



August 20, 2025

VIA E-MAIL

Erika Nijenhuis
U.S. Department of Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Re: Withholding with respect to Digital Asset Transactions

Ms. Nijenhuis:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to supplement the comments provided in our September 13, 2024, letter² (the “September 2024 Letter,” attached) regarding brokers’ information reporting and withholding responsibilities with respect to exchange traded funds (“ETFs”) that seek to track the performance of bitcoin or ether by holding spot bitcoin (“Spot Bitcoin ETFs”) or spot ether (“Spot Ether ETFs”, and together with Spot Bitcoin ETFs and any similar ETFs holding spot cryptocurrency, “Digital Asset ETFs”).

There have been several developments since we submitted the September 2024 Letter. First, the proliferation and advancement of Digital Asset ETFs makes several issues we raised in the September 2024 Letter even more important for the IRS to provide guidance on. These issues relate to “Incidental Assets,” i.e., (i) rights to acquire digital or other assets as a result of a Digital Asset ETFs’ ownership of digital assets, and/or (ii) actual digital or other assets received through the exercise of such right, and include:

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

² [SIFMA Comments to the Department of Treasury on Information Reporting and Withholding with respect to Digital Asset ETFs.](#)

- **Abandonment.** Many Digital Asset ETF prospectuses note that while a Digital Asset ETF may become entitled to receive Incidental Assets, the Digital Asset ETF permanently and irrevocably abandons such Incidental Assets. It is not clear whether such preemptive statements regarding abandonment are effective to prevent a Digital Asset ETF, and therefore its investors, from receiving income at the time that Incidental Assets otherwise would vest. SIFMA recommends that the IRS confirm that Digital Asset ETFs do not receive income from Incidental Assets abandoned in the manner described above.³
- **Character and Source.** Brokers cannot readily determine whether Incidental Assets give rise to a withholding obligation with respect to non-U.S. holders. SIFMA recommends that the IRS publish guidance on the character of income from airdrops, hard forks, and similar events, and the circumstances under which such income is U.S. source income that may be subject to withholding under Chapter 3 or 4 of the Internal Revenue Code (the “Code”). SIFMA further recommends that the source of income be based on the residence of the recipient because other facts that typically drive sourcing rules, such as economic nexus or the residence of the payer, are impractical to determine in the case of Incidental Assets.
- **Reliance on Grantor Trust Tax Information Statement.** Brokers typically do not have information about the income earned by ETFs, including events related to Incidental Assets of Digital Asset ETFs. Because the Digital Asset ETF would have abandoned the Incidental Assets, no distribution of Incidental Assets (or cash related to such Incidental Assets) will be made to holders, nor would such amounts be reflected on the balance sheet of the Digital Asset ETF. In addition, income related to any Incidental Assets will likely not be reported by the Digital Asset ETF on the grantor trust tax information statement that provides the trust interest holder’s allocable portion of the Digital Asset ETF’s annual income, gain, losses, and expenses. Presumably, a broker can rely on the absence of any inclusion of Incidental Assets on a grantor trust tax information statement to determine that holders did not recognize any income related to Incidental Assets (particularly where the broker has no reason to know that the statement is incorrect), but the IRS should clarify this with explicit guidance.
- **Timing Issues on Withholding.** Grantor trust tax information statements are issued in the year after the relevant tax year. In the time between any income event and the publication of the statement, the investor may have sold its position or closed its account entirely, meaning that there may be no income or assets to withhold from. In light of these facts, SIFMA recommends that the IRS provide that brokers shall have no

³ The report issued by the President’s Working Group on Digital Asset Markets, “Strengthening American Leadership in Digital Financial Technology” (the “Report”), released on July 30, 2025, indicates that stakeholders have requested relief for a “de minimis” amount of digital assets received, and recommends that Treasury and the IRS issue administrative guidance that addresses de minimis receipts of digital assets. Report at 134. Even if such relief were provided, it is unclear whether it would apply at the level of the Digital Asset ETF (the trust) or at the level of the investors in the Digital Asset ETF. In addition, such relief may not be administrable in the context of a Digital Asset ETF with numerous owners because it would be difficult for a broker to know who the owners are at the time of receipt and challenging to calculate whether a particular owner is entitled to de minimis relief. Determining whether any de minimis relief applies on an investor-by-investor basis would also be administratively burdensome, given the thousands of investors in each Digital Asset ETF. Therefore, SIFMA recommends that the IRS provide the guidance regarding abandonment described above, even if de minimis relief is provided.

obligation to withhold on such amounts to the extent that they do not have custody or control over money or property of the taxpayer when the withholding tax becomes due.

In addition, a number of ETF issuers have requested that the Securities and Exchange Commission (the “SEC”) permit “staking” of ether held by an Ether ETF.⁴ “Proof of stake” is the mechanism by which transactions on the Ethereum blockchain are validated.⁵ Those who wish to validate transactions are required to “lock up” their ether and are compensated with newly created ether. In addition, it is possible to earn a return by providing ether to others (e.g., centralized exchanges) who in turn stake the ether and share some of the rewards, or to obtain “liquid staking” tokens that represent the right to tokens that have been staked and their rewards.

Staking in its various forms raise similar character, source, and timing issues as Incidental Assets. Because there are various ways to earn staking rewards, guidance is needed to confirm whether the answers to any of these issues depend on the manner in which the rewards are earned. When staking rewards are earned through a Spot Ether ETF, the issue of reliance on information published by the grantor trust is also present.

We focus particularly on the source and character of staking rewards because, if and when they are U.S. source income, they would be subject to withholding under Chapters 3 and 4 and reporting on Form 1042-S when paid to a non-U.S. person.⁶ When the source of an item of income is not specified by statute or regulations, the courts have determined the source by comparison and analogy to classes of income for which the source of income is specified by the Code.⁷ The IRS has applied the same approach in ruling on the source of items of income not addressed in the Code or regulations.⁸ Analogizing to other types of income, however, is difficult given the uniqueness of blockchains and digital assets. As with Incidental Assets, it is normally not possible to identify an economic nexus or a payer of staking rewards, let alone the payer’s residence. On the other hand, to the extent a broker has a customer who is treated as receiving staking rewards through a Spot Ether ETF, the broker will have identified the customer and determined the customer’s residence. Whatever the technical merits of other approaches to the sourcing question, the only administrable rule for the source of such staking rewards is to use the residence of the customer.

In addition, some observers argue that staking rewards are created by stakers themselves and therefore the staker has no gross income upon receipt, any more than a printer has income

⁴ See, e.g., [Form 19b-4.pdf](#); [SR-CboeBZX-2025-038.pdf](#). SIFMA agrees with the recommendation in the Report that “Treasury and the IRS should publish guidance addressing whether a trust that otherwise qualifies as an investment trust treated as a grantor trust fails to qualify as such if the trust stakes digital assets owned by the trust.” Report at 127.

⁵ Proof of stake is the consensus mechanism for many other cryptocurrencies in addition to ether, including Solana, Cardano, and Polygon.

⁶ The Report also notes that stakeholders have requested guidance on the source and character of staking rewards. Report at 128.

⁷ See, e.g., *Bank of America v. United States*, 680 F.2d 142 (Ct. Cl. 1982).

⁸ See Rev. Rul. 2009-14; Rev. Rul. 2004-75.

when it prints a book. Rather, income is earned when the tokens are disposed of, and any taxable income would be the result of a disposal of personal property.⁹ If the IRS adopts this position or it is incorporated into the Code, any income from the disposition of the rewards should be sourced to the residence of the staker, the way sales of personal property are sourced, under the principles of IRC § 865(a)(2), which is consistent with our recommendation above.

No matter how Treasury and the IRS ultimately determine the foregoing concerns, we request that any such guidance be applied prospectively. Digital Asset ETFs, Incidental Assets, and staking raise novel issues without strong analogies in prior law. There is precedent for prospective application of tax rules related to new financial products, as rules were implemented prospectively for both cross-border interest rate swaps¹⁰ and qualified fails charges.¹¹ Further, Treasury and the IRS should issue a moratorium on any withholding on U.S. and non-U.S. recipients related to the receipt of Incidental Assets and staking income until definitive guidance addressing the matter is issued. Finally, if withholding is ultimately required, there should be an adequate transition period to allow payors and brokers time to implement the applicable withholding rules.

Conclusion

SIFMA appreciates your consideration of our comments regarding withholding on the receipt of Incidental Assets and staking income and welcomes the opportunity to discuss the issues in this submission with you and your colleagues.

Respectfully Submitted,



Jessica Barker

Vice President, Tax

cc:

Roseann Cutrone, Special Counsel, IRS
John Sweeney, Special Counsel, IRS
Alan Williams, Attorney, IRS Office of Chief Counsel

⁹ See, e.g., Sutherland, *Cryptocurrency Economics and the Taxation of Block Rewards*, Tax Notes Federal 749 (Nov. 4, 201901), the Report at 128.

¹⁰ See Notice 87-4, providing that a taxpayer could make an irrevocable election to not have swap income included in his or her gross income for all open taxable years before the effective date for the new rules of December 24, 1986.

¹¹ See Notice 2009-61, where the IRS stated that any guidance regarding the treatment of and withholding obligations with respect to qualified fails charge transactions under IRC §1441 and §1442 will be effective prospectively.