

# Consultation Paper

Technical Standards specifying certain requirements of the Markets in Crypto Assets Regulation (MiCA)

## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex I. 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](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

Respondents are expected to use the response forms made available on the ESMA website. Please note that for Q12 to 16, considering the sensitive nature of information to be collected, respondents are invited to use a separate response form (also available on the ESMA website). While ESMA do not intend to publish responses received to Q12 to 16, respondents are still encouraged to select the "I do not wish to have my response published on the ESMA WEBSITE" when submitting their answers to those specific questions.

### 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](http://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.

## List of acronyms

AIF	Alternative investment fund
ART	Asset-referenced token
CASP	Crypto-asset service provider
DLT	Distributed ledger technology
EBA	European Banking Authority
EMT	Electronic money token
ESMA	European Securities and Markets Authority
ESAs	European Supervisory Authorities
ICT	Information and communications technology
ITS	Implementing technical standards
MiCA	Regulation (EU) 2023/1114 of the European Parliament and the Council of 31 May 2023 on markets in crypto-assets (MiCA)
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II)
NCA	National competent authority
RTS	Regulatory technical standards
UCITS	Undertakings for collective investments in transferable securities

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# 1 Executive Summary

## Reasons for publication

The Regulation on markets in crypto-assets<sup>1</sup> (MiCA) was published in the Official Journal of the EU on 9 June 2023. The European Securities and Markets Authority (ESMA) has been empowered to develop technical standards and guidelines specifying certain provisions. ESMA intends to publish three consultation packages in July 2023, October 2023 and Q1 2024. This consultation paper is the first of three consultation papers. The aim of the paper is to collect views, comments and opinions from stakeholders and market participants on the appropriate implementation of MiCA.

## Contents

This consultation paper contains seven sections (chapters 2 – 8) relating to the content, forms and templates for notification by certain financial entities, content, forms and templates for the application for authorisation of Crypto Assets Service Providers (CASPs), the complaint-handling procedure, the identification, prevention, management and disclosure of conflicts of interest by CASPs and the assessment of intended acquisition of qualifying holdings requirements.

## Next Steps

ESMA will consider the feedback received to this consultation and expect to publish a final report and submit the draft technical standards to the European Commission for endorsement by 30 June 2024 at the latest.

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<sup>1</sup> Regulation (EU) 2023/1114 of the European Parliament and the Council of 31 May 2023 on markets in crypto-assets (OJ L 150, 9.6.2023, p. 40–205), [here](#).

## 2 Introduction

1. On 24 September 2020, the European Commission adopted a legislative proposal for Regulation on Markets in Crypto-assets and amending Directive (EU) 2019/1937<sup>2</sup>.
2. The Regulation on Markets in Crypto-assets (MiCA)<sup>3</sup> was published in the Official Journal on 9 June 2023 and entered into force on 29 June 2023.
3. MiCA requires ESMA to develop a series of RTS, ITS and Guidelines, for many of them in close cooperation with the EBA. This first consultation package covers 5 draft RTS and 2 ITS on: (i) the notification by certain financial entities of their intention to provide crypto-asset services; (ii) the authorisation of crypto-asset service providers; (iii) complaints handling by crypto-asset service providers; (iv) the identification, prevention, management and disclosure of conflicts of interest; and (v) the proposed acquisition of a qualifying holding in a crypto-asset service provider
4. These technical standards should be submitted by ESMA to the European Commission by 30 June 2024.
5. While this Consultation Paper does not include a draft cost-benefit analysis, ESMA has developed its draft RTS and ITS having due regard to the principle of proportionality and being mindful about the possible costs the obligations they contain would create for market participants. ESMA considers that the provisions included in the draft RTS and ITS in the Annex of this paper do not create new costs for concerned market stakeholders beyond the ones that naturally stem from the Level 1 obligations. Nevertheless, respondents are invited to highlight in their response any specific concerns the ESMA proposals could raise for them in terms of their associated costs.

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<sup>2</sup> Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF) and [https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_2&format=PDF)

<sup>3</sup> Regulation (EU) 2023/1114 of the European Parliament and the Council of 31 May 2023 on markets in crypto-assets (OJ L 150, 9.6.2023, p. 40–205), [here](#).



## 3 Provision of crypto-asset services by certain financial entities

### 3.1 Background

#### **Article 60(13) of MiCA:**

*ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to further specify the information referred to in paragraph 7.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.*

#### **Article 60(14) of MiCA:**

*ESMA shall, in close cooperation with EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the information to be included notification pursuant to paragraph 7.*

*ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.*

6. Article 60 of MiCA sets forth the notification requirements for certain financial entities that intend to provide crypto-asset services. Pursuant to Article 60 of MiCA, such entities shall submit the notification to the NCA of their home Member State.
7. Article 60(7) sets forth the information that must be included in the notification. This includes the following main elements:
  - a. a programme of operations, setting out the types of crypto-asset services that the notifying entity intends to provide, including where and how those services are to be marketed;
  - b. a description of the notifying entity's internal control mechanisms relating to anti-money laundering and counter-terrorist financing obligations;
  - c. a description of the notifying entity's procedure for the segregation of clients' crypto-assets and funds;
  - d. where the notifying entity intends to provide custody and administration of crypto-assets on behalf of clients, a description of the custody and administration policy;
  - e. documentation of the information and communication technology (ICT) systems and security arrangements of the notifying entity;

- f. where the notifying entity intends to provide the service of execution of orders for crypto-assets on behalf of clients, a description of the execution policy;
- g. where the notifying entity intends to provide the service of exchange of crypto-assets for funds or other crypto-assets, a description of the commercial policy.

## 3.2 Assessment

- 8. MiCA provides that entities that already have a license to provide financial services and that already went through the authorisation process with the NCA of their home Member State (such as investment firms, credit institutions, etc.), do not need to go through the entire authorisation process again. MiCA indeed presumes that such entities are generally capable of providing crypto-asset services. Because those entities are already known to the relevant NCA and because many relevant information are already available to the NCA and have already been accepted as adequate, such information do not need to be submitted again.
- 9. Other information, however, is specific to the newly intended provision of crypto-asset services. Such information, therefore, still needs to be made available to the relevant NCA to allow for an effective supervision.
- 10. MiCA has therefore chosen to require certain financial entities that intend to broaden the scope of their services to the provision of crypto-asset services to notify their relevant NCA before doing so. Such notification shall include the specific information relevant to the provision of crypto-asset services. In other words, MiCA is paying deference to the existing authorisation, but requests that it be complemented with the information specific to the provision of crypto-asset services, to allow for effective supervision.
- 11. With respect to such information, MiCA deems it adequate and sufficient to require a notification rather than an authorisation process which – in theory – could have been limited to the additional crypto-asset services. The rationale for this decision is that notifying financial entities are already strictly regulated and already have the infrastructure in place to provide financial services. An expansion of the license by way of a new, additional authorisation is therefore not deemed necessary or appropriate.
- 12. In terms of substance, the notification requirements under MiCA follow largely the authorisation requirements set out in Articles 62 of MiCA, with the difference being that the notifying entity does not have to submit such information to the relevant NCA for authorisation purposes. Furthermore, not all authorisation requirements are mirrored in the notification requirements. Where the relevant information is already available at the relevant NCA, and where the provision of crypto-asset services does not call for changes to the organisation structure and procedures of the notifying entity, the information does not have to be submitted again.

13. Where, however, the authorisation requirements are reflected in the notification requirements, the substantive requirements and the pertinent MiCA language are the same. Hence, the specific crypto-asset services requirements that need to be included in the notification, follow the corresponding ones related to the draft technical standards for authorisation of crypto-asset service providers below.

### **3.3 Proposal**

14. ESMA's proposals for 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 are set out in Annex II (sections 9.2.1 and 9.2.2).

**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?**

## 4 Content of templates for the application for authorisation

### 4.1 Background

**Article 62(5) of MiCA:**

*ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to further specify the information referred to in paragraphs 2 and 3.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.*

**Article 62(6) of MiCA:**

*ESMA shall, in close cooperation with EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the information to be included in the application for authorisation as a crypto-asset service provider.*

*ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 30 June 2024.*

15. Article 62 of MiCA provides for the requirements for the application for authorisation as CASP. More particularly, Article 62(1) of MiCA obliges legal persons or other undertakings that intend to provide crypto-asset services to submit their application for an authorisation as a CASP to the NCA of their home Member State.
16. Article 62(2) of MiCA sets out the information that such an application must contain and which encompasses, inter alia, the following elements:
  - a. information about the identity of the applicant CASP, including the legal name and any other commercial name used by the applicant, the Legal Entity Identifier (LEI) of the applicant and the website operated by the applicant;
  - b. a programme of operations, setting out the types of crypto-asset services that the applicant CASP intends to provide, including where and how those services are to be marketed;
  - c. proof that the applicant CASP meets the requirements for prudential safeguards set out in Article 67 of MiCA;
  - d. a description of the applicant CASP's governance arrangements and internal control mechanisms (including procedures to comply with anti-money laundering and counter-terrorist financing obligations);

- e. proof that members of the management body of the applicant CASP are of sufficiently good repute and possess the appropriate knowledge, skills and experience to manage the CASP;
  - f. the identity of any natural or legal persons that have qualifying holdings in the applicant CASP, the amounts of those holdings and proof that those persons are of sufficiently good repute;
  - g. a description of the procedure for the segregation of clients' crypto-assets and funds;
  - h. where the applicant CASP intends to provide custody and administration of crypto-assets on behalf of clients, a description of the custody and administration policy;
  - i. a description of the applicant CASP's complaints-handling procedures;
  - j. the technical documentation of the information and communication technology (ICT) systems and security arrangements of the applicant CASP;
  - k. where the applicant CASP intends to provide the service of execution of order for crypto-assets on behalf of clients, a description of the execution policy;
  - l. where the applicant CASP intends to provide the service of exchange of crypto-assets for funds or other crypto-assets, a description of the commercial policy.
17. Moreover, Article 62(3) of MiCA stipulates that, for the purposes of the assessment by the NCA of the home Member State of:
- m. the good repute and knowledge, skills and experience of members of the management body of the applicant CASP (in accordance with Article 62(2)(g)); and
  - n. the good repute of any natural or legal persons that have qualifying holdings in the applicant CASP (in accordance with Article 62(2)(h)),

an applicant CASP should provide information, which encompasses, inter alia:

- o. for all members of the management body of the applicant CASP, the absence of a criminal record in respect of convictions or the absence of penalties imposed under the applicable commercial law, or in relation to anti-money laundering, and counter-terrorist financing, to fraud or to professional liability;
- p. information that the members of the management body of the applicant CASP collectively possess sufficient knowledge, skills and experience to manage the CASP and that those persons are required to commit sufficient time to perform their duties;

- q. for all natural or legal persons that have qualifying holdings in the applicant CASP, the absence of a criminal record in respect of convictions or the absence of penalties imposed under the applicable commercial law, or in relation to anti-money laundering and counter-terrorist financing, to fraud or to professional liability.
18. Article 62(4) of MiCA sets out that NCAs must not require an applicant CASP to provide any information referred to in Article 62(2) of MiCA that they have already received under the respective authorisation procedures in accordance with Directive 2009/110/EC<sup>4</sup>, 2014/65/EU<sup>5</sup> or (EU) 2015/2366<sup>6</sup>, or pursuant to national law applicable to crypto-asset services prior to the date of entry into force of MiCA, provided that such previously submitted information or documents are still up-to-date.

## 4.2 Assessment

### **Foster investor protection by requiring applicants to provide precise information for the authorisation as a CASP**

19. Significant risks may emerge for investors, if they are unaware or do not completely understand the risks related to crypto-asset services and their providers. Such risks can arise from, inter alia, fraud, cyberattacks or inappropriate governance arrangements of the firms offering crypto-asset services.
20. At the same time, prospective clients usually lack the information to assess whether the available CASPs have established appropriate policies, arrangements and procedures based on sufficient resources (e.g. human, financial and IT-related) to ensure the continuous provision of services in the best interest of the client. Observations which have often described (prospective) clients of crypto-asset services as “over-enthusiastic” seem to further exacerbate the issue and increase the risk of potential investor detriment.
21. Hence, by screening the market participants able to provide crypto-asset services, NCAs provide a safer space for investors, despite the risks that any investment in crypto-assets represents.
22. Thus, Chapters 2 and 3 of Title V of MiCA set out prudential and conduct requirements for CASPs, including obligations for the application for authorisation as a CASP to promote investor protection.

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<sup>4</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, OJ L 267, 10.10.2009, p. 7–17.

<sup>5</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

<sup>6</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 35–127.

23. To analyse the CASPs' capability to continuously provide quality services, it is important to enable NCAs to carry out a meaningful assessment as part of the process for granting and refusing requests for authorisation of CASPs. Therefore, Article 62(2) of MiCA stipulates that applications for authorisation of CASPs must contain a set of information related to prudential and conduct requirements provided in MiCA. In accordance with the mandate given to ESMA under Article 62(5) of MiCA, ESMA has further specified the requirements listed under Article 62(2) for applications for authorisation as a CASP. ESMA's proposed draft RTS aims at fostering investor protection by requiring applicants to submit precise information to their home NCA. Such information provides indications as to the applicant readiness and capability to comply with its MiCA obligations when requesting its authorisation.
24. An additional objective of the proposed draft RTS is to foster trust in the crypto-asset market, thanks to a robust authorisation process for CASPs which should promote a more stable crypto-asset market. This can, in turn, foster investments in crypto-assets through CASPs and may enable CASPs to reap more benefits stemming from the growth potential of crypto-asset service markets.

### **Lessons to be drawn from recent collapses of service providers in the crypto world**

25. In 2022, the (global) crypto-assets markets experienced, inter alia, the fallout of several crypto-assets<sup>7</sup> and the failures of several providers of crypto-asset services<sup>8</sup>.
26. Certain malfunctions which led to these recent collapses, seem to have been related to, among others, fields which are in the scope of the applications that legal persons submit to NCAs to be authorised for the provision of crypto-asset services. At this stage, examples of such malfunctions observed in recent cases of collapse include:
  - a. the absence of fundamental information about the service provider's corporate structure and its financial resources, which significantly complicated the assessment of the service provider's links and the rigor of its governance and risk management procedures;
  - b. the lack of transparency on the characteristics and extent of financial links between the entities affiliated to these providers of services related to crypto-assets, while these firms' different affiliates seemed to have been strongly financially interconnected. This indicates significant governance and risk management shortcomings and raises serious investor protection issues.
  - c. the offering of several services related to crypto-assets (such as brokerage, trading, and custody services) which were not subject to (sufficient) regulation and

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<sup>7</sup> For example, in May 2022, the stablecoin Terra's UST collapsed. Prior to its crash it had been considered as the fourth largest stablecoin with a market capitalisation of USD 18 billion (only exceeded by Tether (USDT), USD Coin (USDC) and Binance USD (BUSD)).

<sup>8</sup> For instance, the hedge fund Three Arrows Capital, the crypto-asset lending firm Celsius and FTX Trading Ltd filed for bankruptcy in 2022.

supervision. The provision of these integrated services led to conflicts of interest (inter alia between the objectives of the different services or entities of the same group) that were not mitigated and which resulted in investor protection issues and liquidity and solvency problems, which finally resulted in the relevant entities' insolvency and substantial losses for professional and retail investors.

#### 4.2.1 RTS

27. The below mentioned proposals are related to the draft RTS and were developed by ESMA in accordance with the mandate set out in Article 62(5) of MiCA.

##### **General information**

28. Legal persons or other undertakings that intend to provide crypto-asset services are required to submit their application for an authorisation as a CASP to the NCA of their home Member State. To enable the NCA to precisely identify the applicant for authorisation as a CASP ("applicant"), the draft RTS proposes that the application must contain certain information, including:
- a. the legal name and legal entity identifier (LEI) of the applicant;
  - b. the legal form of the applicant (including information on whether it will be a legal person or other undertaking) and, where available, its national identification number and evidence of its registration with the national register of companies;
  - c. the address of the head office and, if different, of the registered office of the applicant and for branches, information on where the branches will operate;
  - d. the domain name of each website operated by the applicant and its social media accounts.

##### **Programme of operations**

29. In ESMA's view, it is important that NCAs receive precise information showing that the applicant is ready and capable to comply with the MiCA requirements when requesting its authorisation and afterwards. Accordingly, Article 62(2)(d) of MiCA requires applicants to provide a programme of initial operations containing information on the organisation of the CASP. The draft RTS provides that such programme of initial operations should cover the following three years as this period should allow the NCA to make a forward-looking assessment.
30. Recent collapse cases of CASPs have revealed an absence of basic information about the relevant entities' corporate structure and key financial links with other entities of the same group. This seems to have significantly complicated the assessment of relevant financial and operational interconnections within crypto groups and hampered the CASP's governance and risk management arrangements.



31. These observations point to the relevance of information about a CASP's corporate structure and key financial links between its entities to enable NCAs to properly assess a CASP's capability to comply with the MiCA requirements. Consequently, ESMA proposes that the applicant's programme of initial operations must include information about (but not only) its group structure, affiliated entities, outsourcing arrangements and intra group financial links, among others:
- a. where the applicant belongs to a group, explanation of how the activities of the applicant will fit within the group strategy and interact with the activities of the other entities of the group, including an overview of the current and planned organisation and structure of the group;
  - b. an explanation of how the activities of the entities affiliated with the applicant are expected to impact the activities of the applicant, including information on the services provided by these entities;
  - c. the applicant's outsourcing policy and a detailed description of the applicant's planned outsourcing arrangements, including intra-group arrangements, how they comply with Article 73 of MiCA on requirements for services or activities outsourced to third parties for the performance of operational functions, as well as the resources (human and technical) allocated to the control of the outsourced functions, services or activities and the risk assessment related to outsourcing;
  - d. a forecast accounting plan at an individual and, where applicable, at consolidated group and sub-consolidated levels, including any intra-group loans granted or to be granted by and to the applicant.
32. Additionally, ESMA suggests that the information on the organisation of the CASP for the following three years to be provided by an applicant must also encompass, inter alia:
- a. a list of crypto-asset services that the applicant plans to provide as well as the types of crypto-assets to which the crypto-asset services will relate;
  - b. information on other planned regulated and unregulated activities of the applicant, including whether the applicant intends to offer crypto-assets to the public or seek an admission to trading and, if so, of what type of crypto-assets;
  - c. a description of the means of access to the applicant's crypto-asset services, including the name of any website or ICT-based application available to clients to access the crypto-asset services, in which languages it is available and which crypto-asset services will be accessed through it;
  - d. the planned marketing and promotional activities and arrangements for the crypto-asset services, among others about

- (i) all means of marketing to be used;
  - (ii) languages that will be used for the marketing and promotional activities;
- e. a detailed description of the human, financial and technical resources allocated to the various intended activities as well as their geographical location.
33. Where the applicant intends to provide the service of reception and transmission of orders for crypto-assets on behalf of clients, it must provide to the competent authority a copy of the policies and procedures and a description of the arrangements ensuring compliance with the requirements set out in Article 80 of MiCA. Moreover, if the applicant intends to provide the service of placing of crypto-assets, ESMA suggests including in the requested information on the organisation of the CASP among others a copy of the policies and procedures related to the provision of this service.

### **Information about governance arrangements and internal control mechanisms**

34. Article 62(2)(f) and (i) of MiCA requires applicants to provide a description of their governance arrangements and their internal control mechanisms.
35. Recent collapses of crypto firms have shown a lack of governance arrangements and internal control mechanisms which seems to have seriously contributed to the ultimate demise of such firms and the important losses suffered by their clients.
36. Accordingly, it is important to ensure that NCAs are capable to assess whether applicants have established sufficiently effective governance arrangements and internal control mechanisms. Therefore, the draft RTS proposes that an application must contain a set of obligatory detailed descriptions on the applicant's respective arrangements and mechanisms that encompass, among others:
- a. the applicant's organisational structure, including (where relevant) the relevant elements of the group, the indication of the distribution of the tasks and powers and the relevant internal reporting lines and the control arrangements implemented together with an organisational chart;
  - b. personal details of heads of internal functions (management, supervisory and internal control functions), including personal information, including their location and a detailed curriculum vitae, (stating relevant education, professional training and experience) and a description of the skills, knowledge and expertise necessary for the discharge of their responsibilities;
  - c. the procedures and arrangements put in place to ensure that relevant staff are aware of the procedures which must be followed for the proper discharge of their responsibilities;
  - d. the policies, procedures and arrangements to ensure compliance of the applicant's management body's requirement to assess and periodically review the

effectiveness of the governance-related policy arrangements and procedures, including:

- (i) the identification of the internal control functions to monitor the policy arrangements and procedures established to comply with the prudential and conduct requirements for CASPs set out in the Chapters 2 and 3 of Title V of MiCA, including the reporting lines to the applicant's management body;
  - (ii) an explanation how the applicant ensures that the internal control functions operate independently from the functions they control; have access to the necessary resources and information and can report (regularly and ad hoc basis) directly to the applicant's management body, where they detect a significant risk of compliance failure by the applicant;
  - (iii) a description of the ICT systems, safeguards and controls to monitor the applicant's activities and ensure compliance with the prudential and conduct requirements for CASPs under MiCA, including back-up systems and risk controls;
- e. the whistleblowing arrangements to enable staff to safely report actual or potential breaches of regulatory or internal requirements;
  - f. whether the applicant has appointed or will appoint external auditors and their name and contact details (if applicable and when available);
  - g. the accounting procedures by which the applicant will record and report its financial information, including the start and end dates of the applied accounting year;
  - h. information on the management of risks relating to conflicts of interests, including, inter alia, a copy of the applicant's conflicts of interest policy, together with a description of how the policy ensures that the applicant identifies and prevents or manages conflicts of interests in accordance with Article 72(1) MiCA and discloses conflicts of interest in accordance with Article 72(2) of MiCA.

### **Segregation of clients' crypto-assets and funds**

- 37. Article 62(2)(k) of MiCA obliges applicants to provide a description of the procedure for the segregation of clients' crypto-assets and funds.
- 38. Some of the recent collapses in the crypto world have shown a misuse of clients' funds and crypto-assets. This seems to have been permitted by a lack of governance and internal controls (see above) but this also highlights the relevance of the requirements on safekeeping of clients' crypto-assets and funds for ensuring investor protection. Thus, the draft RTS aims at providing NCAs with appropriate information about the applicant's procedure for the segregation of clients' crypto-assets and funds.

39. Where the applicant intends to hold clients' funds (other than e-money tokens), or crypto-assets belonging to clients or the means of access to such crypto-assets, ESMA proposes that the application for authorisation as a CASP shall contain a set of information on the detailed description of its procedures for the segregation clients' crypto-assets and funds, including how the applicant ensures that
- a. clients' funds are not used for its own account, crypto-assets belonging to the clients are not used for its own account and that client wallet addresses are different to the applicant's own wallet address;
  - b. the ownership rights of clients' crypto-assets and funds between different clients are safeguarded and segregated;
  - c. clients are informed in clear, concise and non-technical language about the key aspects of the applicant's systems, policies and procedures to comply with Article 70(1), (2) and (3) of MiCA.
40. The following proposals aim at specifying information requirements on relevant prudential and conduct obligations for the application of authorisation as CASP. The objective of these suggestions is to enable NCAs to analyse thoroughly whether an applicant is ready and capable to comply with the MiCA requirements.

### **Prudential requirements**

41. To ensure investor protection, CASPs authorised under MiCA shall comply with certain prudential requirements (Recital 80 of MiCA). Moreover, Article 62(2)(e) of MiCA sets out that applicants are required to provide information proving that they comply with the obligations for prudential safeguards set out in Article 67 of MiCA.
42. Accordingly, the draft RTS suggests that an application for authorisation as a CASP must contain certain mandatory information, encompassing, among others:
- a. a description of the applicant's prudential safeguards in accordance with Article 67 of MiCA, consisting of:
    - (i) the amount of the prudential safeguards that the applicant has in place at the time of the application for authorisation and the description of the assumptions used for its determination;
    - (ii) the amount of the prudential safeguards covered by own funds and (where applicable) by an insurance policy;
    - (iii) forecast calculations and plans to determine own funds, including for the first three business years: the forecast calculation of the applicant's prudential safeguards and the forecast accounting plans (encompassing projections of balance sheets, profit and loss accounts and a cash or income statements and a cash-flow statement);

b. proof that the applicant meets the prudential safeguards according to Article 67 of MiCA, including:

(i) in relation to own funds, among others, documentation of how the applicant has calculated the amount in accordance with Article 67 of MiCA;

(ii) in relation to the insurance policy (where available) or comparable guarantee, inter alia, a copy of the subscribed insurance policy incorporating all the elements necessary to comply with Article 67(5) and (6) of MiCA.

**Identity and proof of good repute, knowledge, skills, experience and of sufficient time commitment of the members of the management body**

43. Article 62(2)(g) and 62(3) of MiCA obliges applicants seeking authorisation as a CASP to provide proof that members of its management body are of sufficiently good repute and possess the appropriate knowledge, skills and experience and sufficient time to manage that provider. The draft RTS proposes that the application for authorisation as a CASP must contain specific obligatory information indicating the identity, good repute, knowledge, skills, experience and sufficient commitment of time of the members of the applicant's management body, inter alia, about:

a. the member's full name, place and date of birth and address

b. the position held or to be held by the person, including whether the position is executive or non-executive, the (planned) start date, the duration of the mandate (where applicable) and the person's key duties and responsibilities;

c. a curriculum vitae stating the person's relevant education, professional training and professional experience, including among others:

(i) the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed; particularly any activities within the scope of the position sought relevant,

(ii) for positions held in the previous 10 years: details on activities, all internal decision-making powers held and the areas of operations under control;

d. the member's personal history, including:

(i) criminal records (including criminal convictions and any ancillary penalties) and official relevant information on pending criminal proceedings or investigations or penalties (inter alia relating to money laundering and terrorist financing or fraud), relevant civil and administrative cases and disciplinary actions (including disqualification as a company director or bankruptcy procedures);

- (ii) any refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or any expulsion by a regulatory or government body or by a professional body or association;
  - (iii) the person's dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
- e. a description of any financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders. Such description shall include any financial interests, including crypto assets, other digital assets, loans, shareholdings, guarantees or security interests, whether granted or received, commercial relationships, legal proceedings and any position of political influence held over the past two years.
- f. the person's commitment of sufficient time to the mandate, including information on:
  - (i) the estimated minimum time (per year and month) that the person will devote to the performance of his or her functions within the applicant;
  - (ii) a list of the other executive and non-executive directorships that the person holds;
  - (iii) the estimated time (in days per year) and number of meetings (per year) dedicated to each of the other mandates;
- g. the suitability policy and the results of any suitability assessment of each member of the management body.

### **Information relating to shareholders or members with qualifying holdings**

- 44. Article 62(2)(h) and 62(3) of MiCA requires an application for authorisation as a CASP to include information on the sufficiently good repute of shareholders and members with direct and indirect qualifying holdings in the applicant
- 45. ESMA considers that it is essential to enable NCAs to properly assess the reputation of shareholders or members with qualifying holdings. In order to enhance regulatory consistency and keep these provisions concise, the draft RTS suggests focusing on some specified key requirements, while referring to the draft RTS [on specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding] where the more detailed obligations are set out. The latter RTS will also be elaborated based on the Level 2 mandates included in MiCA.
- 46. Accordingly, the draft RTS proposes that applicants for authorisation as a CASP shall include certain obligatory information about shareholders and members with direct and indirect qualifying holdings in the applicant, encompassing, among others:

- a. an ownership structure chart of the applicant, including the breakdown of its capital and voting rights and the names of the shareholders with qualifying holdings;
- b. for each shareholder or member holding a direct or indirect qualifying holding in the applicant the information and documents set out in Articles 1 to 4 of the [RTS specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding] as applicable;
- c. for each shareholder or member holding a direct or indirect qualifying holding in the applicant information, including inter alia, the number and type of shares or other holdings subscribed and the nominal value of such shares or other holdings;

### **Business continuity**

47. To enable NCAs to conduct of proper assessment of the robustness of applicants' business continuity arrangements, ESMA believes it is appropriate to require that the applicant for authorisation as a CASP provides sufficiently detailed information on its efforts undertaken to ensure the continuous and regular provision of crypto-asset services to clients.
48. The draft RTS proposes that an application for authorisation as a CASP shall contain a detailed description showing that the applicant has established a business continuity plan, including which steps have been taken to ensure continuity and regularity in the performance of the applicant's crypto-asset services. This description must include, among others, details showing that the business continuity plan is appropriate and that arrangements are set up to maintain and periodically test it, regarding critical or important functions supported by third-party providers. These plans shall also account for the possible event that the quality of the provision of such functions deteriorates to an unacceptable level or fails. Furthermore, such plans should account for the potential impact of the insolvency or other failures of service providers, death of a key person and, where relevant, political risks in the service provider's jurisdiction.

### **ICT systems and related security arrangements**

49. Many observations, including media reports, about hack attacks at CASPs, which have often resulted in the theft of significant amounts of client crypto-assets, highlight the relevance of CASPs' IT security arrangements in ensuring investor protection.
50. Article 62(2)(j) of MiCA requires applicants to provide the technical documentation of their ICT systems and security arrangements, and a description thereof in non-technical language.
51. In order to specify this Level 1 requirement, the draft RTS suggests that an application for authorisation as a CASP shall contain a set of obligatory information, among others:

- a. technical documentation of the ICT systems, on DLT infrastructure relied upon, where relevant, and on the security arrangements. Moreover, the applicant shall include a description of the arrangements and deployed ICT and human resources established to ensure that the applicant complies with Regulation (EU) 2022/2554;
- b. certain audits or tests performed by external independent parties, including vulnerability assessments and scans, network security assessments, physical security reviews, questionnaires and scanning software solutions for ICT assets supporting critical and important functions as defined in Article 3(22) of Regulation (EU) 2022/2554;

### **Detection and prevention of money laundering and terrorist financing**

52. In order to preserve the integrity of the financial system of the European Union, it is important that crypto-asset service providers carry out effective checks on financial operations involving customers and financial institutions to address money laundering and terrorist financing risks. Additionally, tackling these risks can enhance the trust of market participants (e.g. prospective clients and third-party service providers) in crypto-asset services, thereby increasing the growth potential of this rather new sector.
53. Article 62(2)(i) of MiCA obliges applicants to provide a description of the internal control mechanism, policies, controls and procedures to identify, assess and manage risks, inter alia, related money laundering and terrorist financing.
54. ESMA proposes that an application for authorisation as a CASP must contain information on the applicant's internal control mechanisms, systems and procedures to assess and manage risks relating to money laundering and terrorist financing, including inter alia:
  - a. the applicant's assessment of the inherent and residual anti-money laundering and counter-terrorist financing risks associated with its business, among others, the risks relating to the applicant's customer base, the services provided and the geographical areas of operation;
  - b. the measures that the applicant has or will put in place to mitigate the risks and comply with obligations relating to anti-money laundering and counter-terrorist financing, including the policies and procedures to comply with customer due diligence requirements and to detect and report suspicious transactions or activities;
  - c. detailed information on how such mechanisms, systems and procedures are adequate and proportionate to the scale, nature and range of crypto-assets services provided, such that they ensure the applicant's compliance with Directive (EU) 2015/849 and Regulation (EU) 2023/1113; including information on arrangements, human and financial resources devoted to the training of the staff in anti-money laundering and counter-terrorist financing matters (annual indications);



- d. the frequency of the assessment of the adequacy and effectiveness of such mechanisms, systems and procedures and the person or function responsible for such assessment.

### **Complaints-handling**

55. Article 71 of MiCA sets out that CASPs shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients. Accordingly, the draft RTS aims at specifying that an application for authorisation as a CASP shall contain a detailed description of how the applicant's complaints-handling systems, arrangements, policies and procedures comply with the requirements of Article 71 of MiCA. Therefore, such an application must contain a detailed description on how the applicant will ensure inter alia that
- a. the applicant dedicates sufficient human and technical resources to the handling of complaints;
  - b. the persons in charge of complaints-handling will have the necessary skills, knowledge and expertise for the discharge of the responsibilities;
  - c. the applicant will inform clients or potential clients of the possibility to file a complaint free of charge, including where and how on the applicant's website or app is the information available; and
  - d. clients are informed about the procedural key steps of the decision-making process on complaints.

### **Information on crypto-asset services intended to be provided by the applicant**

56. Article 62 of MiCA requires inter alia that an applicant who intends to offer one or more crypto-asset service<sup>9</sup> must include in its application descriptions of policies, arrangements and procedures relevant for ensuring the provision of the respective service to clients according to the MiCA obligations. In order to promote investor protection and in line with its mandate set out in Article 62(5) of MiCA, ESMA proposes to specify these relevant MiCA provisions. These suggested specifications aim at requiring applicants to provide information that enable NCAs to properly assess whether the applicant is ready and capable to comply with the MiCA requirements when requesting authorisation and continuously afterwards, or not.

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<sup>9</sup> Crypto-asset services means any of the following services and activities relating to any crypto-asset: (i) the custody and administration of crypto-assets on behalf of clients; (ii) the operation of a trading platform for crypto-assets; (iii) the exchange of crypto-assets for funds; (iv) the exchange of crypto-assets for other crypto-assets; (v) the execution of orders for crypto-assets on behalf of clients; (vi) the placing of crypto-assets; (vii) the reception and transmission of orders for crypto-assets on behalf of clients; (viii) providing advice on crypto-assets; (ix) providing portfolio management on crypto-assets; (x) providing transfer services for crypto-assets on behalf of clients (Article 3(1)(15) of MiCA).

57. Accordingly, the draft RTS proposes that an application for authorisation as CASP for the service of custody and administration of crypto-assets on behalf of third parties must contain a set of information encompassing, inter alia
- a. a description of the applicant's custody and administration policy, including a description of identified sources of operational and IT risks for the safekeeping and control of the crypto-assets or the means of access to the crypto-assets of clients; and the applicant's adopted procedures, systems and controls to manage those risks, including when the custody and administration of crypto-assets on behalf of clients is outsourced to a third party;
  - b. the procedures and a description to ensure the exercise of the rights attached to the crypto-assets by the clients; and to ensure the return of crypto-assets or the means of access to the clients;
  - c. information on arrangements to ensure that the crypto-assets or means of access to the crypto-assets of the clients is clearly identified as such;
  - d. where the CASP has delegated the provision of custody and administration of crypto-assets on behalf of clients to a third-party, among others, a description of any functions relating to the custody and administration of crypto-assets on behalf of clients delegated by the CASP, the list of any delegates and any conflicts of interest that may arise from such a delegation.
58. According to Article 62(2)(n) of MiCA, when an applicant seeks an authorisation as CASP for the operation of a trading platform, the applicant must provide, on top of all other information required from all types of CASPs, a description of the operating rules of the trading platform and of the procedure and system to detect market abuse. The minimum content of the operating rules is set by MiCA in Article 76(1). In order to allow national competent authorities to assess the adequacy of the applicant's operating rules there are specific elements which should be further specified in the description of the operating rules provided by the applicant at the moment of authorisation. In particular, the applicant should further elaborate aspects of the operating rules which relate to the admission to trading of crypto-assets, the trading and the settlement of those crypto-assets. For this reason, the RTS highlights some specific information which has to be included as part of the description of the operating rules, in particular:
- a. With regards to the admission to trading, applicants should provide detailed information on rules governing the admission of crypto-assets to trading and the way in which the admitted crypto-assets comply with the applicant's rules, the types of crypto-assets that the applicant will not admit to its platform and the reasons for these exclusion as well as fees applicable to the admission to trading.
  - b. With regards to the trading of crypto-assets, the applicant should further specify in the description of the operating rules, the elements of those rules which govern over the execution, the cancelation and the routing of orders, elements which aim

at ensuring orderly trading, as well as transparency and record keeping elements of the rules.

- c. Finally, the applicant should include in the description of the operating rules the elements governing the settlement of transactions on crypto-assets concluded in the trading platform operated by the applicant, including the definition of the moment at which settlement is final, all verifications required to ensure the settlement of the transaction happens effectively and any measure put in place by the applicant to limit settlement fails.
59. Furthermore, ESMA is of the view that applicants intending to operate a trading platform for crypto-assets shall provide to the NCA a copy of the operating rules of the trading platform and of any procedures to detect and prevent market abuse.
60. Moreover, ESMA proposes that an application for authorisation as a CASP for the service of exchange of crypto-assets for funds or other crypto-assets must include a set of obligatory information, encompassing inter alia information on:
- a. a description of the commercial policy established in accordance with Article 77(1) of MiCA;
  - b. a description of the methodology for determining the price of the crypto-assets that the applicant proposes to exchange for funds or other crypto-assets in accordance with Article 77(2) of MiCA.
61. Additionally, the draft RTS proposes that an application for authorisation as CASP for the service of executing orders for crypto-assets on behalf of third parties is required to contain, inter alia, the following information:
- a. a list of the trading platforms for crypto-assets on which the applicant CASP relies significantly to meet its obligation to take all necessary steps to obtain the best possible result for the execution of client orders and specifying which trading platforms are used for each category of crypto-assets;
  - b. how the applicant considers the execution factors of, inter alia, price, costs, speed, likelihood of execution or any other relevant factors the applicant considers as part of all necessary steps to obtain the best possible result for the client.
62. ESMA proposes that an applicant for CASP authorisation for the service of providing advice on crypto-assets or portfolio management of crypto-assets is obliged to provide a set information, encompassing inter alia:
- a. a description of the arrangements established by the applicant to ensure that the staff providing advice or information about crypto-assets, or a crypto-asset service, on the CASP's behalf possess the necessary knowledge and competence to fulfil their obligations;

- b. details on the amount of human and financial resources planned to be devoted on a yearly basis by the applicant crypto-asset service provider to the professional development and training of the staff providing advice or portfolio management on crypto-assets.
63. Moreover, the draft RTS proposes to require that an application for authorisation as a CASP intending to provide transfer services for crypto-assets on behalf of clients must contain a set of obligatory information, including:
- a. details on the types of crypto-assets for which the applicant intends to provide transfer services;
  - b. the policies, the procedures and a detailed description of the applicant's established policies, procedures and arrangements to ensure compliance with Article 82 of MiCA, including detailed information on the applicant's arrangements and deployed ICT and human resources to address risks quickly, efficiently and thoroughly during the whole process of providing transfer services for crypto-assets on behalf of clients, including operational failures and cybersecurity risks, such as hacking attacks on clients' crypto-assets;
  - c. where relevant, a description of the applicant's insurance policy, including on the insurance's coverage of detriment to client's crypto-assets that may result from cyber security risks, such as hacking attacks;
  - d. how the applicant ensures that clients are adequately informed about the established policies, procedures and arrangements referred to in point b).

#### 4.2.2 ITS

64. It is appropriate to set out common standard forms, templates and procedures to ensure the common understanding and application among Member States' NCAs of the process of authorisation of applicants as a CASP.

#### **Procedure**

65. Articles 2 to 5 of the draft ITS set out the procedure for (i) the submission of the application to the NCA; (ii) the NCA's provision of the acknowledgement of receipt of the application to the applicant; (iii) the notification of changes and (iv) the communication of the NCA's decision to the applicant.

#### **Information to be provided to competent authorities by applicants**

66. Article 2 of the draft ITS stipulates that an applicant seeking authorisation as a CASP in accordance with Article 62 of MiCA is obliged to submit to the NCA its application by filling in the relevant form set out in the Annexes of the draft ITS.

## 4.3 Proposal

67. ESMA's proposals for the draft RTS and ITS on the application for authorisation as a crypto-asset service provider referred to in Articles 62(5) and 62(6) of MiCA is set out in Annex II (sections 9.2.3 and 9.2.4).

**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.**

**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.**

## 5 Complaints-handling procedures of crypto-asset service providers

### 5.1 Background

#### **Article 71 (5) of MiCA:**

*ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify the requirements, templates and procedures for handling complaints.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.*

68. Article 71 of MiCA provides for complaints-handling requirements for CASPs. More specifically, Article 71(1) of MiCA requires CASPs to establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and to publish descriptions of those procedures.
69. Article 71(2) of MiCA sets out that clients must be able to file complaints free of charge with CASPs.
70. Moreover, Article 71(3) of MiCA requires CASPs to inform clients of the possibility of filing a complaint, to make available to clients a template for filing complaints and to keep a record of all complaints received and any measures taken in response thereto.
71. Article 71(4) of MiCA stipulates that CASPs are obliged to investigate all complaints in a timely and fair manner and to communicate the outcome of such investigations to their clients within a reasonable period of time.
72. Article 71(5) of MiCA requires ESMA, in close cooperation with EBA, to develop draft RTS to further specify the requirements, templates and procedures for handling complaints and to submit these draft RTSs to the Commission by 12 months after the date of entry into force of MiCA.

### 5.2 Assessment

73. In a market at still an early stage of development, such as the crypto-asset service market, it is particularly essential to enable clients to express their problems and dissatisfaction with the services they receive, in a uniform way across the Union, to promote investor protection and a shared culture of complaints-handling by CASPs.
74. In entities (such as CASPs) which have so far been – for the most part – unregulated, the compliance gap between the current state of affairs and where they should get at is important. This is especially true if we compare them to other financial entities

(investment firms or credit institutions, for instance) which have sophisticated internal controls – notably compliance functions – and complaints handling mechanisms. Recent cases of collapse in the crypto world have however shown that many crypto firms, for now, lack such sophisticated internal controls, including complaints handling mechanisms and that this caused detriment to investors.

75. For these reasons and whilst remaining in the mandate received under Article 71(5) of MiCA, ESMA chose to be rather specific in the requirements applicable to CASPs (rather than regulating through high level principles), in an effort to prioritise investor protection and compel CASPs to level their compliance standards in relation to complaints handling.
76. Moreover, common requirements, templates and procedures for complaints-handling of CASPs across Member States are an important basis for a common understanding and enforcement among Member States' NCAs of the complaints handling requirements set out in Article 71 of MiCA.
77. In developing the draft RTS, ESMA has considered the principles included in the Joint Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors<sup>10</sup> to promote policy consistency between these Joint Guidelines and this draft RTS. ESMA also considered Commission Delegated Regulation (EU) 2022/2117 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling.
78. Whilst the approach adopted by ESMA is different from the one adopted by the EBA for its mandate under Article 31(5) of MiCA, ESMA notes that the two are not incompatible, even in circumstances where crypto-asset service providers may also be issuers of asset-referenced tokens, and that the difference of approach may also be explained by the different business models of issuers of asset-referenced tokens and CASPs.
79. The below mentioned proposals are related to the draft RTS and were developed by ESMA in accordance with the mandate in Article 71(5) of MiCA.

## **Procedures**

80. Article 71(1) of MiCA sets out that CASPs must establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and must publish descriptions of those procedures.
81. ESMA is of the view that complaints-handling procedures shall be adequately documented and include clear, accurate and up-to-date information. Moreover, the

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<sup>10</sup> Joint Committee of the European Supervisory Authorities: Guidelines on complaints-handling for the securities and banking sectors (04/10/2018, JC 2018 35).

draft RTS aims at harmonising the content of the complaints-handling procedures by specifying a set of minimum information to be included therein. It is also proposed that the procedures and the standard template for the complaints submission must be published on an easily accessible section of the CASPs' websites and be made available in all languages used by the crypto-assets service provider to market its services or communicate with clients or, where relevant, the language of the operating rules of the trading platform for crypto-assets operated by the crypto-assets service provider, as well as in at least one of the official languages of the home Member State and each Member State. To ensure that complaints-handling procedures are up-to-date, the draft RTS proposes to require the management body of CASPs to review the procedures at least once per year.

82. Additionally, ESMA suggests a set of requirements aiming at ensuring an effective implementation of the complaints-handling procedures in the CASPs, including that these procedures must be provided to all relevant staff of the CASP through an adequate internal channel and that staff of the CASP be trained in relation to such procedures.
83. It is worth noting that the draft RTS also provides that CASPs' management bodies must endorse these procedures and be responsible for their implementation, for monitoring compliance with them and for addressing any detected deficiencies.
84. The draft RTS also proposes that the conditions of CASPs for a complaint to be considered admissible and complete, must be fair, reasonable and must not unduly restrict the rights of natural or legal persons to file a complaint.

### **Complaints management**

85. In ESMA's view, it is important to ensure that CASPs handle complaints appropriately. Consequently, the draft RTS proposes that CASPs dedicate adequate resources to the handling and management of complaints. In line with the proportionality principle, to determine what level of resources is adequate, CASPs should take into account the scale, nature and range of crypto-asset services provided as well as other factors such as number of complaints received, average time necessary to handle complaints. Consequently, CASPs may have to dedicate a full team/function to the management of complaints, while others may be able to handle complaints satisfactorily with one FTE.
86. In order to ensure that complaints are handled effectively, the draft RTS also specifies that the dedicated resources must have the necessary skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them and shall have access to all relevant information.
87. Lastly, to allow for the management body to carry out its responsibilities in accordance with Article 68(6) of MiCA and Article 1(6) of the draft RTS, it is essential that the persons in charge of the management of complaints report directly to the management body, at least annually as well as, where material deficiencies are identified, on an ad



hoc basis, on the implementation and effectiveness of the complaints handling procedures. This includes the complaints-handling data and any remedy action taken or to be taken.

### **Standard template and language for the submission of complaints**

88. The draft RTS proposes that CASPs must ensure that clients are able to submit complaints by electronic means or by post, and in all languages used by CASPs to market their services or communicate with clients or, where relevant, the language of the operating rules of the trading platform for crypto-assets operated by the relevant CASP, as well as in at least one of the official languages of the home Member State and each host Member State.
89. Moreover, clients can file their complaints using the standard template set out in the Annex of the draft RTS. This will allow clients to lodge a complaint more easily and will contribute to the convergence and equal treatment of complainants within the European Union. ESMA proposes that the standard template must be made available in line with the language requirements set out in the previous paragraph. This should not, however, prevent clients from filing a complete without using such template.
90. Furthermore, when handling complaints, CASPs are obliged to communicate with complainants in a clear and plain language that is easy to understand.

### **Handling of complaints by CASPs**

91. In order to ensure the prompt, fair and consistent handling of complaints, the draft RTS proposes that CASPs shall acknowledge the receipt of any complaint without undue delay after its receipt. This acknowledgement must include specifically (but not only) the information whether the complaint is admissible and the timeframe in which the complainant can expect to receive a response. Where a complaint does not fulfil the conditions of admissibility CASPs must provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible.
92. ESMA proposes that, to ensure that complaints are investigated timely and fairly, CASPs must assess, without undue delay after acknowledging receipt of the complaint, whether the complaint is clear and complete. In investigating a complaint, CASPs shall gather and investigate all relevant evidence and information regarding a complaint and if needed, request additional information. Additionally, CASPs shall keep the complainant duly informed about any additional steps taken to handle the complaint and must reply to reasonable information requests by the complainant without any undue delay.
93. The RTS also proposes, with regard to decisions on complaints, that CASPs must address all points of the complaint and explain the reasons for the CASP's position. Furthermore, CASPs are required to remain consistent in their decisions on similar complaints and must be able to duly justify any deviation. CASPs are also obliged to

communicate their decision on a complaint to the complainant as soon as possible, within the timeline referred to in the information on the complaints-handling procedure, and in any case within 2 months after the acknowledgement of receipt of the complaint. If, in exceptional situations, the decision on a complaint cannot be provided within the aforementioned timeline, CASPs are obliged to inform the complainant about the reasons for that delay and specify the date of the decision.

94. Where the CASPs' decisions do not satisfy their complainant's demand or only partly satisfies them, the CASPs shall clearly set out the reasoning and contain information on available remedies such as an ombudsman, an alternative dispute resolution mechanism or a national competent authority are available. Additionally, the CASP shall communicate its decision in writing by electronic means.

### **Procedures to ensure consistent complaints-handling**

95. In order to enhance the quality of CASPs' complaints-handling and thereby foster investor protection and trust in crypto-asset services and CASPs, the draft RTS proposes that CASPs must continuously analyse complaints-handling data. This data must encompass certain information, inter alia
- a. the average processing time, per year (on a rolling basis), for each step of the complaints handling procedure, including acknowledgement, investigation, response time;
  - b. the number of complaints received, per year (on a rolling basis), and for each step of the complaints handling procedure, the number of complaints where the CASP did not comply with the maximum time limits set out in its complaints handling procedure.

## **5.3 Proposal**

96. ESMA's proposals for the draft RTS on the requirements, templates and procedures for handling complaints referred to in Article 71(5) of MiCA is set out in Annex II (section 9.2.5).

**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.**

**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?**

## 6 Identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers

### 6.1 Background

#### **Article 72 (5) of MiCA:**

*ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to further specify:*

*(a) the requirements for the policies and procedures referred to in paragraph 1, taking into account the scale, the nature and the range of crypto-asset services provided;*

*(b) the details and methodology for the content of the disclosure referred to in paragraph 2.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.*

97. Article 72 of MiCA provides for the requirement for crypto-asset service providers to:
- a. implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interests; and
  - b. on a prominent place on their website, disclose to their clients and prospective clients the general nature and sources of conflicts of interest and the steps taken to mitigate them.
98. Article 72(1) also details the types of conflicts that should be covered by such policies and procedures and disclosed. The conflicts of interest referred to in Article 72 are those between:
- a. crypto-asset service providers and:
    - (i) their shareholders or members;
    - (ii) any person directly or indirectly linked to the crypto-asset service providers or their shareholders or members by control;
    - (iii) members of their management body;
    - (iv) their employees; or
    - (v) their clients; or
  - b. two or more clients whose mutual interests also conflict.

99. Article 72 also provides that such policies and procedures should be implemented and maintained in accordance with the proportionality principle by taking into account the scale, the nature and range of crypto-asset services provided.
100. Regarding disclosures of the conflicts of interest required by Article 72(1), paragraphs 2 and 3 provide more details as to the requirements that crypto-asset service providers shall meet in this respect:
- a. the disclosures shall be made in an electronic format, on a prominent place on the website of the crypto-asset service provider,
  - b. the disclosures shall cover the general nature and sources of conflicts of interest referred to in paragraph 1, as well as the steps taken to mitigate them;
  - c. the disclosures shall include sufficient detail, taking into account the nature of each client, in order to enable each client to take an informed decision about the crypto-asset service in the context of which the conflicts of interest arise.
101. In addition to Article 72, Article 79 (Placing of crypto-assets) of MiCA also provides, in its paragraph 2, that crypto-asset service providers' rules on conflicts of interest referred to in Article 72(1) shall have specific and adequate procedures in place to identify, prevent, manage and disclose any conflicts of interest arising from the following situations:
- a. crypto-asset service providers place the crypto-assets with their own clients;
  - b. the proposed price for placing of crypto-assets has been overestimated or underestimated;
  - c. incentives, including non-monetary incentives, paid or granted by the offeror to crypto-asset service providers.

## 6.2 Assessment

### The identification and prevention or management of conflicts of interests

102. Article 72 provides that crypto-asset service provider “shall implement and maintain effective policies and procedures [...] to identify, prevent, manage and disclose” conflicts of interest of the sort referred to in Article 72(1). It is clear from paragraph 1 as well as paragraph 2 of Article 72 that conflicts of interests should either be prevented or managed. The disclosure requirements of Article 72(1), as further detailed in paragraph 2, are not an alternative to the prevention or management of conflicts of interests: “*crypto-asset service providers shall, in a prominent place on their website, disclose to their clients and prospective clients the general nature and sources of conflicts of interest referred to in paragraph 1 and the steps taken to mitigate them*”.

### **Application of the proportionality principle**

103. Article 72 provides that crypto-asset service providers must implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest, “taking into account the scale, the nature and range of crypto-asset services provided”. The proportionality principle referred to in Article 72 should, in no way, be interpreted as allowing smaller crypto-asset service providers or those providing only a limited range of services to operate whilst conflicts of interests remain unprevented or unmitigated.

### **Types of conflicts of interests covered by Article 72**

104. The conflicts of interest referred to in Article 72 are those between:

- a. crypto-asset service providers and:
  - (i) their shareholders or members;
  - (ii) any person directly or indirectly linked to the crypto-asset service providers or their shareholders or members by control;
  - (iii) members of their management body; their employees; or
  - (iv) their clients; or
- b. two or more clients whose mutual interests also conflict.

105. MiCA thus requires crypto-asset service providers to tackle conflicts of interest of, mainly, three sorts:

- a. conflicts of interest between the crypto-asset service provider and its clients;
- b. the conflicts of interest between individual clients or groups of clients of the crypto-asset service provider; and
- c. conflicts of interests that may prevent persons or entities linked to the crypto-asset service provider (employees, shareholders, members of the management body) to exercise their duties and responsibilities in an objective and independent manner, i.e. internal conflicts of interests.

106. The following circumstances may be cited as examples of conflicts of interests of the first category:

- a. where the crypto-asset service provider is executing orders for crypto-assets on behalf of clients but is also operating a trading platform for crypto-assets or an entity of its group is operating such a platform;

- b. the crypto-asset service provider provides advice or portfolio management services and is also issuing its own token or an entity in its group is issuing its own token; or
  - c. the crypto-asset service provider is providing placing services and intends to place the relevant tokens with its own clients.
107. For the second category, some obvious examples of situations that would need to be tackled include:
- a. where the crypto-asset service provider is providing both pricing and placing services and intends to sell the relevant crypto-assets to its own clients;
  - b. the crypto-asset service provider has more than one client interested in the outcome of a transaction; or
  - c. the crypto-asset service provider is dealing on own account in crypto-assets whilst also providing execution of orders on crypto-assets on behalf of clients or reception and transmission of orders for crypto-assets on behalf of clients.
108. In our proposal, conflicts of interests of the first two categories described above are covered by Article 1.
109. Regarding internal conflicts of interests (the third category), the following examples may be provided:
- a. an employee of the crypto-asset service provider holds crypto-assets and that employee has access, due to its functions and responsibilities at the crypto-asset service provider, to confidential information about the issuer of such crypto-assets;
  - b. a member of the management body of the crypto-asset service provider also has an economic interest in a competing crypto-asset service provider; or
  - c. a shareholder of the crypto-asset service provider is also a shareholder of another entity providing services to the crypto-asset service provider.
110. These conflicts of interests are covered by Article 2 in our proposal.

### **Remuneration policies, procedures and arrangements**

111. The remuneration of staff involved in the provision of crypto-asset services is a crucial investor protection issue. Although MiCA does not specifically refer to remuneration policies, procedures and practices of crypto-asset service providers, it is an important potential source of conflicts of interest and it is thus essential to make clear that crypto-asset service providers shall tackle this issue either through their conflicts of interest policies and procedures or through separate remuneration policies, procedures and arrangements.

112. Article 4 of the draft RTS therefore sets out some specific requirements in relation to the crypto-asset service provider's remuneration policies, procedures and arrangements.

### **Disclosures**

113. In order for clients or potential clients of the crypto-asset service provider to be able to take an informed decision, the disclosure of conflicts of interest covered by Article 72 should contain a sufficiently detailed, specific and clear description of:
- a. the crypto-asset services, activities or situations giving rise or which may give rise to conflicts of interest of the kind covered by Article 72;
  - b. the nature of the conflicts of interests identified;
  - c. the associated risks identified in relation to the conflicts of interest identified;
  - d. the steps and measures taken to prevent or mitigate the identified conflicts of interests and ensure that there are no residual risks remaining.
114. Such disclosures should be sufficiently detailed, specific and clear in order to allow the client to assess whether the situation described applies to his or her situation and whether all risks have been mitigated by the measures taken by the crypto-asset service provider.
115. For instance, if the crypto-asset service provider is providing advice and/or portfolio management services and is part of a group including an entity issuing its own token, the disclosures should detail that such services give rise to conflicts of interests because the crypto-asset service provider is part of a group comprising issuers of crypto-assets and the crypto-asset service provider thus has an incentive to recommend crypto-assets issued by its own group. The crypto-asset service provider should also detail what type of incentives (placing agreement, economic interest in the financial stability of the group, inducements...) it may have to recommend crypto-assets issued by entities from its group and the risks raised by such conflicts of interest. The measures taken to mitigate such conflicts of interest should also be detailed and should include an explanation as to how this addresses the risks identified.
116. In addition, it is essential that the CASP also discloses to its clients in what role and capacity it is acting when providing a crypto-asset service to a client. Indeed, this may not always be clear to clients, especially where CASPs operate in a vertically integrated manner or in close cooperation with affiliated entities.
117. Furthermore, the disclosures shall be made in a prominent place on the website of the crypto-asset service provider. To ensure that such disclosures are efficient, this shall be available to be read by clients at all times and on any devices. Where the crypto-asset service is provided through another means (such as a mobile app or other), the disclosures should either be also made available on the relevant device or the crypto-

asset service provider should provide a link, placed prominently, to the disclosures on its website.

118. In our proposal, Article 8 covers the requirements applicable to disclosures of conflicts of interest to be made by the crypto-asset service provider.
119. Lastly, the draft RTS provides that disclosures should be made available by the crypto-asset service provider in all languages used for marketing or communicating with clients and shall be kept updated at all times. This is because, although MiCA does not require them to be fully personalised and provided on an ad hoc basis (before each provision of service), the disclosures referred to in Article 72(2) must enable each client to take an informed decision about the crypto-asset service in the context of which the conflicts of interest arise. To allow the client to take such an informed decision, it is essential that CASPs ensure that the disclosures provided be accurate at all times.

#### **Resources dedicated to the implementation, maintenance and review of the conflicts of interest policies and procedures**

120. The identification, prevention and management of conflicts of interests are essential to the protection of investors and the sound management of CASPs. It is thus also essential for CASPs to dedicate adequate resources (a sufficient number of staff but also adequate technical resources) to the implementation, maintenance and review of the policies and procedures meant to identify, prevent, manage and disclose conflicts of interest.
121. The adequate level of resources to be provided will depend on the scale, nature and range of crypto-asset services provided but CASPs may also have to take into account other relevant factors such as, for instance, their group structure.
122. In order to ensure that the conflicts of interest policies and procedures are effectively implemented and maintained, the draft RTS also specifies that the dedicated resources must have the necessary skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them and shall have access to all relevant information.
123. Lastly, to allow for the management body to carry out its responsibilities in accordance with Article 68(6) of MiCA in relation to conflict of interest, it is essential that the person in charge of the implementation, maintenance and review of the conflicts of interest policies and procedures report directly to the management body, at least annually as well as, where material deficiencies are identified, on an ad hoc basis.

#### **Specific requirements for conflicts of interest arising in relation to placing services**

124. In line with Article 79(2) of MiCA, Article 10 of the draft RTS provides for specific requirements applicable to crypto-asset service providers providing placing services.



125. Article 10 requires crypto-asset service providers to, as a minimum, cover a number of circumstances that may give rise to conflicts of interest and take certain mitigation measures to prevent or mitigate such conflicts of interest. For instance, where the crypto-asset service provider places the crypto-assets with its own client, it should prevent staff responsible for providing services to its investment clients, or deciding on which products should be included in the list of products offered/recommended, from being directly involved in decisions about pricing to the issuer client.

### **6.3 Proposal**

126. ESMA's proposals for the draft RTS on the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers referred to in Article 72(5) of MiCA is set out in Annex II (section 9.2.6).

**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?**

## 7 Assessment of intended acquisition of a qualifying holding in a CASP under Article 83(4)

### 7.1 Background

#### Article 84 (4) of MiCA:

ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards specifying the detailed content of the information that is necessary to carry out the assessment referred to in Article 83(4), first subparagraph. The information required shall be relevant for a prudential assessment, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition referred to in Article 83(1).

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 30 June 2024.

127. Article 83 of MiCA requires any natural or legal person who intends to acquire or to increase a qualifying holding in a CASP, to notify the NCA of that CASP in writing and provide specific information to enable the relevant NCA to assess the proposed acquisition or increase of an existing qualifying holding.
128. Article 84 of MiCA further establishes the criteria against which the NCA should evaluate the suitability of the proposed acquirer. These criteria include the following: a) reputation of the proposed acquirer; b) reputation and experience of any person that will direct the business of the CASP as a result of the intended acquisition; c) financial soundness of the proposed acquirer; d) continued compliance of target CASP with applicable MiCA requirements after the acquisition; e) reasonable ground to suspect money laundering or terrorist financing in connection with the proposed acquisition or whether it could increase these risks.
129. ESMA is mandated in Article 84(4) of MiCA to develop, in close cooperation with EBA, draft regulatory technical standards (RTS) on the detailed content of the information for the assessment of proposed acquisitions of qualifying holdings in CASPs. The aim of this draft RTS is to specify the detailed content of the information that direct or indirect proposed acquirers must provide to national competent authorities (NCAs) when notifying the intended acquisition. This should ensure a harmonised approach to the assessment across Member States in the EU of the intended acquisition of qualifying holdings in CASPs.
130. The RTSs are applicable to proposed acquirers of qualifying holdings in CASPs, as well as NCAs as designated under Article 93(1) of MiCA that will conduct the assessment of the intended acquisition in accordance with Article 83(4) of MiCA.

## 7.2 Assessment

131. MiCA states that crypto-assets services may be provided only by entities authorised as CASPs or authorised financial entities that can provide crypto-asset services pursuant to the notification procedure foreseen in Article 60 of MiCA. CASPs are required to set up a registered office in a Member State of the European Union, where they carry out at least part of their services. Legal persons and undertakings that intend to provide crypto-asset services are required to obtain authorisation from an NCA under MiCA. Once authorised, CASPs become regulated entities that are subject to supervision and prudential requirements.
132. The main objectives of the provisions in MiCA on the notification of proposed acquisition or increase of qualifying holdings are to provide legal certainty and clarity regarding the process and the assessment to be conducted by NCAs, by ensuring that NCAs have sufficient information to conduct the required assessment. Article 83 paragraphs (3) to (9) of MiCA set a clear procedure for the assessment by NCAs of proposed acquisitions or increases of qualifying holdings, including setting a maximum period of time for the assessment, and specifying criteria to be applied by NCAs in their assessment.
133. The harmonised information request outlined in the draft RTS is intended to support the assessment of the direct or indirect proposed acquirers to be performed by the NCAs proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition referred to in Article 83(1) of MiCA.
134. As the acquisition of qualifying holdings in CASPs is subject to the same process and requirements as those applicable to issuers of ARTs, EBA and ESMA have strived to ensure maximum alignment between the two RTSs to achieve consistent treatment of entities within the scope of application of MiCA. Furthermore, ESMA is aware that the same undertaking might be authorised both as an issuer of ARTs and as a CASP, which further justifies alignment between both RTS.
135. The framework for the assessment of proposed acquisitions of qualifying holdings in regulated entities has existed in financial markets and the banking sector for many years. The requirements resulting from MiCA, which are applicable to intended acquirers of CASPs and intended acquirers of issuers of ARTs, are fully aligned with the procedures, timelines and criteria applicable on the acquisition of qualifying holdings across the financial sector. In developing this draft RTS, ESMA aims to achieve consistency with the requirements and methodology set out in the requirements on the assessment of acquisition of qualifying holdings that implement sectoral acts such as the Capital Requirements Directive (CRD), the Markets in Financial Instruments Directive (MiFID), and the Solvency II Directive (Solvency II). To achieve consistency with the existing EU financial legislation, the drafting process of the draft RTS relied on Commission Delegated Regulation (EU) 2017/1946 on information for notification of acquisitions of qualifying holdings in investment firms and

on the Annex to the Joint ESAs Guidelines on the prudential assessment of the acquisition or increase of qualifying holdings (JC/GL/2016/01). When relevant, the specificities of crypto-asset markets have been reflected in the draft RTS produced in accordance with the mandate in Article 84(4) of MiCA.

### 7.3 Proposal

136. To fulfil the mandate in Article 84(4) of MiCA and reduce any risk of creating an unlevel playing field, ESMA has drafted the proposed RTS detailing information requirements which are clear and standardised. ESMA has included in the draft RTS specific information requirements with respect to the documents to be submitted, with the aim of fostering legal certainty and clarity. Taking into consideration that the requirements to assess proposed acquisitions of qualifying holdings have been long established in the financial sector and that ESMA does not have knowledge of any malfunctioning of the existing framework, the draft RTS has been largely modelled on this existing framework.
137. The draft RTS includes a provision regarding the general information on the identity of the acquirer which should be provided, distinguishing the cases where the proposed acquirer is (i) a natural person, (ii) a legal person, (iii) a trust, (iv) a fund or (v) a sovereign wealth fund. Such provision aims at ensuring sufficient information is provided to the NCA for the purpose of identifying the entity proposing the acquisition.
138. The draft RTS also includes specific provisions regarding additional information to be provided, distinguishing between natural and legal persons. With respect to natural persons, the draft RTS requests to submit, among other, information which allows for the identification of any undertaking formally directed or controlled by the proposed acquirer in the previous ten years. Furthermore, specific information is requested to enable NCAs to carry out an assessment of the reputation of the natural person (e.g. criminal records or proceedings, administrative proceedings and possible bankruptcy or insolvency procedures).
139. ESMA also deems it necessary to require additional details to establish the financial soundness of the proposed acquirer and their ability to comply with the relevant legal provisions for the purpose of the NCA assessment against the criteria in Article 84(1) of MiCA (e.g. details about the financial position of the person and their financial interests).
140. With respect to legal persons, information requirements are analogous and aimed at providing the NCAs sufficient information to evaluate the proposed acquisition. However, ESMA proposes to include some further information relevant to an evaluation of the reputation of shareholders that exert significant influence on the proposed acquirer.

141. ESMA additionally notes that in cases where the legal person has its head office in a third country, it is beneficial to request further information proving the good standing of the legal person and to gather insights relevant for the proposed acquisition on the applicable legal framework and regulatory regime of that third country.
142. The information requested in the draft RTS was designed in order to be proportionate to the proposed acquirer and features of the acquisition. In particular the information is (i) adapted depending on the percentage of qualifying holding resulting from the proposed acquisition, (ii) reduced for proposed acquirers in specific situations and, (iii) in case of an indirect qualifying holding, calibrated to the specificity of the holding.
143. With respect to point (i) different information is required depending on the percentage of qualifying holding resulting from the proposed acquisition as in the case of larger prospective holdings, in respect of which NCAs might need further information to evaluate the acquirer against the criteria in Article 84 of MiCA.
144. As a result, the draft RTS envisages some baseline information requirements for a proposed acquisition where qualifying holdings would be less than 20% and additional requirements for higher holdings. More specifically, if holdings would range from 20% to 50%, the proposed acquirer should provide the relevant NCA, among others, a description of the proposed strategy in case of acquisition, including details concerning the proposed dividend policy, the strategic development, and the allocation of resources to the target entity.
145. With respect to proposed acquisitions where holdings would be above 50%, the proposed acquirer is additionally required to provide a three-year time horizon business plan. This should include, with respect to the target entity, a strategic development plan, an estimation of financial statements and an evaluation of the impact of the acquisition on the corporate governance and on the general organisational structure.
146. Considering point (ii) the draft RTS proposes alleviation in terms of the information to be submitted by the proposed acquirer in instances where the acquirer has already been subject to an assessment for an acquisition of (or increase in) qualifying holdings by the relevant NCA within the previous two years. In such circumstances the proposed acquirer is expected to submit to the NCA only information relevant for the purpose of the assessment which has changed since the previous submission.
147. In order to enable the relevant NCA to assess the proposed acquisition it is also necessary to require that the proposed acquirer provides details regarding the envisaged acquisition and, when the proposed acquirer is a legal person, on the new group structure. Such information should not only clearly identify the target entity but also provide additional details on the acquisition, including information on the number and type of shares of the target entity which are contemplated to be owned, a copy of the contract of acquisition and the proposed acquisition price with a rationale for establishing such price.

148. With respect to (iii) ESMA notes that in case of an acquisition of indirect qualifying holdings in the target entity, it is preferable to ensure the information is calibrated based on two possible scenarios, as detailed in the Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector<sup>11</sup>.
149. The first scenario would materialise when the person would acquire the indirect holding by 'control' of an existing holder of qualifying holding in the target entity. The definition of control refers to Article 2, paragraphs (9) and (10) and Article 22 of Directive 2013/34/EU<sup>12</sup> of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ('the accounting Directive'). The definition of control in the accounting Directive is based on holding a majority of voting rights. Nevertheless, other possibilities are contemplated in the provision, as in certain circumstances control may be effectively exercised where the parent holds a minority or none of the shares in the subsidiary.
150. The second scenario would materialise when the proposed acquirer would not directly have 'control' over the existing holder of qualifying holding in the target entity, but still be able to exert influence as the 'combined holdings' of the proposed acquirer and the target entity would be sizable enough for this purpose. In such instance the existence of a qualifying holding is determined by the multiplication criteria, which consists in multiplying the qualifying holding held in the target entity per the percentage of the qualifying holdings held by the potential acquirer (or further indirectly along the holding chain, where further levels of holders are present). This is referred to as 'the multiplication criterion'.
151. ESMA notes that proportionality has been ensured by requiring that in the case where the proposed acquirer would have control, they are required to submit the same information requirements applicable to direct proposed acquirers. Where the proposed acquirer would not have control, having regard to the more limited influence that such shareholder may exercise on the target entity, a reduced set of information should be submitted. However, during the preparation of this draft RTS, questions emerged with regards to some aspects of the information which would not be requested from indirect shareholders identified via the multiplication criterion. For this reason, and depending on the feedback received to this consultation paper, ESMA might amend the list of information required from this type of indirect shareholders if there are grounds to believe that important information could be missing.
152. Finally, ESMA intends to consider, also on the basis of the feedback that it will receive from consultation, whether further requirements are necessary in the draft RTS for the

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<sup>11</sup> [JC GL 2016 01 Joint Guidelines on prudential assessment of acquisition and increases of qualifying holdings - Final \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034)

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034>

purpose of the assessment by NCAs of whether the CASP will be able to comply and continue to comply with the provisions of Title V of MiCA after the intended acquisition.

**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?**

## 8 Overview of EU crypto-assets markets

153. MiCA is set to become a cornerstone of the regulation of crypto-assets in the European Union (EU). It regulates, inter alia, the authorisation and the supervision of crypto-asset service providers (CASPs), the requirements for the provision of crypto-assets services and activities, the authorisation and supervision of trading platforms and the requirements for trading activities of crypto-assets across the EU.
154. The entry into force of MiCA will require market participants to undertake extensive preparatory activities to be ready for the new rules. At the same time, ESMA and the other ESAs are called upon to further detail and specify the legal provisions, so to enable and simplify compliance for regulated entities by ensuring legal certainty.
155. In the development of the several policy and convergence mandates conferred to it under MiCA, ESMA is mindful of the need to ensure that the proposed rules are well calibrated.
156. At the same time, ESMA is aware of the need to duly account for the risks that digital finance can entail for consumers, markets integrity and financial stability and that regulatory measures should be designed to address such risks.
157. In light of the above, and as this Paper constitutes the first public consultation following the publication of the final text of MiCA, ESMA would like to gather additional insights from respondents on the key general aspects described in Q12 to 16 below concerning entities, activities and assets falling under the scope of MiCA.
158. Such overview will allow ESMA to properly calibrate Level 2 legislation and convergence measures to the foreseeable EU crypto-assets market landscape considering both the associated costs and potential risks. The gathered feedback will orient ESMA's general approach towards the definition of all requirements and obligations it shall specify, both those covered in the present Paper and in the subsequent ones that will be published ahead of MiCA application date.
159. ESMA is mindful of the sensitive nature of some of the information required under Q12 to 16. For this reason, ESMA will not publish any of the responses to the questions below on its website. To that effect, ESMA has made available on its website a response form dedicated to the questions included under this Section. Respondents are nonetheless encouraged to carefully review the instructions on how to ensure the confidential treatment of responses, and to select the *"I do not wish to have my response published on the ESMA WEBSITE" option part of the response form*<sup>13</sup>

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<sup>13</sup> See the paragraph titled "Publication of responses" under "Responding to this Paper" Section (page 2).



**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 off-chain 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?**

## 9 Annexes

### 9.1 Annex I

#### Summary of 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?
- 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.:
- 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.
- 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.
- 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?
- 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?
- Q8:** 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?**
- 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 off-chain 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?**

## 9.2 Annex II

### 9.2.1 RTS on the notification by certain financial entities of their intention to provide crypto-asset services

#### **COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be included in a notification by certain financial entities of their intention to provide crypto-asset services**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>14</sup>, and in particular Article 60(13), third subparagraph, thereof,

Whereas:

(1) The information to be provided in a notification by certain financial entities of their intention to provide crypto-asset services should be sufficiently detailed and comprehensive to enable competent authorities to assess whether the notifying entity meets the relevant requirements laid down in Titles V and VI of Regulation (EU) 2023/1114.

(2) A notification to provide crypto-asset services should contain a programme of operations, describing the notifying entity's organisational structure, strategy in providing crypto-asset services to its targeted clients, and its operational capacity for the three years following notification.

(3) Where describing the strategy used to target clients, the notifying entity should describe the marketing means to be used as such, for instance, websites, mobile phone applications,

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<sup>14</sup> OJ L 150, 9.6.2023, p. 40.

social media campaign tools, internet advertisements or banners, sponsorships, influencers, sponsorship agreements, calls, webinars, gamification techniques, demo accounts or other educational materials.

(4) Effective mechanisms, systems and procedures in compliance with Directive (EU) 2015/849 are crucial to ensure that notifying entities appropriately address risks and practices of money laundering and terrorist financing in the provision of crypto-asset services. Thus, notifying entities should provide detailed information on their mechanisms, systems and procedures on how they prevent, inter alia, anti-money laundering and counter-terrorist financing risks associated with their business activities.

(5) A notification should contain detailed information on the notifying entity's arrangements to ensure continuity and regularity in the performance of its crypto-asset services, including a detailed description of its business continuity and disaster recovery plans.

(6) Effective Information and Communications Technology (ICT) systems and security arrangements are crucial to ensure the functioning of the provision of crypto-asset services, including the security and confidentiality of related information. Notifying entities should therefore provide appropriate information on their ICT systems and related security arrangements, showing that they are in compliance with the requirements set out in Regulation 2022/2554/EU.

(7) The protection of client crypto-assets and funds is an important part of the regime regulating crypto-asset services. Crypto-asset service providers are therefore subject to an obligation to make adequate arrangements to safeguard investors' ownership rights. This requirement also applies to crypto-asset service providers which do not provide custody and administration services.

(8) Notifying entities shall provide national competent authorities with a description of the operating rules of their trading platforms and a description of the systems and procedures to detect and prevent market abuse. To allow national competent authorities to assess the adequacy of the notifying entity's operating rules, specific elements should be detailed in the description of the operating rules. In particular, the notifying entity should elaborate aspects of the operating rules relating to the admission to trading, the trading and the settlement of crypto-assets. Relating to the admission to trading, notifying entities should provide detailed information on rules governing the admission of crypto-assets to trading, the way in which the admitted crypto-assets comply with the notifying entity's rules, the types of crypto-assets that the notifying entity will not admit to its platform and the reasons for these exclusions and fees applicable to the admission to trading. As for the trading of crypto-assets, the notifying entity should further specify in the description of the operating rules, the elements of those rules which govern the execution and cancelation of orders, elements which aim at ensuring orderly trading and transparency and record-keeping rules. Finally, the notifying entity should include in the description of the operating rules the elements governing the settlement of transactions of crypto-assets concluded on the trading platform, including whether the settlement of transactions is initiated in the Distributed Ledger Technology (DLT), the timeframe in which the execution is initiated, the definition of the moment at which the settlement is final, all verification

required to ensure the effective settlement of the transaction and any measure in place to limit settlement failures.

(9) To ensure market integrity, notifying entities intending to provide the service of exchange of crypto-assets for funds or other crypto-assets should provide to competent authorities clear and comprehensive information, notably on the non-discriminatory commercial policy and the methodology for determining the price of the crypto-assets to be exchanged for funds or other crypto-assets.

(10) To ensure investor protection, notifying entities should comply with the conduct requirements laid out by Regulation (EU) 2023/1114 for the crypto-asset services they intend to provide. Therefore, notifying entities should provide competent authorities with information on their policies relating to the execution of orders on behalf of clients and the provision of advice or portfolio management.

(11) To ensure investor protection, notifying entities should provide to the competent authorities information on their deployed ICT and human resources to address cybersecurity risks (such as hacking attacks on clients' crypto-assets) quickly, efficiently and comprehensively during the whole process of the provided transfer service.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission, as developed in close cooperation with the European Banking Authority (EBA) in accordance with Article 60 of Regulation (EU) 2023/1114.

(13) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>15</sup>,

HAS ADOPTED THIS REGULATION:

## Article 1 Programme of operations

1. A notifying entity shall provide to the competent authority the programme of operations for the following three years, including all of the following information:

- (a) where the notifying entity belongs to a group, an explanation of how the activities of the notifying entity will fit within the group strategy and interact with the activities of the

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<sup>15</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



other entities of the group, including an overview of the current and planned organisation and structure of the group;

- (b) an explanation of how the activities of the entities affiliated with the notifying entity, including where there are regulated entities in the group, is expected to impact the activities of the notifying entity. This explanation shall include a list of and information on the entities affiliated with the notifying entity, including where there are regulated entities, the services provided by these entities (including regulated services, activities and types of clients) and the domain names of each website operated by such entities;
- (c) the list of crypto-asset services that the notifying entity intends to provide as well as the types of crypto-assets to which the crypto-asset services will relate;
- (d) other planned regulated and unregulated activities, including whether the notifying entity intends to offer crypto-assets to the public or seek admission to trading of crypto-assets and if so, of what type of crypto-assets;
- (e) the geographical distribution of the crypto-asset services that the notifying entity plans to provide, including information on the domicile of targeted clients;
- (f) categories of prospective clients targeted by the notifying entities' services;
- (g) a description of the means of access to the notifying entity's crypto-asset services by clients, including all of the following:
  - (i) the domain names for each website or other ICT-based application through which the crypto-asset services will be provided by the notifying entity and information on the languages in which the website will be available, the types of crypto-asset services that will be accessed through it and, where applicable, from which Member States the website will be accessible;
  - (ii) the name of any IT-based application available to clients to access the crypto-asset services, in which languages it is available and which crypto-asset services can be accessed through it;
- (h) the planned marketing and promotional activities and arrangements for the crypto-asset services, including:
  - (i) all means of marketing to be used for each of the services, the means of identification that the notifying entity intend to use and information on the relevant category of clients and types of crypto-assets;
  - (ii) languages that will be used for the marketing and promotional activities;
- (i) a detailed description of the human, financial and technical resources allocated to the intended crypto-asset services as well as their geographical location;

- (j) the notifying entity's outsourcing policy and a detailed description of the notifying entity's planned outsourcing arrangements, including intra-group arrangements, how the notifying entity intends to comply with the requirements set out in Article 73 of Regulation (EU) 2023/1114. The notifying entity shall also include information on the functions or person responsible for outsourcing, the resources (human and technical) allocated to the control of the outsourced functions, services or activities of the related arrangements and on the risk assessment related to the outsourcing;
- (k) the list of entities that will provide outsourced services, their geographical location and the relevant services outsourced;
- (l) a forecast accounting plan at an individual and, where applicable, at consolidated group and sub-consolidated level in accordance with Directive 2013/34/EU. The financial forecast shall consider any intra-group loans granted or to be granted by and to the notifying entity;
- (m) any exchange of crypto-assets for funds and other crypto-asset activities that the notifying entity intends to undertake, including through any decentralised finance applications with which the notifying entity wishes to interact on its own account.

2. Where the notifying entity intends to provide the service of reception and transmission of orders for crypto-assets on behalf of clients, it shall provide to the competent authority a copy of the policies and procedures and a description of the arrangements ensuring compliance with the requirements set out in Article 80 of Regulation (EU) 2023/1114.

3. Where the notifying entity intends to provide the service of placing of crypto-assets, it shall provide to the competent authority a copy of the policies, procedures and a description of the arrangements in place to comply with Article 79 of Regulation (EU) 2023/1114 as well as Article 9 of [RTS on conflicts of interest of CASPs].

## Article 2

### Detection and prevention of money laundering and terrorist financing

A notifying entity shall provide the competent authority with information on its internal control mechanisms, systems and procedures assess and manage risk relating to money laundering and terrorist financing, including all of the following:

- (a) the notifying entity's assessment of the inherent and residual risks of money laundering and terrorist financing associated with its business, including the risks relating to the notifying entity's customer base, to the services provided, to the distribution channels used and to the geographical areas of operation;
- (b) the measures that the notifying entity has or will put in place to prevent the identified risks and comply with applicable laws on anti-money laundering and counter-terrorist

financing obligations, including the notifying entity's risk assessment process, the policies and procedures to comply with customer due diligence requirements, and the policies and procedures to detect and report suspicious transactions or activities;

- (c) detailed information on how such mechanisms, systems and procedures are adequate and proportionate to the scale, nature, inherent money laundering and terrorist financing risk, range of crypto-asset services provided, the complexity of the business model and how they ensure the notifying entity's compliance with Directive (EU) 2015/849 and Regulation (EU) 2023/1113;
- (d) the identity of the person in charge of ensuring the notifying entity's compliance with anti-money laundering and counter-terrorist financing obligations, and evidence of the person's skills and expertise;
- (e) arrangements, human and financial resources devoted to ensure that staff of the notifying entity is appropriately trained in anti-money laundering and counter-terrorist financing matters (annual indications);
- (f) a copy of the notifying entity's anti-money laundering and counter-terrorism procedures and systems;
- (g) the frequency of the assessment of the adequacy and effectiveness of such mechanisms, systems and procedures as well as the person or function responsible for such assessment.

### Article 3 Business continuity

1. A notifying entity shall submit to the competent authority a detailed description of the notifying entity's business continuity plan, including which steps shall be taken to ensure continuity and regularity in the performance of the notifying entity's crypto-asset services.

2. The description shall include details showing that the established business continuity plan is appropriate and that arrangements are set up to maintain and periodically test it, with regard to critical or important functions supported by third-party service providers also accounting for the possible event that the quality of the provision of such functions deteriorates to an unacceptable level or fails. Such plans should also take into account the potential impact of the insolvency or other failures of third-party service providers, death of a key person and, where relevant, political risks in the service provider's jurisdiction.

### Article 4 ICT systems and related security arrangements

A notifying entity shall submit to the competent authority all of the following information:

- (a) technical documentation of the ICT systems, on DLT infrastructure relied upon, where relevant, and on the security arrangements. The applicant shall include a description of the arrangements, the deployed ICT policies, procedures, systems, protocols, tools and human resources to ensure that the applicant complies with Regulation (EU) 2022/2554;
- (b) where available, the outcome of audits or tests on the ICT systems of the notifying entity performed by external independent parties in the last 3 years, including a source code review of the notifying entity's used and/or developed smart-contracts.
- (c) a description in non-technical language of the information provided under points a) and b).

#### Article 5

#### Segregation of clients' crypto-assets and funds

Where the notifying entity intends to hold crypto-assets belonging to clients or the means of access to such crypto-assets, or clients' funds (other than e-money tokens), the notifying entity shall provide to the competent authority a detailed description of its procedures for the segregation of clients' crypto-assets and funds, including all of the following:

- (a) how the notifying entity ensures that
  - (i) clients' funds are not used for its own account;
  - (ii) crypto-assets belonging to the clients are not used for its own account without the clients' explicit consent;
  - (iii) the addresses of clients' crypto wallets are different from the notifying entity's own wallet address;
- (b) a detailed description of the approval system for cryptographic keys and safeguarding of cryptographic keys (for instance, multi-signature wallets);
- (c) how the notifying entity segregates clients' crypto-assets;
- (d) a description of the procedure to ensure that clients' funds (other than e-money tokens) are deposited with a central bank or a credit institution by the end of the business day following the day on which they were received;
- (e) where the notifying entity does not intend to deposit funds with the relevant central bank, which factors the notifying entity is taking into account to select the credit institutions to deposit clients' funds, including the notifying entity's diversification policy,

where available, and the frequency of review of the selection of credit institutions to deposit clients' funds;

- (f) how the notifying entity ensures that clients are informed in clear, concise and non-technical language about the key aspects of the notifying entity's systems, policies and procedures to comply with Article 70(1), (2) and (3) of Regulation (EU) 2023/1114.

## Article 6

### Custody and administration policy

A notifying entity intending to provide the service of custody and administration of crypto-assets on behalf of clients shall provide to the competent authority all of the following information:

- (a) a description of the arrangements linked to the type or types of custody offered to clients, a copy of the notifying entity's standard agreement for the custody and administration of crypto-assets on behalf of clients as well as a copy of the summary of the custody policy made available to clients in accordance with Article 75(3) of Regulation (EU) 2023/1114;
- (b) a description of the notifying entity's custody and administration policy, including a description of identified sources of operational and IT risks for the safekeeping and control of the crypto-assets or the means of access to the crypto-assets of clients, together with a description of:
  - (i) the procedures and a description of the arrangements to ensure compliance with Article 75(8) of Regulation (EU) 2023/1114;
  - (ii) procedures, systems and controls to manage those risks, including when the custody and administration of crypto-assets on behalf of clients is outsourced to a third party;
  - (iii) the procedures and a description of the systems to ensure the exercise of the rights attached to the crypto-assets by the clients;
  - (iv) the procedures and a description of the systems to ensure the return of crypto-assets or the means of access to the clients;
- (c) information on arrangements to ensure that the crypto-assets or means of access to the crypto-assets of the clients is clearly identified as such;
- (d) information on arrangements to minimize the risk of loss of crypto-assets or of means of access to crypto-assets;
- (e) where the crypto-asset service provider has delegated the provision of custody and administration of crypto-assets on behalf of clients to a third-party:

- (i) information on the identity of any third-party providing the service of custody and administration of crypto-assets and its status as an authorised entity in accordance with Article 59 of Regulation (EU) 2023/1114;
- (ii) a description of any functions relating to the custody and administration of crypto-assets delegated by the crypto-asset service provider, the list of any delegates and sub-delegates (as applicable) and any conflicts of interest that may arise from such a delegation;
- (iii) a description of the supervision procedures relating to such delegations or sub-delegations.

## Article 7

### Operating rules of the trading platform and market abuse detection

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:

- (a) rules regarding the admission of crypto-assets to trading;
- (b) 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;
- (c) the list of any categories of crypto-assets that will not be admitted to trading and the description of the reasons for such exclusion;
- (d) the policies, procedures and fees for the admission to trading, together with a description, where relevant, of membership, rebates and the related conditions;
- (e) the rules governing the order execution, including any cancellation procedures for executed orders and for disclosing such information to market participants;
- (f) the procedures adopted to assess the suitability of crypto-assets in accordance with Article 76(2) of Regulation (EU) 2023/1114;
- (g) the systems, procedures and arrangement put in place to comply with Article 76(7), points (a) to (h), of Regulation (EU) 2023/1114;
- (h) the systems, procedures and arrangements to make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through their trading platforms;
- (i) the fee structures and a justification of how they comply with the requirements laid down in Article 76(13) of Regulation (EU) 2023/1114;

- (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;
- (k) with regards to the settlement of transactions:
  - (i) whether the final settlement of transactions is initiated on the distributed ledger or outside the distributed ledger;
  - (ii) the timeframe within which the final settlement of crypto-asset transactions is initiated;
  - (iii) the systems and procedures to verify the availability of funds and crypto-assets;
  - (iv) the procedures to confirm the relevant details of transactions;
  - (v) the measures foreseen to limit settlement fails;
  - (vi) the definition of the moment at which settlement is final and the moment at which final settlement is initiated following the execution of the transaction.
- (l) a description of the procedures and systems to detect and prevent market abuse, including information on the communications to the competent authority of possible market abuse cases.

2. Notifying entities intending to operate a trading platform for crypto-assets shall provide to the competent authority a copy of the operating rules of the trading platform and of any procedures to detect and prevent market abuse.

#### Article 8

##### Exchange of crypto-assets for funds or other crypto-assets

A notifying entity intending to exchange crypto-assets for funds or other crypto-assets shall provide to the competent authority all of the following information:

- (a) a description of the commercial policy established in accordance with Article 77(1) of Regulation (EU) 2023/1114;
- (b) a description of the methodology for determining the price of the crypto-assets that the notifying entity proposes to exchange for funds or other crypto-assets in accordance with Article 77(2) of Regulation (EU) 2023/1114, including how the volume and market volatility of crypto-assets impact the pricing mechanism.

## Article 9 Execution policy

A notifying entity intending to provide the service of executing orders for crypto-assets on behalf of clients shall provide to the competent authority a description of its execution policy, including all of the following:

- (a) a description of the arrangements to ensure the client has provided consent on the execution policy prior to the execution of the order;
- (b) a list of the trading platforms for crypto-assets on which the notifying entity will rely for the execution of orders in accordance with Article 78(6) of Regulation (EU) 2023/1114;
- (c) which trading platforms it intends to use for each type of crypto-assets and provide confirmation that it will not receive any form of remuneration, discount or non-monetary benefit in return for routing orders received to a particular trading platform for crypto-assets;
- (d) how the execution factors of price, costs, speed, likelihood of execution and settlement, size, nature, conditions of custody of the crypto-assets or any other relevant factors are considered as part of all necessary steps to obtain the best possible result for the client;
- (e) where applicable, information on the arrangements for informing clients that the notifying entity will execute orders outside a trading platform and how the notifying entity will obtain the prior express client consent before executing such orders;
- (f) information on how the client is warned that any specific instructions from a client may prevent the notifying entity from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;
- (g) information on the selection process for trading venues, execution strategies employed, the procedures and processes used to analyse the quality of execution obtained and how the notifying entity monitors and verifies that the best possible results were obtained for clients;
- (h) information on the arrangements to prevent the misuse of any information relating to clients' orders by the employees of the notifying entity;
- (i) information on the arrangements and procedures for how the notifying entity will disclose to clients information on its order execution policy and notify them of any material changes to their order execution policy;



- (j) information on the arrangements to demonstrate compliance with Article 78 of Regulation (EU) 2023/1114 to the competent authority, upon the request of the authority.

#### Article 10

##### Provision of advice or portfolio management on crypto-assets

A notifying entity intending to provide advice on crypto-assets or portfolio management of crypto-assets shall provide to the competent authority all of the following information:

- (a) the procedures, policies and a detailed description of the arrangements put in place by the notifying entity to ensure compliance with Article 81(7) of Regulation (EU) 2023/1114. This information shall include details on:
  - (i) the mechanisms to control, assess and maintain effectively the knowledge and competence of the natural persons providing advice or portfolio management on crypto-assets;
  - (ii) the arrangements to ensure that natural persons involved in the provision of advice or portfolio management are aware of, understand and apply the notifying entity's internal policies and procedures designed to ensure compliance with Regulation (EU) 2023/1114, especially Article 81(1) of Regulation (EU) 2023/1114 and anti-money laundering and anti-terrorist financing obligations in accordance with Directive (EU) 2015/849;
  - (iii) the amount of human and financial resources planned to be devoted on a yearly basis by the notifying entity to the professional development and training of the natural persons providing advice or portfolio management on crypto-assets;
- (b) a description of the arrangements adopted by the notifying entity to ensure that the natural persons giving advice on behalf of the notifying entity have the necessary knowledge and expertise to conduct the suitability assessment referred to in Article 81(1) of Regulation (EU) 2023/1114.

#### Article 11

##### Transfer services

A notifying entity intending to provide transfer services for crypto-assets on behalf of clients shall provide to the competent authority all of the following information:

- (a) details on the types of crypto-assets for which the notifying entity intends to provide transfer services;

- (b) the policies, the procedures and a detailed description of the arrangements put in place by the notifying entity to ensure compliance with Article 82 of Regulation (EU) 2023/1114, including detailed information on the notifying entity's arrangements and deployed ICT and human resources to address risks promptly, efficiently and thoroughly during the provision of transfer services for crypto-assets on behalf of clients, considering potential operational failures and cybersecurity risks;
- (c) where relevant, a description of the notifying entity's insurance policy, including on the insurance's coverage of detriment to client's crypto-assets that may result from cyber security risks;
- (d) arrangements to ensure that clients are adequately informed about the policies, procedures and arrangements referred to in point (b).

Article 12  
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

**9.2.2 ITS on standard forms, templates and procedures for the notification by certain financial entities of their intention to provide crypto-asset services**

**COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the information to be included in the notification of certain entities of their intention to provide crypto-asset services**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>16</sup>, and in particular Article 60(14), third subparagraph, thereof,

Whereas:

(1) It is appropriate to set out common standard forms, templates and procedures to ensure a uniform mechanism by which Member States' competent authorities effectively exercise their powers in respect of the notifications from already regulated entities that notify the relevant competent authority of their intention to become crypto-asset service providers.

(2) The information submitted by the notifying entity should be true, accurate, complete and up-to-date. To allow the competent authority to assess whether changes to the information provided in the notification may render the notification as not complete, it is appropriate to require notifying entities to communicate such changes without undue delay.

(3) To facilitate communication between a notifying entity and the relevant competent authority, competent authorities should designate a designated contact point for the notification process and should publish the contact information on their website.

(4) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), in close cooperation with the European Banking Authority (EBA).

(5) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>17</sup>

HAS ADOPTED THIS REGULATION:

## Article 1

### Designation of a contact point

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<sup>16</sup> OJ L 150, 9.6.2023, p. 40.

<sup>17</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Competent authorities shall designate a contact point for handling all information notified pursuant to Article 60 of Regulation (EU) 2023/1114. Competent authorities shall keep the contact details of the designated contact point up-to-date and shall make those contact details public on their websites.

#### Article 2

##### Submission of the notification

1. A notifying entity shall submit to the competent authority its notification by filling in the standard form set out in the Annex.
2. The notification shall be provided in a manner which enables storage of information in a way accessible for future reference and which allows the unchanged reproduction of the information stored.

#### Article 3

##### Receipt of the notification and acknowledgement of receipt

Within five working days from the receipt of the notification, the competent authority shall send electronically, on paper, or in both forms, an acknowledgement of receipt in writing to the notifying entity. The acknowledgement of receipt shall include the contact details of the designated contact points as referred to in Article 1.

#### Article 4

##### Notification of changes

The notifying entity shall notify the competent authority of any changes to the information provided in the notification without undue delay. The notifying entity shall provide the updated information by using the form set out in the Annex.

#### Article 5

##### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission  
The President*

ANNEX

**Form for the notification of information to be provided by certain financial entities  
pursuant to Article 60 Regulation (EU) 2023/1114**

Reference number:

Date:

FROM:

Name of the notifying entity:

Address:

(Contact details):

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Competent Authority:

Address:

(Contact details of the designated contact point):

Name:

Telephone:

Email:

Dear [*insert appropriate name*],

In accordance with Commission Implementing Regulation (EU) XXXX/XXX, laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the notification of certain entities of their intention to provide crypto-asset services, kindly find attached our notification of our intention to provide crypto-asset services.

We [notifying entity] declare that the submitted information is true, accurate complete and up to date to the best of [notifying entity]'s knowledge.

- Person in charge of preparing the notification:

Name:

Status/position:

Telephone:

Email:

REQUIRED INFORMATION

*Programme of operations*

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Please insert the information referred to under Article 1 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Detection and prevention of money laundering and terrorist financing*

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Please insert the information referred to under Article 2 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Business continuity*

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Please insert the information referred to under Article 3 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*ICT systems and related security arrangements*



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Please insert the information referred to under Article 4 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Segregation of clients' crypto-assets and funds*

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Please insert the information referred to under Article 5 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Custody and administration policy*

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Please insert the information referred to under Article 6 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Operating rules of the trading platform and market abuse detection*

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.....

Please insert the information referred to under Article 7 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Exchange of crypto-assets for funds or other crypto-assets*

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.....

Please insert the information referred to under Article 8 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Execution policy*

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.....

Please insert the information referred to under Article 9 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Provision of advice or portfolio management on crypto-assets*

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.....

Please insert the information referred to under Article 10 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Transfer services*

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Please insert the information referred to under Article 11 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

Yours sincerely,

[signature]

### 9.2.3 RTS on authorisation of crypto-asset service providers

## **COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be included in an application for authorisation as crypto-asset service provider**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>18</sup>, and in particular Article 62(5), third subparagraph, thereof,

Whereas:

- (1) The information to be provided in an application for authorisation as crypto-asset service provider should be sufficiently detailed and comprehensive to enable competent authorities to assess whether an applicant meets the relevant requirements laid down in Titles V and VI of Regulation (EU) 2023/1114.
- (2) The competent authority should retain the right to request additional information from the applicant during the assessment process in accordance with the criteria and timelines set out in Regulation (EU) 2023/1114.
- (3) To ensure that the competent authority's assessment is based on accurate information, it is essential that an applicant provides copies of its corporate documents, including its legal entity identifier, the articles of association and a copy of registration of the applicant in the national register of companies.
- (4) An application for authorisation as crypto-asset service provider should contain a programme of operations, describing the applicant's organisational structure, strategy in providing crypto-asset services to its targeted clients and its operational capacity for the three

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<sup>18</sup> OJ L 150, 9.6.2023, p. 40.

years following authorisation. Where describing the strategy used to target clients, the applicant should describe the marketing means to be used such as, for instance, websites, mobile phone applications, social media campaign tools, internet advertisements or banners, influencers, sponsorships agreements, calls, webinars, gamification techniques, demo accounts or educational materials.

(5) Clients are exposed to potential risks related to the crypto-asset service providers. In order to enable competent authorities to assess whether applicants meet the requirements set in Article 67 Regulation (EU) 2023/1114 to protect clients against such risks, an application should contain an obligatory set of information describing the applicant's prudential safeguards.

(6) To ensure that crypto-asset service providers comply with their obligations under Regulation (EU) 2023/1114, applicants should demonstrate that they have adequate and robust governance arrangements and internal control mechanisms, as such arrangements and mechanisms are essential to the sound and prudent management of crypto-asset service providers.

(7) An application should contain detailed information on the applicant's arrangements to ensure continuity and regularity in the performance of its crypto-asset services, including a detailed description of its business continuity and disaster recovery plans.

(8) Effective mechanisms, systems and procedures in compliance with Directive (EU) 2015/849 are crucial to ensure that applicants appropriately address risks and practices of money laundering and terrorist financing in the provision of crypto-asset services. Thus, applicants should provide detailed information on their mechanisms, systems and procedures on how they prevent, inter alia, anti-money laundering and counter-terrorist financing risks associated with their business activities.

(9) As one of the requirements to ensure that the crypto-asset service provider will act fairly and honestly, it is necessary that applicants provide the information and documents to prove that the members of the management body are of sufficiently good repute and have sufficient knowledge, skills and experience. Notably, the applicant should provide the competent authorities with all information about past convictions and pending criminal investigations, civil and administrative cases and other adjudicatory proceedings of the members of the management body, as well as relevant information to assess their professional experience, knowledge and skills in the scope of the position sought and a description of all financial and non-financial interests of the members of the management body that could create potential material conflicts of interest significantly affecting the members' perceived trustworthiness in the performance of their mandate.

(10) In respect of the requirement of good repute of shareholders and members directly or indirectly holding qualifying holdings in the applicant, the application should contain all information about past convictions and pending criminal investigations, civil and administrative cases and other adjudicatory proceedings as well as relevant information relating to the certainty and legitimate origin of the funds used to set-up the applicant and finance its business

so to enable the assessment of any attempt or suspicion of money laundering or terrorist financing.

(11) Effective Information and Communications Technology (ICT) systems and security arrangements are crucial to ensure the functioning of the provision of crypto-asset services, including the security and confidentiality of related information. Applicants should therefore provide appropriate information on their ICT systems and related security arrangements, showing that they are in compliance with the requirements set out in Regulation 2022/2554/EU.

(12) The segregation of client crypto-assets and funds is an important part of the regime regulating crypto-asset services. Crypto-asset service providers are therefore subject to an obligation to make adequate arrangements to safeguard investors' ownership rights. This requirement also applies to crypto-asset service providers which do not provide custody and administration services. The requirements to submit the information provided in Article 10 of this Regulation are, however, without prejudice to Article 70(5) of Regulation 2023/1114.

(13) Applicants shall provide national competent authorities with a description of the operating rules of their trading platforms and a description of the systems and procedures to detect and prevent market abuse. To allow national competent authorities to assess the adequacy of the applicant's operating rules, specific elements should be detailed in the description of the operating rules. In particular, the applicant should elaborate aspects of the operating rules relating to the admission to trading of crypto-assets, the trading and the settlement of crypto-assets. Relating to the admission to trading, applicants should provide detailed information on rules governing the admission of crypto-assets to trading, the way in which the admitted crypto-assets comply with the applicant's rules, the types of crypto-assets that the applicant will not admit to its platform and the reasons for these exclusions and fees applicable to the admission to trading. As for the trading of crypto-assets, the applicant should further specify in the description of the operating rules, the elements of those rules which govern the execution and cancellation of orders, elements which aim at ensuring orderly trading and transparency and record-keeping rules. Finally, the applicant should include in the description of the operating rules the elements governing the settlement of transactions of crypto-assets concluded on the trading platform, including whether the settlement of transactions is initiated in the Distributed Ledger Technology (DLT), the timeframe in which the execution is initiated, the definition of the moment at which the settlement is final, all verifications required to ensure the effective settlement of the transaction and any measure in place to limit settlement failures.

(14) To ensure market integrity and investor protection, applicants intending to provide the service of exchange of crypto-assets for funds or other crypto-assets should provide to competent authorities clear and comprehensive information, notably on the non-discriminatory commercial policy and the methodology for determining the price of the crypto-assets to be exchanged for funds or other crypto-assets.

(15) To ensure investor protection, applicants should comply with the conduct requirements laid out by Regulation (EU) 2023/1114 for the crypto-asset services they intend to provide. Therefore, applicants should provide competent authorities with information on their policies

relating to the execution of orders on behalf of clients and the provision of advice or portfolio management.

(16) To ensure investor protection, applicants should provide to the competent authorities information on their deployed ICT and human resources to address cybersecurity risks (such as hacking attacks on clients' crypto-assets) quickly, efficiently and comprehensively during the whole process of the provided transfer service.

(17) This Regulation should apply to all applications for the provision of crypto-asset services on or after the day of entry into force of this Regulation, unless such application for authorisation falls under the simplified procedure provided under Article 143(6) of Regulation (EU) 2023/1114. This Regulation does not apply to applications submitted before its entry into force.

(18) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), in close cooperation with the European Banking Authority.

(19) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>19</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1 General information

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority an application that includes all of the following information:

- (a) the legal name of the applicant;
- (b) any commercial or trading name used or to be used by the applicant;
- (c) the legal entity identifier (LEI) of the applicant;

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<sup>19</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (d) the full name, function, email address and telephone number of the designated contact point or person;
- (e) the legal form of the applicant (including information on whether it will be a legal person or other undertaking) and, where available, its national identification number as well as evidence of its registration with the national register of companies;
- (f) date and Member State of the applicant's incorporation or foundation;
- (g) where applicable, the instruments of constitution, the articles of association and by-laws;
- (h) the address of the head office and, if different, of the registered office of the applicant as well as, for branches of the applicant, information on where the branches will operate;
- (i) the domain name of each website operated by the applicant and the social media accounts of that applicant;
- (j) where the applicant is not a legal person, documentation to assess whether the level of protection ensured to third parties interests and the rights of the holders of crypto-assets, including in case of insolvency, is equivalent to that afforded by legal persons and that the applicant is subject to equivalent prudential supervision appropriate to their legal form.

## Article 2 Programme of operations

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority the programme of operations for the following three years, including all of the following information:

- (a) where the applicant belongs to a group, an explanation of how the activities of the applicant will fit within the group strategy and interact with the activities of the other entities of the group, including an overview of the current and planned organisation and structure of the group;
- (b) an explanation of how the activities of the entities affiliated with the applicant, including where there are regulated entities in the group, is expected to impact the activities of the applicant. This explanation shall include a list of and information on the entities affiliated with the applicant, including where there are regulated entities, the services provided by these entities (including regulated services, activities and types of clients) and the domain names of each website operated by such entities;



- (c) the list of crypto-asset services that the applicant intends to provide as well as the types of crypto-assets to which the crypto-asset services will relate;
- (d) other planned regulated and unregulated activities, including whether the applicant intends to offer crypto-assets to the public or seek admission to trading of crypto-assets and if so, of what type of crypto-assets;
- (e) the geographical distribution of the crypto-asset services that the applicant plans to provide, including information on the domicile of targeted clients;
- (f) categories of prospective clients targeted by the applicant's services;
- (g) a description of the means of access to the applicant's crypto-asset services by clients, including all of the following :
  - (i) the domain names for each website or other ICT-based application through which the crypto-asset services will be provided by the applicant and information on the languages in which the website will be available, the types of crypto-asset services that will be accessed through it and, where applicable, from which Member States the website will be accessible;
  - (ii) the name of any IT-based application available to clients to access the crypto-asset services, in which languages it is available and which crypto-asset services can be accessed through it;
- (h) the planned marketing and promotional activities and arrangements for the crypto-asset services, including:
  - (i) all means of marketing to be used for each of the services, the means of identification that the applicant intends to use and information on the relevant category of clients and types of crypto-assets;
  - (ii) languages that will be used for the marketing and promotional activities;
- (i) a detailed description of the human, financial and technical resources allocated to the intended crypto-asset services as well as their geographical location;
- (j) the applicant's outsourcing policy and a detailed description of the applicant's planned outsourcing arrangements, including intra-group arrangements, how the applicant intends to comply with the requirements set out in Article 73 of Regulation (EU) 2023/1114. The applicant shall also include information on the functions or person responsible for outsourcing, the resources (human and technical) allocated to the control of the outsourced functions, services or activities of the related arrangements and on the risk assessment related to the outsourcing;
- (k) the list of entities that will provide outsourced services, their geographical location and the relevant services outsourced;

- (l) a forecast accounting plan at an individual and, where applicable, at consolidated group and sub-consolidated level in accordance with Directive 2013/34/EU. The financial forecast shall consider any intra-group loans granted or to be granted by and to the applicant;
- (m) any exchange of crypto-assets for funds and other crypto-asset activities that the applicant intends to undertake, including through any decentralised finance applications with which the applicant wishes to interact on its own account.

2. Where the applicant intends to provide the service of reception and transmission of orders for crypto-assets on behalf of clients, it shall provide to the competent authority a copy of the policies and procedures and a description of the arrangements ensuring compliance with the requirements set out in Article 80 of Regulation (EU) 2023/1114.

3. Where the applicant intends to provide the service of placing of crypto-assets, it shall provide to the competent authority a copy of the policies, procedures and a description of the arrangements in place to comply with Article 79 of Regulation (EU) 2023/1114 as well as Article 9 of [RTS on conflicts of interest of CASPs].

### Article 3 Prudential requirements

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority all of the following information:

- (a) a description of the applicant's prudential safeguards in accordance with Article 67 of Regulation (EU) 2023/1114, consisting of
  - (i) the amount of the prudential safeguards that the applicant has in place at the time of the application for authorisation and the description of the assumptions used for its determination;
  - (ii) the amount of the prudential safeguards covered by own funds referred to in Article 67(4), point (a), of Regulation (EU) 2023/1114, where applicable;
  - (iii) the amount of the applicant's prudential safeguards covered by an insurance policy referred to in Article 67(4), point (b), of Regulation (EU) 2023/1114, where applicable;
- (b) forecast calculations and plans to determine own funds, including:
  - (i) forecast calculation of the applicant's prudential safeguards for the first three business years;

- (ii) forecast accounting plans for the first three business years, encompassing forecast balance sheets and forecast profit and loss accounts, a cash or income statements and a cash-flow statement;
- (iii) planning assumptions for the above forecast as well as explanations of the figures;
- (iv) expected number and type of clients, volume of orders and transactions and volume of crypto assets under custody;
- (c) for companies that are already active, the financial statements of the last three years approved, where audited, by the external auditor;
- (d) a description of the applicant's prudential safeguards planning and monitoring procedures;
- (e) proof that the applicant meets the prudential safeguards in accordance with Article 67 of Regulation (EU) 2023/1114, including:
  - (i) in relation to own funds:
    - documentation on how the applicant has calculated the amount in accordance with Article 67 of Regulation (EU) 2023/1114;
    - for companies that are already active and whose financial statements are not audited, a certification by the national supervisor of the amount of own funds of the applicant;
    - for undertakings in the process of being incorporated, a statement issued by a bank certifying that the funds are deposited in the applicant's bank account;
  - (ii) in relation to the insurance policy or comparable guarantee:
    - a copy of the subscribed insurance policy incorporating all the elements necessary to comply with Article 67(5) and (6) of Regulation (EU) 2023/1114, where available, or
    - a copy of the insurance agreement incorporating all the elements necessary to comply with Article 67(5) and (6) of Regulation (EU) 2023/1114 signed by an undertaking authorised to provide insurance in accordance with Union law or national law.

#### Article 4

#### Information about governance arrangements and internal control mechanisms

1. An applicant seeking authorisation as a crypto asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority the following information on its governance arrangements and internal control mechanisms:

- (a) a detailed description of the organisational structure of the applicant, where relevant encompassing the group, including the indication of the distribution of the tasks and powers and the relevant reporting lines and the internal control arrangements implemented together with an organisational chart;
- (b) the personal details of the heads of internal functions (management, supervisory and internal control functions), including their location and a curriculum vitae, stating relevant education, and professional training and professional experience and a description of the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
- (c) the procedures and a detailed description of the arrangements put in place to ensure that relevant staff are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- (d) the procedures and a detailed description of the arrangements put in place to maintain adequate and orderly records of the business and internal organisation of the applicant in accordance with Article 68(9) of Regulation (EU) 2023/1114;
- (e) the policies, procedures and arrangements to enable the management body to assess and periodically review the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114 in accordance with Article 68(6) of the same Regulation including all of the following:
  - (i) identification of the internal control functions in charge of monitoring the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, together with the scope of their responsibility and reporting lines to the management body of the applicant;
  - (ii) indication of the periodicity of internal control functions reporting to the management body of the applicant on the effectiveness of the policy arrangements and procedures put in place to comply with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114;
  - (iii) explanation of how the applicant ensures that the internal control functions operate independently and separately from the functions they control, have access to the necessary resources and information, and that those internal control functions can report directly to the management body of the applicant both at least once a year and on an ad hoc basis including where they detect a significant risk of failure for the applicant to comply with its obligations;

- (iv) a description of the ICT systems, safeguards and controls put in place to monitor the activities of the applicant and ensure compliance with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, including back-up systems, and systems and risk controls in accordance with Article 9 of this Regulation;
- (f) the procedures, policies and a detailed description of the arrangements established by the applicant to ensure compliance with its obligations under Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, including:
  - (i) the applicant's record keeping arrangements in accordance with [RTS on record-keeping by CASPs];
  - (ii) a detailed description of the procedures for the applicant's employees to report potential or actual infringements of Regulation (EU) 2023/1114 in accordance with Article 116 of Regulation (EU) 2023/1114;
- (g) where relevant, a description of the arrangements put in place to prevent and detect market abuse in accordance with Article 92 of Regulation (EU) 2023/1114;
- (h) whether the applicant has appointed or will appoint external auditors and, if that is the case, their name and contact details, when available;
- (i) the accounting procedures by which the applicant will record and report its financial information, including the start and end dates of the applied accounting year.

2. As part of the information on policies and procedures established to ensure compliance with Chapters 2 and 3 of Title V of Regulation (EU) 2023/1114, applicants shall provide to the competent authority all of the following information on the management of risks relating to conflicts of interests:

- (a) a copy of the applicant's conflicts of interest policy, together with a description of how the policy:
  - (i) ensures that the applicant identifies and prevents or manages conflicts of interests in accordance with Article 72(1) of Regulation (EU) 2023/1114 and discloses conflicts of interest in accordance with Article 72(2) of Regulation (EU) 2023/1114;
  - (ii) is commensurate to the scale, nature and range of crypto-asset services that the applicant intends to provide and of the other activities of the group to which it belongs;
  - (iii) ensures that the remuneration policies, procedures and arrangements do not create conflicts of interest;
- (b) how the applicant's conflicts of interest policy ensures compliance with Article 4(9) of [RTS on conflicts of interest of CASPs], including information on the systems and arrangements put in place by the applicant to:

- (i) monitor, assess, review the effectiveness of its conflicts of interests policy and remedy any deficiencies;
- (ii) record cases of conflicts of interests, including the identification, assessment, remedy and whether the case was disclosed to the client.

#### Article 5 Business continuity

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall submit to the competent authority a detailed description of the applicant's business continuity plan, including which steps shall be taken to ensure continuity and regularity in the performance of the applicant's crypto-asset services.

2. The description shall include details showing that the established business continuity plan is appropriate and that arrangements are set up to maintain and periodically test it, with regard to critical or important functions supported by third-party service providers also accounting for the possible event that the quality of the provision of such functions deteriorates to an unacceptable level or fails. Such plans should also take into account the potential impact of the insolvency or other failures of third-party service providers, death of a key person and, where relevant, political risks in the service provider's jurisdiction.

#### Article 6 Detection and prevention of money laundering and terrorist financing

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with information on its internal control mechanisms, systems and procedures to assess and manage risks relating to money laundering and terrorist financing, including all of the following:

- (a) the applicant's assessment of the inherent and residual risks of money laundering and terrorist financing associated with its business, including the risks relating to the applicant's customer base, to the services provided, to the distribution channels used and to the geographical areas of operation;
- (b) the measures that the applicant has or will put in place to prevent the identified risks and comply with applicable laws on anti-money laundering and counter-terrorist financing obligations, including the applicant's risk assessment process, the policies and procedures to comply with customer due diligence requirements, and the policies and procedures to detect and report suspicious transactions or activities;
- (c) detailed information on how such mechanisms, systems and procedures are adequate and proportionate to the scale, nature, inherent money laundering and terrorist

financing risk, range of crypto-asset services provided, the complexity of the business model and how they ensure the applicant's compliance with Directive (EU) 2015/849 and Regulation (EU) 2023/1113;

- (d) the identity of the person in charge of ensuring the applicant's compliance with anti-money laundering and counter-terrorist financing obligations, and evidence of the person's skills and expertise;
- (e) arrangements, human and financial resources devoted to ensure that staff of the applicant is appropriately trained in anti-money laundering and counter-terrorist financing matters (annual indications);
- (f) a copy of the applicant's anti-money laundering and counter-terrorism procedures and systems;
- (g) the frequency of the assessment of the adequacy and effectiveness of such mechanisms, systems and procedures as well as the person or function responsible for such assessment.

#### Article 7

Identity and proof of good repute, knowledge, skills, experience and of sufficient time commitment of the members of the management body

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with all of the following information for each member of the management body:

- (a) the full name and, where different, name at birth;
- (b) the place and date of birth, address and contact details of the current place of residence and of any other place of residence in the past ten years, nationalit(y/ies), personal national identification number and copy of an official identity document or equivalent;
- (c) details of the position held or to be held by the person, including whether the position is executive or non-executive, the start date or planned start date and, where applicable, the duration of mandate, and a description of the person's key duties and responsibilities;
- (d) a curriculum vitae stating relevant education, professional training and professional experience with the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought, including professional experience relevant to financial services, crypto-assets, or other digital assets, distributed ledger technology, information technology, cybersecurity, or digital innovation; for positions held in the previous 10 years. When describing the aforementioned activities, details

shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;

- (e) documentation relating to the person's reputation and experience, in particular a list of reference persons including contact information and letters of recommendation;
- (f) personal history, including all of the following:
  - (i) criminal records, including criminal convictions and any ancillary penalties and information on pending criminal proceedings or investigations or penalties (including relating to commercial law, financial services law, money laundering, and terrorist financing, fraud or professional liability), information on enforcement proceedings or sanctions, information on relevant civil and administrative cases and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document or, where such certificate does not exist. For ongoing investigations, the information may be provided through a declaration of honour. Official records, certificates and documents shall have been issued within three months before the submission of application for an authorisation;
  - (ii) information on any refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence to carry out a trade, business or profession; or any expulsion by a regulatory or government body or by a professional body or association;
  - (iii) information on dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
  - (iv) information on whether another competent authority has assessed the reputation of the individual, including the identity of that authority, the date of the assessment and information about the outcome of that assessment. The applicant shall not need to submit such information about the previous assessment where the competent authority is already in possession of such information;
- (g) a description of any financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders. Such description shall include any financial interests, including crypto assets, other digital assets, loans, shareholdings, guarantees or security interests, whether granted or received, commercial relationships, legal proceedings and any position of political influence held over the past two years.



- (h) where a material conflict of interest is identified, a statement of how that conflict will be satisfactorily mitigated or remedied, including a reference to the outline of the conflicts of interest policy;
- (i) information on the time that will be devoted to the performance of the person's functions within the applicant, including all of the following:
  - (i) the estimated minimum time, per year and per month, that the individual will devote to the performance of his or her functions within the applicant;
  - (ii) a list of the other executive and non-executive directorships that the person holds, referring to commercial and non-commercial activities or set up for the sole purposes of managing the economic interests of the person concerned;
  - (iii) information on the size and complexity of the companies or organisations where the mandates referred to in point (ii) are held, including total assets, based on the last available annual accounts whether or not the company is listed and the number of employees of those companies or organisations;
  - (iv) a list of any additional responsibilities associated with the mandates referred to in point (ii), including chairing a committee;
  - (v) the estimated time in days per year dedicated to each of the other mandates referred to in point (ii) and the number of meetings per year dedicated to each mandate.

2. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with the suitability policy and the results of any suitability assessment of each member of the management body performed by the applicant, and the results of the assessment of the collective suitability of the management body, including the relevant board minutes or suitability assessment report or documents on the outcome of the suitability assessment.

#### Article 8

##### Information relating to shareholders or members with qualifying holdings

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide the competent authority with all of the following information:

- (a) a detailed organigram of the holding structure of the applicant, including the breakdown of its capital and voting rights and the names of the shareholders or members with qualifying holdings;

- (b) for each shareholder or member holding a direct or indirect qualifying holding in the applicant, the information and documents set out in Articles 1 to 4 of the [RTS specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding] as applicable;
- (c) the identity of each member of the management body who will direct the business of the applicant and will have been appointed by, or following a nomination from, such shareholder or member with qualifying holdings;
- (d) for each shareholder or member holding a direct or indirect qualifying holding, information on the number and type of shares or other holdings subscribed, their nominal value, any premium paid or to be paid, any security interests or encumbrances, including the identity of the secured parties.
- (e) information referred to in Article 6, points (b), (d) and (e) and in Article 8 of the [RTS specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding].

#### Article 9

##### ICT systems and related security arrangements

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority all of the following information:

- (a) technical documentation of the ICT systems, on DLT infrastructure relied upon, where relevant, and on the security arrangements. The applicant shall include a description of the arrangements, the deployed ICT policies, procedures, systems, protocols, tools and human resources to ensure that the applicant complies with Regulation (EU) 2022/2554;
- (b) where available, the outcome of audits or tests on the ICT systems of the applicant performed by external independent parties in the last 3 years, including a source code review of the applicant's used and/or developed smart-contracts.
- (c) a description in non-technical language of the information provided under points a) and b).

#### Article 10

##### Segregation of clients' crypto-assets and funds

Where the applicant intends to hold crypto-assets belonging to clients or the means of access to such crypto-assets, or clients' funds (other than e-money tokens), the applicant seeking

authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority a detailed description of its procedures for the segregation of clients' crypto assets and funds, including all of the following:

- (a) how the applicant ensures that
  - (i) clients' funds are not used for its own account;
  - (ii) crypto-assets belonging to the clients are not used for its own account;
  - (iii) the addresses of clients' crypto wallets are different from the applicant's own wallet address;
- (b) a detailed description of the approval system for cryptographic keys and safeguarding of cryptographic keys (for instance, multi-signature wallets);
- (c) how the applicant segregates clients' crypto-assets;
- (d) a description of the procedure to ensure that clients' funds (other than e-money tokens) are deposited with a central bank or a credit institution by the end of the business day following the day on which they were received;
- (e) where the applicant does not intend to deposit funds with the relevant central bank, which factors the applicant is taking into account to select the credit institutions to deposit clients' funds, including the applicant's diversification policy, where available, and the frequency of review of the selection of credit institutions to deposit clients' funds;
- (f) how the applicant ensures that clients are informed in clear, concise and non-technical language about the key aspects of the applicant's systems, policies and procedures to comply with Article 70(1), (2) and (3) of Regulation (EU) 2023/1114.

## Article 11 Complaints-handling

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall provide to the competent authority a detailed description of the applicant's complaints handling procedures, including all of the following:

- (a) information on the human and technical resources allocated to complaints handling;
- (b) information on the person in charge of the resources dedicated to the management of complaints, together with a curriculum vitae stating relevant education, professional training and professional experience justifying the skills, knowledge and expertise for the discharge of the responsibilities allocated to him or her;

- (c) how the applicant ensures compliance with the requirements set out in Article 1 of [RTS on complaints handling by CASPs];
- (d) how the applicant will inform clients or potential clients of the possibility to file a complaint free of charge, including where and how on the applicant's website, or on any other relevant digital device that may be used by clients to access the crypto-asset services, is the information available as well as what information is provided;
- (e) the applicant's record-keeping arrangements in relation to complaints;
- (f) the timeline provided in the complaints-handling procedures of the applicant to investigate, respond and, where appropriate, take measures in response to complaints received;
- (g) how the applicant will inform clients or potential clients of the available remedies;
- (h) the procedural key steps of the applicant in making a decision on a complaint and how the applicant will communicate this decision to the client or potential client who filed the complaint.

## Article 12

### Operating rules of the trading platform and market abuse detection

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to operate a trading platform for crypto-assets shall provide to the competent authority a description of all of the following:
- (a) rules regarding the admission of crypto-assets to trading;
  - (b) 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;
  - (c) the list of any categories of crypto-assets that will not be admitted to trading and the description of the reasons for such exclusion;
  - (d) the policies, procedures and fees for the admission to trading, together with a description, where relevant, of membership, rebates and the related conditions,
  - (e) the rules governing order execution, including any cancellation procedures for executed orders and for disclosing such information to market participants;
  - (f) the procedures adopted to assess the suitability of crypto-assets in accordance with Article 76(2) of Regulation (EU) 2023/1114;

- (g) the systems, procedures and arrangement put in place to comply with Article 76(7) points (a) to (h) of Regulation (EU) 2023/1114;
- (h) the systems, procedures and arrangements to make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through their trading platforms;
- (i) the fee structures and a justification of how they comply with the requirements laid down in Article 76(13) of Regulation (EU) 2023/1114;
- (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;
- (k) with regards to the settlement of transactions:
  - (i) whether the final settlement of transactions is initiated on the distributed ledger or outside the distributed ledger;
  - (ii) the timeframe within which the final settlement of crypto-asset transactions is initiated;
  - (iii) the systems and procedures to verify the availability of funds and crypto-assets;
  - (iv) the procedures to confirm the relevant details of transactions;
  - (v) the measures foreseen to limit settlement fails;
  - (vi) the definition of the moment at which settlement is final and the moment at which final settlement is initiated following the execution of the transaction;
- (l) the procedures and systems to detect and prevent market abuse, including information on the communications to the competent authority of possible market abuse cases.

2. Applicants intending to operate a trading platform for crypto-assets shall provide to the competent authority a copy of the operating rules of the trading platform and of any procedures to detect and prevent market abuse.

### Article 13 Custody and administration policy

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide the service of custody and administration of crypto-assets on behalf of clients shall provide to the competent authority all of the following information:

- (a) a description of the arrangements linked to the type or types of custody offered to clients, a copy of the applicant's standard agreement for the custody and administration of crypto-assets on behalf of clients as well as a copy of the summary of the custody policy made available to clients in accordance with Article 75(3) of Regulation (EU) 2023/1114;
- (b) a description of the applicant's custody and administration policy, including a description of identified sources of operational and IT risks for the safekeeping and control of the crypto-assets or the means of access to the crypto-assets of clients, together with a description of:
  - (i) the procedures and a description of the arrangements to ensure compliance with Article 75(8) of Regulation (EU) 2023/1114;
  - (ii) procedures, systems and controls to manage those risks, including when the custody and administration of crypto-assets on behalf of clients is outsourced to a third party;
  - (iii) the procedures and a description of the systems to ensure the exercise of the rights attached to the crypto-assets by the clients;
  - (iv) the procedures and a description of the systems to ensure the return of crypto-assets or the means of access to the clients;
- (c) information on arrangements to ensure that the crypto-assets or means of access to the crypto-assets of the clients is clearly identified as such;
- (d) information on arrangements to minimize the risk of loss of crypto-assets or of means of access to crypto-assets;
- (e) where the crypto-asset service provider has delegated the provision of custody and administration of crypto-assets on behalf of clients to a third-party:
  - (i) information on the identity of any third-party providing the service of custody and administration of crypto-assets and its status as an authorised entity in accordance with Article 59 of Regulation (EU) 2023/1114;
  - (ii) a description of any functions relating to the custody and administration of crypto-assets delegated by the crypto-asset service provider, the list of any delegates and sub-delegates (as applicable) and any conflicts of interest that may arise from such a delegation.
  - (iii) a description of the supervision procedures relating to such delegations or sub-delegations.

#### Article 14

##### Exchange of crypto-assets for funds or other crypto-assets

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide the service of exchange of crypto-assets for funds or other crypto-assets shall provide to the competent authority all of the following information:

- (a) a description of the commercial policy established in accordance with Article 77(1) of Regulation (EU) 2023/1114; and
- (b) a description of the methodology for determining the price of the crypto-assets that the applicant proposes to exchange for funds or other crypto-assets in accordance with Article 77(2) of Regulation (EU) 2023/1114, including how the volume and market volatility of crypto-assets impact the pricing mechanism.

#### Article 15

##### Execution policy

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide the service of executing orders for crypto-assets on behalf of clients shall provide to the competent authority a description of its execution policy, including all of the following:

- (a) a description of the arrangements to ensure the client has provided consent on the execution policy prior to the execution of the order;
- (b) a list of the trading platforms for crypto-assets on which the applicant will rely for the execution of orders in accordance with Article 78(6) of Regulation (EU) 2023/1114;
- (c) which trading platforms it intends to use for each type of crypto-assets and provide confirmation that it will not receive any form of remuneration, discount or non-monetary benefit in return for routing orders received to a particular trading platform for crypto-assets;
- (d) how the execution factors of price, costs, speed, likelihood of execution and settlement, size, nature, conditions of custody of the crypto-assets or any other relevant factors are considered as part of all necessary steps to obtain the best possible result for the client;
- (e) where applicable, information on the arrangements for informing clients that the applicant will execute orders outside a trading platform and how the applicant will obtain the prior express client consent before executing such orders;
- (f) information on how the client is warned that any specific instructions from a client may prevent the applicant from taking the steps that it has designed and implemented in its

execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;

- (g) information on the selection process for trading venues, execution strategies employed, the procedures and processes used to analyse the quality of execution obtained and how the applicant monitors and verifies that the best possible results were obtained for clients;
- (h) information on the arrangements to prevent the misuse of any information relating to clients' orders by the employees of the applicant;
- (i) information on the arrangements and procedures for how the applicant will disclose to clients information on its order execution policy and notify them of any material changes to their order execution policy;
- (j) information on the arrangements to demonstrate compliance with Article 78 of Regulation (EU) 2023/1114 to the competent authority, upon the request of the authority.

## Article 16

### Provision of advice or portfolio management on crypto-assets

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide advice on crypto-assets or portfolio management of crypto-assets shall provide to the competent authority all of the following information:

- (a) the procedures, policies and a detailed description of the arrangements put in place by the applicant to ensure compliance with Article 81(7) of Regulation (EU) 2023/1114. This information shall include details on:
  - (i) the mechanisms to control, assess and maintain effectively the knowledge and competence of the natural persons providing advice or portfolio management on crypto-assets;
  - (ii) the arrangements to ensure that natural persons involved in the provision of advice or portfolio management are aware of, understand and apply the applicant's internal policies and procedures designed to ensure compliance with Regulation (EU) 2023/1114, especially Article 81(1) of Regulation (EU) 2023/1114 and anti-money laundering and anti-terrorist financing obligations in accordance with Directive (EU) 2015/849;
  - (iii) the amount of human and financial resources planned to be devoted on a yearly basis by the applicant to the professional development and training of the staff providing advice or portfolio management on crypto-assets;



- (b) a description of the arrangements adopted by the applicant to ensure that the natural persons giving advice on behalf of the applicant have the necessary knowledge and expertise to conduct the suitability assessment referred to in Article 81(1) of Regulation (EU) 2023/1114.

#### Article 17 Transfer services

An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 and intending to provide transfer services for crypto-assets on behalf of clients shall provide the competent authority all of the following information:

- (a) details on the types of crypto-assets for which the applicant intends to provide transfer services;
- (b) the policies, the procedures and a detailed description of the arrangements put in place by the applicant to ensure compliance with Article 82 of Regulation (EU) 2023/1114, including detailed information on the applicant's arrangements and deployed ICT and human resources to address risks promptly, efficiently and thoroughly during the provision of transfer services for crypto-assets on behalf of clients, considering potential operational failures and cybersecurity risks;
- (c) where relevant, a description of the applicant's insurance policy, including on the insurance's coverage of detriment to client's crypto-assets that may result from cyber security risks;
- (d) arrangements to ensure that clients are adequately informed about the policies, procedures and arrangements referred to in point (b).

#### Article 18 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## 9.2.4 ITS on standard forms, templates and procedures for authorisation of crypto-asset service providers

### **COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the information to be included in the application for the authorisation of crypto-asset service providers**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>20</sup>, and in particular Article 62(6), third subparagraph, thereof,

Whereas:

- (1) It is appropriate to set out common standard forms, templates and procedures to ensure a uniform mechanism by which Member States' competent authorities effectively exercise their powers in respect of the application for authorisation as crypto-asset service providers for the provision of crypto-asset services.
- (2) The information submitted by the applicant for authorisation as crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 ('applicant') should be true, accurate, complete and up-to-date from the moment of submission of the application until authorisation.
- (3) To facilitate communication between an applicant and the competent authority, competent authorities should designate a contact point specifically for the purpose of the application process and should publish the information on the contact point on their website.

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<sup>20</sup> OJ L 150, 9.6.2023, p. 40.

(4) To ensure a prompt and timely handling of applications for the authorisation of crypto-asset service providers, the competent authority should confirm the receipt of the application by sending electronically, on paper, or in both forms, an acknowledgement of receipt in writing to the applicant. That acknowledgement of receipt shall include the contact details of the persons or function in charge of handling the application for authorisation.

(5) To allow the competent authority to assess whether changes to the information provided in the application for authorisation may affect the procedure of authorisation, it is appropriate to require applicants to communicate such changes without undue delay. Furthermore, it is necessary to establish that the time limits for the assessment of the information laid down in Article 63(9) of Regulation (EU) 2023/1114 apply from the date on which the amended information is provided by the applicant to the competent authority.

(6) The competent authority should retain the right to request additional information from the applicant during the assessment process in accordance with the criteria and timelines set out in Regulation (EU) 2023/1114.

(7) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), in close cooperation with the European Banking Authority.

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>21</sup>.

HAS ADOPTED THIS REGULATION:

#### Article 1 Designation of a contact point

Competent authorities shall designate a contact point for receiving the applications for authorisation as a crypto-asset service provider pursuant to Article 62 of Regulation (EU) 2023/1114. Competent authorities shall keep the contact details of the designated contact point up-to-date and shall make those contact details public on their websites.

#### Article 2

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<sup>21</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

### Submission of the application

1. An applicant seeking authorisation as a crypto-asset service provider in accordance with Article 62 of Regulation (EU) 2023/1114 shall submit to the competent authority its application by filling in the form set out in the Annex.
2. The application shall be provided in a manner which enables storage of information in a way accessible for future reference and which allows the unchanged reproduction of the information stored.

### Article 3

#### Receipt of the application and acknowledgement of receipt

The competent authority shall send electronically, on paper, or in both forms, an acknowledgement of receipt in writing to the applicant. That acknowledgement of receipt shall include the contact details of the designated contact points as referred to in Article 1.

### Article 4

#### Notification of changes

1. The applicant shall notify the competent authority of any changes to the information provided in the application for authorisation without undue delay. The applicant shall provide the updated information by using the form set out in the Annex.
2. Where the applicant provides updated information, the time limit laid down in Article 63(9) of Regulation (EU) 2023/1114 shall start to run from the date on which that updated information is received by the competent authority.

### Article 5

#### Communication of the decision

The competent authority shall inform the applicant of its decision to grant or not the authorisation in paper form, by electronic means or both.

### Article 6

#### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.



This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission  
The President*

ANNEX

**Application Form for authorisation as a Crypto-Asset Service Provider**

**Regulation (EU) 2023/1114**

Reference number:

Date:

FROM:

Name of the applicant:

Address:

(Contact details of the designated contact person):

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Competent Authority:

Address:

(Contact details of the designated contact point):

Name:

Telephone:

Email:

Dear [*insert appropriate name*],

In accordance with Article 2 of the Commission Implementing Regulation (EU) XXXX/XXX, laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the information to be included in the application for the authorisation of crypto-asset service providers, kindly find attached the application for authorisation.

We [applicant] declare that the submitted information is true, accurate, complete and up to date to the best of [applicant's] knowledge.

- Person in charge of preparing the application:

Name:

Status/position:

Telephone:

Email:

- Nature of the application (tick the relevant box)

-  Authorisation

- Change to the authorisation already obtained

## CONTENT

### *General information*

.....  
.....

Please insert the information referred to under Article 1 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

### *Programme of operations*

.....  
.....

Please insert the information referred to under Article 2 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date] of the European Parliament and the Council of Date [include Title and number of the MiCA RTS on authorisation for CASPs]. Please set out that information here or make reference to the relevant annexes containing the information.

### *Prudential requirements*

.....  
.....

Please insert the information referred to under Article 3 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date].



Please set out that information here or make reference to the relevant annexes containing the information.

*Information about governance arrangements and internal control mechanisms*

.....  
.....

Please insert the information referred to under Article 4 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Business continuity*

.....  
.....

Please insert the information referred to under Article 5 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Detection and prevention of money laundering and terrorist financing*

.....  
.....

Please insert the information referred to under Article 6 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information

*Identity and proof of good repute, knowledge, skills, and experience and of sufficient time commitment of the members of the management body*

.....  
.....

Please insert the information referred to under Article 7 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Information relating to shareholders or members with qualifying holdings*

.....  
.....

Please insert the information referred to under Article 8 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*ICT systems and related security arrangements*

.....  
.....

Please insert the information referred to under Article 9 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Segregation of clients' crypto-assets and funds*

.....  
.....

Please insert the information referred to under Article 10 Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Complaints-handling*

.....  
.....

Please insert the information referred to under Article 11 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Operating rules of the trading platform and market abuse detection*

.....  
.....

Please insert the information referred to under Article 12 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Custody and administration policy*

.....  
.....

Please insert the information referred to under Article 13 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Exchange of crypto-assets for funds or other crypto-assets*

.....  
.....

Please insert the information referred to under Article 14 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Execution policy*

.....  
.....

Please insert the information referred to under Article 15 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Provision of advice or portfolio management on crypto-assets*

.....  
.....

Please insert the information referred to under Article 16 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

*Transfer services*

.....  
.....

Please insert the information referred to under Article 17 of Commission Delegated Regulation (EU) XXXX/XXXX of the European Parliament and the Council of [date]. Please set out that information here or make reference to the relevant annexes containing the information.

Yours sincerely,

[signature]

## 9.2.5 RTS on complaints handling by crypto-asset service providers

### **COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards on the requirements, templates and procedures for handling complaints by crypto-asset service providers**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>22</sup>, and in particular Article 71(5), third subparagraph, thereof,

Whereas:

- (1) In the interests of investor protection as well as to promote an effective system of internal governance, crypto-asset service providers should provide their clients with easy access to a clear, understandable and up-to-date description of their complaints-handling procedure on their website.
- (2) In order to avoid diverging complaints handling procedures among crypto-asset service providers across the Union, clients should be able to file their complaints using a harmonised template.
- (3) In order to provide for an adequate level of protection of investors, it is appropriate to require crypto-asset service providers to ensure that complainants are allowed to file complaints in all languages used by the crypto-assets service provider to market its services or communicate with clients or, where relevant, the language of the operating rules of the trading platform for crypto-assets operated by the crypto-assets service provider, as well as in at least one of the official languages of the home Member State and each host Member State.

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<sup>22</sup> OJ L 150, 9.6.2023, p. 40.

(4) To ensure a prompt and timely handling of complaints, crypto-asset service providers should acknowledge receipt of any complaint without undue delay. Crypto-asset service providers should also, without undue delay, inform the complainant as to whether that complaint is admissible or not and, in the latter case, communicate the reasons for the inadmissibility. Upon acknowledgment of receipt of the complaint, the complainant should also receive the contact details of the person or department to be contacted for any queries related to the complaint, as well as an indicative timeframe for a response.

(5) To ensure a prompt, timely and fair investigation of complaints, crypto-asset service providers should, upon receipt of a complaint, assess whether that complaint is clear, complete and contains all relevant evidence and information necessary for handling it. Where appropriate, additional information should be requested without undue delay. Crypto-asset services providers should gather and investigate all relevant evidence and information regarding the complaint. Complainants should be kept duly informed about the complaints handling process.

(6) To ensure a fair and effective handling of complaints, it is necessary that decisions on complaints address all points raised by the complainant in its complaint. Moreover, complaints presenting similar circumstances should result in consistent decisions, unless the crypto-asset service provider is able to provide an objective justification for any possible deviation from a previously taken decision.

(7) To ensure a prompt handling of complaints, decisions on complaints should be communicated to the complainant as soon as possible, within the timeframe determined in the complaints handling procedure and in any case within 2 months after the acknowledgement of receipt of the complaint. In exceptional circumstances where the crypto-asset service provider is not able to meet that timeframe or deadline, the complainant should be informed of the reasons for the delay and of the expected date by which a decision will be delivered.

(8) In order to ensure efficient interactions, crypto-asset service providers should communicate with complainants in clear and plain language that is easily understandable. Communications of crypto-asset service providers should be made in writing by electronic means or, upon the complainant's request, by post. Where the decision on a complaint does not address positively all of the complainant's request, it is appropriate that the decision contains a thorough reasoning and information on available remedies.

(9) In order to achieve procedural and substantive consistency of complaints handling, crypto-asset service providers should analyse complaints-handling data on an on-going basis, including inter alia, the average processing time, per year (on a rolling basis), for each step of the complaints handling procedure.

(10) To ensure that complaints are investigated fairly and effectively, adequate resources should be dedicated by the crypto-asset service provider to their management and the establishment, maintaining and review of the procedures referred to in Article 71 of Regulation (EU) 2023/1114. Such resources should also ensure that complaints are handled without conflicts of interests.

(11) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), in close cooperation with the European Banking Authority.

(12) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>23</sup>.

HAS ADOPTED THIS REGULATION:

Article 1  
Complaints-handling procedures

1. For the purposes of this Regulation, 'complaint' means a statement of dissatisfaction addressed to a crypto-asset service provider by one of its clients relating to the provision of one or more crypto-asset services.

2. The procedures for complaints handling as referred to in Article 71(1) of Regulation (EU) 2023/1114 shall contain at least all of the following information:

- (a) the conditions for the admissibility of complaints;
- (b) information that complaints are filed and handled free of charge;
- (c) a detailed description of how to file complaints, including:
  - (i) information that complaints may be filed using the template set out in the Annex;
  - (ii) the type of information and evidence to be provided by the complainant;
  - (iii) the identity and contact details of the person to whom or department to which complaints must be addressed;
  - (iv) the electronic platform, system, email or postal or address to which complaints must be submitted;
  - (v) the language or languages in which a complainant is allowed to file a complaint pursuant to Article 3;

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<sup>23</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



- (d) the process for complaints handling, as specified in Articles 3 to 6;
  - (e) the timeline applicable to complaint handling, including for acknowledging receipt of the complaint, requesting additional information, investigating a complaint and providing a response.
  - f) a description of the arrangements for registering and keeping records of complaints and of measures taken in response thereto through a secure electronic system.
3. Crypto-asset service providers shall publish an up-to-date description of the procedures for complaints handling on their website, as well as the standard template set out in the Annex, and ensure that both the description and the template are easily accessible on their website and on any other relevant digital device that may be used by clients to access the crypto-asset services. In addition, they shall provide such description upon clients' request and at the time of acknowledging receipt of complaints.
4. The description of the complaints handling procedure and the standard template set out in the Annex shall be published in all languages used by the crypto-assets service provider to market its services or communicate with clients or, where relevant, the language of the operating rules of the trading platform for crypto-assets operated by the crypto-assets service provider referred to in Article 76(4) of Regulation (EU) 2023/1114 as well as in at least one of the official languages of the home Member State and each host Member State.
5. The crypto-asset service provider shall adequately document the procedures for complaints handling and shall communicate such procedures to all relevant staff through an adequate internal channel and provide appropriate training.
6. The crypto-asset service provider shall ensure that the procedures for complaints handling are defined and endorsed by its management body, which shall also be responsible for monitoring their proper implementation and for reviewing them periodically and at least on an annual basis.
7. The crypto-asset service provider shall ensure that the conditions a complaint shall meet to be considered admissible and complete shall be fair, reasonable and shall not unduly restrict the rights of natural or legal persons to file a complaint. As such, the conditions a complaint shall meet to be considered admissible and complete shall not include the mandatory use of the template provided in the Annex to this Regulation to submit the complaint.

## Article 2

### Resources dedicated to complaints handling

1. Crypto-asset service providers shall dedicate adequate resources to the management of complaints.

2. The dedicated resources referred to in paragraph 1 shall have the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them and shall have access to all relevant information.

3. The person in charge of the dedicated resources referred to in paragraph 1 shall report directly to the management body on the implementation and effectiveness of the complaints handling procedures, including the data referred to in Article 8, and on any measures taken or to be taken in response thereto, on at least an annual basis and, where material deficiencies are identified, on an ad hoc basis.

### Article 3

#### Submission means and language

1. Crypto-asset service providers shall ensure that clients are able to submit complaints by electronic means or by post.

2. Crypto-asset service providers shall ensure that clients are able to file complaints in any of the languages referred to in Article 1(4).

### Article 4

#### Acknowledgment of receipt and verification of admissibility

1. Crypto-asset service providers shall acknowledge receipt of a complaint and inform the complainant about whether the complaint is admissible without undue delay after its receipt.

2. Where a complaint does not fulfil the conditions of admissibility referred to in Article 1(2) and (7), crypto-asset service providers shall provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible.

3. The acknowledgment of receipt of a complaint shall contain all of the following:

(a) the identity and contact details, including email address and telephone number, of the person to whom, or the department to which, complainants can address any query related to their complaint;

(b) a reference to the timeline referred to in Article 1(2), point (e);

(c) a copy of the completed template filed by the client, clearly mentioning the date of its receipt.

### Article 5

## Investigation of complaints

1. Upon receipt of an admissible complaint, crypto-asset service providers shall, without undue delay after acknowledging receipt of the complaint, assess whether the complaint is clear and complete. In particular, they shall assess whether the complaint contains all relevant information and evidence. Where a crypto-asset service provider concludes that a complaint is unclear or incomplete, it shall, without undue delay after acknowledging receipt of the complaint, request any additional information or evidence necessary for the proper handling of the complaint.
2. Crypto-asset service providers shall seek to gather and examine all relevant information and evidence regarding a complaint. They shall not require from the complainant information and evidence that is already in their possession or that should be in their possession.
3. Crypto-asset service providers shall keep the complainant duly informed about any additional steps taken to handle the complaint. They shall reply to reasonable information requests made by the complainant without any undue delay.

## Article 6 Decisions

1. In its decision on a complaint, the crypto-asset service provider shall address all points raised in the complaint and shall state the reasons for the outcome of the investigation. That decision shall be consistent with any previous decision taken by the crypto-asset service provider in respect of similar complaints, unless the crypto-asset service provider is able to justify why a different conclusion is drawn.
2. Crypto-asset service providers shall communicate their decision on a complaint to the complainant as soon as possible, within the timeline referred to in Article 1(2), point (e) and in any case within 2 months after the acknowledgement of receipt of the complaint.
3. Where, in exceptional situations, the decision on a complaint cannot be provided within the timeline referred to in of Article 1(2), point (e) or deadline referred to in paragraph 2, crypto-asset service providers shall inform the complainant about the reasons for that delay and specify the date of the decision.
4. Where the decision does not satisfy the complainant's demand or only partly satisfies it, the crypto-asset service provider shall clearly set out the reasoning and contain information on available remedies.

## Article 7 Communication with clients

1. When handling complaints, crypto-asset service providers shall communicate with complainants in a clear and plain language that is easy to understand.

2. Any communication made by the crypto-asset service provider under Articles 4 to 6 that is addressed to a complainant shall be made in the language in which the complainant filed its complaint, provided that the language used by the complainant is one of the languages referred to in Article 1(4). The communication shall be made in writing by electronic means or, upon the complainant's request, by post.

## Article 8

### Procedures to ensure consistent complaints-handling

1. Crypto-asset service providers shall analyse, on an on-going basis, complaints-handling data. Such data shall include all of the following:

- (a) the average processing time, per year (on a rolling basis), for each step of the complaints handling procedure, including acknowledgement, investigation, response time;
- (b) the number of complaints received, per year (on a rolling basis), and for each step of the complaints handling procedure, the number of complaints where the crypto asset service provider did not comply with the maximum time limits set out in its complaints handling procedure;
- (c) the categories of the topics to which complaints relate;
- (d) outcomes of investigations.

2. For this purpose, crypto-asset service providers shall keep records of all complaints received, outcome of the investigation thereof and of any measures taken in response to complaints for a period of 5 years.

## Article 9

### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission  
The President*

## ANNEX

**Template for the submission of complaints**
**SUBMISSION OF A COMPLAINT**

(to be sent by the client to the crypto-asset service provider)

*1.a. Personal data of the complainant*

LAST NAME/LEGAL ENTITY NAME	FIRST NAME	REGISTRATION or ID NUMBER	LEI (IF AVAILABLE)	CLIENT REFERENCE (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL

*1.b Contact details (if different from 1.a)*

LAST NAME/LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL

*2.a Personal data of the legal representative (if applicable) (a power of attorney or other official document as proof of the appointment of the representative)*

LAST NAME	FIRST NAME/LEGAL ENTITY NAME	REGISTRATION NUMBER AND LEI (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR	POSTCODE	CITY	COUNTRY

(for firms registered office)			

TELEPHONE		EMAIL	
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*2.b Contact details (if different from 2.a)*

LAST NAME/LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	
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**3. Information about the complaint**

*3.a Full reference of the crypto-asset service or agreement to which the complaint relates (i.e. name of the crypto-asset service provider, crypto-asset service reference number, or other references of the relevant transactions...)*

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*3.b Description of the complaint's subject-matter*

Please provide documentation supporting the facts mentioned.

*3.c Date(s) of the facts that have led to the complaint*

*3.d Description of damage, loss or detriment caused (where relevant)*

*3.e Other comments or relevant information (where relevant)*

In \_\_\_\_\_ (place) on \_\_\_\_\_ (date)

*SIGNATURE*

## COMPLAINANT/LEGAL REPRESENTATIVE

*Documentation provided (please check the appropriate box):*

<i>Power of attorney or other relevant document</i>	
<i>Copy of the contractual documents of the investments to which the complaint relates</i>	
<i>Other documents supporting the complaint:</i>	

## 9.2.6 RTS on identification, prevention, management and disclosure of conflicts of interest

### **COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards on the requirements for the policies and procedures of crypto-asset service providers to identify, prevent, manage and disclose conflicts of interest as well as on the details and methodology for the content of disclosures of conflicts of interest**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>24</sup>, and in particular Article 72(5), third subparagraph, thereof,

Whereas:

(1) Where implementing and maintaining the policies and procedures required pursuant to Article 72 of Regulation (EU) 2023/1114, crypto-asset service providers should take into account the scale, nature and range of crypto-asset services provided, including, where relevant, circumstances related to the fact that the crypto-asset service provider belongs to a group.

(2) A broad range of situations, relationships and affiliations may create potential conflicts of interest. When deciding what kind of situations and circumstances should be covered by their conflicts of interest policies, crypto-asset service providers should take into consideration all situations which may influence or affect, or which may appear to influence or affect, the crypto-asset service provider's ability or the ability of any person connected to the crypto-asset service provider (such as its employees, members of the management body) to exercise its duties or responsibilities objectively and independently.

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<sup>24</sup> OJ L 150, 9.6.2023, p. 40.

(3) Pursuant to Article 72(1) of Regulation (EU) 2023/1114, the potential and actual conflicts of interest to be taken into consideration by crypto-asset service providers in their conflicts of interest policies should be those affecting, or potentially affecting, the interests of clients of the crypto-asset service provider as well as those affecting or potentially affecting the interests of the crypto-asset service provider as such may affect its performance and situation and thus, indirectly, also affect interests of clients.

(4) In order to ensure that conflicts of interest rules meet their objective, crypto-asset service providers should not rely on disclosure requirements to clients set out in Article 72(2) of Regulation (EU) 2023/1114 as a way to manage conflicts of interest. Instead, they should ensure the identification, prevention and management of conflicts of interest.

(5) As such, the steps that crypto-asset service providers are to take in accordance with Article 72(1) of Regulation (EU) 2023/1114 should ensure with reasonable confidence that risks of damage to clients' interests or those of the crypto-asset service provider will be prevented and, where this is not possible, appropriately mitigated.

(6) The remuneration of staff involved in the provision of crypto-asset services to clients is a crucial investor protection issue. It is essential that crypto-asset service providers ensure that their remuneration policies and practices for all persons who could have an impact on the service provided or corporate behaviour of the crypto-asset service provider do not create conflicts between the interests of clients and those of the crypto-asset service provider or connected persons or impair the ability of connected persons to carry out their duties and responsibilities in an independent and objective manner.

(7) In order to ensure the efficient and consistent application of the conflicts of interest requirements in the area of remuneration, a definition of remuneration should be adopted. It should include all forms of payment or financial or non-financial benefits provided directly or indirectly by crypto-asset service providers to persons with an impact, directly or indirectly, on crypto-asset services provided by the crypto-asset service providers or on its corporate behaviour.

(8) It is important for crypto-asset service providers to dedicate adequate resources for the implementation, monitoring and review of the policies and procedures relating to the identification, prevention, management and disclosure of conflicts of interest. Such dedicated resources should have the necessary skills, knowledge and expertise and report to the management body. As such, the conflicts of interest policies and procedures referred to in Article 72(1) of Regulation (EU) 2023/1114 shall include arrangements for such resources to be adequate at all times.

(9) To ensure that clients can take an informed decision about services presenting actual conflict of interests, crypto-asset service providers should keep up-to-date the information, disclosed in accordance with Article 72(2) of Regulation (EU) 2023/1114, about the general nature and sources of conflicts of interest as well as the steps taken to mitigate them. Such disclosure should be appropriate to the nature of the clients to whom or which it is addressed,

in particular taking into account their level of knowledge and experience. The disclosure should include a description of the conflicts of interests and the measures taken to mitigate them.

(10) It may not always be clear to clients in what capacity or capacities the crypto-asset service provider is acting, especially as crypto-asset service providers may often be operating in a vertically integrated manner or in close cooperation with affiliated entities or entities of the same group. Therefore, it is essential that the disclosures referred to in Article 72(2) of Regulation (EU) 2023/1114 include a sufficiently detailed, specific and clear description of the situations which give or may give rise to conflicts of interests, including the role and capacity in which the crypto-asset service provider is acting. This is particularly relevant in situations where, for instance, the crypto-asset service provider is presenting itself as an exchange but actually engage in multiple activities such as operating a trading platform in crypto-assets, market-making or offering margin trading.

(11) In order to ensure appropriate investor protection, it is also essential that clients have access to the disclosures referred to in Article 72(2) of regulation (EU) 2023/1114 in a language with which they are familiar. This Regulation thus requires that crypto-asset service providers make available such disclosures in all languages used by crypto-asset service provider to market their services or communicate with clients in the relevant Member State.

(12) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), in close cooperation with the European Banking Authority.

(13) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>25</sup>,

HAS ADOPTED THIS REGULATION:

## Article 1 Definitions

1. For the purposes of this Regulation, the following definitions apply:

- (a) 'connected person' means any of the persons referred to in Article 72(1), point (a), (i) to (iv) of Regulation (EU) 2023/1114.

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<sup>25</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (b) 'remuneration' means any form of payment or financial or non-financial benefits provided directly or indirectly by crypto-asset service providers in the provision of crypto-asset services to clients;
- (c) 'group' means a group as defined in Article 2(11) of Directive 2013/34/EU<sup>26</sup>.

## Article 2

### Conflicts of interest potentially detrimental to clients

1. For the purposes of identifying the types of conflict of interest that arise in the course of providing crypto-asset services and whose existence may damage the interests of one or more clients, crypto-asset service providers shall take into account, at least, whether the crypto-asset service provider or any connected person, is in any of the following situations:

- (a) it is likely to make a financial gain, avoid a financial loss, or receive another kind of benefit, at the expense of the client;
- (b) it has an interest in the outcome of a crypto-asset service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
- (c) it has a financial or other incentive to favour the interest of one or more clients over the interests of another client;
- (d) it carries on the same business as the client;
- (e) it receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits or services.

## Article 3

### Conflicts of interest potentially detrimental to the crypto-asset service provider

1. For the purposes of identifying the types of circumstances which could adversely influence the performance of a connected person's duties and responsibilities, crypto-asset service providers shall take into account, as a minimum, situations or relationships where a connected person:

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<sup>26</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182 29.6.2013, p. 19).

- (a) has an economic interest in a person, body or entity with interests conflicting with those of the crypto-asset service provider;
  - (b) has a personal relationship with a person, body or entity with interests conflicting with those of the crypto-asset service provider;
  - (c) has or has had a professional relationship with a person, body or entity with interests conflicting with those of the crypto-asset service provider;
  - (d) has a political relationship with a person, body or entity with interests conflicting with those of the crypto-asset service provider;
  - (e) carries out conflicting tasks, is entrusted with conflicting responsibilities or is hierarchically supervised by someone who is in charge of conflicting functions or tasks.
2. For the purposes of identifying the persons, bodies or entities with conflicting interests to theirs, crypto-asset service providers shall take into account, at least, whether that person, body or entity is in any of the following situations:
- (a) it is likely to make a financial gain, or avoid a financial loss, at the expense of the crypto-asset service provider;
  - (b) it has an interest in the outcome of a crypto-asset service provided or an activity carried out or decision taken by the crypto-asset service provider, which is distinct from the crypto-asset service provider's interest in that outcome;
  - (c) it carries out the same business as the crypto-asset service provider or is a client, consultant, adviser, delegatee, outsourcee or other supplier (including subcontractors) of the crypto-asset service provider.
3. For the purposes of paragraph 1, point (a), crypto-asset service providers shall take into account at least the following situations or relationships where the connected person:
- (a) holds shares, tokens (including governance tokens), other ownership rights or membership in that natural or legal person, body or entity;
  - (b) holds debt instruments of or has other debt arrangements with that natural or legal person, body or entity;
  - (c) has any form of contractual arrangements, such as management contracts, service contracts, delegation or outsourcing contract or intellectual property licenses, with that natural or legal person, body or entity.

1. The conflicts of interest policies and procedures referred to in Article 72(1) of Regulation (EU) 2023/1114 shall be set out in writing. They shall be defined and endorsed by the crypto-asset service provider's management body, which shall also be responsible for their implementation, for monitoring compliance with them and for periodically assessing and reviewing their effectiveness and addressing any deficiencies in that respect. Crypto-asset service providers shall establish adequate internal channels to inform staff of such rules and perform appropriate training.

2. Where the crypto-asset service provider is a member of a group, the policies and procedures referred to in Article 72(1) of Regulation (EU) 2023/1114 shall also take into account any circumstances which may give rise to a conflict of interest due to the structure and business activities of other members of the group.

3. The conflicts of interest policies and procedures referred to in Article 72(1) of Regulation (EU) 2023/1114 shall include the following content:

- (a) in relation to any service or activity provided, or carried out by, or on behalf of, the crypto-asset service provider or a consultant, adviser, delegate or outsourcee, a description of the circumstances which may give rise to a conflict of interest in accordance with Article 1 or Article 2;
- (b) the procedures to be followed and measures to be adopted in order to identify, prevent, manage and disclose such conflicts.

4. The procedures and measures referred to in paragraph 3, point (b), shall be designed to ensure that connected persons engaged in different business activities that may give rise to a potential or actual conflict of interest as referred to in paragraph 2, point (a), carry out these activities at a level of objectivity and independence appropriate to the scale, nature and range of crypto-asset services provided by the crypto-asset service provider and of the group to which it belongs, whilst also taking into consideration the risk of damage to the interests of one or more clients or the interests of the crypto-asset service provider.

5. The policies, procedures and arrangements referred to in paragraph 3, point (b), in conjunction with Article 2, shall include at least the following:

- (a) policies, procedures and arrangements to prevent and control the exchange of information between connected persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
- (b) policies, procedures and arrangements for the separate supervision of connected persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict with each other or with those of the crypto-asset service provider;



- (c) policies, procedures and arrangements for the removal of any direct link between the remuneration provided to the crypto-asset service provider's employees, delegates, outsourcees, subcontractors or members of the management body principally engaged in one activity and the remuneration of, or revenues generated by, different employees, delegates, outsourcees, subcontractors or members of the management body of the crypto-asset service provider principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (d) policies, procedures and arrangements to prevent any person from exercising inappropriate influence over the way in which a connected person carries out crypto-asset services;
- (e) policies, procedures and arrangements to prevent or control the simultaneous or sequential involvement of a connected person in separate crypto-asset services or activities where such involvement may impair the proper management of conflicts of interest.

6. The procedures and measures referred to in paragraph 3, point (b), in conjunction with Article 3, shall include at least the following:

- (a) policies, procedures and arrangements for reporting and communicating promptly to the management body any matter that may result, or has resulted, in a conflict of interest;
- (b) policies, procedures and arrangements to ensure that conflicting activities or transactions are entrusted to different persons;
- (c) procedures, policies and arrangements to prevent connected persons who are also active outside the crypto-asset service provider from having inappropriate influence within the crypto-asset service provider in relation to those other activities;
- (d) policies, procedures and arrangements to establish the responsibility of the members of the management body to inform other members of and abstain from voting on any matter where a member has or may have a conflict of interest or where the member's objectivity or ability to properly fulfil his or her duties to the crypto-asset service provider may be otherwise compromised;
- (e) policies, procedures and arrangements to prevent members of the management body from holding directorships in competing crypto-asset service providers outside of the same group;
- (f) policies, procedures and arrangements to prevent and control the exchange of information between connected persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may affect the performance of such connected person's duties and responsibilities to the crypto-asset service provider.

7. The procedures and measures referred to in paragraph 3, point (b), shall ensure with reasonable confidence that risks of damage to clients' or the crypto-asset provider's interests will be prevented or appropriately mitigated.

8. The conflicts of interest policies and procedures referred to in Article 72(1) of Regulation (EU) 2023/1114 shall ensure that the disclosures referred to in Article 72(2) of Regulation (EU) 2023/1114 shall be made available in the languages used by the crypto-asset service provider to market their services or communicate with clients in the relevant Member State.

9. The conflicts of interest policies and procedures referred to in Article 72(1) of Regulation (EU) 2023/1114 shall include arrangements ensuring that adequate resources are dedicated by the crypto-asset service provider to their implementation, maintaining and review.

Such policies and procedures shall also define the skills, knowledge and expertise necessary for staff in charge of the responsibilities described in subparagraph 1 and shall provide for such staff to have access to all relevant information for the discharge of their responsibilities.

For the purposes of the responsibilities allocated to the management body of the crypto-asset service provider referred to in paragraph 1, the conflicts of interest policies and procedures shall define the content of the report that the staff in charge of the policies and procedures' implementation, maintaining and review shall submit to the management body on an annual basis and, where material deficiencies are identified, on an ad hoc basis. Such report shall include, at least:

- (a) a detailed description of the situations referred to in paragraph 1 of Article 8;
- (b) the measures taken to prevent and mitigate conflicts of interests arising or which may arise from the situations referred to in paragraph 1 of Article 8;
- (c) the deficiencies identified in the crypto-asset service provider's conflicts of interest policies, procedures and arrangements (including the remuneration policies, procedures and arrangements) and the measures taken to remedy them.

## Article 5

### Remuneration procedures, policies and arrangements

1. Crypto-asset service providers shall define and implement remuneration procedures, policies and arrangements taking into account the interests of all their clients, in the short, medium or long term.

Remuneration procedures, policies and arrangements shall be designed so as not to create a conflict of interest or incentive that may lead the persons to whom they apply to favour their own interests or the crypto-asset service provider's interests to the potential detriment of any client or that may lead the persons to whom they apply to perform their duties and responsibilities in a non-objective and non-independent manner.

2. Crypto-asset service providers shall ensure that their remuneration procedures, policies and arrangements apply to:

- (a) their employees as well as any other natural person whose services are placed at the disposal and under the control of the crypto-asset service provider and who is involved in the provision by the crypto-asset service provider of crypto-asset services;
- (b) members of their management body; and
- (c) any natural person directly involved in the provision of services to the crypto-asset service provider under an outsourcing arrangement for the purpose of the provision by the crypto-asset service provider of crypto-asset services.

The application of the crypto-asset service provider's remuneration procedures, policies and arrangements to the persons listed in (a) to (c) above is subject to such persons having an impact, directly or indirectly, on crypto-asset services provided by the crypto-asset service providers or on its corporate behaviour, regardless of the type of clients, and to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the crypto-asset service provider's clients or impair their ability to fulfil their duties and responsibilities in an objective and independent manner.

3. Remuneration and similar incentives shall not be solely or predominantly based on quantitative commercial criteria, and shall take into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients. A balance between fixed and variable components of remuneration shall be maintained at all times, so that the remuneration structure does not favour the interests of the crypto-asset service providers or its connected persons against the interests of any client.

## Article 6

### Scope of personal transactions

1. A personal transaction shall be a trade in a crypto-asset or providing exposure to a crypto-asset effected by or on behalf of a connected person, where at least one of the following criteria are met:

- (a) the connected person is acting outside the scope of the activities he carries out in his professional capacity;
- (b) the trade is carried out for the account of any of the following persons:
  - (i) the connected person;
  - (ii) any person with whom a connected person has a family relationship, or close links;

- (iii) a person in respect of whom the connected person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

2. For the purposes of paragraph 1, point (b)(ii), “person with whom a connected person has a family relationship” shall mean any of the following:

- (a) the spouse of the connected person or any partner of that person considered by national law as equivalent to a spouse;
- (b) a dependent child or stepchild of the connected person;
- (c) any other relative of the connected person who has shared the same household as that person for at least one year on the date of the personal transaction concerned.

#### Article 7 Personal transactions

1. Crypto-asset service providers shall establish, implement and maintain adequate policies, procedures and arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 in the case of any connected person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 87 of Regulation (EU) 2023/1114, or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the crypto-asset service provider.

2. Crypto-asset service providers shall ensure that connected persons do not enter into a personal transaction which meets any of the following criteria:

- (a) that person is prohibited from entering into it under Title VI of Regulation (EU) 2023/1114;
- (b) it involves the misuse or improper disclosure of that confidential information;
- (c) it conflicts or is likely to conflict with an obligation of the crypto-asset service provider under Regulation (EU) 2023/1114.

3. The arrangements shall be designed to ensure that:

- (a) each connected person is aware of the restrictions on personal transactions, and of the measures established by the crypto-assets service provider in connection with personal transactions;

- (b) the crypto-assets service provider is informed promptly of any personal transaction entered into by a connected person, either by notification of that transaction or by other procedures enabling the crypto-assets service provider to identify such transactions;
- (c) a record is kept of the personal transaction notified to the crypto-assets service provider or identified by it, including any authorisation or prohibition in connection with such a transaction.

4. In the case of outsourcing arrangements, the crypto-assets service provider shall ensure that the entity to which the activity is outsourced maintains a record of personal transactions entered into by any connected person and provides that information to the crypto-assets service provider promptly on request.

#### Article 8

Disclosures of the general nature and source of conflicts of interest and the steps taken to mitigate them

1. Crypto-asset service providers shall keep the information referred to in Article 72(2) of Regulation (EU) 2023/1114 updated at all times.
2. The disclosure made in accordance with Article 72(2) of Regulation (EU) 2023/1114 shall contain a sufficiently detailed, specific and clear description of:
  - (a) the crypto-asset services, activities or situations giving rise, or which may give rise, to conflicts of interest of the kind referred to in Article 2(1) and Article 3(1), including the role and capacity in which the crypto-asset service provider is acting when providing the crypto-asset service to the client;
  - (b) the nature of the conflicts of interests identified;
  - (c) the associated risks identified in relation to the conflicts of interest referred to in (i) above;
  - (d) the steps and measures taken to prevent or mitigate the identified conflicts of interests.
3. The disclosure to the clients referred to in paragraph 2 shall be available to clients at all times and on any devices. Where the crypto-asset service provider makes them available on the relevant device, the crypto-asset service provider should also provide a link to the disclosures on its website.
4. For the purposes of the disclosure referred to in paragraph 2, crypto-asset service providers shall keep up-to-date records of all situations giving rise to actual and potential conflicts of interests, including the relevant crypto-asset services or activities,, and of the measures taken to mitigate such conflicts in the relevant situations.

## Article 9

### Additional requirements in relation to placing

1. For the purposes of identifying the types of conflict of interest that arise where the crypto-asset service provider provides placing services, crypto-asset service providers shall take into account, without prejudice to points (a) to (c) of Article 79(2) of Regulation (EU) 2023/1114, at least, the following situations:

- (a) the crypto-asset service provider is also offering pricing services in relation to the offer of crypto-assets;
- (b) the crypto-asset service provider is also providing execution of orders for crypto-assets on behalf of clients and research services;
- (c) the crypto-asset service provider is placing crypto-assets of which itself or an entity from its group is the issuer.

2. Crypto-asset service providers shall establish, implement and maintain internal arrangements to ensure at least all of the following:

- (a) that the pricing of the offer does not promote the interests of other clients of the crypto-asset service provider or the crypto-asset service provider's own interests, in a way that may conflict with the issuer client's interests;
- (b) that the pricing of the offer does not promote the interests of the issuer client's, the crypto-asset service provider's own interests or the interests of a connected person, in a way that may conflict with other clients' interests;
- (c) the prevention of a situation where persons responsible for providing services to the crypto-asset service provider's investment clients, or deciding which products should be included in the list of products offered or recommended by the crypto-asset service provider, are directly involved in decisions about pricing to the issuer client;
- (d) the removal of any direct or indirect link between the results of any placing activity and the remuneration of persons engaged in another crypto-asset service or other activity provided by the crypto-asset service provider;
- (e) the prevention of any kind of recommendations, either upon client's request or at the initiative of the crypto-assets service provider either directly or indirectly, on placing from being inappropriately influenced by any existing or future relationships;
- (f) the prevention of a situation where persons responsible for providing services to the crypto-asset service provider's investment clients are directly involved in decisions about recommendations to the issuer client on allocation;

- (g) the prevention of the exercising of staking rights without prior consent of the investment client and without disclosing conflicts of interest.

3. Crypto-asset service providers shall have in place a centralised process to identify all their placing operations and record such information, including the date on which the crypto-asset service provider was informed of potential placing operations.

#### Article 11 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## 9.2.7 RTS on the proposed acquisition of a qualifying holding in a crypto-asset service provider

### **COMMISSION DELEGATED REGULATION (EU) 2024/XXX**

**of XXXX**

**supplementing Regulation EU (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of the information necessary to carry out the assessment of the proposed acquisition of a qualifying holding in a crypto-asset service provider**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2012 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>27</sup>, and in particular Article 84(4), third subparagraph, thereof,

Whereas:

(1) Detailed information should be required from a proposed acquirer of a qualifying holding in a Crypto-Assets Services Provider (CASP) (“target entity”) at the time of the initial notification to enable competent authorities to carry out the prudential assessment of the proposed acquisition, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Information on the identity of the proposed acquirer and of the persons who will direct the business should be provided by the proposed acquirer irrespective of whether it is a natural or a legal person, in order to enable the competent authority of the target entity to assess the reputation of that proposed acquirer.

(2) Where the proposed acquirer is a legal person, information on the identity of the beneficial owners and on the reputation and experience, over the last ten years, of the persons who effectively direct the business of the proposed acquirer is also necessary.

(3) Similarly, where the proposed acquirer is an alternative investment fund (AIF) in accordance with Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the

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<sup>27</sup> OJ L 150, 9.6.2023, p. 40.



Council<sup>28</sup> or an undertaking for collective investment in transferable securities (UCITS) in accordance with Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council<sup>29</sup>, its alternative investment fund manager (AIFM) authorised pursuant to Chapter II of Directive 2011/61/EU or UCITS management company pursuant to Article 2(1)(b) of Directive 2009/65/EC or self-managed UCITS investment company pursuant to Chapter V of Directive 2009/65/EC, should provide the competent authority with information on the identity and proof of good repute of the individuals in charge of making the investment decisions for the fund. Where the proposed acquirer is a sovereign wealth fund, it should provide the competent authority with information on the identity and proof of good repute of the persons holding high level positions in the ministry, government department or other public body in charge of making the investment decisions for the fund. Where the proposed acquirer is or is intended to be a trust structure, it is necessary for the competent authority of the target entity to obtain information both on the identity of the trustees who will manage the assets of the trust, and on the identity of the beneficial owners of those assets to be able to assess the reputation and experience of these persons.

(4) Where the proposed acquirer is a natural person, it is necessary to obtain information both in relation to the proposed acquirer and in relation to any undertaking formally directed or controlled by the proposed acquirer over the last ten years in order to provide the competent authority of the target entity with full information relevant for the assessment of reputation.

(5) Where the proposed acquirer is a legal person it is necessary to obtain information in relation to any person and any undertaking under the proposed acquirer's control, as well as any shareholder with a qualified holding in the proposed acquirer, in order to provide the competent authority with full information relevant for the assessment of reputation.

(6) The information relevant for the assessment of reputation should include details of criminal proceedings, historical and ongoing, as well as civil or administrative cases. Similarly, information should be provided in relation to all open investigations and proceedings, sanctions or other enforcement decisions against the proposed acquirer, as well as any other relevant information such as refusal of registration or dismissal from employment or from a position of trust which is deemed relevant in order to assess the reputation of the proposed acquirer.

(7) Proposed acquirers should provide information on whether an assessment of their reputation as an acquirer, or as a person who directs the business of a CASP has already been conducted by another competent authority or another authority and, if so, the outcome of such an assessment. This should allow the competent authority of the target entity to take into account the outcome of investigations run by other authorities when conducting its own assessment of the proposed acquirer.

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<sup>28</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>29</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).

(8) Financial information concerning the proposed acquirer should be provided in order to assess the financial soundness of that proposed acquirer.

(9) It is important for the competent authority of the target entity to assess whether the existence of any potential conflict of interests could affect the financial soundness of the proposed acquirer. Therefore, proposed acquirers should provide information on their financial and non-financial interests or relationships with any shareholders or directors or members of senior management of the target entity or person entitled to exercising voting rights in the target entity, or with the target entity itself or its group.

(10) The submission of additional information, including information on the shareholding owned or contemplated to be owned before and after the proposed acquisition, is necessary when the proposed acquirer is a legal person. This should allow the competent authority of the target entity to complete the assessment of the proposed acquisition. In such cases, the legal and group structures involved may be complex and may necessitate a more detailed review.

(11) Where the proposed acquirer is an entity established in a third country or is part of a group established outside the Union, additional information should be provided so that the competent authority of the target entity can assess whether there are obstacles to the effective supervision of the target entity posed by the legal regime of the third country, and can ascertain the proposed acquirer's reputation in that third country.

(12) Specific information enabling an assessment as to whether the proposed acquisition will impact the ability of the competent authority of the target entity to carry out effective supervision of the target entity should be submitted by the proposed acquirer. This should include an assessment of whether the close links of the proposed acquirer will impact the ability of the target entity to continue to provide timely and accurate information to its supervisor. For legal persons, it is also necessary to assess the impact of the proposed acquisition on the consolidated supervision of the target entity and of the group it would belong to after the acquisition.

(13) With regard to the proposed acquisition of indirect qualifying holdings in the target entity, it is adequate to calibrate in a proportionate way the content of such information request. To this extent it is relevant to differentiate two cases. The first one is the case where the natural or legal person indirectly acquiring or increasing a qualifying holding in the target entity holds the control of an existing holder of qualifying holding in the target entity. The second is the case where the existence of a qualifying holding is determined by multiplying the qualifying holding held in the target entity by the percentage of the qualifying holdings held indirectly along the holding chain. In the first case, the indirect proposed acquirer should submit the same information requirements applicable to direct proposed acquirers. In the second case, having regard to the more limited influence that such an indirect shareholder or member with qualifying holdings may exercise on the target entity, a reduced set of information should be submitted.

(14) The proposed acquirer should provide information on the financing of the proposed acquisition, including information concerning all means and sources of financing. The

proposed acquirer should also be able to present evidence about the original source of all funds and assets, including any crypto-asset or other digital asset, in order for the competent authority of the target entity to assess their certainty, sufficiency and legitimate origin, including whether there is a risk of money laundering activities.

(15) Proposed acquirers intending to acquire a qualifying holding of between 20 % and 50 % in the target entity should provide information on their strategy to the competent authority of the target entity in order to ensure a comprehensive assessment of the proposed acquisition. Similarly, proposed acquirers intending to acquire a qualifying holding of less than 20 % in the target entity but that would exercise an influence equivalent to a qualifying holding of more than 20% through other means, such as the relationships with the existing shareholders of the target entity, the existence of shareholders' agreements, the distribution of shares, participating interests and voting rights across shareholders or the proposed acquirer's position within the group structure of the target entity, should also provide that information to ensure a high degree of homogeneity in assessing proposed acquisitions.

(16) Where there is a proposed change in control of the target entity, the proposed acquirer should, as a general rule, submit a full business plan. However, where there is no proposed change in the control of the target entity, it is sufficient to be in possession of certain information on the entity's future strategy and the proposed acquirer's intentions for the target entity in order to assess whether this will not affect the financial soundness of the proposed acquirer.

(17) It is proportionate that, in certain cases, the proposed acquirer should only produce limited information. In particular, where the proposed acquirer has been assessed by the competent authority of the target entity within the previous two years, it should only provide certain information to the competent authority of the target entity. Where the proposed acquirer is authorised by the competent authority of the target entity and subject to its supervision, it should be exempted from submitting certain pieces of information that are already in the possession of the supervisor. In such case the proposed acquirer should only be requested to submit information specific to the proposed acquisition. At the same time, the proposed acquirer should be required to sign a declaration certifying that the non-submitted information in possession of the competent authority is true, accurate and up-to-date.

(18) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be carried out in accordance with the rules on personal data as laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

(19) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission. ESMA has developed these draft regulatory technical standards in close cooperation with European Banking Authority (EBA).

(20) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in

accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>30</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### General information relating to the proposed acquirer

1. Where the proposed acquirer is a natural person, the proposed acquirer shall provide the competent authority of the target entity with the following identification information:

- (a) personal details, including all of the following:
  - (i) the person's name and, if different, the person's name at birth;
  - (ii) the date and place of birth;
  - (iii) the person's nationality or nationalities;
  - (iv) where available, the person's personal national identification number,;
  - (v) the person's current place of residence, address and contact details, and any other place of residence in the past ten years;
  - (vi) a copy of an official identity document;
  - (vii) the name and contact details of the principal professional adviser, if any, used to prepare the notification;
- (b) the detailed curriculum vitae, stating the relevant education and professional training, and any professional experience in managing holdings in companies, any management experience, any professional activities or other relevant functions currently performed, and any previous professional experience relevant to financial services, crypto-assets, or other digital assets, distributed ledger technology ("DLT"), information technology, cybersecurity, or digital innovation.

2. Where the proposed acquirer is a legal person, the proposed acquirer shall provide the competent authority of the target entity with the following information:

- (a) the name of the legal person;

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<sup>30</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (b) the name and contact details of the principal professional adviser, if any, used to prepare the application;
- (c) where the legal person is registered in a central register, commercial register, companies register or similar public register, the name of the register, the registration number of the legal person or an equivalent means of identification in that register and a copy of the registration certificate;
- (d) the validated, issued and duly renewed ISO 17442 legal entity identifier released in accordance with the terms of any of the accredited Local Operating Units of the Global Legal Entity Identifier System;
- (e) the addresses of the legal person's registered office and, where different, of its head office, and principal place of business;
- (f) contact details of the person within the proposed acquirer to contact regarding the notification;
- (g) corporate documents or agreements governing the legal person and a summary explanation of the main legal features of the legal form of the legal person as well as an up-to-date overview of its business activity, registration of legal form in accordance with relevant national legislation;
- (h) whether the legal person has ever been or is regulated by a competent authority in the financial services sector or other public authority or government body and the name of such authority or other government body;
- (i) where the legal person is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849, the applicable anti-money laundering and counter terrorist-financing policies and procedures;
- (j) a complete list of persons who effectively direct the business of the proposed acquirer and, in respect of each such person, the name, date and place of birth, address, contact details, a copy of the official identity document, the national identification number where available, the detailed curriculum vitae stating relevant education and professional training, the previous professional experience, and the professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in points (a) and (b) of Article 2;
- (k) the identity of all persons who are the legal person's ultimate beneficial owners, in accordance with Article 3(6)(a)(i) or 3(6)(c) of Directive (EU) 2015/849 and, in respect of each such person, the name, date and place of birth, address, contact details, and, where available, the national identification number, together with the information referred to in points (a) and (b) of Article 2. Where the ultimate beneficial owners are

the natural persons referred to in Article 3(6)(a)(ii), the proposed acquirer may refer to the information submitted in accordance with point (j);

3. Where the proposed acquirer is a trust, the proposed acquirer shall provide the competent authority of the target entity with the following information:

- (a) in respect of each such person, the identity of all trustees who manage assets under the terms of the trust document, together with the date and place of birth, address, contact details, a copy of the official identity document, the national identification number where available, the detailed curriculum vitae stating relevant education and professional training, their previous professional experience, and their professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in points (a) and (b) of Article 2;
- (b) the identity, including the date and place of birth, address, contact details, copy of the official identity document, of each person who is a settlor, a beneficiary or a protector (where applicable) of the trust assets and, where applicable, their respective shares in the distribution of income generated by the assets;
- (c) a copy of any document establishing or governing the trust;
- (d) a description of the main legal features of the trust and its functioning, as well as an up-to-date overview of its business activity, and type and value of the trust assets;
- (e) a description of the investment policy of the trust and possible restrictions on investments, including information on the factors influencing investment decisions and the exit strategy in relation to the crypto-asset service provider;
- (f) the information set out in point (i) of paragraph (2).

4. Where the proposed acquirer is an alternative investment fund (AIF) as defined in point (a) of Article 4(1)(a) of Directive 2011/61/EU or an undertaking for collective investment in transferable securities (UCITS) authorised in accordance with Article 5 of Directive 2009/65/EC, its alternative investment fund manager (AIFM) or the AIF in the case of an internally-managed AIF, or its UCITS management company or the UCITS investment company in the case of a self-managed UCITS, shall provide the competent authority of the target entity with the following information:

- (a) details of the investment policy and any restrictions on investments, including information on the factors influencing investment decisions and of exit strategies;
- (b) the identity and position of the persons responsible, whether individually or as a committee, for determining and making the investment decisions for the AIF or UCITS,

as well as a copy of any contract in case of delegation of portfolio management to a third party or, where applicable, terms of reference of the committee. For each such person the AIFM or UCITS management company, or the AIF or self-managed UCITS investment company shall provide the date and place of birth, address, contact details, a copy of their official identity document, their national identification number where available, their detailed curriculum vitae stating relevant education and professional training, their previous professional experience, and their professional activities or other relevant functions currently performed, including, together with the information referred to in points (a) and (b) of Article 2;

- (c) the information set out in point (i) of paragraph (2);
- (d) a detailed description of the performance of qualifying holdings previously acquired by the AIFM or UCITS management company on behalf of the AIFs or UCITS they manage, or by the AIF or self-managed UCITS investment company, in accordance with this paragraph, in the last three years in other similar firms or in firms providing services in relation to crypto-assets or issuing crypto-assets indicating whether the acquisition of such qualifying holdings was approved by a competent authority and, if so, the identity of that authority.

5. Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide the competent authority of the target entity with the following information:

- (a) the name of the ministry, government department or other public body in charge of determining the investment policy of the sovereign wealth fund;
- (b) details of the investment policy of the sovereign wealth fund and any restrictions on investment;
- (c) the names and positions of the individuals responsible for making the investment decisions for the sovereign wealth fund. For each such individual the proposed acquirer shall provide the date and place of birth, address, contact details, a copy of their official identity document, their national identification number where available, their detailed curriculum vitae stating relevant education and professional training, their previous professional experience, and their professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, crypto-assets or other digital assets, distributed ledger technology (DLT), information technology, cybersecurity or digital innovation, together with the information referred to in points (a) and (b) of Article 2;
- (d) details of any influence exerted by the ministry, government department or other public body referred to in point (i) on the day-to-day operations of the sovereign wealth fund;
- (e) the information set out in point (i) of paragraph (2), where applicable.

## Article 2

### Additional information relating to the proposed acquirer that is a natural person

The proposed acquirer that is a natural person shall also provide the competent authority of the target entity with the following:

- (a) a statement containing the following information in respect of the proposed acquirer and of any undertaking directed or controlled by the proposed acquirer over the past 10 years:
  - (i) subject to national legislative requirements concerning the disclosure of spent convictions, information about any criminal conviction or proceedings where the person has been found guilty, which are not subject to appeal and which were not dismissed;
  - (ii) information about any civil or administrative decisions concerning the person that are relevant for the assessment of the acquisition of the qualifying holding in the crypto-asset service provider, and any administrative sanctions or measures that were imposed as a consequence of a breach of laws or regulations, including disqualification as a company director, in each case which was not set aside which are not subject to appeal, and about criminal convictions still subject to appeal;
  - (iii) any bankruptcy, insolvency or similar procedures;
  - (iv) any pending criminal investigations or procedures including relating to precautionary measures;
  - (v) any civil, administrative investigations, enforcement proceedings against the person concerning matters which may reasonably be considered to be relevant to the authorisation of the assessment of the qualifying holding in the crypto-asset service provider;
  - (vi) where such documents exist, an official certificate or any other equivalent document, where such documents do not exist any reliable source of information concerning the absence of any of the proceedings, decisions and judgments set out in points (i) to (v) of this point (a). Official records, certificates and documents shall have been issued within three months before the submission of the notification;
  - (vii) any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;
  - (viii) any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out a trade, business or a profession;
  - (ix) any expulsion by a regulatory or government body or by a professional body or association;



- (x) any position of responsibility within an entity subject to any criminal conviction or civil or administrative penalty or other civil or administrative measure that is relevant for the assessment of the suitability or authorisation process taken by any authority or any on-going investigation, in each case for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the involvement, if any, in them;
  - (xi) any dismissal from employment or a position of trust, any removal from a fiduciary relationship, save as a result of the relationship concerned coming to an end by passage of time, and any similar situation;
- (b) where another supervisory authority has already assessed the reputation of the person concerned, the identity of that authority, the date of the assessment and evidence of the outcome of this assessment;
  - (c) the current financial position of the proposed acquirer, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;
  - (d) a description of the current business activities of the proposed acquirer and of any undertaking which the proposed acquirer directs or controls;
  - (e) financial information, including credit ratings and publicly available reports on any undertakings directed or controlled by the proposed acquirer;
  - (f) a description of the financial interests of the proposed acquirer, and of any non-financial interests of the person with any of the following natural or legal persons:
    - (i) any other current shareholder or member of the target entity;
    - (ii) any person entitled to exercise voting rights of the target entity in any of the following cases or combination of them:
      - voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights held by them, a lasting common policy towards the management body of the target entity in question;
      - voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
      - voting rights attached to shares which are lodged as collateral with that person, provided the person controls the voting rights and declares his or her intention of exercising them;

- voting rights attached to shares in which that person has the life interest;
  - voting rights which are held, or may be exercised within the meaning of the first four items of this point (ii) by an undertaking controlled by that person;
  - voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;
  - voting rights held by a third party in its own name on behalf of that person;
  - voting rights which that person may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (iii) any person that is a member of the management body of the target entity;
- (iv) the target entity itself or any other member of its group;
- (g) to the extent any conflict of interest arises from the relationships referred to in point (f), proposed methods for managing such conflict;
- (h) a description of any links to politically exposed persons, as defined in Article 3(9) of Directive (EU) 2015/849 of the European Parliament and of the Council;
- (i) any other interests or activities of the person that may be in conflict with those of the applicant and proposed methods for managing those conflicts of interest.

For the purposes of point (f), credit operations, guarantees and security interests, whether granted or received, including relating to crypto-assets or other digital assets, shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

### Article 3

Additional information relating to the proposed acquirer that is a legal person

1. The proposed acquirer that is a legal person shall also provide the competent authority of the target entity with all of the following:

- (a) the information referred to in:
- (i) points (i) to (xi) of point (a) of the first subparagraph of Article 2 in relation to the legal person and any undertaking under the legal person's control;
  - (ii) point (b) of the first subparagraph of Article 2 in relation to the legal person;

- (iii) point (d) of the first subparagraph of Article 2 in relation to the legal person;
  - (iv) points (e) of the first subparagraph of Article 2 in relation to the legal person and in relation to any executive member of the management body of the legal person or any undertaking under the legal person's control;
- (b) a description of financial interests and non-financial interests or relationships of the proposed acquirer, or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:
- (i) any other current shareholder or member of the target entity;
  - (ii) any person entitled to exercise voting rights of the target entity in any of the following cases or combination of them:
    - voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights held by them, a lasting common policy towards the management of the target entity in question;
    - voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
    - voting rights attached to shares which are lodged as collateral with that person, provided the person or entity controls the voting rights and declares its intention of exercising them;
    - voting rights attached to shares in which that person has the life interest;
    - voting rights which are held, or may be exercised within the meaning of the first four items of this point (ii), by an undertaking controlled by that person;
    - voting rights attached to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;
    - voting rights held by a third party in its own name on behalf of that person;
    - voting rights which that person may exercise as a proxy where the person can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
  - (iii) any politically exposed person, as defined in Article 3(9) of Directive (EU) 2015/849;

- (iv) any person that is, according to national legislation, a member of the administrative, management or supervisory body, or of the senior management of the target entity;
- (v) the target entity itself or any other member of its group;
- (c) to the extent any conflict of interest arises from the relationships referred to in point (b), proposed methods for managing such conflicts;
- (d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest;
- (e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;
- (f) and where it is part of a group, a detailed organisational chart of the group structure and information on the activities currently performed by the entities of the group and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and on the activities currently performed by the entities of the group;
- (g) if the proposed acquirer is part of a group as a subsidiary or as the parent company, information on the relationships between the financial and the non-financial entities of the group;
- (h) identification of any credit institution, payment institution or e-money institution, assurance, insurance or re-insurance undertaking, collective investment undertakings and their managers or investment firm within the group, and the names of the relevant supervisory authorities;
- (i) annual financial statements, at individual level and, where applicable, at consolidated and sub-consolidated levels, for the last three financial years, where the legal person has been in operation for that period of time, or such shorter period of time for which the legal person has been in operation and financial statements were prepared, approved by the statutory auditor or audit firm as defined in Article 2, points (2) and (3), of Directive 2006/43/EC of the European Parliament and of the Council , where applicable, including each of the following items:
  - (i) the balance sheet;
  - (ii) the profit and loss accounts or income statements;
  - (iii) the annual reports and financial annexes and any other documents registered with the registry or competent authority of the legal person;

- (iv) where the proposed acquirer is a newly set-up legal person or entity, in the absence of any financial statements, an updated summary as close as possible to the date of notification, of the financial situation of the proposed acquirer, as well as the financial forecasts for the next three years, and the planning assumptions used in base case and stress scenario.

For the purposes of point (c), credit operations, guarantees and security interests, whether granted or received, including relating to crypto-assets or other digital assets, shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

2. Where the proposed acquirer that is a legal person has its head office in a third country, it shall provide the competent authority of the target entity, all of the following information:

- (a) where the legal person is supervised by an authority of a third country in the financial services sector:
  - (i) a certificate of good-standing, or equivalent where not available, from such third country authority in relation to the legal person;
  - (ii) general information about the regulatory regime of that third country as applicable to the legal person;
  - (iii) a detailed description of the applicable anti-money laundering and counter-terrorist financing legal framework, including its consistency with the recommendations of the Financial Action Task Force, and of the related procedures applicable to that person;
  - (iv) a declaration by the relevant foreign competent authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity;

#### Article 4

Information to be submitted by persons acquiring an indirect qualifying holding in the target entity

1. A proposed acquirer shall submit the information set out in paragraph 2 where it:
  - (a) intends to acquire, directly or indirectly, control within the meaning of Article 2, points (9) and (10) and Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ('control'), over an existing holder of a qualifying holding in a target entity, irrespective of whether such existing holding is direct or indirect; or
  - (b) controls, directly or indirectly the proposed direct acquirer of a qualifying holding in a target entity.

2. Where the conditions set out in paragraph 1 are met, the proposed acquirer shall submit the following:

- (a) information set out in Article 1, paragraph 1, in Articles 2, 6 and 8, and in Article 9, 10 or 11, as applicable, if the proposed acquirer is a natural person;
- (b) information set out in Article 1, paragraphs 2, 3, 4 or 5 as applicable, in Articles 3, 6 and 8, and in Article 9, 10 or 11 as applicable, if the proposed acquirer is a legal person.

3. Where the application of paragraph 1 does not determine that an indirect qualifying holding is acquired by a natural or legal person, the proposed acquirer shall submit the information set out in paragraph 4, where the percentages of the holdings across the corporate chain, starting from the qualifying holding held directly in the target entity, multiplied per the holding in the level immediately above in the corporate chain results in a qualifying holding of 10% or more. The multiplication shall be applied up the corporate chain for so long as the result of holding in the target entity is 10% or more.

4. Where the conditions set out paragraph 3 are met, or where the proposed acquirer controls a natural or legal person holding a qualifying holding in accordance with the application of paragraph 3, the proposed acquirer shall submit the following:

- (a) information set out in Article 1, paragraph 1, Article 2, letters a to f and h, Article 6, in points (a) to (f), and in Article 8, if the proposed acquirer is a natural person;
- (b) information set out in Article 1, paragraph 2, 3, 4 or 5, in Article 3, paragraph 1, point (a), points (i) to (iv), point (b) point (iii), point (f) to (i), Article 3, paragraph (1), letter (b), point (iii); Article (3), paragraph (1), letters (f) to (i) Article 3, paragraph (2), in Article 6, point (a) to (f), and in Article 8, if the proposed acquirer is a legal person.

#### Article 5

##### Information on the persons that will direct the business of the target entity

Where the proposed acquirer envisages the appointment of one or more members of the management body of the target entity, the notification shall contain all the information referred to in Article 7 [Information on the management body of the [RTS on information for authorisation for applicant crypto-asset service provider] for each such proposed member.

#### Article 6

##### Information relating to the proposed acquisition

The notification relating to the proposed acquisition shall be provided by the proposed acquirer to the competent authority of the target entity:

- (a) identification of the target entity;
- (b) details of the proposed acquirer's intentions with respect to the proposed acquisition, including the strategic investment or portfolio investment;
- (c) information on the shares of the target entity owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:
  - (i) the number and type of shares – whether ordinary shares or other –along with the nominal value of such shares;
  - (ii) the percentage of the overall capital of the target entity that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
  - (iii) the share of the overall voting rights of the target entity that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target entity;
  - (iv) the market value, in euros and in local currency, of the shares of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition;
- (d) any action in concert with other parties, including the contribution of those parties to the financing of the proposed acquisition, the means of participation in the financial arrangements and future organisational arrangements;
- (e) the content of any intended shareholder's agreements with other shareholders in relation to the target entity;
- (f) the proposed acquisition price and the criteria used when determining such price and, if there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case;
- (g) a copy of the contract of acquisition.

#### Article 7

##### Information on the new proposed group structure and its impact on supervision

1. Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with an analysis of the perimeter of consolidated supervision of the group which the target entity would belong to after the proposed acquisition. That analysis shall include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group those requirements would apply on a full or sub-consolidated basis.

2. The proposed acquirer shall also provide the competent authority of the target entity with an analysis of the impact of the proposed acquisition on the ability of the target entity to continue to provide timely and accurate information to its competent authority, including as a result of close links of the proposed acquirer with the target entity.

#### Article 8

##### Information relating to the financing of the proposed acquisition

1. The proposed acquirer shall provide the competent authority of the target entity a detailed explanation of the specific sources of funding for the proposed acquisition, enabling to prove their legitimate origin, certainty and sufficiency, including:

- (a) detailed description of the activity that generated the funds and assets for the acquisition, supported by relevant documents such as financial statements, bank statements, tax statements and any other document or information providing evidence to the competent authority that no money laundering or terrorist financing is attempted through the proposed acquisition;
- (b) details on any assets, including any crypto-assets, which are to be sold to help finance the proposed acquisition, such as conditions of sale, price, appraisal and details about the characteristics of those assets, including information on when, how and from whom they were acquired;
- (c) details on access to capital sources and financial markets including details of financial instruments to be issued;
- (d) if the funds used for the acquisition of the holding have been borrowed, information on the borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges, guarantees or other security interests, as well as information on the source of revenue to be used to repay such borrowings and the origin of the borrowed funds where the lender is not a supervised financial institution;
- (e) details on the means of payment to transfer the funds and assets from the proposed acquirer to the proposed seller to purchase the holding enabling to reconstruct the transfers in line with Regulation 2023/XXX/EU on Transfer of Funds, irrespective of whether the transfer is executed via credit institutions or payment institutions or any other network used;
- (f) details of the wallet where the crypto-assets used or exchanged into official currency to acquire the holding were stored, of the crypto-asset service providers used and of the address identifiers of the originator and of the beneficiary on the DLT;



- (g) information on any financial arrangement with other persons who are or will be shareholders of the crypto-asset service provider.

For the purposes of point (c), where the lender is not a credit institution or a financial institution authorised to grant credit, the proposed acquirer shall provide comprehensive information and supporting evidence on the origin of the funds borrowed including, the lender's activity, legal form and place of residence, and any contractual clause empowering the lender to give instructions to the borrower about the qualifying holding.

2. Where the proposed acquirer is a trust, it shall provide the competent authority of the target entity with information on the method of financing the trust and resources ensuring the financial soundness of the trust to support the crypto-asset service provider.

#### Article 9

##### Additional information for qualifying holdings of up to 20 %

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, the proposed acquirer should provide a document on the strategy to the competent authority of the target entity containing the following information:

- (a) the strategy of the proposed acquirer regarding the proposed acquisition, including the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of his shareholding in the foreseeable future;
- (b) an indication of the intentions of the proposed acquirer towards the target entity, including whether or not it intends to exercise any form of control over the target entity, and the rationale for that action;
- (c) information on the financial position of the proposed acquirer and its willingness to support the target entity with additional financial interests if needed for the development of its activities or in case of financial difficulties.

#### Article 10

##### Additional information for qualifying holdings between 20 % and 50%

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of more than 20% and up to 50%, the proposed acquirer should provide a document on the strategy to the competent authority of the target entity containing the following information:

- (a) all the information requested pursuant to Article 9;

- (b) details on the influence that the proposed acquirer intends to exercise on the financial position in relation to the target entity including dividend policy, the strategic development, and the allocation of resources of the target entity;
- (c) a description of the proposed acquirer's intentions and strategy towards the target entity, covering all the elements referred to in Article 11(2) with a level of detail proportionate to the influence in the target entity stemming from the acquisition;

2. By way of derogation from paragraph 1, the information referred to in that paragraph shall also be provided to the competent authority of the target entity by any proposed acquirer referred to in Article 9 where, depending on a comprehensive assessment of the structure of the shareholding of the target entity, the influence exercised by the shareholding of the proposed acquirer is considered to be equivalent to the influence exercised by shareholdings of more than 20% and up to 50%.

#### Article 11

##### Additional information for qualifying holdings of 50% or more

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of more than 50%, or the target entity becoming its subsidiary, the proposed acquirer shall provide a three year time horizon business plan to the competent authority of the target entity which shall comprise a strategic development plan, estimated financial statements of the target entity, and the impact of the acquisition on the corporate governance and general organisational structure of the target entity.
2. The strategic development plan referred to in paragraph 1 shall indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:
  - (a) the overall aim of the proposed acquisition;
  - (b) financial goals which may be stated in terms of return on equity, cost-benefit ratio, earnings per share, or in other terms as appropriate;
  - (c) the possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target entity;
  - (d) general processes for including and integrating the target entity in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.

With regard to point (d), for proposed acquirers authorised and supervised in the Union, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

3. The estimated financial statements of the target entity referred to in paragraph 1 shall, on both an individual and, where applicable, a consolidated basis, for a period of three years, include the following:

- (a) a forecast balance sheet and income statement;
- (b) forecast prudential capital requirements and reserve of assets;
- (c) information on forecasted level of risk exposures including market, operational (such as cyber and fraud), credit and environmental risks as well as other relevant risks;
- (d) a forecast of provisional intra-group transactions.

4. The impact of the acquisition on the corporate governance and general organisational structure of the target entity referred to in paragraph 1 shall include the impact on:

- (a) the composition and duties of the members of the management body, and where applicable the main committees created by such decision-taking body including information concerning the persons who will be appointed as members of the management body;
- (b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating to accounting, internal audit, compliance including anti-money laundering and counter terrorism financing, and risk management, and including the appointment of the key functions holders of internal audit, compliance officers and risk managers;
- (c) the overall IT and technology architecture including any changes concerning the policy relating to third-party service providers of critical or important functions, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools including back-up, business continuity plans and audit trails;
- (d) the policies governing third-party service providers of critical or important functions, including information on the areas concerned, on the selection of service providers, and on the respective rights and obligations of the principal parties as set out in contracts such as audit arrangements and the quality of service expected from the provider;
- (e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target entity, including any modification regarding the voting rights of the shareholders.

1. Where the proposed acquirer has been assessed for the acquisition or increase in qualifying holdings by the same competent authority of the target entity in accordance with Articles 41(1) or 83(1) of Regulation (EU) 2023/1114 of the European Parliament and of the Council, with Article 13 of Directive 2014/65/EU of the European Parliament and of the Council, Article 23 of Directive 2013/36/EU of the European Parliament and of the Council, Article 59 Directive 2009/138/EC of the European Parliament and of the Council, Article 32 of Regulation (EU) No 648/2012 of the European Parliament and of the Council, within the previous two years from the submission of the notification, such proposed acquirer shall submit to the competent authority of the target entity the information that is specific to the proposed acquisition or that has changed since the previous assessment.

The proposed acquirer shall submit a signed declaration indicating the exact information set out in this Regulation that has not been submitted, certifying that it has not changed since the previous assessment and that it is true, accurate and up-to-date.

2. Without prejudice to paragraph 1, where the proposed acquirer is authorised by and subject to the ongoing supervision of the competent authority of the target entity, it shall only submit the information set out in this Regulation specific to the proposed acquisition and shall be exempted from the submission of the information already in possession of that competent authority.

The proposed acquirer shall submit a signed declaration indicating the exact information referred to in this Regulation that has not been submitted because already in possession of that competent authority and certifying that such information is true, accurate and up-to-date.

3. For purposes of this Article, information specific to the proposed acquisition set out in this Regulation includes at least all of the following:

- (a) where the proposed acquirer is a natural person:
  - (i) information set out in Article 1(1);
  - (ii) information set out in Article 2, points (c) to (i) where the proposed acquisition is covered by paragraph 1, information set out in Article 2, points (f) to (i) in case of proposed acquisitions covered by paragraph 2;
  - (iii) information set out in Article 5;
  - (iv) information set out in Article 6;
  - (v) information set out in Article 8;
  - (vi) the information set out in Articles 9, 10 or 11, as applicable;
- (b) where the proposed acquirer is a legal person, a trust, an alternative investment fund (AIF) in accordance with Article 4(1)(a) of Directive 2011/61/EU or an undertaking for

collective investment in transferable securities (UCITS) in accordance with Article 1(2) of Directive 2009/65/EC, or a sovereign wealth fund:

- (i) information set out in Article 1(2), points (a) to (f);
- (ii) information set out in Article 3(1), points (a) (ii) to (iv) , as well as points (b) to (d), and in Article 5 as applicable; where the proposed acquisition is covered by paragraph 1 of this Article, also information set out in Article 3(1), point (i) (i) to (iv);
- (iii) Information set out in Article 6 and 7;
- (iv) information set out in Article 8;
- (v) the information set out in Articles 9, 10 or 11, as applicable.

Article 13  
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission  
The President

