July 1, 2019

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution, Avenue, N.W.
Washington, D.C. 20224

RE: Guidance Regarding Investing in Qualified Opportunity Funds (REG-120186-18)

Dear Secretary Mnuchin and Commissioner Rettig:

On behalf of Coasis Coalition Companies PB LLC ("***Coasis***") the undersigned writes to make certain suggestions as to regulatory elements that appear within the purview of the U.S. Department of Treasury ("***Treasury***") and the Internal Revenue Service (the "***Service***") to clarify and improve upon the second set of Proposed Treasury Regulations for investments in qualified opportunity funds ("***QOFs***") under Section1 1400Z-2 of the Internal Revenue Code (the "***OZ Law***").

Background

Coasis is a public benefit company that provides support, services and products to the Opportunity Zone ecosystem, including its (a) investment and other economic participants, (b) agencies and organizations that are historically dedicated to assisting under-optimized communities, (c) state and local economic development agencies, and (d) residents of those communities. Among other services to the industry it provides professional education and advancement, as well as synergistic professional introductions through its series of conferences which feature the top Opportunity Zone fund managers, dealmakers and professionals in the space and is very focused on advancing transactions and other commercial outcomes. Its first nationwide conference was the Coasis Coalition Opportunity Zone SuperConference and its next nationwide conference is scheduled for February 2020.

The author of this letter is Gerald J. (Gerry) Reihsen, III, the founder and chief executive officer of Coasis. With Coasis Mr. Reihsen continues and leverages his rich career in corporate-securities law and founding and building innovative business enterprises, both for-profit and non-profit (including, among others, a real estate investment fund platform grown from startup to nearly $12 billion in assets under management globally and a high school that serves families in low-income communities with both a rigorous college prep curriculum and a corporate work-study program which maintains a college acceptance rate for its seniors at well above 90%). Mr. Reihsen's professional expertise and experience are uniquely suited to build Coasis as a "provider of picks and shovels" to the Opportunity Zone ecosystem and its various participants.

Section 1400Z-2 is designed to encourage economic growth and investment in designated distressed communities (known as "***qualified opportunity zones***," or "***QOZs***") by providing certain U.S. federal income tax benefits to taxpayers who invest in businesses located within a QOZ through a QOF. In discussion of its recently proposed regulations (the "***Proposed Regs***"), Treasury stated the OZ Law was adopted for "the purpose of focusing investment in designated qualified opportunity zones" and to thereby "facilitate increased business activity and economic investment in qualified opportunity zones."

Comments and Suggestions

We believe Treasury may further preserve and advance these purposes and the Congressional intent behind the OZ Law by addressing the following issues in additional regulatory guidance or via Revenue Ruling, as appropriate.

1. Clarification that transactions among QOFs maintain the qualified status of the arrangements involved to the maximum extent within the OZ Law framework

"Business activity and economic investment" is best facilitated by an environment where robust transactional activity can be undertaken. The drafters of the OZ Law understood this as evidenced by the flexibility available under the statute for broad qualifying investment types ("***qualified investments***" or "***QOZ Assets***") and economic dynamics, with the caveat that, in order to advance sustained positive impact upon qualified Opportunity Zones, capital dedicated to investment under the OZ Law ("***OZ Capital***") must be maintained in place for periods of five to more than ten years to achieve the law's tax incentives.

With these concepts in mind it is our suggestion that Treasury make it clear that (a) mergers, consolidations, share exchanges, asset acquisitions and conversions where the acquiring or surviving enterprise, as the case may be, is a QOF, such acquiring or surviving enterprise continues to be a QOF and (b) when QOFs transact in qualified assets among themselves those assets retain their status as qualified investments. As to the type of transactions referred to in clause (a) above, to a certain extent our suggestion is implied in the Proposed Regs and related discussion thereof as to the effect of certain types of transactions upon the owners of QOFs. In the interest of clarity we suggest that appropriate regulations be added that make it clear as to the status of the surviving or acquiring entity.

As to the concept suggested in clause (b), the ability of QOFs to transact qualifying assets among themselves creates transactional value in QOZs which generally enhances the economic activity in those communities but also allows Opportunity Zone capital to stay within those communities while enhancing the investment value of the subject QOZ Assets by providing flexibility in respect of them. It is not possible to foresee all the benefits that may come from this, but some obvious benefits of QOFs being able to transfer QOZ Assets to other QOFs with those assets retaining their OZ Law character in the hands of the transferee is that the transferee QOF will also be incentivized to further invest and support these assets within the OZ Law ecosystem. This may be especially beneficial in the case of a real estate development or a Qualified Opportunity Zone Business ("***QOZB***") in the event the transferor QOF finds that it cannot financially support such QOZ Asset through its full realization for example. A transfer to a more liquid QOF can permit the optimization of that QOZ Asset while achieving the goals of the OZ Law, both as to the continued injection of OZ Capital into the QOZ and the long-term development and maintenance of QOZ Assets in those QOZs.

In respect of the transfer of a QOZ Asset, we also suggest that the QOF be allowed to create a newly initiated working capital safe harbor of up to 31 months to the extent the transferee QOF intends to inject additional QO Capital to complete or otherwise realize the objectives of that QOZ Asset.

There may be many other benefits of the ability of QOFs to transfer QOZ Assets and take them as qualified opportunity zone assets in the hands of the transferee that we have not anticipated, but one other benefit that we can clearly see is the ability of QOFs to manage their portfolios of investments and share and spread risks and benefits with and among other QOFs. It is important to point out that in

respect of the transfer of QOZ Assets among QOFs we are not suggesting affecting the taxation of any such transaction as to that transaction. In other words, if the transaction itself would create gain or loss to the transferor such gain or loss and the transferee's basis in the QOZ Asset as a result of such transaction should not be affected.

2. Leased Property

The Proposed Regs have substantial and very helpful discussion and clarification regarding leases on tangible property under the OZ Law. We suggest that Treasury include rules that address instruments of use that are substantially similar to leases. As background, the entire industry of non-owned use of business assets, which has traditionally been structured using leases, has been rapidly evolving as cultural acceptance of more flexible and creative maximization of the use of these assets are driven by technological innovations around internet connectivity, geolocation and asset sharing. In this regard we are seeing shared use of assets at shared office or coworking facilities being governed under licensing arrangements and other evolving arrangements rather than leases. Whether under technical leases or similar arrangements such as licenses, QOZB using tangible assets in QOZs are bringing value to these communities and will be entering into agreements with their investor QOFs to remain in these communities for the long term.

It is function that should drive these arrangements not merely form. Therefore, our suggestion is that Treasury adopt an explicit rule that includes within the definition of "lease", "lease-like arrangements", including licenses within the definition of lease, and provide for the applicable valuation arrangements to apply thereto.

3. Inventory

Treasury's release of the Proposed Regs contains extensive discussion of "inventory in transit" but further ask for comment as to whether "inventory (including raw materials) should be excluded from both the numerator and denominator of the 70 percent test for QOZBs."

This 70 percent test is around the question, established in relation to the tangible assets used by the QOZB, of whether or not the QOZB is truly located and operating in the QOZ. When taking into account this underlying analysis we suggest that all inventory held for sale by a QOZB not be included in the numerator or denominator of the 70-percent test for QOZBs. We suggest this for three reasons. First, inventory held for sale is really a transitory asset that the QOZB seeks to liquidate as soon as it can, and that liquidation is already more aptly monitored by another test of the qualification of the QOZB, namely the requirement that at least 50 percent of the gross income of a trade or business of a QOZB be derived from the active conduct of a trade or business in the QOZ. It would be redundant to also include inventory in the consideration of the 70 percent test. Further, the location of the QOZB's inventory would not be especially relevant to the QOZB's asset connection to the QOZ. The substantial and well-thought out tests for determining the location of gross income should suffice as to inventory as a result of its essential involvement in the generation of that income.

Second, a major goal of the OZ Law is to add long-term valuable assets and businesses to the QOZs. The 70 percent test is part of the determination as to whether the QOZB is adding such long-term valuable assets to the QOZ. Inventory location, again being transitory, does not advance this goal and is for the most part irrelevant to these considerations.

Third, many aspects of the inclusion of inventory into the 70 percent test will be a significant burden to administer for many QOZBs. This will be true for QOZBs that deal in large amounts of small value items of inventory. This level of compliance administration may be a special challenge go the many potential QOZBs that deal in selling inventory from storefronts who may be operated by persons who operate their businesses with more practicality than formality. In addition, there will no doubt be many QOZBs that conduct local level synthesis of their inventory (e.g., makers of small local handmade foodstuffs such as ice cream or craft beer) that is difficult to incorporate as inventory into the 70 percent test. It would seem enough that these types of businesses keep track of, value and test their operating assets for the purpose of the 70 percent test rather than requiring them to include and value their many small pieces of transitory and/or blended inventory.

4. Good faith compliance efforts

We note that Treasury has adopted a broad anti-abuse rule which serves as a strong incentive for those participating in the Opportunity Zone incentive to design their arrangements to serve the goals of the OZ Law. The flip side of this sort of approach is that there should be adopted rules that recognize and accommodate OZ Law compliance efforts that are undertaken in good faith, including those taken in reasonable reliance upon experts or expertized systems or errors of compliance that occur despite good faith efforts of compliance. There exists similar such allowance in other complex tax compliance systems. In this regard we have in mind the ability of real estate investment trusts (“***REITs***”) to approach the Service to obtain absolution for good faith errors of REIT compliance.

As to reliance on experts and expertized systems we note that, even in the seeming simplicity of the very briefly written OZ Law, there are innumerable specific examples to which it is currently and, in the future will be, difficult to apply the law. Further, though Treasury has undertaken very impressive efforts to provide regulatory guidance, this guidance both (a) cannot anticipate every circumstance and (b) itself introduces complex compliance structures. In such cases, responsible investors, QOF managers and QOZBs will look to tax consultants and other experts for guidance with regard to such compliance. In addition, it is anticipated that software developers, whether with fund administrators or otherwise, will work with such experts to create automated systems to create efficient environments within which to achieve, monitor and report compliance. None of these can be perfect, especially in the earlier years of operation under the OZ Law, but reasonable reliance on them should be acknowledged and accommodated even if it might appear in hindsight that such reliance might nonetheless result in errors of compliance. It is important that any rules in this regard explicitly allow both for reliance on the advice of experts *and* expertized systems. Experts in the Opportunity Zone space tend to be drawn from among the priciest of the consultants in the investment and business world. The friction that the cost of these experts create reduces both the entry of participants into the Opportunity Zone ecosystem and the capital available to invest in QOZs. It is important to be able to reduce these compliance arrangements to much lower cost expertized automated systems to help the Opportunity Zone participants to best be able to advance goals of the OZ Law.

Similarly, as applies to REITs, general allowance for errors made despite good faith efforts of compliance should be acknowledged and accommodated. Failure to adopt rules in respect of these circumstances will have a depressive effect on the willingness of OZ businesses to engage in the necessary record keeping to become and maintain their status as QOZBs and on investors’ willingness to dedicate capital to the Opportunity Zone ecosystem. This will be exacerbated to the extent that over time these errors are penalized, harming the good faith investors who have dedicated their capital to the Opportunity Zone ecosystem.

5. QOF compliance with the 90% QOZ asset requirement and reporting thereof

We note that Section 1400Z-2(d)(1) defines a QOF as a vehicle that qualifies as a QOF when measured as of the last day of the first six-month period of the taxable year of the vehicle and the last day of the taxable year of the vehicle (the "***Testing Periods***"). Also, Section 1400Z-2(f)(1) provides that a QOF that fails the 90% test in any month must pay a prescribed penalty, which status and any related penalty is reported under the Service's Form 8996. Initially, we suggest that the penalty arrangements are onerous and unforgiving, especially as to early stage QOFs, and it would be more appropriate if the test were the average of the monthly 90% test over each full Testing Period. However, the express language of the OZ Law would seem to require that the current onerous approach and it does not seem to be within Treasury's rule-making purview to alter this in which case an amendment of the Section 1400Z-2(f)(1) through the legislative process would be required to change this compliance approach. Therefore, we ask that Treasury pass on this comment to legislators as a suggested improvement to the OZ Law to the extent Treasury provides feedback to legislators as to improvements to the OZ Law.

Still, we are concerned as to the ambiguity of the interaction of Section 1400Z-2(d)(1) and Section 1400Z-2(f)(1) and it certainly does seem to be within Treasury's purview to eliminate this ambiguity. Under Section 1400Z-2(d)(1) a QOF would seem to immediately cease to qualify as a QOF if at and as of the end of any Testing Period the QOF fails the 90% test. However, Section 1400Z-2(f)(1) provides a contemporaneous penalty for any such failure. The implication is that the failure to meet the 90% test should not be fatal as to the QOF qualification rather the consequence to the QOF is that it becomes liable for the payment of the applicable penalty. Because the legal qualification of a QOF is essential to the implementation of the OZ Law and because many investors are likely to require a legal opinion as to the qualification of the QOF before they would invest, we suggest that Treasury adopt a rule that explicitly indicates that when QOF that fails to meet the 90% test under Section 1400Z-2(d)(1) it does not cease to be a QOF but only becomes liable for the applicable penalty under Section 1400Z(f)(1) and Form 8996.

6. Optionality as to taxation of Opportunity Zone capital

We are already seeing significant trepidation as to dedication of investable capital gains into the Opportunity Zone ecosystem regarding the uncertainty of the ultimate taxation of those capital gains upon the expiration of the deferral period for taxation of those gains. It would promote the purpose of the OZ Law by reducing concerns of potential providers of OZ Capital and thereby enhancing the capital dedicated to the Opportunity Zone ecosystem, to allow these investors to elect to accelerate the taxation of that OZ Capital to a tax year of their choosing prior to the expiration of the maximum deferral period, regardless that no event had occurred that would require taxation of that capital.

Section 1400Z-2(b) of the OZ Law provides that deferred gains are taxable at the earlier of the date the investment is sold or exchanged or December 31, 2026. Such gains are taxed at the federal income tax rate applicable at the date the gain is recognized, not the date when the gain is deferred. The tax rate could therefore be higher or lower than the rate at the time the taxpayer invests gains into a qualifying fund. The choice of the applicable rate is analogous to that applicable to installment sales under Code Section 453 and the related rules thereto. Under this Section, and critically important, entering into the installment sale treatment of a particular transaction is elective to the selling taxpayer.

As currently appears on its face, deferral of tax on OZ Capital extends far longer than the typical installment sale obligation is outstanding. This arrangement as currently implemented has the effect of forcing an investor of OZ Capital to hold its investment for this long period, with the result that the investor will owe tax at a rate to be determined in the future (and without having the contemporaneous cash proceeds from the original capital gains transaction with which to pay the tax). By contrast, it would be unusual for an installment sale obligation to have such a long term to maturity. Moreover, in an installment sale contract the parties can agree to provide for the seller to have the option to accelerate.

We suggest that serious consideration be given to a rule that would provide that an investor of QO Capital would have the right to declare as income at any date prior to the end of the deferral period those previously deferred gains that were invested, with the applicable federal income tax rate being the governing rate at the time of such election. Such a rule will provide greater financial certainty to these investors and allow them to match up a tax event to periods where they are confident they have the liquidity to pay their tax obligation.

Should such a rule be adopted, there may also be consideration of a rule that allows for the filing of an amendment to obtain a refund in the event the investor holds its QOF interest for the necessary period of time to realize an increase in such investor's basis in the original QO Capital invested pursuant to the tax incentive structure of the OZ Law if such investor had elected to pay the tax due on its original QO Capital at an earlier date. This would effectively allow the investor to retroactively reduce the taxable amount previously declared so that such an investor can still benefit from the imputed basis increase granted to those holding their QO Capital in QOZs as provided under the OZ Law.

7. Encouragement of cryptocurrency gains investment into the Opportunity Zone ecosystem

Since the advent of Bitcoin in 2008 the growth of interest and participation in newly created digital assets followed a hockey stock path through 2017. Regardless of retraction in cryptocurrency trading and values from 2017 highs, this is an investment realm that is likely to be with us for the long term. Also, despite these general value declines since the beginning of 2018, there remains outstanding vast unrealized capital gains in digital assets and these gains are difficult to bring to bear outside of their digital ecosystem. At the same time, these digital assets are often difficult to reliably track and include in our nation's tax systems and other financial compliance regulations. We propose that with some practical regulatory guidance from Treasury, many more holders of digital assets would participate in Opportunity Zone investing than might otherwise. As part of this process of making such investments they would be highly encouraged to dispose of their digital assets and the realize their gains thereon with such gains being redeployed to the benefit of Opportunity Zones nationwide.

While several of the major digital assets, such as Bitcoin and Ether (Ethereum) are readily sold for or converted into United States Dollars, the clear majority of digital asset types are not, and must instead be sold or converted to one or more other digital assets until reaching the point where the holder can realize Dollars. Treasury has determined that each transaction in digital assets, even conversions of one digital asset into another, is a taxable transaction. However, it can be that a holder of digital asset A, must convert that asset into to digital asset B then C and/or D, etc. (often ending at an exchange for Bitcoin or Ether) before arriving at the ultimate transaction that provides Dollars to the holder. During this process there may be numerous notional valuations of the taxable gain or loss from each transaction in digital assets which was required to realize those Dollars resulting in a complex and frequently unaccounted for tax burden on the holders of such assets.

We suggest a rule that would greatly simplify this process and greatly enhance the ease by which holders of digital assets may divest themselves from their investments from the conceptual world of digital assets to more traditional investments while also further encouraging investment in Opportunity Zones. To that end we suggest a rule that provides that a holder of digital assets may simply take its original basis in the initial digital assets held and converted in the first transaction therefor compared to the gains represented by the proceeds of the final transaction into Dollars to determine the gains that may be invested (within the 180 days of the transaction into Dollars) as qualified QO Capital when the holder of such assets goes through a process of a series of transactions before obtaining those Dollars if those transactions are accomplished within a limited period of time (perhaps 60 days) of the first such transaction.

Concluding Remarks

It is with great pleasure that we have seen the Opportunity Zone ecosystem evolve and the highly cooperative environment in which this has been undertaken by all, not the least of which is the very impressive efforts of Treasury and the Service, to make this new area not just workable, but dynamic. We at Coasis Coalition Companies PB LLC are enthused and feel privileged to be a part of advancing what is essentially an entirely new financial and cultural system. We again thank Treasury and the Service for its efforts and we appreciate your consideration of these comments and suggestions. We look forward to the opportunity to discuss these issues further during the public hearing scheduled for July 9, 2019.

Respectfully submitted,

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Founder and Chief Executive Officer
Coasis Coalition Companies PB LLC

cc: David J. Kautter, Assistant Secretary, Office of Tax Policy, U.S. Department of the Treasury
Daniel Kowalski, Counselor to the Secretary, U.S. Department of Treasury