbursement, or associated return on a loan.⁴⁹

Transfers to external wallet addresses are also reportable when the Reporting Crypto-Asset Service Provider has transferred Relevant Crypto Assets on behalf of a Reportable Person and does not know or have reason to know that the wallet address is associated with another Reporting Crypto-Asset Service Provider. This reporting requirement is applicable only if the Reportable Person is a resident of a jurisdiction on the OECD-published list of jurisdictions that have opted in to receive reporting on external wallet addresses.⁵⁰ The public consultation questions ask whether there are specific challenges posed by the requirement to report external wallet addresses, including whether information is available to distinguish wallet addresses associated with other Reporting Crypto-Asset Service Providers from other wallet addresses not associated with a service provider that would be required to be reported. Additionally,

the questions note that the OECD is considering requiring reporting of the wallet addresses from which a customer transfers Relevant Crypto Assets to a Reporting Crypto-Asset Service Provider and asks whether this information is available, whether reporting of it would materially increase compliance burdens, and whether other alternatives such as reporting of public keys would be more efficient.⁵¹

Relevant Transactions are reportable when executed by or on behalf of a Reportable Jurisdiction Person—an individual or entity that is a resident in a Reportable Jurisdiction that is not an Excluded Person. Included in the term are corporations, partnerships, trusts, foundations, or other legal arrangements as well as an estate of a decedent that was a Reportable Jurisdiction Person. The commentary acknowledges the differing treatment of partnerships among jurisdictions, treating them as taxable units or as fiscally transparent depending on the partnership's treatment under its domestic law. Where an entity does not have a tax residency, it should be treated as a tax resident in the place of its effective management.⁵²

The reportable demographic information, obtained using the due diligence procedures discussed in the following section, includes the following:

- Reportable Person name
- Reportable Person address
- Reportable Person Jurisdiction(s) of residence
 - Where a Reportable Person has multiple jurisdictions of residence, all jurisdictions are reportable
- Tax Identification Number(s) ("TIN(s)") assigned to the Reportable Person by its jurisdiction(s) of residence
- For individuals, Reportable Person date and place of birth
- For applicable entities, Reportable Person Controlling Person information
 - Controlling Person name, address, jurisdiction(s) of residence, TIN(s), date and place of birth, role (control through (i) ownership, (ii) other means, or (iii) position of senior managing official)⁵³
- Reporting Crypto-Asset Service Provider name
- Reporting Crypto-Asset Service Provider address
- Reporting Crypto-Asset Service Provider identifying number
 - TIN, business code/number, or Global Legal Entity Identifier⁵⁴

A Reportable Person's TIN is not required to be reported when (i) their jurisdiction does not issue TINs or (ii) their jurisdiction's domestic law does not require the collection of TINs. The commentary notes that, where a Reportable Person's TIN is not required to be collected but is provided by the Reportable Person, it should be reported, using the example of Australia as a jurisdiction to which this circumstance might apply. Place of birth is not required to be reported unless collection and reporting of the information is required under domestic law and is available in the Reporting Crypto-Asset Service Provider's electronically searchable books and records.⁵⁵ The reportable information for Relevant Transactions includes the following:

- Relevant Crypto-Asset name
- The aggregate gross amount paid or FMV equivalent, number of units, and number of transactions for the following:
 - Acquisitions and disposals of Relevant Crypto-Assets in exchange for Fiat Currency
 - Acquisitions and disposals of Relevant Crypto-Assets in exchange for other Relevant Crypto-Assets
 - Reportable Payment Transactions
 - Transfers, subdivided by transfer type, not otherwise included in the reporting categories above
- External wallet addresses (if applicable; see Transfers above)⁵⁶

The amount paid or FMV of received should be reduced by transaction fees. Where amounts with respect to a Relevant Transaction are paid or received in multiple Fiat Currencies, the Reporting Crypto-Asset Service Provider must convert the amounts to a single Fiat Currency at the time of the transaction and in a consistent manner (e.g., spot rate(s) at the time of the Relevant Transaction). Similarly, FMV must be determined and reported in a single Fiat Currency, with valuation occurring at the time of the transaction and in a consistent manner. Where the Relevant Transaction is a Crypto-to-Crypto, retail, or other transaction, the service provider may rely on crypto-to-fiat trading pairs that it maintains to determine the FMV of the Crypto-Assets involved in the exchange.⁵⁷ Several of the public consultation questions ask for input on these valuation rules, including a general request for input on preferable alternative valuation methods of Relevant Transactions and illiquid tokens including NFTs.⁵⁸

All proceed amounts will be aggregated for reporting purposes, grouped by Fiat Currency within each Relevant Transaction category—Exchange Transactions, Reportable Retail Payment Transactions, and other Transfers. A jurisdiction may require reporting of Crypto-to-Crypto Exchange Transactions in its local currency. Relevant Transactions will also be grouped by Relevant

Crypto-Assets, and, where units of the same Relevant Crypto-Asset can be mutually substituted, they should be treated as the same type for aggregation purposes. Where units are non-fungible and have varying value among fixed units, each should be treated as a separate type of Relevant Crypto-Asset for reporting purposes.⁵⁹ With respect to Transfer types, CARF includes the following categories for reporting purposes: airdrop resulting from a hard-fork; airdrop for reasons other than a hard-fork; income from staking; or the disbursement, reimbursement, or associated return on a loan.⁶⁰ The public consultation questions ask whether Reporting Crypto-Asset Service Providers have the necessary knowledge to classify transfers by type and whether other transfer types should be separately identified.⁶¹

Each jurisdiction will determine the “appropriate reporting period” in their reporting rules, but it is generally expected that reporting will occur on an annual basis. The public consultation questions ask for input on the earliest date by which information on Relevant Transactions from the preceding year could be reported by Reporting Crypto-Asset Service Providers.⁶²

D. Due Diligence Procedures

The CARF due diligence procedures use the foundation of the CRS due diligence procedures,⁶³ requiring Reporting Crypto-Asset Service Providers obtain self-certification forms from their customers that capture the relevant status and taxpayer demographic information, including controlling persons for some entity types. These forms are not required to be in any format, and service providers (or participating jurisdictions) can draft forms in whatever fashion provided the requisite information is captured.⁶⁴ The self-certifications must be signed and contain legal name, residence address, jurisdiction(s) of tax residence, and TIN(s) for each Reportable Jurisdiction (provided the jurisdiction issues TINs). Individuals, including controlling persons, must provide dates of birth. An entity that does not qualify as an Active Entity or Excluded Person must also provide self-certifications for its controlling persons including controlling person type or, if applicable, information as to the entity's status as an Active Entity or Excluded Person. Except for jurisdictions of residence, self-certification information is permitted to be prepopulated based on the service provider's records, and a CRS self-certification may be relied upon for CARF purposes.⁶⁵ Once collected, self-certification forms must be reviewed against information collected by the Reporting Crypto-Asset Service Provider for AML/KYC or other purposes to confirm the reasonableness of the self-certification. Participating jurisdictions are expected to make available information to assist taxpayers with determining their tax residences, and the OECD anticipates publishing this information, presumably in a similar

manner to the implementation and assistance information currently published for CRS purposes.⁶⁶ However, the reasonableness confirmation requirement imposes a “reason to know” standard, and the commentary notes that service providers “are not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.” Self-certifications that include information that conflicts with other information on the self-certification or on file or are incomplete in some way would be considered unreliable absent additional information. For example, an individual self-certification form where the jurisdiction provided in the residence address conflicts with the jurisdiction collected for AML/KYC purposes or where that residence address is in a different jurisdiction than the tax residency claim would fail the reasonableness test. In such a case, a new self-certification or a reasonable explanation and documentary evidence supporting the reasonableness of the original self-certification would need to be provided.⁶⁷

The rules for individual and entity self-certification forms are similar in many respects. One distinction is the ability of the Reporting Crypto-Asset Service Provider to rely on publicly available information—information published by an authorized government body or disclosed on an established securities market—to determine that an Entity Crypto-Asset User is an Excluded Person. An Excluded Person includes the following entities:

- a) an Entity the stock of which is regularly traded on one or more established securities markets,
- b) any Entity that is a Related Entity of an Entity described in clause (a),
- c) a Governmental Entity,
- d) an International Organisation,
- e) a Central Bank, or
- f) a Financial Institution other than an Investment Entity described in Section IV E(5)(b) of the CARF.^{68,69}

Where an entity qualifies as an Excluded Person, it is not considered a Reportable Person, and a self-certification form is not required to be obtained. Any other entities, including Active Entities and Reporting Crypto-Asset Service Providers, are not excluded from the definition of Reportable Person.⁷⁰ The public consultation questions ask whether sufficient information is available for Reporting Crypto-Asset Service Providers to verify the status of other service providers were they to be included in the Excluded Person status.⁷¹

If an entity is not excluded, a self-certification must be obtained to determine whether the entity is an Active Entity—less than

50% of the entity's gross income is passive income and less than 50% of the assets produce passive income.⁷² Among the passive income categories is income derived from Relevant Crypto-Assets, and the public consultation questions ask whether there are instances where income derived from Relevant Crypto-Assets could be considered active income, such as income from mining or staking. For non-active entities, service providers need to determine the controlling persons of the entities and whether those controlling persons are Reportable Persons. Controlling persons may be identified using AML/KYC procedures consistent with FATF recommendations, but reportability determinations must be based on self-certification forms from the controlling persons, the validation rules for which align with those of Individual Crypto-Asset Users discussed above. An exception for Reportable Retail Payment Transactions is included, allowing a service provider to effectuate a transaction for a merchant's customer without obtaining controlling person information provided it does not perform other Relevant Transactions on behalf of the customer.⁷³

The most significant differences between CARF and CRS due diligence rules relate to self-certification solicitation requirements. First, there is limited relief from the due diligence requirements for preexisting users, allowing service providers to obtain valid self-certification forms from Preexisting Individual and Entity Crypto-Asset Users within 12 months of the effective date of the rules in their jurisdiction and otherwise requiring self-certifications to be obtained for new users when establishing

the customer relationship. Second, self-certification information must be confirmed at least once every 36 months from the last validation of the self-certification. The commentary notes that this confirmation can be performed electronically, for example, using push notification messages sent to the client. Unlike the Internal Revenue Service ("IRS") Form W-8 expiration rules, which result in year-end expiration and annual solicitation efforts,⁷⁴ this expiration period will require Reporting Crypto-Asset Service Providers to monitor and perform monthly expiration and solicitations. As under CRS, self-certifications also need to be refreshed for changes of circumstances, requiring service providers to monitor for such changes and to obtain a new self-certification form within 90 days. Finally, where valid self-certifications are required but not obtained, "the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the concerned Crypto-Asset User until such self-certification is obtained and the reasonableness of such self-certification is confirmed."⁷⁵ Considering the inherent volatility in digital asset value, this trading prohibition is likely to cause business issues for service providers. It is conceivable that errors in self-certification validation or delays in review could result in trade delays, the cost for which will be borne by the customers or passed on to the service provider through customer complaints. To that end, the public consultation questions ask whether other potential alternative implementation measures can be considered and how to enforce such measures.⁷⁶

Conclusion

As evidenced by the expansive scope and complex reporting and due diligence rules outlined above, the OECD's CARF proposal is an exacting regime for the digital asset industry to implement. Although CRS-like in structure, there are numerous instances where the CARF requirements are more stringent than the current rules imposed on financial institutions under CRS. Industry members have voiced these concerns in their written comments and during the public hearing, noting the compliance burdens that CARF would place on a burgeoning industry that are not otherwise placed on well-established financial intermediaries under existing rules.⁷⁷ It is possible that the OECD will lessen the burden placed on Reporting Crypto-Asset Service Providers in its final CARF rules; it is also possible that they will propose further CRS amendments to impose rules like self-certification expiration and account activity prohibitions on financial Institutions more broadly.

Regardless of whether or how the OECD chooses to incorporate public feedback, the current CARF proposal is likely to be largely intact in its final form. Depending on OECD publication timeline, it is conceivable that jurisdictions could begin implementing CARF into local law in 2023, imposing reporting requirements in 2025 on tax year 2024 Crypto-Asset transaction activity. This provides 18 months of lead time for businesses to plan, budget, build, and staff as needed to ensure compliance readiness, a sufficient—but by no means overabundant—amount of time to prepare if organizations act quickly. If the Greenbook proposal is read as an indication of plans for U.S. participation in CARF, the proposed effective date is 2024 reporting of tax year 2023 activity, a more aggressive implementation timeline for U.S. financial institutions facilitating digital asset transfers.⁷⁸ This CARF draft provides sufficient direction for digital asset exchanges and other in-scope service providers to prepare to comply, and, in light of the breadth of the rules and potential implementation timeline, it is advisable to begin preparations directly.

Endnotes

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1 Org. for Econ. Co-operation and Dev. ("OECD"), Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard (22 Mar., 2022), www.oecd.org/tax/exchange-of-tax-information/public-consultation-document-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf [hereinafter "CARF"].

2 Id. at 5.

3 Note that CBDC and specified electronic money reporting is in scope under the CRS amendments. Id. at 55–56.

4 Id. at 6.

5 Id.

6 Id. at 7.

7 See OECD public comments on CARF, www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-the-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm [hereinafter "CARF public comments"].

8 CARF, supra n. 1, at 5.

9 The United States has not adopted CRS, relying on the Foreign Account Tax Compliance Act ("FATCA") reporting regime under Code Secs. 1471–1474 to identify U.S. persons' non-U.S. financial activity. On March 28, 2022, the U.S. Treasury Department released revenue proposals and explanations in the fiscal year 2023 General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (home.treasury.gov/system/files/131/General-Explanations-FY2023.pdf [hereinafter "Greenbook"]). Among the proposals is a significant expansion of U.S. financial institution reporting of non-U.S. account holder activity including reporting of gross proceeds from digital asset sales effectuated on behalf of foreign customers and, in the case of passive entities, substantial foreign owners (see Greenbook at 97–99). Adoption of this proposal would allow the United States to reciprocally exchange information on digital asset activity with other jurisdictions, indicating that U.S. participation in CARF may be under consideration.

10 CARF, supra n. 1, at 5–7.

11 Id. at 15.

12 Code Sec. 6045(g)(3)(D).

13 CARF, supra n. 1, at 5.

14 See Financial Action Task Force, *Virtual Assets and Virtual Asset Service Providers: Updated Guidance for a Risk-Based Approach* (Oct. 2021), www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf [hereinafter "FATF"].

15 CARF, supra n. 1, at 5.

16 FATF, supra n. 14, at 109 ("A virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or

investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.").

17 CARF, supra n. 1, at 41.

18 Id. at 40–41.

19 Id. at 42.

20 Id.

21 Id.

22 Id. at 7–8.

23 Id. at 15.

24 Code Sec. 6045(c)(1)(D).

25 CARF, supra n. 1, at 43.

26 Code Sec. 6045(c)(1)(D).

27 CARF, supra n. 1, at 43.

28 See FATF, supra n. 14, at 109:

29 CARF, supra n. 1, at 6.

30 Id. at 43.

31 Id.

32 Id. at 44.

33 Id. at 43.

34 Id. at 21.

35 Id. at 21–23.

36 Id. at 8.

37 Id. at 11.

38 Id. at 15.

39 The term Reportable Retail Payment Transaction would only include transfers where the value of the goods or services being purchased exceeds the reporting threshold specified by the jurisdiction imposing the reporting requirement. Id.

40 Id.

41 Id. at 25–26.

42 Id. at 26. In contrast, Code Sec. 6050I imposes reporting requirements on the businesses accepting payments of digital assets, not the service provider facilitating the transfer from the customer to the merchant. If the United States were to implement CARF (see Greenbook, supra n. 9), this reporting would be largely redundant except in cases where a customer remitted payment to a merchant in the form of digital assets using a private wallet without the intervention of an intermediary.

43 CARF, supra n. 1, at 27.

44 Id. at 8.

45 This could occur when the service provider is either sending or receiving the Relevant Crypto Asset but does not have actual knowledge of the acquisition or disposal in exchange, including lack of knowledge of the consideration paid or received. Id. at 26.

46 Id.

47 Id. at 27.

48 Id.

49 Id.

50 Id.

51 Id. at 8–9.

52 Id. at 47.

53 See FATF Guidance: Transparency and Beneficial Ownership, Oct. 2014, pp. 14–16; www.fatf-gafi.org/media/fatf/documents/reports/Guidancetransparency-beneficial-ownership.pdf.

54 CARF, supra n. 1, at 11, 23.

55 Id. at 27–28.

56 Id. at 11.

57 Id. at 24–26.

58 Id. at 8–9.

59 Id. at 24.

60 Id. at 27.

61 Id. at 8.

62 Id. at 9.

63 Id.

64 Id. at 30.

65 Id. at 13–14.

66 Id. at 35. See also www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/.

67 CARF, supra n. 1, at 35–36.

68 Id.

69 Id. at 18: E(5)(b): The term “Investment Entity” means any Entity ... b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets or Relevant Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph E(5)(a).

E(5)(a).

70 Id. at 47.

71 Id. at 9.

72 See id. at 48–50 for additional details on Active Entity qualifications, including exceptions for dealers, insurance entities, nonfinancial holding companies, and non-profit entities.

73 Id. at 37.

74 See, e.g., Instructions for the Requester of Forms W-8, p. 7, www.irs.gov/pub/irs-pdf/iw8.pdf.

75 CARF, supra n. 1, at 39.

76 Id. at 9.

77 See CARF public comments, supra n. 7.

78 Greenbook, supra n. 9, at 99.

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