Take-Away: Charities might consider revisiting their gift-acceptance-policies to include cryptocurrency.

Background: Charities are always looking for gifts to carry out their mission. Charities are accustomed to receiving gifts of appreciated property, like marketable securities, since the donor receives an income tax deduction for the fair market value of the gift, and the charity then sells the appreciated gifted property yet avoids paying any capital gains tax because the charity is tax-exempt. But not all charities will accept a gift of any appreciated property, like real estate or other complex assets, due to the risks associated with either liquidating the complex asset, e.g., private equity, or an unwillingness to take-on environmentally contaminated real property exposure. As such, it is not surprising to find many charities' gift acceptance policies now reject either real estate or more sophisticated types of assets that require a high level of administration. Should a charity's gift acceptance policy contain a blanket rejection of cryptocurrency as a gift which may be complicated to administer?

Fidelity Charitable Experience: Recently Fidelity Charitable brought to light its experience with the gift of cryptocurrency to its donor-advised fund platform. According to Fidelity Charitable, 95% of cryptocurrency owners have made charitable gifts. Apparently, the size of their cryptocurrency investments dramatically increased by 90% with global family office clients who now regularly inquire about or direct the inclusion of cryptocurrency in their investment portfolios.

Cryptocurrency contributions to Fidelity Charitable totaled more than $300 million in the first four months of 2024, compared to less than $50 million for all of 2023. The Fidelity Charitable study also concluded that 2 in 5 cryptocurrency owners did not know that the sale of their digital assets was a taxable event, and only 50% of cryptocurrency investors were aware that their digital assets could be gifted to charity. All these Fidelity Charitable findings are significant with the knowledge that cryptocurrency gained by about 130% in value on average in 2023 (compared to about 20% for U.S. stocks.) Which leads to the conclusion that cryptocurrency might be a good asset for a charity to consider as part of its gift-acceptance policy.

Why Gift Cryptocurrency? Cryptocurrency investors may have substantial unrealized cryptocurrency gains in their investment portfolio, perhaps even leading to an overconcentration of cryptocurrency, which rebalance could be addressed with a tax-advantaged gift of the digital asset to charity. Some of the benefits a cryptocurrency owner might derive from a charitable gift of cryptocurrency to charities include the following:

> **Donor's Charitable Income Tax Deduction:** The income tax deduction associated with the gift of cryptocurrency to a charity is generally equal to the fair market value of the donated cryptocurrency. The bad news is that the gift of assets other than cash or other marketable securities are subject to the IRS's qualified appraisal requirement, and there are not a lot of appraisers who are experts in the fair market valuation of cryptocurrency.
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> **Charity's Tax-Free Sale:** When the charity receives the gifted cryptocurrency, it will avoid paying capital gains taxes on the appreciation. The charity, if a 501(c)(3) charity, will receive the full value of the donor's gift of the cryptocurrency when it is sold.
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> **Split-Gifts:** Cryptocurrency can also be used to fund split-interest gifts like a charitable remainder trust (CRT) or a pooled income fund, which means that if cryptocurrency is used as the split-interest gift, 100% of the sales proceeds (capital) will be reinvested and able to produce income for the donor-life beneficiary of the CRT or the pooled income fund.
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> **Recipient:** While a large charity may be willing to directly accept the gift of cryptocurrency, it might make more sense to make the crypto gift to a

donor advised fund (DAF.). If the gift is made to a DAF, the donor will receive an immediate charitable income tax deduction, while retaining some control over which charities will benefit from his/her gift, with perhaps with directed gifts from the DAF over an extended period to different charities. In short, the use of a DAF may be far more administratively efficient than the gift of a smaller amount of cryptocurrency directly to a charity, e.g., having to collect tax receives from each recipient organization.

Structuring the Cryptocurrency Gift? Due to the opaque/privacy/confidential nature of cryptocurrency it might be important to use a LLC structure to implement the gift to charity if a DAF is not used. For example, the owner of the cryptocurrency could create an LLC, and then contribute his/her crypto to that LLC. The owner then gifts the LLC membership units to his/her favorite charity. If the donor sold his/her cryptocurrency outright for cash, he/she would have a recognition event, incurring a capital gain tax. With the use of an LLC, the charitable donee will neither have to obtain its own cryptocurrency wallet nor incur other trading expenses and compliance responsibilities. The donor-owner then acts as the LLC's manager and makes the crypto sale and then terminates the LLC. This LLC structure makes it much easier for the charity to receive the donated funds in the form of cash, and it also relieves the charity of the administrative burdens associated with managing and liquidating the cryptocurrency. Sadly, using an LLC for the sole purpose of facilitating the gift of cryptocurrency to a small charity will nonetheless incur the reporting obligations of the Corporate Transparency Act (CTA.)

Conclusion: With interest in cryptocurrency on the rise, and the potentially dramatic appreciation of that investment class, charities may want to reconsider their gift-acceptance policies with an eye towards attracting potentially large gifts.