Reply form

on the first Consultation Paper for MiCA implementation

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1 . Comments are most helpful if they:

- respond to the question stated;

- indicate the specific question to which the comment relates;

- contain a clear rationale; and

- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 September 2023.**

All contributions should be submitted online at www.esma.europa.eu under the heading '*Your input - Consultations'*.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.

- Please do not remove tags of the type < ESMA_QUESTION_MICA_0>. Your response to each question has to be framed by the two tags corresponding to the question.

- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_MiCA _nameofrespondent.

  For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_MiCA _ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be

submitted online at *www.esma.europa.eu* under the heading *'Your input - Consultations'.*

Publication of responses

All contributions received will be published following the close of the consultation unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading ['Data protection'](#).

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, ESMA invites crypto-assets issuers, crypto-asset service providers and financial entities dealing with crypto-assets as well as all stakeholders that have an interest in crypto-assets.

1 General information about respondent

Name of the company / organisation	Association for Financial Markets in Europe
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	☒
Country / Region	Europe

2 Introduction

Q0: Please make your introductory comments below, if any:

<ESMA_QUESTION_MICA_0>

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on its **CONSULTATION ON THE TECHNICAL STANDARDS SPECIFYING CERTAIN REQUIREMENTS OF MICA (1ST PACKAGE)**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

High Level Comments

AFME recognises the important work that ESMA has done in drafting this first set of technical standards for MiCA. Overall, we believe that ESMA's proposals set a helpful direction for the Level 2 work on this file and we are broadly supportive of the content.

We have answered some of the specific questions in the consultation paper in more detail below. In addition, we would like to raise two overarching objectives that we encourage ESMA to keep in mind as Level 2 development progresses:

- <u>Consistency with existing regulatory approaches:</u> we acknowledge the particular characteristics of the assets covered by MiCA, in particular their digital nature. However, we encourage ESMA to ensure, as far as possible, a level playing field with other, more traditional markets and activities. This will not only ensure similarly high regulatory standards across markets but will also allow regulated entities to streamline their compliance processes; and

- <u>Avoidance of duplicative requirements:</u> our members are already subject to requirements in many of the areas raised within these technical standards (whereas for other participants in crypto activities, these areas may be entirely new). In introducing new requirements for crypto assets, we encourage ESMA to ensure that existing obligations are taken into account and that no new duplicative or conflicting rules are put in place for already heavily regulated entities.

<ESMA_QUESTION_MICA_0>

3 Questions

Q1: Do you think that anything is missing from the draft RTS and ITS on the notification by certain financial entities to provide crypto-asset services referred to in Articles 60(13) and 60(14) of MiCA?

<ESMA_QUESTION_MICA_0>
Overall, we support the Level 1 requirement for notification rather than an authorisation process for financial entities that are already licensed. However, we would like to raise the following points in relation to ESMA's approach.

In relation to Article 5 on segregation of clients' crypto-assets and funds, we have identified two specific clarifications that would improve practicality. First, confirmation that a minimum amount of the custodian´s own crypto-assets could be allocated in the clients´ crypto addresses for operational purposes such as the payment of gas fees. We suggest that an additional point (iv) is added to (a) as follows *"(iv) only a minimum amount of entity's own crypto assets will be included and maintained in the clients' addresses for operational purposes;"* .

Second, we request a specific recognition of the possibility that clients´ crypto-assets could be allocated in an "omnibus" address. For clarification, an "omnibus" address refers to an address in the DLT where the crypto-assets of all (or part of) the clients are allocated, duly segregated from the custodian's own crypto-assets which should be allocated in a different address. For this, we suggest the following amendment to Article 5(c) *" how the notifying entity segregates clients' crypto-assets <u>from notifying entity's own assets, and whether the assets of each client will have a specific address or if an address may include crypto assets of more than one client;"</u>*.

In relation to Article 7, we request the inclusion of a specific description or requirements of the expected due diligence to be applied to crypto-assets that are admitted for trading, particularly from an anti-money laundering perspective. We also suggest avoiding mention of Directive (EU) 2015/849, as it only refers to due diligence applied to customers and not to assets. Our suggested amendment to Article 7(1)(d) would be as follows: *"the approval process for admitting crypto-assets to trading, including the due diligence carried out ~~in accordance with Directive (EU) 2015/849~~ before admitting the crypto-asset to the trading platform, with specific description of the anti-money laundering evaluation;"*

Third, Article 5 should be amended to make clear that, given that the obligations under MiCA Article 70, paragraphs 2 and 3, do not apply to credit institutions (see MiCA Article 70, paragraph 5), the Article 5 obligations relating to client funds (other than e-money tokens) should not apply to credit institutions.

<ESMA_QUESTION_MICA_0>

Q2: Do you agree with the list of information to be provided with an application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.:

<ESMA_QUESTION_MICA_0>
We refer to our answers to Q1 above on Article 5 – asset segregation and omnibus addresses.
<ESMA_QUESTION_MICA_0>

Q3:   Do you agree with ESMA's proposals on standard forms, templates and procedures for the information to be included in the application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q4: Do you agree with ESMA's proposals to specify the requirements, templates and procedures for the handling of client complaints by crypto-asset service providers? Please also state the reasons for your answer.

<ESMA_QUESTION_MICA_0>
We support these proposals, as they create clarity for clients and a level playing field across CASPs with respect to complaints handling.

<ESMA_QUESTION_MICA_0>

Q5: **Do you think that it is useful to keep the possibility for clients of CASPs to file their complaints by post, in addition to electronic means?**

<ESMA_QUESTION_MICA_0>
We consider it important for client interaction to be in line with the digital nature of the product, where clients already use websites and apps (as opposed to the traditional banking system with counters). Therefore, we would not support the requirement to allow complaints via post, as this would not be proportionate to the level of client technological sophistication and would instead impose an unnecessary burden on CASPs.

<ESMA_QUESTION_MICA_0>

Q6: **Do you think that other types of specific circumstances, relationships or affiliations should be covered by Articles 1 and 2 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers?**

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q7: **Do you think that other types of specific prevention or mitigation measures should be highlighted in the minimum requirements of Article 3 of the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers?**

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q8: **Do you agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds?**

<ESMA_QUESTION_MICA_0>
The question highlights the fact that there are notably more detailed and possibly restrictive conditions to consider when seeking a qualifying holding in an entity authorised as a CASP, in comparison to existing sectoral requirements on the assessment (e.g. ESAs joint guidelines on the prudential assessment of acquisitions of qualifying holdings (JC/GL/2016/01) or the Commission Delegated Regulation 2017/1946) of acquisitions of qualifying holdings, including the ones applicable to credit institutions.

This situation might create a discrepancy between standard industry players (e.g. credit institutions or investment firms) and those affected by these new rules (i.e. CASPs). While new standards could be created, an extensive review of what is required under existing regimes on the prudential assessment of acquisitions of qualifying holdings and whether any additional layer of rules is necessary in relation to acquisitions of qualifying holdings in CASPs should be carefully considered.

<ESMA_QUESTION_MICA_0>

Q9: Do you agree with the proportionate approach to the request of information to be submitted by proposed indirect acquirers of qualifying holdings based on whether they are identified via the control or the multiplication criterion?

<ESMA_QUESTION_MICA_0>
Yes, AFME supports this approach <ESMA_QUESTION_MICA_0>

Q10:   Do you consider the list of information under Article 8 complete and comprehensive to assess the financing of the acquisition, in particular as regards funding originated in the crypto ecosystem?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q11:   Do you agree with the identified cases where reduced information requirements apply and with the related requirements and safeguards?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q12:   In which EU jurisdiction(s) do you plan to be authorised to provide CASP services? In which EU jurisdiction(s) do you plan to provide CASP services under cross-border provision of crypto-asset services as specified in Article 65 of   Regulation (EU) 2023/1114?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q13: What crypto asset services as listed in point 16 of Article 3(1) of Regulation (EU) 2023/1114 do you plan to offer (e.g. reception/transmission of orders; execution of

orders on behalf of clients; operation of a trading platform etc.)? In addition, please provide some high-level explanation of the business model, including, what type of trading systems do you plan to use.**

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q14: If you are planning to operate a trading platform:

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(a)   How many white papers do you estimate to publish on you platform?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(b)   What turnover, in terms of crypto-assets trading volume, do you expect to attract on your platform according to your business forecasts for the upcoming years?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(c)   Do you plan to undertake transactions on the basis of an on-chain ledger or an off-chain one?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

i. In case of the former, which type of DLT are you planning to use (e.g. Ethereum, Corda, Stellar etc.)? Do you plan to store transaction data on-chain or off-chain or a mix of the two?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

ii. If the latter, how would you link on-chain and off-chain transaction data?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q15: If you are planning to execute/place orders on behalf of clients:

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(a)   How many white papers do you estimate to offer to your clients for execution/order placement?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(b)   What is the expected turnover (i.e. revenues) according to your business forecasts for the upcoming years?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(c)   Do you plan to undertake transactions on the basis of an on-chain ledger   or an off-chain one?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

i. In case of the former, is transaction data stored on-chain or off-chain or a mixed of the two?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

ii: If the latter, how do you link on-chain and off-chain transaction data?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

Q16: If you are planning to receive and transmit orders:

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(a)   How many white papers do you estimate to offer to your clients for order transmission?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(b)   What is the expected turnover (i.e. revenues) according to your business forecasts for the upcoming years?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(c)   Which are the main platforms/brokers you are intending to transmit orders to?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(d)   In which jurisdictions are these platforms/brokers based?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>

(e)   How do you plan to keep track of the transmitted orders?

<ESMA_QUESTION_MICA_0>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MICA_0>