



14th December 2023

European Securities and Markets Authority
201-203 rue de Bercy
75012 Paris

Re: ESMA Consultation Paper - Technical Standards specifying certain requirements of Markets in Crypto Assets Regulation (MiCA) - second consultation paper

The members of the European Focus Committee of the Association of Global Custodians¹ (the “AGC-EFC”) are broadly highly supportive of ESMA’s proposals as set out in the second consultation referenced above² (the “Consultation Paper” or “CP”).

However, as asset servicing providers who will not address elements of the CP applicable to CASPs operating trading platforms, the AGC-EFC emphasises a core structural problem with ESMA’s proposed approach as it would apply to CASPs who do not operate trading platforms.

Sustainability disclosure requirements

Our concerns regarding sustainability disclosure requirements are founded in what we believe is the correct application of the principle of proportionality: put simply, CASPs who themselves are not providing the service of “operation of a trading platform for crypto-assets” (as defined in MiCAR Art. 3(1)(16)(b)) should not be subject to the same requirements as those that do. This is because CASPs not operating trading platforms (i.e., those falling under (a) or (c) through (j) of MiCAR Art. 3(1)(16)) will not have access to the same level of sustainability information relating to crypto-assets as parties responsible for white papers or operators of trading platforms. As we explain in more detail in our responses to the Call for Evidence, we urge adaptation of the proposed approach to sustainability disclosures so that it is more appropriate to the role of the disclosing CASP.

There is an important question of scope of responsibility of CASPs who are not privy to the information available to issuers and operators of trading platforms. It is essential to ensure a workable framework in which service providers can operate predictably. Applying the principle of proportionality would suggest that CASPs should be able to rely on information set out in white papers and not require the information to be sourced elsewhere, which, for those CASPs not operating trading platforms, would create the risk of divergent disclosures that could well vary widely.

¹ Established in 1996, the Association of Global Custodians (the “Association”) is a group of 12 global financial institutions that each provides securities custody and asset-servicing functions primarily to institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members’ common interests on regulatory and market structure. The member banks are competitors, and the Association does not involve itself in member commercial activities or take positions concerning how members should conduct their custody and related businesses. The members of the Association are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

² *Consultation Paper - Technical Standards specifying certain requirements of Markets in Crypto Assets Regulation (MiCA) - second consultation paper*, ESMA75-453128700-438 (5 October 2023).

It is crucial that single sources of information are used for purposes of disclosure, which can only happen if a recognised point of centrality is considered definitive. Such a point of centrality would be a white paper, or - failing this – as otherwise facilitated by the operator of the relevant trading platform. Indeed, as we explain in our responses to the CP, this approach is supported in the text of the Regulation.

Consequently, for the reasons stated above, it would be appropriate to exclude CASPs falling under (a) or (c) through (j) of MiCAR Art. 3(1)(16) from having to source information independently of any white papers, including where for whatever reason there is no white paper. Where no white paper has been issued, we strongly urge ESMA to recognise that only operators of relevant trading platforms can act as the single, definitive source of information upon which other CASPs – and the wider investing public – can rely.

A conceptually sound distribution model is a model in which information is stored and maintained in one place, and all parties have access to this information. The obligations placed on issuers to publish white papers, and on CASPs to provide links to these white papers for crypto assets for which they provide services (MiCAR Article 66(3)), are in line with such a conceptually sound distribution model.

In summary, we believe that ESMA should apply the following three principles in drafting the RTS:

1. Tailoring the obligations depending on the role of the CASP, and in particular with respect to whether, or not, the CASP acts as an operator of a trading platform.
2. Differentiating between crypto assets with a white paper provided by the issuer, and those without.
3. Applying to the greatest extent possible the principle of data uniqueness, namely, the principle of a “golden source” of data (i.e. of data being stored and maintained in one location, and not in multiple, separate locations).

The AGC-EFC makes specific recommendations to apply these principles in our responses to the CP.

CASP liability

ESMA in the CP touches on the liability of CASPs for loss of crypto- assets in the CP by drawing a distinction between “permissioned” and “permissionless” DLTs. We believe the assumptions and support for this distinction or significantly flawed and represent a departure from longstanding approaches taken to legal and operational risks by the financial services community who would operate as CASPs.

In our responses to the CP, we point out that a distinction between “permissioned” vs. “permissionless” DLT is inconsistent with MiCA regulation (specifically MiCAR Art. 75(8)) and therefore inappropriate. There will be CASPs that do not operate trading platforms themselves and – perhaps more important – there will be CASPs who participate in and provide access to permissioned networks on the basis that they will be required to accept the rules of those networks, similar to the way in which participants in financial market infrastructures (FMIs) (such as CSDs) “participate” in those FMIs today. As is the case with respect to post-trade FMI arrangements today, participants will be unable to control the actions (or inaction) of permissioned networks, who of course will be required to be highly regulated themselves. We would expect the liability regime applicable to CASPs to be applied without distinction between permissioned or permissionless DLT - but rather with reference to what is beyond the control of CASPs and where the relevant incident is not “attributable” to the CASP, etc. – all as set out in MiCAR Art. 75(8).

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More detail explaining our positions in respect of the two core points referenced above can be found in our responses to the CP.

In the meantime, we look forward to further engagement with ESMA on the development of this very important regulatory framework. We would be pleased to discuss any questions ESMA representatives may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Siena', is written over a horizontal line.

John Siena

Chair, European Focus Committee
The Association of Global Custodians

ASSOCIATION OF GLOBAL CUSTODIANS – EUROPEAN FOCUS COMMITTEE

Responses to ESMA Consultation on the Technical Standards Specifying Certain Requirements of MiCA (2nd package)

14th December 2023

Questions

Q1: Do you agree with ESMA’s assessment of the mandate for sustainability disclosures under MiCA?

ANSWER: As asset services providers, members of the Association of Global Custodians – European Focus Committee (“AGC-EFC”) have no objection to requiring sustainability disclosures, and we agree with ESMA’s assessment of its mandate.

However, we caution that the principle of proportionality should be applied: CASPs who themselves are not providing the service of “operation of a trading platform for crypto-assets” (as defined in MiCAR Art. 3(1)(16)(b)) should not be subject to the same requirements as those that do. This is because CASPs not operating trading platforms (i.e., those falling under (a) or (c) through (j) of MiCAR Art. 3(1)(16)) will not have access to the same level of ESG information relating to crypto-assets as parties responsible for white papers or operators of trading platforms. For reasons that are explained more fully in our response to Question 2, we urge adaptation of the proposed approach to sustainability disclosures so that it is more appropriate to the role of the disclosing CASP.

Q2: In your view, what features of the consensus mechanisms are relevant to assess their sustainability impacts, and what type of information can be obtained in relation to each DLT network node?

ANSWER: The AGC-EFC defers to the response of the Association for Financial Markets in Europe (“AFME”).

Q3: Do you agree with ESMA’s approach to ensure coherence, complementarity, consistency and proportionality?

ANSWER: We support ESMA’s objective of ensuring coherence, complementarity, consistency and proportionality, as well as ESMA’s proposal to combine all four mandates into one single RTS. We generally agree with ESMA’s approach as described in the Consultation Paper, however, we would add that the proportionality principle be applied in order to ensure that the right CASP is subject to the right set of disclosure obligations. All CASPs will not have access to the same level of ESG information relating to crypto-assets as parties responsible for white papers or operators of trading platforms, hence the necessity to adapt the regime depending on the role of the disclosing CASP.

We disagree with statement in paragraph 6 of the CP that MiCA Article 66(5) “requires Crypto-Asset Service Providers (CASPs) to make such information available in a prominent place on their website for all the crypto-assets in relation to which they provide services, regardless of whether the information can be obtained from white-papers”. Article 66(5) provides:

Crypto-asset service providers shall make publicly available, in a prominent place on their website, information related to the principal adverse impacts on the climate and other environment-related

adverse impacts of the consensus mechanism used to issue each crypto-asset in relation to which they provide services. That information may be obtained from the crypto-asset white papers.

There is an important question regarding the scope of responsibility of CASPs who are not privy to the information available to issuers and operators of trading platforms. Interpretation of Article 66(5) should be in line with the proportionality principle in order to ensure a workable framework in which service providers can operate predictably. Applying the principle would suggest that CASPs should be able to rely on information set out in white papers since the last sentence of Art. 66(5) is permissive, i.e., providing that “information **may be** obtained from the crypto-asset white papers”, but not requiring the information be sourced elsewhere, which, for those CASPs not operating trading platforms, would create the risk of divergent disclosures that could well vary widely.

The proposals require extensive duplication of information, both as provided by an individual CASP, and as provided by the market as whole. The information distribution model embodied in ESMA’s proposals is conceptually flawed and inefficient. One major result is that investors purchasing crypto assets will be faced with inconsistent and inaccurate information from multiple different sources.

It is crucial that single sources of information are used for purposes of disclosure, which can only happen if a recognised point of centrality is considered definitive. Such a point of centrality would be a white paper, or - failing this – as otherwise facilitated by the operator of the relevant trading platform. Indeed, this approach is supported in the text of the Regulation: MiCAR Art. 5(2) provides that “when a crypto-asset is admitted to trading on the initiative of the operator of a trading platform and a crypto-asset white paper has not been published in accordance with Article 9 in the cases required by this Regulation, the operator of that trading platform for crypto-assets shall comply with the requirements set out in paragraph 1 of this Article”.

Consequently, for the reasons stated above, it would be appropriate to exclude CASPs falling under (a) or (c) through (j) of MiCAR Art. 3(1)(16) from having to source information independently of any white papers, including where for whatever reason there is no white paper. Where no white paper has been issued, we strongly urge ESMA to recognise that only operators of relevant trading platforms can act as the single, definitive source of information upon which other CASPs – and the wider investing public – can rely.

We believe that the calls by ESMA in paragraphs 26 and 42 for cooperation and coordination among market participants show that ESMA recognises some of these concerns that we describe above, but we do not believe that such cooperation and coordination in themselves will be sufficient to mitigate the fundamental problem that we have focused on. In our answer to question 10, we set out some further specific suggestions to neutralise the risk of duplicative, likely inconsistent information.

A conceptually sound distribution model is a model in which information is stored and maintained in one place, and all parties have access to this information. The obligations placed on issuers to publish white papers, and on CASPs to provide links to these white papers for crypto assets for which they provide services (MiCAR Article 66(3)), are in line with such a conceptually sound distribution model.

In summary, we believe that ESMA should apply the following three principles in drafting the RTS:

1. Tailoring the obligations depending on the role of the CASP, and in particular with respect to whether, or not, the CASP acts as an operator of a trading platform.
2. Differentiating between crypto assets with a white paper provided by the issuer, and those without.

3. Applying to the greatest extent possible the principle of data uniqueness, namely, the principle of a “golden source” of data (i.e. of data being stored and maintained in one location, and not in multiple, separate locations).

Our suggestions in our answer to Question 10 below are based on these principles.

Q4: Do you agree with ESMA’s approach to mitigating challenges related to data availability and reliability? Do you support the use of estimates in case of limited data availability, for example when data is not available for the entirety of a calendar year?

ANSWER: Members of the AGC-EFC, assuming they would take a role of a CASP not operating a trading platform, would expect to rely entirely on information provided in white papers and, if necessary, operators of the relevant trading platforms. On this basis, we defer to others who would more directly responsible for compiling and disclosing the information required under MiCA.

Q5: What are your views on the feasibility and costs of accessing data required to compute the sustainability metrics included in the draft RTS?

ANSWER: On the assumption that CASPs not operating trading platforms would not be directly responsible for accessing the reference data, the AGC-EFC defers to others who would be directly responsible, however, the AGC-EFC emphasises the need for standardisation of the output of these metrics (presumably premised on consistent computation), including by parties operating outside the EEA or where crypto-assets are otherwise accessible outside the EEA. We envision an environment that includes crypto-assets for which no white paper has been prepared in compliance with expectations set out in the MiCA regime, and where the operator of a platform or exchange is outside the EEA as well. CASPs not operating as trading venues are unlikely to be able ensure the consistency and standardisation of computations necessary to produce metrics in this scenario. We therefore urge the adoption of generally accepted standards that ensure “like-for-like” metrics on which CASPs may rely for purposes of onward disclosure requirements.

Q6: Do you agree with ESMA’s description on the practical approach to assessing the sustainability impacts of consensus mechanisms? If not, what alternative approach would you consider suitable to assess these impacts?

ANSWER: We disagree that CASPs not operating trading platforms should be required to identify energy consumption of the DLT network nodes used to validate transactions, calculate GHG emissions and/or infer the production of waste/use of natural resources. As noted above, we support applying a proportionate approach, with the aforementioned CASPs relying on disclosure from parties on whom these obligations fall proportionately. Asset servicing providers – as non-discretionary agents - have long-established businesses that are established on this kind of division of responsibilities. There is no reason for this approach not to continue.

Q7: Do you agree with the definitions proposed in the draft RTS, in particular on incentive structure and on DLT GHG emissions? If not, what alternative wording would you consider appropriate?

ANSWER: no response.

Q8: In your view, are the proposed mandatory sustainability indicators conducive to investor awareness? If not, what additional or alternative indicators would you consider relevant?

ANSWER: On the assumption that CASPS not operating trading platforms would not be directly responsible for accessing the reference data, the AGC-EFC defers to others who would be directly responsible.

Q9: Do you consider the proposed optional sustainability indicators fit for purpose? If not, what additional indicators would you consider relevant? Would you agree to making these optional sustainability indicators mandatory in the medium run?

ANSWER: On the assumption that CASPS not operating trading platforms would not be directly responsible for accessing the reference data, the AGC-EFC defers to others who would be directly responsible.

Q10: Do you consider the principles for the presentation of the information, and the template for sustainability disclosures fit for purpose? If not, what improvements would you suggest?

ANSWER: As set out in our answers to Questions 1 and 3 above, we believe that the current proposals are not fit for purpose.

As a preliminary remark, we note that there are four main scenarios with respect to the issuance of a white paper:

1. An EU/EEA issuer issues a white paper in accordance with the MiCA requirements
2. An EU/EEA issuer does not issue a white paper as it can benefit from an exemption from the obligation to provide a white paper (as set out in MiCAR Art. 4, paragraphs 2 and 3)
3. A third country issuer issues a white paper that is in line with the MiCA requirements
4. A third country issuer issues a white paper that is not in line with the MiCA requirements, or does not issue a white paper, or there is no issuer.

In order to apply the principles set out in our answer to Question 3, we suggest that Article 4 and the Annex of the proposed RTS be amended as follows:

- (i) With relation to scenario 1/, we suggest that the information to be provided by CASPs under the Article 66(5) disclosure obligation be limited to the “General information and key indicators” set out in Table 1; there should be no obligation for a CASP to provide the information contained in the rest of Table 1, and in Table 2. In its disclosure the CASP should state the information comes from the white paper of the issuer, and should include a link to this white paper.
- (ii) With relation to scenario 2/, given that the issuer benefits from an exemption, we suggest that all CASPs similarly benefit from an exemption from the disclosure obligation.
- (iii) With relation to scenario 3/, we suggest that the same approach be taken as with an EU/EEA issuer that issues a white paper (see point (i) above).

- (iv) With relation to scenario 4/, we suggest that the full Article 66(5) obligation to provide sustainability related information be applied just to those CASPs that operate a trading platform. All other CASPs (that do not operate a trading platform) will be able to provide the limited information set out in point (i) above, and in this information refer, and provide a link, to the information provided by a CASP operating a trading platform for that crypto asset.

Q11: In your view, are the calculation guidance for energy use and GHG emissions included in the draft European Sustainability Reporting Standards relevant for methodologies in relation to the sustainability indicators under MiCA? If not, what alternative methodologies would you consider relevant? For the other indicators for which the calculation guidance of the ESRS was not available, do you consider that there are alternative methodologies that could be used? If so, which ones?

ANSWER: On the assumption that CASPS not operating trading platforms would not be directly responsible for accessing the reference data, the AGC-EFC defers to others who would be directly responsible.

Q12: Would you consider it useful that ESMA provides further clarity and guidance on methodologies and on recommended data sources? If yes, what are your suggestions in this regard?

ANSWER: On the assumption that CASPS not operating trading platforms would not be directly responsible for accessing the reference data, the AGC-EFC defers to others who would be directly responsible.

Q13: Is the definition for permissionless DLT in Article 1 sufficiently precise?

ANSWER: In itself, we view this definition as being sufficiently precise. However, we believe that it is important that we provide commentary on paragraphs 62 and 63 of the consultation paper.

A CASP may provide a wide variety of services, and may interact with a DLT platform in different ways. A CASP may, for example, hold tokens on a DLT platform without using that platform for many of its internal processes. Under such a model, the distinction raised in paragraphs 62 and 63 between permissioned and permissionless DLTs is inappropriate.

Under such a model, a CASP – even though it may have a contractual relationship with the operator of a permissioned DLT platform – would not have control of the infrastructure, and thus – as with a permissionless platform – should, as set out in paragraph 62, be exempted from liability for losses not attributable to the CASP.

A similar comment is relevant for paragraph 63. This paragraph is fully correct in stating that use by a CASP of a permissionless DLT platform is not outsourcing in the context of Article 73 of MiCA Level 1. However, it is important to note that under the model set out above, use by a CASP of a permissioned DLT would also not be outsourcing.

We believe these varying roles of CASPs are clearly envisioned in MiCA: MiCAR Art. 3.1(1)(16) differentiates among different kinds of CASPs, i.e., those not operating trading platforms, in paragraphs (a) and (c) through (j).

Focusing on the interaction of these distinctions in the different roles of CASPs with liability falling on CASPs under the Regulation, MiCA Article 75(8) provides:

Crypto-asset service providers providing custody and administration of crypto-assets on behalf of clients shall be liable to their clients for the loss of any crypto-assets or of the means of access to the crypto-assets as a result of an incident that is attributable to them. The liability of the crypto-asset service provider shall be capped at the market value of the crypto-asset that was lost, at the time the loss occurred.

Incidents not attributable to the crypto-asset service provider include any event in respect of which the crypto-asset service provider demonstrates that it occurred independently of the provision of the relevant service, or independently of the operations of the crypto-asset service provider, such as a problem inherent in the operation of the distributed ledger that the crypto-asset service provider does not control.

A distinction between “permissioned” vs. “permissionless” DLT is insufficient and inapposite for the purpose of putting this provision of the legislation into effect. The principle of proportionality would dictate an interpretation of Article 75(8) that is true to the text, without creating a new distinction – not found in the text – that departs from the clear intent expressed in the text.

As noted above, there will be CASPs that do not operate trading platforms themselves and – perhaps more important – there will be CASPs who participate in and provide access to permissioned networks on the basis that they will be required to accept the rules of those networks, similar to the way in which participants in financial market infrastructures (FMIs) (such as CSDs) “participate” in those FMIs today. As is the case with respect to post-trade FMI arrangements today, participants will be unable to control the actions (or inaction) of permissioned networks, who of course will be required to be highly regulated themselves. Consistent with Article 75(8), we would expect the liability regime applicable to CASPs to be applied without distinction between permissioned or permissionless DLT - but rather with reference to what is beyond the control of CASPs and where the relevant incident is not “attributable” to the CASP, etc.

Q14: Throughout the RTS, we refer to ‘critical or important functions’. The term is borrowed from DORA and does not just capture ICT-specific systems. Does this approach make sense?

ANSWER: We agree this approach makes sense.

Q15: Do you consider subparagraph (e) in Article 4(2) on external communications with clients in the event of a disruption involving a permissionless DLT appropriate for the mandate (i.e., does it constitute a measure that would ensure continuity of services)?

ANSWER: We defer to AFME’s response to this question. However, in addition to this, we disagree with the basis of ESMA’s rationale for excluding the “use” by CASPs only of permissionless DLTs from being considered subject to MiCA outsourcing requirements (set out in MiCAR Art. 73). ESMA’s rationale for this distinction – explained in paragraph 70 – is that “CASPs will often have no feasible back-up options for settlement, custody and other services conducted on a permissionless DLT when they suffer a disruptive incident”. For reasons explained in our previous responses, CASPs not operating a trading platform equally “do not control” a permissioned network - their lack of control is not confined solely to the permissionless environment.

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Q16: Should this RTS also specify that CASPs should establish a business continuity management function (to oversee the obligations in the RTS)? In your view, does this fall within the mandate of 'measures' ensuring continuity and regularity?

ANSWER: The AGC-EFC has no objection to this proposal.

Q17: Are there other organisational measures to be considered for specific CASP services?

ANSWER: n/a.

Q18: Do you consider the obligation for CASPs to conduct testing of the business continuity plans in Article 4(4) via an internal audit function appropriate for the mandate?

ANSWER: n/a.

Q19: In Art. 68(8), CASPs are required to take into account the scale, nature, and range of crypto asset services in their internal risk assessments. Is there support for this general principle on proportionality in Article 6? Do you support the proposed self-assessment under Article 6(2) and in the Annex of the draft RTS?

ANSWER: We support this approach.

Q20: Do you agree with the description provided for the different types of CEX and DEX listed?

ANSWER: n/a

Q21: For trading platforms: Please provide an explanation of (i) the trading systems you offer to your users, (ii) which type of orders can be entered within each of these trading systems and (iii) whether you consider these trading systems to be a CEX or a DEX (please explain why)?

ANSWER: n/a

Q22: Do you consider the trading systems described, and the transparency obligations attached to each trading system, in Table 1 of Annex I of the draft RTS appropriate for the trading of crypto-assets? Do you offer a trading system that cannot meet the transparency requirements under the provisions in this Table? Please provide reasons for your answers.

ANSWER: n/a

Q23: Regarding more specifically AMMs, do you agree with the definition included in Table 1 of Annex I of the draft RTS? What specific information other than the mathematical equation used to determine the price and the quantity of the asset in the liquidity pools would be appropriate to be published to allow a market participant to define the price of the assets offered in the liquidity pool?

ANSWER: n/a

Q24: Do you agree with ESMA's proposals on the description of the pre-trade information to be disclosed (content of pre-trade information) under Table 2 of Annex I of the draft RTS? If not, please explain why. If yes, please clarify whether any elements should be amended, added and/or removed.

ANSWER: n/a

Q25: Do you agree with ESMA's proposals to require a specific format to further standardise the pre-trade information to be disclosed (format of pre-trade information)? If not, please explain why and how the pre-trade information can be harmonised. If yes, please clarify whether any elements should be amended.

ANSWER: n/a

Q26: Do you agree with the proposed approach to reserve and stop orders?

ANSWER: n/a

Q27: Do you agree with the proposed list of post-trade information that trading platforms in crypto assets should make public in accordance with Tables 1, 2 and 3 of Annex II of the draft RTS? Please provide reasons for your answers.

ANSWER: n/a

Q28: Is the information requested in Table 2 of Annex II of the draft RTS sufficient to identify the traded contract and to compare the reports to the same / similar contracts.

ANSWER: n/a

Q29: Is there any other information, specific to crypto-assets, that should be included in the tables of Annex II of the draft RTS? Please provide reasons for your answers.

ANSWER: n/a

Q30: Do you expect any challenges for trading platforms in crypto assets to obtain the data fields required for publication to comply with pre- and post-trade transparency requirements under Annex I and Annex II of the draft RTS?

ANSWER: n/a

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Q31: What do you consider to be the maximum possible delay falling under the definition of “as close to real-time as is technically possible” to publish post-trade information in crypto-assets? Please provide reasons for your answer.

ANSWER: n/a

Q32: Do you agree with ESMA’s approach on the requirements to be included in the draft RTS in relation to a trading platform’s operating conditions? Please provide reasons for your answer.

ANSWER: n/a

Q33: Do you consider that ESMA should include in the RTS more specific disclosure rules regarding a trading platform’s operating conditions, in particular in relation to co-location and access arrangements?

ANSWER: n/a

Q34: From your experience, are all crypto-assets trading platforms making their data available free of charge? If not, what specific barriers have you encountered to access the data (e.g., price, level of disaggregation).

ANSWER: n/a

Q35: Do you agree with the level of disaggregation proposed in the draft RTS? Please provide reasons for your answer.

ANSWER: n/a

Q36: In the context of large number of CASPs and possible different models of data access, what kind of measures (common messages, common APIs, others) would you consider feasible to ensure effective and efficient access to data?

ANSWER: Efficient and effective access to standardised data is key. This may be seen as a prerequisite to allow market players (service providers, customers and investors) to take full advantage of innovations and evolutions stemming from the use of the underlying technology. A multiplication of models may constitute a barrier or at least a hurdle as interoperability among models would be needed.

We are conscious that initiatives are ongoing with a view to harmonise and standardise the sharing of financial information. The European Commission’s open finance proposal captures many products: crypto-assets under MiCA are among them. All financial institutions (including CASPs) are in scope and may act as data holders, data users or both. We therefore anticipate that standards, mechanics and guidelines will be adopted under FIDA that financial institutions will likely have to observe in the context of operations conducted while acting as a CASP. It is therefore important to monitor the evolution of the open finance framework in order to ensure compatibility and harmonisation with that framework so that it can be leveraged by CASPs under the MiCA regime.

Q37: Do you agree with using the DTI for uniquely identifying the crypto-assets for which the order is placed, or the transaction is executed? Do you agree with using DTI for reporting the quantity and price of transactions denominated in crypto-assets?

ANSWER: n/a

Q38: Are there relevant technical attributes describing the characteristics of the crypto-asset or of the DLT on which this is traded, other than those retrievable from the DTIF register? Please detail which ones.

ANSWER: n/a

Q39: Do you agree with using the transaction hash to uniquely identify transactions that are fully or partially executed on-chain in orders and transactions records? Please clarify in your response if this would be applicable for all types of DLT, and also be relevant in cases where hybrid systems are used.

ANSWER: n/a

Q40: Do you agree that a separate field for the recording of “gas fees” should be included for the purpose of identifying the sequencing of orders and events affecting the order?

ANSWER: n/a

Q41: Do you agree with the inclusion of the above data elements, specific for on-chain transactions, in both RTS?

ANSWER: n/a

Q42: Are some of the proposed data elements technology-specific, and not relevant or applicable to other DLTs?

ANSWER: n/a

Q43: Do you consider it necessary to add a different timing for the provision of identification codes for orders in the case of CASPs operating a platform which uses only on-chain trading?

ANSWER: n/a

Q44: Please suggest additional data elements that may be included to properly account for on-chain trading.

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ANSWER: n/a

Q45: Do you find the meaning of the defined terms clear enough? Should the scope be adjusted to encompass or exclude some market practices? Provide concrete examples.

ANSWER: We defer to AFME's response.

Q46: Are there other aspects that should be defined, for the purposes of this RTS?

ANSWER: n/a.

Q47: Do you anticipate practical issues in the implementation of the proposed approach to reception and transmission of orders?

ANSWER: We defer to AFME's response.

Q48: What transaction information can be retrieved in cases where a CASP execute the order on a third country platform/entity?

ANSWER: We defer to AFME's response.

Q49: Do you anticipate problems in retrieving information about the buyer/seller to the transaction?

ANSWER: We defer to AFME's response.

Q50: Do you anticipate practical issues in the implementation of the methods for client identification that are used under MiFIR?

ANSWER: We defer to AFME's response.

Q51: Do you anticipate practical issues in the implementation of the short selling flag?

ANSWER: We defer to AFME's response.

Q52: Do you consider that some of the proposed data elements are not applicable/relevant to trading in crypto-assets?

ANSWER: n/a

Q53: Do you consider that additional data elements for CASP operating a trading platform are needed to allow NCAs to properly discharge their supervisory duties?

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ANSWER: Since AGC-EFC members are not responding as operators of trading platforms, we decline to respond to the question and defer to others.

Q54: Do you believe that a specific definition of routed orders should be provided as it applies to orders that are routed by the trading platform for crypto-assets to other venues? Should this definition include CASPs operating a platform which uses only on-chain trading?

ANSWER: n/a

Q55: Do you believe that fill-or kill strategies as referenced in MiFID II apply to trading in platforms for crypto-assets? Do they apply to partially filled orders?

ANSWER: n/a

Q56: Do you agree with using messages based on the ISO 20022 methodology for sharing information with competent authorities?

ANSWER: We have no objection to this approach.

Q57: Do you agree with the criteria proposed for identifying a relevant machine-readable format for the MiCA white paper and consequently with the proposal to mandate iXBRL as the machine-readable format for MiCA white papers, subject to the outcome of the study referred to in paragraph 239?

ANSWER: n/a.

Q58: If yes, do you agree that the white paper should be required to be a stand-alone document with a closed taxonomy (i.e., without extensions nor complex filing rules)?

ANSWER: n/a.

Q59: If not, please elaborate your answer and propose alternative solutions that would best meet the criteria identified in section 7.3.

ANSWER: n/a.

Q60: Are you currently preparing white paper documents in a different machine-readable format? If yes, which one?

ANSWER: n/a

Q61: How different is the white paper mandated by MiCA and further specified in this Consultation Paper from any white paper which you have drawn up or analysed prior to MiCA? Do you think that

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any additional information that used to be included in white papers prior to MiCA but that is no longer allowed under the relevant provisions of MiCA for the white paper will continue to be made available to investors as marketing communication?

ANSWER: n/a

Q62. Do you agree with ESMA's estimate of the cost of preparing a white paper in iXBRL format? If not, where would you put the estimate of a preparing a white paper in iXBRL format (not considering costs of information sourcing which should be considered as base scenario)?

ANSWER: n/a

Q63: Do you agree with the proposed template for presenting the information as indicated in the Annex to this CP? We welcome your comments on the proposed fields and values/descriptions to be included in the fields - please provide specific references to the fields which you are commenting in your response and pay specific attention to the areas where additional explanatory description of the information is provided.

ANSWER: n/a.

Q64: Are there additional data elements in the table of fields that would benefit from further explanatory descriptions to ensure that the information provided by a given issuer/offeree is understandable and comparable to the information provided by other issuer/offeree of the same type of crypto-asset? If yes, please elaborate and provide suggestions.

ANSWER: n/a.

Q65: Would you deem it useful for ESMA to provide an editable template to support preparers with the compliance of the format requirements proposed in the draft ITs?

ANSWER: n/a.

Q66: Are there any other data elements that you would consider relevant to ensure that investors can properly compare different crypto-asset white papers and NCA can perform their classifications on the basis of harmonised information?

ANSWER: n/a.

Q67: Do you agree with ESMA's conclusion that an issuer, an offeror or a person seeking admission to trading of crypto-assets should always be eligible for an LEI? If not, please provide a description of the specific cases

ANSWER: n/a

Q68: Do you agree with the proposed metadata elements, also considering the mandatory metadata expected to be mandated in the context of ESAP?

ANSWER: n/a

Q69: Do you have any feedback in particular with regards to the metadata on the “industry sector of the economic activities” and its relevance for the ESAP search function?

ANSWER: n/a

Q70: Do you agree with the listed definitions? Would you consider useful to clarify any other term used in the ITS?

ANSWER: n/a

Q71: Do you agree with the proposed requirements for publication on the website of the issuer, offeror or person seeking admission to trading? Would you consider necessary any additional requirements regarding the publication on the website?

ANSWER: n/a

Q72: In your view, is there any obstacle for the website of the relevant parties to allow for specific alerts?

ANSWER: n/a

Q73: In your view, what are the media most relied upon by the public to collect information on crypto-assets? In case you are an issuer, offeror or person seeking admission to trading, please specify/add which media you would normally use to communicate with investors and the reasons supporting your choice.

ANSWER: n/a

Q74: Should a social media or a web-based platform be media reasonably relied upon by the public, what are the risks that you see when using them to achieve dissemination of inside information in relation to crypto assets? Should the dissemination rather take place through traditional media channel?

ANSWER: n/a

Q75: Please comment the proposed means for dissemination of inside information? Please motivate your answer by indicating why the means they are/are not valuable tools for dissemination purposes.

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ANSWER: n/a

Q76: Would you add any means of communications for the persons subject to the disclosure obligation to consider when disseminating inside information? Please motivate your answer.

ANSWER: n/a

Q77: Do you agree with the technical means for delaying the public disclosure of inside information as described?

ANSWER: n/a