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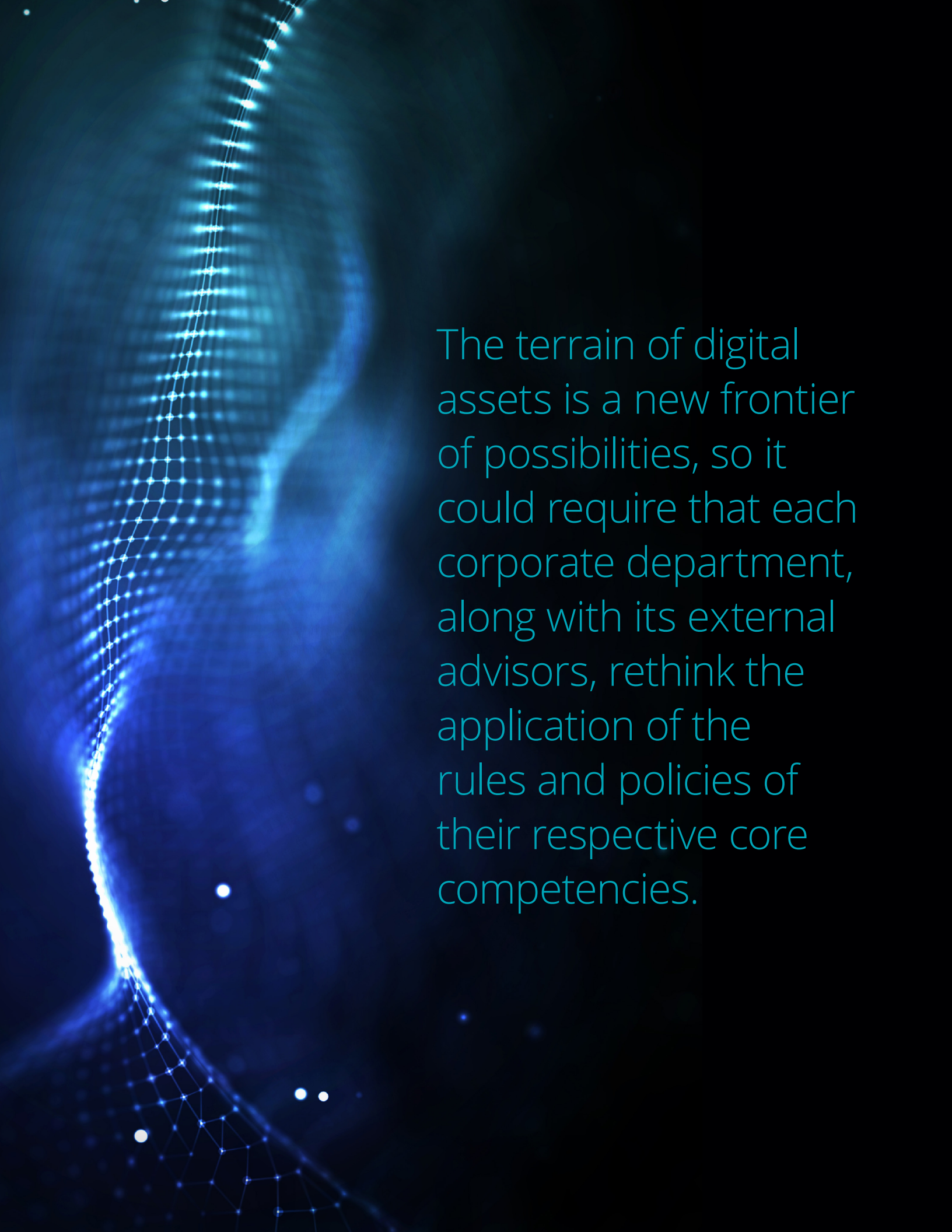
# Corporates investing in crypto

**Considerations regarding allocations to digital assets**



The terrain of digital assets is a new frontier of possibilities, so it could require that each corporate department, along with its external advisors, rethink the application of the rules and policies of their respective core competencies.

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# Introduction

More operating companies are actively allocating portions of their treasury to digital assets. We began to see meaningful examples of this dynamic in 2020, and it continues despite the fluctuations and turbulence in the markets. One early example was MicroStrategy Inc., which in 2020 announced that it had made more than $1B in bitcoin purchases and then continued to acquire more in subsequent years. They characterized it as an investment that would "provide the opportunity for better returns and preserve the value of our capital over time compared to holding cash."[1] Since then, and as of the date of this publication, they have amassed more than 226,000 bitcoin. Some companies have followed suit, and others may now be wondering how to invest in bitcoin and other digital assets. There are a variety of reasons for adding digital assets to a company's balance sheet, whether it's seeking asymmetric risk return observed over previous years or as a natural hedge against fluctuating fiat currencies; it's part of a corporate strategy to embrace modern, open technologies; or it's a complement to an operational strategy that includes accepting digital assets as payments.

This paper focuses largely on bitcoin investments, considering recent increased corporate investments in bitcoin and its common reference as a store of value. It should be noted that there are numerous types of digital assets, each having its own unique characteristics. Ether (ETH) is also viewed as a store of value, with the added use of enabling transactions on Ethereum-based decentralized applications. These contrast with central bank digital currencies (CBDCs) and stablecoins, which are digital representations of fiat currency. Their value is derived from the actual currency in circulation, and they are issued by a central bank. Equity and derivative tokens are digital assets whose value may represent actual corporate stock or a legal right to another asset or financial instrument. Some digital assets have additional attributes, such as voting rights on a protocol, or they may provide a level of access for participation in a decentralized application. These may provide some commercial or economic benefit to the holder. Prior to investing in any digital asset, it is important to understand the specific terms, conditions, and characteristics of the investment since those will affect accounting, tax, risk, controls, and legal considerations, among others.

What follows here, then, is some guidance on what undergirds any corporate decision to invest in digital assets like bitcoin. In addition, we set out the ongoing actions that teams across a company should undertake to monitor and go forward with a long-term investment. In other words, our goal is to answer the question "How would you do that?" rather than "Why do it?"

Before proceeding, we want to make one point absolutely clear: There is no playbook or foolproof approach for these kinds of bold moves. There is only painstaking effort, disciplined analysis, fresh thinking and rethinking, dedicated collaboration across competencies, and, above all, rigorous execution. What follows, then, is not a step-by-step prescription but instead a high-level guided tour of the wide terrain companies may cover when they are considering investing in bitcoin. Given the many variables and different characteristics of digital assets, the provisions presented in this POV are not necessarily pertinent or germane to all digital assets. Nonetheless, the broad methodology and considerations set out here may apply to multiple corporate investment scenarios in select digital assets.

# The high-level view from corporate treasury

Generally, the main purpose of the treasury function is risk management and the preservation of capital. When deciding and executing on digital assets for investment and operational purposes, digital assets governance risk can be key to all activities. More than creating a policy, governance typically includes understanding the types of investment the company is making and where this alternative investment vehicle—digital assets like bitcoin—fits within the broader investment strategy. Leaders should also be comfortable with the characteristics and nature of the vehicle (more on this below in the discussion on controls). Given that it's a financial investment, it's important that the treasurer, CRO, CEO, CTO, CFO, and board of directors all have a clear assessment and understanding of the asset's risk profile, the company's tolerance for risk, and how these two may align or diverge. Ultimately, governance is about monitoring and assuring that the conditions and requirements set by the organization are maintained.

Tolerance for risk, depending on the stake and type of digital asset, may have to be periodically adjusted. Risk tolerance takes several forms and requires decisions on issues such as the following:

- What percentage of the cash on hand, after accounting for operating costs, will be assigned to alternative investments in digital assets?
- What range of risk is the company comfortable with? Risk is a constantly moving target, and adjustments within an agreed-upon band of risk tolerance may need to be made frequently.
- With digital assets, treasury should consider not just the investment side but also how these assets may figure into daily operations such as payments, debt management, raising funds, IPOs, etc.

There are other key considerations a treasurer should evaluate when adding digital assets to the company's operations. Understanding of the underlying features tied to specific digital assets is important in helping effectively utilize and deploy the asset to its full potential while also implementing a robust control structure to help ensure proper usage. Control and storage are often imperative elements for an organization, whether they intend to manage the asset themselves (self-custody), leverage a third-party custodian, or take a hybrid approach. The storage decision can allow an organization to determine its exposure to counterparty risk, as each option varies to the control and ownership of the asset. The failures of certain banks and digital asset exchanges have emphasized the importance of understanding exposures held at external platforms and at institutions. The importance of risk management applies when managing digital assets that are spread across multiple wallets, exchanges, and custodians.

With emerging technologies, a holistic view is likely needed to help an organization review its positions and liquidity across its wallets and exchanges due to the asset's volatile nature when compared to traditional fiat. New technology and vendors have emerged focused on reporting, management, transactional activity, and utilization of digital assets within a single platform. Multiple vendors have built out integrations with leading treasury management systems to enable real-time visibility for liquidity and reporting that supports the treasury function. Treasuries that adopt digital assets should have a risk assessment framework to identify where exposures exist, how the assets are managed, and if the system has adequate controls in place. Points outlined below highlight key factors for corporates to consider for treasury:

- Overall purpose, function, and how digital assets will be utilized (payments, investments, staking, etc.)
- Establishment of internal and external controls that comply with digital asset specific policies to properly manage digital assets across business units.
- Ability to integrate digital assets into key treasury operations to fulfill the organization's objectives and strategy.

How can treasury be more strategic in using these assets to advance efficiencies in payroll, vendor payment, trade, customer interactions, and cross-border transactions with subsidiaries and others? (Below, there is more on this last point when we discuss accounting and tax implications as well as controls.) A first and final refrain for treasury should be that the governance of digital assets is a living and adaptive process. It can constantly follow and should adjust to market, regulatory, and risk realities.

Liquidity may not be the prime consideration, especially if the company is adopting a longer-term investment mindset. Nevertheless, there should be appropriate provision for extra cash on hand. And assuming investments are layered in progressively over time, liquidity is likely to be less of an issue. Yet, in the event of the need to liquidate assets, the company may need to know if the facility to do so is available without a premium penalty or the transaction can be executed without a depreciation of the assets' value.

"2024 has been a milestone year for the ongoing maturity in the regulatory landscape and for the further institutional adoption for digital assets. The regulatory and market catalysts this year have resulted in new companies adopting Bitcoin on corporate balance sheets and now even legislative support for the digital asset ecosystem is gaining more mainstream momentum. Now more than ever, we believe a corporate digital asset treasury strategy can strengthen public and private company balance sheets and increase shareholder value for the long term."

**Phong Le, President and CEO, MicroStrategy Inc.**

# Digital assets accounting and tax: Potential opportunities for alignment, challenges of divergence

### Accounting for digital assets under US Generally Accepted Accounting Principles (US GAAP)

Simply put, the accounting for digital assets will likely be determined by the specific attributes of the digital asset itself. What is it investing in? To date, under US GAAP, investments in certain digital assets, like bitcoin, were accounted for under the general guidance on indefinite-lived intangible assets.[3] A challenge with this approach is that the traditional intangible asset model requires digital assets to be recorded at cost, subject to subsequent impairment in accordance with ASC 350. When the value of the asset decreased, companies using this model were required to write down its value on their books. However, if the value of the asset subsequently increased, even within the same day, companies could not write it back up as discussed in ASC 350-30-35-20. This model can make it difficult for companies to accurately reflect the return on investment (ROI) for digital assets held as investments.

The previous accounting model described above made it difficult for companies' accounting functions to accurately reflect the economic value of their digital assets on their financial statements.

Recognizing these challenges, the Financial Accounting Standards Board (FASB), which sets GAAP in the United States, finalized amendments to the accounting standards for certain digital assets. The Accounting Standards Update (ASU) No. 2023-08, *Accounting for and Disclosure of Crypto Assets*, issued December 13, 2023, now requires investments in certain digital assets, such as bitcoin, to be measured at fair value. As discussed within the ASU, this change is designed to help bring more clarity and comparability to financial statements and more closely represent the economics of digital asset investments. While not effective until 2025 for calendar year-end companies, early adoption is permitted[4] and is a route that many companies are choosing.

### More disclosures to come

Historically, the required disclosures for intangible assets did not necessarily paint a clear picture of a company's digital asset holdings. As such, companies often disclosed additional information to better reflect the economics of the digital asset holdings. However, the FASB's new ASU provides a set of standardized disclosures to increase comparability of disclosures across companies to help alleviate this reporting challenge. Prior to adoption, companies should work to craft appropriate financial statement disclosures related to digital asset investments.

Like other assets measured at fair value, crypto assets within the scope of ASC 350-60 are subject to the disclosure requirements in ASC 820. Further, the ASU's amendments require entities to provide certain additional disclosures about crypto asset holdings, such as details on significant holdings, contractual sale restrictions cost basis information, and a reconciliation over the period. For a complete overview of disclosure requirements, please refer to Deloitte's December 15, 2023 *Heads Up, FASB Issues Final Standard on Crypto Assets*.

While the FASB's new ASU is not effective until 2025, many companies have seen a benefit in early adopting the new ASU as it reduces the need for patchwork disclosures by allowing certain digital assets to be recorded at fair value, thereby providing a framework of disclosures through ASC 350-60-50 and ASC 820.[5] Despite these improvements, the new model will likely bring its own set of challenges, such as identifying the principal market and dealing with markets that do not close.

These challenges will need to be addressed to help ensure the new ASU provides the intended clarity and comparability of information for financial statement users resulting

in better representation of the economics of such holdings. For additional insight on some of the questions raised by companies that are early adopting, please refer to Deloitte's *Frequently Asked Questions About Implementation of the FASB's New Crypto Assets Standard*.

### Digital assets and crypto tax treatment and challenges from an investment perspective

The rules governing tax treatment of digital assets and crypto do not depend on US GAAP accounting rules and frameworks. One key difference: Under current accounting rules applicable to most companies, digital assets and crypto are adjusted for fair value; but for tax purposes, such treatment is only available as a result of an election that dealers or traders of certain digital assets may make, whereby the tax function can mark up or down to fair value. For tax purposes, gain or loss is normally recognized only when a digital asset is used, sold or exchanged. In the United States, taxpayers may specifically identify units of digital assets used, sold, or disposed of in a transaction. If an adequate and timely identification of the asset used in the transaction is not made, the taxpayer is deemed to have disposed of the earliest acquired units of the asset.

So how does one specifically identify a fungible digital asset like bitcoin? While industry practices have varied over the years, in June 2024 the US Treasury in collaboration with the IRS published guidance addressing the application of specific identification to sales, dispositions, exchanges, and transfers of digital assets.

For digital assets held in self-custody (ex. using an un-hosted wallet), the company must document in its books and records the particular units to be sold, disposed of, or transferred by reference to an identifier such as purchase date and time, purchase price, or other indicia that sufficiently identifies the assets. The company must maintain adequate records by location (e.g. wallet or address) in order to adequately identify a particular digital asset or tax lot, even if comingled with other fungible assets held in the same location. This identification must occur prior to the transaction and the digital assets must be transferred from the correct location.

For digital assets held in custody of a broker, exchange, or custodian, the requirements to specifically identify units are similar to those mentioned above. The company needs an inventory of their digital assets in their books and records which tracks the units or tax lots by account, including relevant tax lot identifiers such as acquisition dates and tax basis. When they decide to use, sell, or exchange an asset, they need to communicate to the broker prior to the transaction, the details of the asset or tax lot intended to be used. The communication needs to adequately identify the units by reference to an appropriate identifier (such as the date acquired) that the broker deems sufficiently specific to that particular asset.

The actual transaction flow (as relevant to a particular broker, account or wallet) must follow the specifics used in the identification. The rules are clear that for those which don't appropriately and timely identify the specific unit or tax lot, the transactions are deemed to happen on a FIFO basis.

While the new rules provide clarity, they are not without practical challenges. In the preamble to the rules, US Treasury commented on the requirement to identify the asset prior to the transaction and how these rules differ from those applicable to traditional securities where settlement may take a day or two compared to the near real time settlement of digital assets. Companies with high volumes of transactions may find it burdensome to provide the level of documentation and communication to satisfy the requirements of specific ID. These companies should consider putting in place standing instructions (ex. using those most recently acquired). Standing instructions are allowed for those who self-custody their assets as well as for those who use a broker. In conjunction with the regulations, the IRS published Revenue Procedure 2024-28 which allows taxpayers to re-attribute their unused digital basis as of January 1, 2025. They must satisfy the documentation requirements described in the Rev. Proc. And record the re-attribution in their books and records on by January 1, 2025, prior to any digital asset transactions in 2025, or before they file their 2025 tax return. For more details on these rules, see our [Tax Alert].

> Regarding partnerships: The accounting and tax treatments for digital assets may change if a company invests in these alternative vehicles using a fund versus holding the assets outright.

From a tax standpoint, digital assets held for investment purposes are normally deemed capital assets. In corporate solutions, capital losses can be used only to offset capital gains. So, while a company may remeasure crypto assets at fair value with changes recognized in earnings for accounting purposes, tax does not follow that methodology (except in certain limited circumstances relating to an election to mark to market as a dealer or trader in digital assets). Rather, it's a matter of layering in a deferred tax asset, which may require a valuation allowance if there are no other sources of capital gains. So how does this play out in a set of financial statements? Members of a company's tax function should abide by the rules and framework of US GAAP first and then layer on the tax treatment in terms of deferred taxes.

### Tax treatment and challenges from a business transactions perspective

Let's move now from the investment angle to consider the use of digital assets in business transactions, such as fund transfers, paying vendors, and as an accepted form of payment from customers. When used for such transactions, digital assets should be segregated into separate wallets to maintain a clear distinction between digital assets used in the operation of the business (ordinary assets) and digital assets held for investment (capital assets). Naturally, if digital assets are being used in place of fiat, such actions will generate a gain/loss recognition event for tax purposes under the umbrella of a barter transaction. That's the case every time digital assets are used in a business transaction and the rules for basis tracking for ordinary assets to differ from those mentioned above for capital assets. This has a related impact on accounting as well, and the process can become complex on both fronts.

### Cross-border transactions

So far, we've applied a US-centric view to digital assets from both an accounting and tax perspective. Outside the United States, the treatment of digital assets varies substantially. Unlike the change in accounting for crypto assets under US GAAP described above, accounting under International Financial Reporting Standards (IFRS) does not have specific guidance for crypto assets. IFRS guidance views digital assets like bitcoin as general intangible assets similar to prior US GAAP accounting or in some cases as inventory carried at fair value less costs to sell. When a company uses digital assets like bitcoin to transfer funds across borders; say to a foreign subsidiary in Europe—it encounters complexities in other jurisdictions. The transfer process may involve a number of steps: converting fiat to a crypto, transferring the crypto, and then reconverting the crypto as a fiat.

One of the benefits, of course, is that such a process avoids bank transfer fees. Yet the act of transferring funds may well have triggered an unrealized gain or loss. And since the subsidiary may not be subject to the same tax and accounting rules as the US parent company, there may be implications in the following areas:

- Gain recognition rules
- Cost basis tracking methods
- Indirect taxes, such as VAT
- Withholding taxes that may apply upon transfer

The bottom line is this: The tax and accounting rules surrounding digital assets are still evolving. This evolution is occurring simultaneously around the world but with inconsistent conclusions being reached across jurisdictions.

# Controls, governance risk, and compliance

Risk and controls are at the very foundation of any investment project in digital assets. Let's quickly review the main areas that should be on the radar.

The recent collapse of a high-profile crypto exchange highlights the importance of conducting rigorous due diligence in terms of counterparty risk, how a given digital asset or coin operates, and related market vulnerabilities. A robust third-party risk management process would likely have identified the exchange's lack of a service organization controls (SOC) report, apparent absence of insurance, receipt of cease-and-desist letters from the FDIC, and the fact that the entity parent was domiciled in a lower-regulation jurisdiction. Such indicators as these can inform the relative level of risk in engaging with a given entity. And in this instance, they would likely have resulted in corporations choosing alternative exchanges.

### Risks unique to each digital asset

The risks underlying digital assets, including crypto, vary considerably. Consequently, companies should conduct rigorous due diligence about how the given asset or coin operates and related market vulnerabilities, as well as terms and conditions. From a technical perspective, companies should understand the blockchain supporting each asset and how the associated governance system works, as this may have a direct bearing on the resilience of the coin system. This can also help to identify the types of events for which companies should be monitoring. For example, the computer code that enables the bitcoin network to process transactions is fundamentally different from the Ethereum code base. Further, as many blockchains enable extensibility in the form of smart contracts (e.g., ERC-20 tokens), mechanisms that allow for the taking of unilateral actions can have a negative impact on the holder of the assets. Other instances where assets can be lost include proof-of-stake blockchains, where assets can be "slashed" for violating network rules. That will result in a reduction of the amount of assets held in a given address. A full appreciation of the technical and business risks associated with each digital asset, and their dimensions, may warrant the assistance of third-party technical help and evaluation.

Custody raises a number of important questions. Will the company custody the asset itself, or will it rely on third-party vendors? Self-custody may provide easy access to the assets, but it also presents additional risk in terms of accidental loss, transaction authorization, and transaction monitoring and recording. Given the inherent complexity and risk associated with self-custody, more and more companies are resorting to third-party custodians. Then it's a matter of evaluating the strengths and weaknesses of different custody processes and procedures. If the company chooses to rely on an exchange or custodian to store its digital assets, careful consideration of a large number of potential risk issues and questions is in order. Some of these include:

- How does the third-party exchange or custodian secure private key material?
- Can the company trust the accuracy of account statements furnished by the third-party vendor?
- What plans are in place in the event of a liquidation of the custodial services?
- How does the exchange handle market anomalies, such as flash crashes?
- What is the vendor's hard-fork policy in supporting new digital assets?
- What occurs if private keys and passwords are lost or stolen?

A great way to start addressing these potential issues would be to obtain and review the SOC 1 and/or SOC 2 reports of any potential exchange or custodian.

### Authorization risks

Authorizing and executing transactions and transfers (such as the cross-border transfers to subsidiaries and/or loans made to related parties) may well create a host of risks. That's why it is vital for companies to segregate duties in such a way that there is a clear chain of command and documentation regarding who has custody of the assets, the ability to authorize their usage, and

responsibility for the recordkeeping of those assets. In the recent market events surrounding the collapse of certain digital asset platforms, it has come to light that there were issues in terms of segregation of duties around authorization of transactions, recordkeeping, and safeguarding of assets. Mature organizations likely have the necessary controls in place to prevent unauthorized transactions from being broadcast to the public blockchain. Further, it may be common for automated recordkeeping and monitoring to be performed to ensure that the business is not assuming risks beyond its designated risk appetite. There are also third-party tailored custodial solutions that employ, among other devices, automatic alerts that transactions were, in fact, authorized. Given that there is no FDIC insurance for digital asset holdings, it's important that a company ensures its holdings are segregated from other participants rather than being part of a commingled account in an omnibus fashion and that the custodian carries adequate insurance. That can become very important if an exchange or custodian suddenly goes offline for a time or ultimately fails.

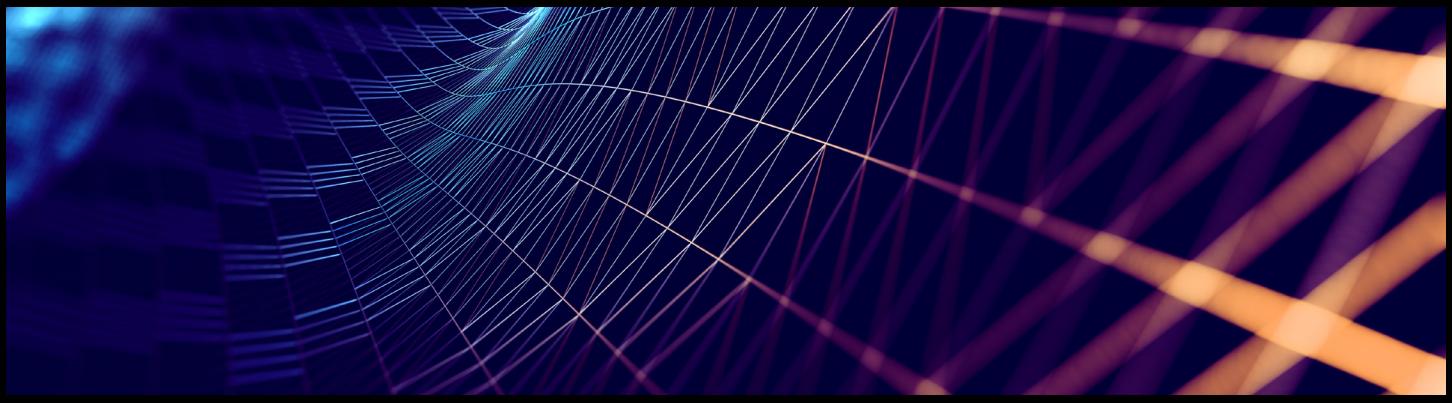
### Regulatory compliance

It's important that the company be able to ascertain that the exchange or custodian in question is abiding by all appropriate laws and regulations. Items on the regulatory radar for exchanges and custodians include, among others, compliance with all anti-money-laundering and know-your-customer regulations, measures related to counterterrorism, and rules set by the Office of Foreign Assets Control. As with crypto accounting and tax, the rules and regulations vary by jurisdiction. Hence, to help ensure compliance, it would be wise to seek advice from informed legal counsel.

"The growth in mainstream adoption of Bitcoin in the last year has been significant. The progress made in the accounting and regulatory landscape has made it easier and more transparent for corporations to adopt digital asset as a strategic treasury reserve asset. With fair value accounting for certain digital assets, including Bitcoin, now approved by the Financial Accounting Standards Board, we have seen more companies adopt and even more corporates interested in adopting Bitcoin on their balance sheets. We remain optimistic with what we expect will be continued momentum in this space."

**Andrew Kang, CFO at MicroStrategy Inc.**

# Conclusion: Monitoring regulatory and standard-setting changes while realigning for success



As market events and ongoing discussions about regulation and standard setting animate the digital asset ecosystem, it's imperative that corporations investing in these digital assets devote the resources, time, and attention to monitoring the evolving situation. At the same time, they should continue to engage in the necessary transformation of their organization so that, when new regulations and standards are announced, they can pivot to understand their implications and implement their rules.

Any sizable investment in digital assets presents more than just technical or regulatory issues related to treasury, accounting, reporting, tax, and controls. It also involves a significant cultural realignment, both internal and external, among the many different groups and departments, including but not limited to the board of directors, the audit committee, risk, corporate reporting, finance, tax, internal audit, operations, controls, technology, and investor relations. Since many of these departments interact with external parties, such as the external auditor, tax, and legal counsel, etc., it is vital that there be a corresponding realignment in thinking when dealing with these external groups.

What does that realignment entail? Typically, the various functions and departments of a company establish procedures and assumptions for collaborating across and outside the organization based on normal-course, well-understood transactions. The terrain of digital assets is still a new frontier of possibilities, so it requires that each corporate department and its external party rethink the application of the rules and policies of its core competency and align with current and anticipated rules and standards when they are announced. Few of the norms associated with legacy investments in securities, fiat currency, or treasuries may apply. Once each group gains a level of comfort with the application of the evolving rules and standards to digital assets, they then should actively listen to one another, gain an understanding of the sensitivities, evaluate any operational or technical dependencies, and, finally, rethink how they collaborate and tackle challenges together.

Many more operating companies are beginning to evaluate the potential benefits of investing in digital assets like bitcoin. And as their cumulative experience grows and sparks further interest, the more likely strategic investments in digital assets are to become more routine realities. That said, companies should have the right risk measures in place, as well as the right risk tolerance levels, for it to be worthwhile to pursue this type of investment. The realities facing operating companies interested in investing in such assets are complex and ever in flux. But they can be navigable with the right level of commitment from all departments and external parties. And with appropriate attention to issues of rules and standards as well as process, procedures, and risk all along the decision spectrum, digital assets can offer innovative, bold, and dynamic alternatives to traditional investments.

# Authors

**Tim Davis**
Global & US Risk & Financial Advisory
Blockchain & Digital Assets Leader
Deloitte & Touche LLP
timdavis@deloitte.com

**Rob Massey**
Global & US Tax Blockchain and
Digital Assets Leader
Deloitte Tax LLP
rmassey@deloitte.com

**Amy Park**
US Audit & Assurance
Blockchain & Digital Assets Partner
Deloitte & Touche LLP
amyjpark@deloitte.com

**PJ Theisen**
US Audit & Assurance
Blockchain & Digital Assets Partner
Deloitte & Touche LLP
ptheisen@deloitte.com

**Kesavan Thuppil**
Risk & Financial Advisory Principal
Deloitte & Touche LLP
kthuppil@deloitte.com

**Keaton Ackerman**
Audit & Assurance Manager
Deloitte & Touche LLP
kackerman@deloitte.com

**Seth Connors**
Risk & Financial Advisory
Blockchain & Digital Assets
Senior Manager
Deloitte & Touche LLP
sconnors@deloitte.com

**Conor O'Brien**
Washington National Tax
Blockchain & Digital Assets
Senior Manager
Deloitte Tax LLP
conorkobrien@deloitte.com

# Endnotes

1. Microstrategy Inc., "MicroStrategy announces over $1B in total bitcoin purchases in 2020," press release, December 21, 2020.
2. Microstrategy Inc., "MicroStrategy Acquires Additional 11,931 Bitcoins and Now Holds 226,331 BTC," press release, June 20, 2024.
3. That assumes that the company is not required to apply specialized industry guidance, such as the guidance in ASC 946 Financial Services – Investment Companies.
4. ASC 350-60-65-1 states that the amendments "shall be effective for all entities for fiscal years beginning after December 15, 2024, including interim periods within those fiscal years. Early adoption is permitted for both interim and annual financial statements that have not yet been issued (or made available for issuance)."
5. The Background Information and Basis for Conclusions of ASU 2023-08 indicates that entities should use the existing guidance in ASC 820 in (1) determining the principal (or most advantageous) market, the levels of inputs in the fair value hierarchy, and the fair value of the transactions affected by related parties; (2) measuring fair value when the volume of transactions has decreased significantly; (3) identifying transactions that are not orderly; and (4) using quoted prices provided by third parties.
6. House Financial Services Committee, "Testimony of Mr. John J. Ray III, CEO, FTX Debtors," December 13, 2022.

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