FESE response to the first ESMA Consultation on Technical Standards specifying certain requirements under MiCA

20th September 2023

1. Provision of crypto-asset services by certain financial entities

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?

In our opinion, it is unclear what systems or tools can be used by the trading platform to collect and execute the orders. There is only one link to that in Annex 2 re. 9.2.1 RTS on the notification by certain financial entities of their intention to provide crypto-asset services in Article 7(1)(j):

"1. A notifying entity intending to operate a trading platform for crypto-assets shall provide to the competent authority a description of all of the following:

*(j) the systems, procedures and arrangement to keep data relating to all orders at the disposal of the competent authority or the mechanism to ensure that the competent authority has access to the **order book**;"*

Does it mean that the order book is only acceptable as mentioned above system to collect and execute orders by the trading platform?

There are serious doubts taking into account MiCA Article 60(3):

"(3) An investment firm may provide crypto-asset services in the Union equivalent to investment services and activities for which it is expressly authorized under Directive 2014/65/EU, if it provides the competent authority of its home Member State with the information referred to in paragraph 7 of this Article at least 40 working days prior to the commencement of such services. For the purposes of this paragraph:

*(b**) the operation of a crypto assets trading platform shall be deemed equivalent to the operation of a multilateral trading platform** and the operation of an organized trading platform as referred to in Section A(8) and (9) of Annex I to Directive 2014/65/EU, respectively;"*

ESMA provided further comments on the 8th of June 2023 regarding the usage of the liquidity pool as a trading system:

*"We agree that a liquidity pool as described is a **multilateral system which is subject to pre- and post-trade transparency requirements.** We also agree with the proposed classification as **"any other trading system"**. We agree that the use of trading protocols based on liquidity pools should not cause issues for transaction data reporting."*

In our opinion, in the draft of the RTS on the notification by certain financial entities to provide crypto-asset services referred to in Articles 60(13) and 60(14) of MiCA, it should be clearly stated that order book and any other trading system (ex. liquidity pool) are the systems to collect and execute orders by the trading platform for crypto assets. Moreover, regarding the multilateral character of the liquidity pool, it should be added that trading

platforms which create and use any other trading systems like liquidity pools do not use them for dealing on own account but for market making and improving the liquidity of low-liquid assets.

2. Content of templates for the application for authorisation

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.

Issuers of crypto-assets that meet the criteria under the MiCA regime will be permitted to offer those crypto-assets to the public or admit them to trading anywhere in the EU. This is the same idea as "passporting", which we believe can be relevant for a Single Digital Finance market; however, further details are needed to fully assess the feasibility of the proposed regime.

Regarding crypto-asset service providers, authorised service providers must comply with a list of general requirements as well as the additional specific requirements applicable to the services they provide. The details of these requirements and their implementation in practice need to be fully assessed. Further clarity on the supervision of issuers and service providers is also needed, as NCAs may differ at the national level according to the underlying products and activities.

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.

3. Complaints-handling procedures of crypto-asset service providers

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.

"Crypto-asset" platforms should have clear, transparent and non-discretionary complaint or redress procedures to provide investors with a safe and predictable trading environment in this respect and hence foster investor trust.

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?

4. Identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers

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?

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?

> Most "crypto-asset"-trading platforms currently combine potentially conflicting activities. Depending on the scale of these activities, two possible approaches would help prevent potential threats to investor protection and market integrity:
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> Option 1: Requiring platforms to properly disclose conflict of interest risks to clients and potential clients, and to have in place proper governance arrangements to limit these associated risks. For instance, different entities should be required to have Chinese Walls in place (virtual barrier intended to block the exchange of information between departments to prevent conflicts of interest) for each conflicting activity such as exchange operations, reception and transmission of client orders, trading on own account and custody services (even when done on a temporary basis). Additionally, if the "crypto-asset"-trading platform is acting as a receptor-transmitter of client orders, the "crypto-asset"-trading platform should be required to route client orders and execute them in a non-discretionary manner.
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> Option 2: "Crypto asset"-trading platforms could be prevented from combining conflicting activities. Similar to trading venues for standard financial instruments, the platform (or its holding entity) should be prevented from trading on own account on the platform they operate. It is important to emphasize that trading platforms which use any other trading system than based on the order book, would not be considered to trade on their own account if the purpose of trade is to improve liquidity by participation in an algorithmic facility e.g. liquidity pool as an automated market-maker. Such facility would be required to be pre- and post-trade transparent on the same basis as any other trading system. Additionally, when acting as custodians, platforms should be prevented from using the assets held on custody on behalf of their clients.
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> It would be useful to garner the experience gained from the implementation and enforcement of the Market Abuse Regulation (MAR). This regime is currently under review, and it is important to take a coordinated approach between the two.

5. Assessment of intended acquisition of a qualifying holding in a CASP under Article 83(4)

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?

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?

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?

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

6. Overview of EU crypto-assets markets

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?

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.

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

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

(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?

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

 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?

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

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

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

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

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

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

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

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

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

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

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

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

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