CHAMBER OF DIGITAL COMMERCE

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Via Electronic Delivery

OECD
International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
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To Whom It May Concern:

The Chamber of Digital Commerce (the "Chamber") recognizes the importance of updating global tax transparency tools to account for new types of assets and technologies. We are pleased to see the Organisation for Economic Co-operation and Development's ("OECD") has embarked on this process and is seeking public consultation. The Chamber welcomes the opportunity to provide feedback on the OECD consultative document regarding the Crypto-Asset Reporting Framework ("CARF") and Amendments to the Common Reporting Standard ("CRS").[1]

The Chamber is the world's largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology. We are supported by a diverse membership that represents the blockchain industry globally. Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a responsible, pro-growth legal environment relating to the application of laws concerning anti-money laundering ("AML"), securities, tax, and other rules. We believe such an approach fosters trust, innovation, job creation, and investment, while building protections from bad actors.

Our members include the world's leading innovators, operators, advisory firms, and investors in the blockchain ecosystem, such as leading-edge startups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, and investment firms. Consequently, the Chamber and its members have a significant interest in the appropriate regulation of activities involving blockchain and distributed ledger technology. The Chamber is committed to leveraging the power of blockchain technologies to facilitate innovation, job creation, and investment, while maintaining rigorous standards of tax compliance.

[1] OECD, *Public Consultation Document: Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (March 22, 2022 – April 29, 2022) (hereinafter "Consultation Document"), https://www.oecd.org/tax/exchange-of-tax-information/public-consultation-document-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf.

The Chamber is pleased to serve as a resource to the OECD on these matters, and we look forward to working with you to consider and address them.

Very truly yours,

Perianne Boring
Founder & CEO
Chamber of Digital Commerce

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EXECUTIVE SUMMARY OF COMMENTS IN RESPONSE TO THE CARF CONSULTATION DOCUMENT

The Chamber supports effective tax transparency and regulatory action, but believes that should be done in a manner that minimizes burden and achieves parity with other financial asset classes. Specifically, we believe that any reporting regime for digital assets should endeavor to meet the goal of increasing global tax transparency, while preventing avoidance of the reporting requirements.

This goal should be reached with the following principles in mind:

- Achieve parity with other financial asset classes and hence align as much as possible with existing requirements under CRS and the Financial Action Task Force ("FATF") recommendations;
- Be neutral with respect to the underlying technology involved;
- Minimize burden on reporting persons, particularly smaller businesses, so as to continue to foster innovation and entrepreneurship in this emerging industry; and
- Minimize privacy concerns.

With these principles in mind, the Chamber would like to make the following recommendations related to the CARF, which are discussed more fully in the attached comments:

1. We recommend aligning the CARF's reporting for digital assets with existing reporting requirements under the CRS. As currently drafted, the CARF would create an unlevel playing field between digital assets and traditional financial assets by requiring additional reporting for digital assets beyond the current CRS requirements, and beyond what is necessary to achieve tax transparency goals.
    a. We also recommend limiting the scope of Relevant Crypto-Assets to more closely align with traditional financial assets that are covered by the CRS and eliminate assets that are difficult to value or have no investment value. We believe the easiest way to achieve this would be to limit the scope of Relevant Crypto-Assets to digital assets that are fungible and actively traded on an established market.
    b. We recommend that the CARF limit the collection of on-chain wallet addresses. The CARF's reporting of wallet address creates legitimate privacy concerns and is unnecessary since a wallet address is not the functional equivalent of a bank account.
    c. To the extent additional information is deemed necessary for digital assets, we recommend that digital assets that could otherwise fall within the definition of Financial Assets for CRS purposes (e.g., securities tokens, stablecoins, and derivatives) be reportable solely under CRS.[2]
    d. Similarly, we recommend that the anti-duplication rule proposed in the CRS amendments (i.e., where the disposal of Financial Assets is reported under CARF,

[2] We note that some jurisdictions, such as the United States, have not adopted CRS but have similar reporting regimes (e.g., Foreign Account Tax Compliance Act ("FATCA")).

no reporting is necessary under CRS) be reversed, so that reporting under CRS obviates the need to report under CARF.

   e. We recommend the OECD further study nonfungible tokens ("NFTs") before applying the CARF's reporting requirements to them. NFTs are quickly evolving into use cases that go well beyond traditional financial or investment assets.

2. We recommend adopting an effective date that is at least 4 years after the approval of the relevant legislation to allow CASPs sufficient time to implement the CARF. Most new reporting regimes have taken that long to implement, even for mature industries. In addition, jurisdictions should be encouraged to wait before adopting local reporting regimes for digital assets to ensure that reporting regimes are coordinated globally. On the other hand, Countries that have already legislated reporting regimes should also be encouraged to align their domestic reporting requirements to comply with the CARF.

   a. The OECD should also consider phasing in the CARF for all intermediaries, along the lines of our recommendation for small businesses (i.e., Anti-Money Laundering ("AML") /Know Your Customer ("KYC") reporting only for a period of time, followed by CRS-style reporting, and if our first recommendation above is not adopted, followed by CARF reporting).

   b. Penalties should not be imposed for good faith compliance for at least the first five years of reporting.

3. We recommend establishing a simplified reporting regime for small businesses (i.e., businesses that are less than $10 million in gross receipts). For example, small businesses could begin by reporting their AML/KYC information to tax authorities in the first year and phase in the same information required by CRS and, if our first recommendation above is not adopted, phase in the information required by CARF, all while protected from penalties for good faith compliance. The digital asset industry is an emerging industry with many start-up and other small businesses. Requiring these businesses to set up costly systems to collect and report voluminous information could constitute a barrier to entry to the industry at a time when such entry should be encouraged.

4. We recommend that the OECD further study the potential application of the CARF to decentralized trading platforms prior to the publication of any special rules for such platforms, particularly as this area of technological innovation is in its nascent stages. Decentralized exchanges make up a small percentage of the overall cryptocurrency market and we do not believe that excluding decentralized exchanges from the scope of the CARF at this stage would lead to reduced tax transparency because the vast majority of known transactions take place with the involvement of a centralized exchange.

5. We recommend that the OECD encourage governments and tax authorities to consider a voluntary disclosure regime in order to reduce potential adverse consequences that may arise from the additional light that the CARF may shed on prior tax reporting practices.

In our view, these recommendations would encourage compliance while minimizing the potential burdens that could discourage entrepreneurship, competition and innovation.

COMMENTS IN RESPONSE TO THE CARF CONSULTATION DOCUMENT

I. General Comments

A. The CARF Should Provide Parity with CRS Reporting

The CARF's scope of reportable information should be defined by reference to the scope applicable under the current CRS that applies to traditional financial assets. Since implementation in 2014, the CRS has been successful in enabling the detection and taxation of offshore accounts to limit tax evasion and bolster global tax compliance. We believe that tax transparency regimes should be technology-neutral and that similar activities should be regulated similarly. Thus, we believe that, to the extent possible, the CARF's reporting requirements should align with reporting under the CRS.

The OECD's stated rationale in the Consultation Document for adopting the CARF was that "the current scope of assets, as well as the scope of obliged entities, covered by the CRS do not provide tax administrations with adequate visibility on when taxpayers engage in tax-relevant transactions in, or hold, Crypto-Assets."[3] The Consultation Document notes that "the ability of individuals to hold Crypto-Assets in wallets unaffiliated with any service provider and transfer such Crypto-Assets across jurisdictions, poses a risk that Crypto-Assets will be used for illicit activities or to evade tax obligations."[4].

These risks can be addressed by requiring CASPs to report the same categories of information currently reported by financial institutions under CRS—that is, name, address, jurisdiction of residence, taxpayer identification number ("TIN"), date and place of birth of Crypto-Asset Users, account number and value, income earned on the account, and total gross proceeds from the sale or redemption of financial assets paid or credited to the account.[5] That information also achieves the OECD's stated goal to extend the scope of reporting required by CRS to Crypto-Assets.

The additional information required by CARF, including reporting at a transactional level on an asset-by-asset basis, as well as reporting on retail purchases using Crypto-Assets is not necessary to achieve tax transparency goals. And we believe the downsides to such additional information collection outweigh the benefits.

First, it is not yet clear this additional information will be useful to tax authorities. Substantive tax laws governing crypto-assets are still developing and there is no consistency among the different jurisdictions. In addition, the crypto-assets themselves and the platforms on which they trade are rapidly evolving. This is quite different from the state of the law and markets governing financial assets when the CRS was adopted. Given the potential downsides, we recommend that the scope of reportable assets and information under the CARF be aligned with that of the CRS.[6] Specifically, the scope of assets should be limited to digital assets that are actively traded on an

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[3] Consultation Document, at p. 5 ¶6.
[4] Consultation Document, at p. 4 ¶4.
[5] CRS Rules § I, Consultation Document, at p. 63.
[6] Even if CARF achieves parity with CRS in terms of the scope of reporting, we think that a separate framework for Crypto-Assets is warranted to account for the different definitions and different types of intermediaries.

established market, which would more closely align with the financial and investment assets covered under the CRS and FATF. In addition, the OECD should further study NFTs and decentralized platforms before subjecting them to the CARF, as these are areas of technological innovation that are still in their nascent stages. The scope can be revisited in the future when the technology and substantive laws become more settled.

Second, requiring CASPs to collect and review this additional information would increase costs, in terms of building systems, quality control, and risk assurance, as well as increase exposure to penalties. For example, to implement the CARF, CASPs will need to hire professional advisors to interpret and apply the CARF's new rules to their existing products and determine the appropriate reporting jurisdiction. CASPs will face additional costs to purchase or develop new technology and develop new operational procedures to generate the CARF's required information as well as to collect, validate, and process self-certifications. Finally, CASPs will need to develop and implement on-going compliance, audit, and internal control programs to comply with the CARF. We note that implementation is more complex and costly when the requirements are not standardized across jurisdictions, which has proven to be the case under the CRS. For example, some jurisdictions require a report even when there is no data to report; some require information to be submitted to third parties that have unique processes in place to utilize their platforms; and some have extra steps (e.g., extra checkboxes to click) before the portals will accept the reports.

Third, there are increased privacy risks that come with the increased data collection, retention, and transmission. Data breaches and hacks have become a significant risk in the digital world, and any increase in reporting of sensitive personal and financial information to intermediaries and tax authorities should be weighed against this risk. This may be particularly relevant in the case of on-chain wallets as potentially the entire transactional history of the wallet can be traced. In a future world where most transactions could happen via crypto-assets, this would amount to today's equivalent of providing tax administrations with taxpayers' transactional credit card details. We believe the risks in terms of privacy and data protection far outweigh the benefits of the additional data.

If our recommendation of parity with CRS is not adopted and it is determined that the additional information is needed for digital assets, we recommend that CRS (or similar reporting regimes) be the primary reporting regime for CASPs and Crypto-Assets that otherwise fall within its scope. For example, digital assets that could otherwise fall within the definition of Financial Assets for CRS purposes, such as securities tokens, stablecoins, and derivatives, should be reportable solely under CRS. Further, the proposed amendments in the CRS, notably, the definitions of financial asset, investment entity, depositary institution, depositary account, and custodial account have been amended to take into consideration relevant Crypto-Assets as defined in the CARF.[7] This would also help align the CARF with the FATF guidance, which excludes from the definition of virtual assets digital representations of fiat currencies, securities, and other financial assets that are already covered elsewhere in the FATF Recommendations.[8]

[7] *See* CRS Rules § VIII(A)-(C), Consultation Document, at pp. 65-68.

[8] *See* FATF, *Virtual Assets and Virtual Asset Service Providers Updated Guidance for a Risk Based Approach* (Oct. 2021), at 109 (hereinafter "FATF VA/VASP Guidance"), https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf.

In addition, while we commend the OECD for adopting a rule to prevent duplicative reporting under the CRS and CARF, we believe it should be reversed. The anti-duplication rule proposed in the CRS amendments provides that the gross proceeds from the sale or redemption of a Financial Assets is not required to be reported under the CRS to the extent it is reported under CARF.[9] Instead, we believe the rule should provide that if the sale or redemption of a Financial Asset (including a Crypto-Asset that falls within the definition of a Financial Asset) is not required to be reported under the CARF to the extent it is reported under the CRS.

B. Effective Date Considerations

We note that the OECD's Consultation Document does not indicate a proposed timeline to implement the CARF. We urge the OECD to provide substantial lead time to allow CASPs to design and implement their reporting processes to comply with the CARF.

We recommend adopting an effective date that is at least 4 years after the approval of the relevant legislation to allow CASPs sufficient time to implement the CARF. Most new reporting regimes have taken that long to implement, even for mature industries. For example, in the United States, FATCA was enacted in 2010, effective for payments made after 2012, but the rules were actually implemented over a four-year implementation period beginning in 2014 through 2017.[10]

In addition, some jurisdictions are currently considering substantial digital asset reporting regimes. Jurisdictions should be encouraged to wait until the CARF is approved before finalizing their local reporting regimes to ensure that reporting regimes are consistent across borders. Countries that have already legislated reporting regimes should also be encouraged to align their domestic reporting requirements to comply with the CARF.

Once adopted, we believe that penalties should not be imposed for good faith compliance with CARF for at least the first five years of reporting. In addition, the OECD should encourage jurisdictions to phase in the reporting under the CARF for all intermediaries, along the lines of our recommendation for small businesses (i.e., AML/KYC reporting only for a period of time, followed by CRS reporting, and if our first recommendation to align CARF reporting with the CRS is not adopted, followed by CARF reporting).

C. A Simplified Reporting Regime Should Be Adopted to Reduce the Burden on Small Businesses While Encouraging Innovation

The digital asset ecosystem is continually and rapidly evolving. Digital assets are helping to usher in a global and inclusive economy, while blockchain technologies are revolutionizing entire industries. This innovation can be seen in the financial sector as well as other areas, such as supply chains, government records, title and asset ownership, digitization and encryption of records, and digital identity.

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[9] CRS Rules §I(G), Consultation Document, at p. 64.

[10] *See* IRS Notice 2013-43 (Oct. 21, 2013), https://www.irs.gov/pub/irs-drop/n-13-43.pdf.

Even with its rapid growth, the digital asset and blockchain industry is still a growing industry. Although the industry includes a few large entities, including some publicly traded companies, the industry remains dominated by start-ups and other small businesses. Unlike the implementation of CRS or FATCA where long-established financial institutions were already subject to local reporting requirements, the CARF would apply a new reporting regime to a relatively new industry. Even then, the implementation of CRS and FATCA proved that the initial statutory deadlines were too ambitious, and exchanges needed additional time (years) in order to bring their systems and customer records into compliance.

As discussed above, implementing the CARF would involve significant costs, in terms of building systems, quality control, and risk assurance, as well as increase exposure to penalties. As with any new industry, imposing significant regulatory costs could create a barrier to entry, which has the effect of hampering innovation. To minimize the costs and potential barriers to entry, we recommend establishing a simplified reporting regime under the CARF for small businesses. Specifically, businesses with less than $10 million in gross income would be required to report the Crypto-Asset User's name, TIN, and account number and value maintained by the CASP. In addition to increased tax compliance, this level of reporting will assist with AML/KYC. Once the business reaches the $10 million gross income threshold, it would be required to report the remainder of the information currently reported by financial institutions under CRS. If our recommendation above regarding parity between CARF and CRS reporting is not adopted, the small business could phase in CRS-style reporting and later full CARF reporting.

The simplified reporting regime should also offer penalty protection for good faith compliance with the applicable reporting regime. Even with a simplified approach, this third-party reporting will promote tax compliance while still protecting innovation throughout the industry.

D. Incentivize Compliance by Taxpayers and Jurisdictions

Taxing jurisdictions should consider a voluntary disclosure regime to encourage taxpayers to come forward to remedy past compliance shortfalls.[11] This will reduce some of the adverse consequences that may arise from additional light the CARF may shed on prior tax reporting practices. We recommend this because blockchain records are permanent, and, for example, reporting in 2024 can highlight activity in 2017 where crypto-asset tax rules may not have existed or been clear.

Under our proposal, relief from tax understatement penalties would be afforded to any taxpayer not currently under audit. Additionally, any disclosures should be accompanied by a list of exchanges where the taxpayer has traded, as well as the public address of the wallets used. These additional disclosures will enable tax authorities to independently confirm any representations made by the taxpayer if they choose.

[11] For example, the IRS previously created an offshore voluntary disclosure program, which offered U.S. taxpayers with undisclosed income from offshore assets a compliance avenue to resolve income tax liabilities, various tax information reporting obligations relating to foreign financial assets, and foreign bank account reporting requirements.

II. <u>Responses to Specific Questions</u>

With respect to questions regarding the CARF listed in the Consultation Document, the Chamber provides the following comments and responses.

A. Crypto-Assets in Scope

1. Does the CARF cover the appropriate scope of Crypto-Assets? Do you see a need to either widen or restrict the scope of Crypto-Assets and, if so, why?

We believe the proposed definition of Crypto-Asset as a "digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions" is too broad with the proposed definition sourced from a description of the technology itself and not its use. Although the Consultation Document states that uses of cryptographic technology that are not digital representations of value, such as a record of activities or materials related to supply chains or declarative records of ownership of assets, are not Crypto-Assets,[12] the definition expressly includes cryptographic tokens that represent rights of membership, rights to property, or other rights (such as a security token, derivative contract or right to purchase or sell an asset),[13] and NFTs representing rights to collectibles, games, art, physical property, or financial documents.[14]

The CRS and FATF generally apply only to financial or investment assets. Other transfers of physical property, collectibles, and contract rights are not subject to tax information reporting and should not become reportable solely because they are digitized. We recommend limiting the scope of Crypto-Assets to digital assets that are actively traded on an established market and insert a reference to their use for investment or payment purposes as in the FATF definition. This would be an administrable way to more closely align with the financial and investment assets covered under the CRS and FATF.

In addition, the scope of Crypto-Assets should be initially limited to *fungible* digital assets. We believe that the OECD should further study NFTs before applying the CARF to them, since NFTs are quickly evolving into use cases that go well beyond traditional financial or investment assets. Limiting the scope of this definition to fungible crypto-assets will, thus, limit distortion between physical and digital assets.

2. Does the definition of Closed-Loop Crypto-Assets contain the correct criteria for identifying Crypto-Assets that operate in a closed-loop environment?

We recommend modifying the definition of "Closed-Loop Crypto-Asset" as a Crypto-Asset that:

a. is issued as a means of payment with Participating Merchants for the purchase of goods and services; and
b. either:

[12] Consultation Document, at p. 41, ¶6.
[13] Consultation Document, at p. 40, ¶4.
[14] Consultation Document, at p. 41, ¶5.

i. can only be transferred by or to the issuer, ~~or~~ a Participating Merchant, or another user; or
ii. can only be redeemed for Fiat Currency by a Participating Merchant redeeming with the issuer.

In other words, the issuance should be separate from the transfer/redemption of the Crypto-Asset. In addition, permitting the Closed-Loop Crypto-Asset to be exchanged among participants does not pose tax compliance risks.

For example, the current definition of Closed-Loop Crypto-Assets does not appear to cover virtual currencies or tokens used only in a gaming environment to purchase in-game items, such as additional lives, enhanced-powers, or weapons. These virtual currencies or tokens pose limited risk for tax compliance because they do not produce taxable income. The currency or tokens can be used only to purchase virtual goods or services within an online game and cannot be exchanged for fiat currency.[15] We believe the suggested modification clarifies that in-game tokens should be treated as Closed-Loop Crypto-Assets.

3. Are you aware of existing types of Crypto-Assets, other than Closed-Loop Crypto Assets or Central Bank Digital Currencies that present a low risk from a tax compliance perspective and should therefore be excluded from the scope?

Yes, there are "vanity" tokens that individuals, groups, and organizations create primarily for marketing and promotion purposes. For example, certain National Football League players have created such tokens that fans can purchase in exchange for benefits and services that only fans of that celebrity will care about. Such tokens are used more for branding, marketing, and loyalty purposes, than as financial or investment assets. Such marketing-related tokens should be excluded from the definition of Relevant Crypto Assets.

There are also tokens that are issued to contributors of a protocol that allow that contributor to "earn" tokens that represent rights to approve changes to the protocol. Such tokens have the primary purpose of governing and ensuring the technical integrity of a protocol and have little value to those outside of a community of enthusiasts and hobbyists for a certain protocol.

In addition, if our recommendation above that stablecoins be treated as Financial Assets subject to CRS instead of CARF is not adopted, we also believe that stablecoins pegged to a fiat currency should be excluded from Crypto-Assets. Although different stablecoins use different methods to maintain their peg to a fiat currency, they are designed to have minimal gain or loss and, thus, pose limited tax compliance risk.

Further, as discussed in Question A.1., a Relevant Crypto-Asset should exclude any crypto-asset that is not actively traded on an established market.

[15] For example, in the United States, the Internal Revenue Service ("IRS") has clarified that virtual currencies that do not leave the gaming environment are not subject to taxation. *See* Press Release, IRS Statement on Changes to Virtual Currency Webpage(Feb. 14, 2020), https://www.irs.gov/newsroom/irs-statement-on-changes-to-virtual-currency-webpage.

4. An NFT is in scope of the FATF Recommendations as a virtual asset if it is to be used for payment or investment purposes in practice. Under the Crypto-Asset Reporting Framework, an NFT would need to represent value and be tradable or transferable to be a Crypto-Asset. On that basis it is expected that relevant NFTs would generally be covered under both the CARF (as a Crypto-Asset) and the FATF Recommendations (either as a virtual asset or a financial asset). Are you aware of any circumstances where this would not be the case, in particular, any NFTs that would be covered under the definition of Crypto-Assets and that would not be considered virtual assets or financial assets under the FATF Recommendations or vice versa?

NFTs are a new and rapidly evolving area of digital technology. Their use cases are rapidly expanding beyond investments in art, collectibles, or music, to include event tickets, experiences, loyalty rewards, and discounted merchandise. Consequently, we believe further study is required to better understand the types of NFTs that present tax compliance risks before requiring reporting of NFTs under the CARF. Therefore, we recommend that the scope of Relevant Crypto-Assets be limited to *fungible* digital assets in order to minimize distortive reporting outcomes between physical and digital non-fungible items. The scope can be revised once the study is complete.

In the event that our recommendation for further study related to NFTs is rejected, we believe the CARF treatment of NFTs should align with the recently updated FATF guidance released last year. The updated FATF guidance generally excludes NFTs from the virtual asset definition due to their unique nature as collectibles rather than as a payment or investment asset.[16] However, the updated FATF guidance further states that NFTs can still be considered virtual assets, in some circumstances, based on their function and practice if they are used for payment or investment purposes.[17] To appropriately limit the scope of covered NFTs, our secondary recommendation is that the CARF only require reporting if the NFT is used for payment or is actively traded on an established exchange.

As currently drafted, the CARF would apply to any NFT that has value and can be transferred. Although NFTs often represent ownership of an asset that can be held for investment or readily traded, their use cases are quickly expanding beyond investment assets. For example, the CARF would apply to NFTs that represent event tickets, experiences, or even discounted merchandise rights. For tax purposes, this type of NFT transaction is akin to a ‘goods and services’ transaction and not an asset held for investment purposes, rendering it inappropriate for this transaction to be reported under the current framework outlined for CARF. In addition, as discussed above and in Question A.1., we believe that the CARF should be technology-neutral; additional reporting should not be required for NFTs as compared to a similar tangible asset simply because an NFT is a digital asset.

B. Intermediaries In Scope

1. Do you see a need to either widen or restrict the scope of the intermediaries (i.e. Reporting Crypto-Asset Service Providers)?

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[16] *See* FATF, VA/VASP Guidance, at 24.
[17] *Id.*

The definition of Reporting CASP on its face is quite broad, covering "any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers." We appreciate the additional commentary clarifying that investment funds, stand-alone custodians, validators, creators (including presumably NFT creators), software developers, or infrequent service providers are excluded, as are individuals or Entities who create or sell software or an application or provide a platform with only bulletin board functionality.[18]

However, we believe the scope of the intermediaries subject to reporting should be restricted to ensure intermediaries are not subject to both CRS and CARF reporting. The CRS requires the reporting of electronic money, CBDC, and other digital assets. For the reasons discussed above, we recommend that intermediaries that report under the CRS not be subject to additional reporting under the CARF.

2. Are there any circumstances in which multiple (affiliated or unaffiliated) Reporting Crypto-Asset Service Providers could be considered to effectuate the same Relevant Transaction with respect to the same customer? If so, which types of intermediaries (e.g. the one with the closest relationship with the client) would be best placed to ensure reporting?

Yes, there are several scenarios where multiple CASPs could be considered to effectuate the same Relevant Transaction, including several where digital asset exchanges facilitate transactions behind the scene: 1) regional banks and credit unions seeking to offer digital assets to their clients rely on exchanges to provide a white-label trading solution; 2) trustees utilizing digital asset exchanges to invest trust assets in digital assets; and 3) retirement plan administrators offering crypto asset investments in plans.

The best approach to minimize the duplicative reporting of the same transaction by multiple intermediaries is to limit the definition of Crypto-Asset Service Providers to the intermediaries that provide customers on-ramping and off-ramping services from fiat currencies. Alternatively, we believe the party with the closest connection to the taxpayer is the most appropriate party to report.

3. Do the nexuses described in paragraph A of Section I of the CARF ensure a comprehensive coverage of all relevant Reporting Crypto-Asset Service Providers? If not, under what circumstances would relevant Reporting Crypto-Asset Service Providers not have a nexus in any jurisdiction? In your view, should this be a potential concern, and if so, what solutions could be considered to address it?

We have not identified a circumstance in which a Reporting CASP would not have nexus in any jurisdiction at this time. If this scenario presented itself, the CASP with the closest relationship with the customer should report.

[18] Consultation Document, at p. 43, ¶¶14-18.

C. Reporting Requirements

1. Do intermediaries maintain valuations on the equivalent Fiat Currency fair market values of Crypto-Assets? Do you see challenges in reporting on the basis of such fair market value? If yes, what do you suggest to address them?

As discussed in Question A.1., above, we recommend limiting the definition of Crypto-Asset to fungible assets that are actively traded on an established exchange. This will help facilitate fair market value reporting, as intermediaries generally maintain a fiat currency fair market value for Crypto-Assets that are actively traded.

2. Are there preferable alternative approaches to valuing Relevant Transactions in Crypto-Assets?

We recommend that valuation of relevant transactions under the CARF be performed based on the applicable accounting standards (e.g., International Reporting Financial Standards ("IFRS") or U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), where applicable.

3. Are there specific difficulties in applying the valuation rules for illiquid tokens, for example, NFTs or other tokens that may not be listed on a marketplace, to identify a fair market value? If so, please provide details of any preferable valuation methods that could be adopted within the CARF.

The valuation process is more difficult when an asset is not traded in a liquid market or is thinly traded. As noted in Questions A.1. and A.4., above, we recommend limiting reportable Crypto-Asset to those that are fungible and actively traded.

4. Regarding Reportable Retail Payment Transactions, what information would be available to Reporting Crypto-Asset Service Providers pursuant to applicable AML requirements (including the FATF travel rule, which foresees virtual asset service providers collecting information on originators and beneficiaries of transfers in virtual assets) with respect to the customers of merchants in particular where the customer does not have a relationship with a Reporting Crypto-Asset Service Provider, for whom it effectuates Reportable Retail Payment Transactions? Are there any specific challenges associated with collecting and reporting information with respect to Reportable Retail Payment Transactions? What measures could be considered to address such challenges? Would an exclusion of low-value transactions via a de minimis threshold help reducing compliance burdens? If so, what would be an appropriate amount and what measures could be adopted to avoid circumvention of such threshold by splitting a transaction into different transactions below the threshold?

The CARF would require CASPs who process retail payments on behalf of a merchant accepting Crypto-Assets as payment to treat the customer of the merchant as its own customer, subject to the due diligence and reporting requirements. However, the customer has no transactional relationship or privity with the CASP. Although the requirement is based on the FATF travel rule,[19] the reporting required under the CARF goes far beyond what is required under the FATF travel rule.

Under the FATF travel rule, an originating VASP must obtain and provide information on the originator (i.e., its customer), including name, address, and account number, but only limited information on the beneficiary (i.e., the person receiving the transfer), including the name and account number. Moreover, the originating VASP is only required to perform due diligence on the originator, not the beneficiary.[20] Collection of the more detailed information on the beneficiary appropriately falls to the beneficiary's VASP with which it has a transactional relationship.

Further, the CARF should impose no greater due diligence and information reporting requirement than the FATF travel rule. Thus, the CASP should only be required to do due diligence and report the detailed information regarding the merchant (its customer). The only information that the CASP should be required to report regarding the merchant's customer is the customer's name and wallet address (which it will obtain from the merchant). Any greater burden would discourage use of Crypto-Assets in the marketplace.

In addition, we recommend the inclusion of a de minimis reporting threshold to reduce the compliance burden for small retail transactions.

5. Concerning the requirement to report transfers based on certain pre-defined transfer types (e.g. hardforks, airdrops due to other reasons, loans or staking), do Reporting Crypto-Asset Service Providers have the knowledge necessary to identify, and classify for reporting purposes, transfers effectuated according to such transfer types? Are there any other transfer types that typically occur and that are separately identified for customers or for other purposes?

CASPs may not have the necessary knowledge to report transfers effectuated according to pre-defined transfer type and may be unable to meet this reporting requirement. For example, an exchange does not maintain records of newly created Crypto-Assets that are not supported on their exchange and would not be able to identify and classify the transaction for reporting purposes.

6. Concerning the proposal for reporting with respect to wallet addresses, are there any specific challenges for Reporting Crypto-Asset Service Providers associated with the proposed requirement to report wallet addresses that are the destination of transfers sent from a customer's wallet maintained by a Reporting Crypto-Asset Service Provider? Do Reporting Crypto-Asset Service Providers have, or are they able to obtain, information to distinguish wallet addresses associated with other Reporting Crypto-Asset Service Providers from wallet addresses that are not associated with another Reporting Crypto-Asset Service Provider? The OECD is also considering to require, in addition, reporting with respect to wallet addresses that are the origins of transfers to a customer's wallet maintained by a Reporting Crypto-Asset Service Provider. Is this information available and would providing it materially increase compliance burdens for Reporting Crypto-Asset Service Providers? Are there alternative

[19] *See* Consultation Document, at p. 37, ¶40.
[20] FATF VA/VASP Guidance, at pp. 56-59.

requirements (e.g. reporting of the public keys associated with Crypto-Asset Users instead of wallet addresses) that could be considered to more efficiently increase visibility over transactions carried out without the intervention of the Reporting Crypto-Asset Service Provider?

It will be difficult, if not impossible, for intermediaries to distinguish between broker and non-broker wallet address. In addition, the reporting of on-chain wallet addresses goes much further than the CRS and creates a legitimate privacy concern. Furthermore, the reporting of on-chain wallet addresses may be impractical or unnecessary since an on-chain wallet address is not the functional equivalent of a bank account, and a user may only use an individual wallet address for a single transaction.

7. Information pursuant to the CARF is to be reported on an annual basis. What is the earliest date by which information on the preceding year could be reported by Reporting Crypto-Asset Service Providers?

As mentioned above, we recommend consistency between reporting requirements for both the CRS and the CARF. We recommend aligning the information reporting deadline under the CRS and CARF.

D. Due Diligence Procedures

1. The due diligence procedures of the CARF are in large part based on the CRS. Accordingly, the CARF requires Reporting Crypto-Asset Service Providers to determine whether their Entity Crypto-Asset Users are Active Entities (corresponding largely to the definition of Active NFE in the CRS) and, on that basis, identify the Controlling Persons of Entities other than Active Entities. Would it be preferable for Reporting Crypto-Asset Service Providers to instead document the Controlling Persons of all Entity Crypto-Asset Users, other than Excluded Persons? Are there other elements of the CRS due diligence procedures that should be included in the CARF to ensure that Reporting Financial Institutions that are also Reporting Crypto-Asset Service Providers can apply efficient and consistent due diligence procedures?

Similar to the CRS, the CARF's due diligence procedures provide for self-certifications of a Crypto-Asset User's tax-residence and TIN with additional checks to confirm the reasonableness of the self-certification.[21] However, self-certifications under the CARF would expire after 36 months and the information would need to be reviewed and re-confirmed by the customer.[22] If a CASP is unable to obtain a valid self-certification, either after an expiration or change of circumstances, the CASP must refuse to effectuate the transaction.[23]

The CRS has successfully relied on self-certification for tax reporting and transparency, and we believe similar treatment should be provided under the CARF. Accordingly, we recommend that self-certification under the CARF remain valid indefinitely, subject to the change of

[21] Consultation Document, at pp. 12-14, ¶¶A.1., C.1-2.
[22] Consultation Document, at p. 12, ¶C.4.
[23] Consultation Document, at p. 12, ¶D.1.

circumstances rules. The CARF's 36-month expiration should not be applied to any account that has already been certified with indefinite validity under the CRS.

2. An Entity Crypto-Asset User qualifies as an Active Entity if less than 50% of the Entity's gross income is passive income and less than 50% of the assets held by the Entity produce, or are held for the production of, passive income. The Commentary on the term "Active Entity" provides that passive income includes "income derived from Relevant Crypto-Assets". Are there any specific instances in which such income (e.g. income from mining, staking, forks or airdrops) should qualify as active income?

Mining and staking activities may occur with such frequency as to give rise to a trade or business.[24] In such cases, the income derived should be considered active.

However, the receipt of airdropped assets and forks should not constitute "active income." Airdrops of new assets are generally a marketing tactic employed by the protocol to reward users. Forks are merely a change in the blockchain protocol and may not result in income to the taxpayer. Furthermore, the decision to fork the blockchain is generally controlled by a subset of miners on the protocol and not the taxpayer that is using the protocol.

3. The CARF removes the information collection and reporting obligations with respect to Crypto-Asset Users which are Excluded Persons. The OECD is still considering whether Reporting Crypto-Asset Service Providers should be included in the definition of Excluded Persons. Against this background, would Reporting Crypto-Asset Service Providers have the ability to obtain sufficient information on clients that are Reporting Crypto-Asset Service Providers to verify their status?

We are unable to obtain sufficient information at this time to verify the status of Reporting CASPs.

4. Section III.D enumerates effective implementation requirements in instances where a Reporting Crypto-Asset Service Provider cannot obtain a self-certification from a Crypto-Asset User or Controlling Person. Notably, these requirements specify that the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User until such self-certification is obtained and its reasonableness is confirmed. Are there potential alternative effective implementation measures to those listed in Section III.D? If so, what are the alternative or additional effective implementation measures and which persons or Entities would be best-placed to enforce such measures?

We believe that refusal to effectuate a Relevant Transaction is extremely harsh, is not necessary to achieve the tax transparency goals of the CARF, and is not aligned with CRS, which has no such regime. The Reporting CASP can be required to make and document a certain number of follow-up requests for the self-certification, and if it is still not provided, the Reporting CASP

[24] In the United States, the IRS has concluded that Crypto-Asset mining income can be considered trade or business income that is subject to self-employment taxes. *See* IRS Notice 2014-21, FAQ A-9 (April 14, 2014), https://www.irs.gov/pub/irs-drop/n-14-21.pdf .

should report the information it does have for the customer without being subject to further penalties.[25]

Further, as described above, we recommend self-certification requirements remain consistent across the CARF and CRS. Similar to the CRS, self-certifications under the CARF should remain valid indefinitely absent a change in circumstances. It is unclear why a financial institution can effectuate trades on behalf of a taxpayer that has an invalid self-certification, but a CASP cannot not under the CARF.

V. Conclusion

The Chamber is supportive of tax transparency efforts related to digital assets and blockchain technology. As the OECD considers the CARF, the existing CRS reporting regime should serve as a model and efforts should be made to ensure consistency across both reporting regimes. The CRS framework has proven to be a useful tool for increasing tax transparency. We see no reason to impose a higher burden on the treatment of Crypto-Assets and CASPs compared to traditional financial assets and financial institutions. Finally, we stress that the digital asset and blockchain industry should be permitted appropriate transition time to adapt to these requirements through a phased-in approach, much like what was provided for traditional financial institutions for the CRS and FATCA.

[25] For example, in the United States, a penalty for a failure related to information reporting may be waived if the failure is due to reasonable cause. With respect to the failure to obtain the payee's TIN, if the filer makes an initial solicitation at the time an account is opened and two additional annual solicitations, the filer will be treated as acting in a responsible manner for purposes of the reasonable cause exception. *See* Treas. Reg. § 301.6724-1(e).