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To:

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Date:

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EBA 3rd consultation package on stablecoin requirements in MiCA

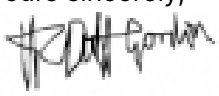
Coinbase Global, Inc. and its EU subsidiary Coinbase Europe Limited (together, **Coinbase**) welcome the opportunity to respond to EBA's 3rd consultation package on stablecoins.

Coinbase started in 2012 with the idea anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the US and provide a trusted and easy-to-use platform relied on by millions of verified users in over 100 countries to access the broader crypto economy.

We are committed to the EU, where we have a significant presence reflecting its importance as one of our largest markets outside of the US. Coinbase has a crypto license in Germany, an EMI license in Ireland, and a number of registrations in national markets across the EU. We believe we are well placed to transition to a MiCA license, and we are excited by the opportunities presented across the region. The EU has taken a leadership role globally with MiCA, and is now well positioned to capitalise on a new wave of technological innovation capable of making a significant contribution to major EU priorities from capital market reform, green transition and the strategic autonomy agenda.

However MiCA is not "done," and the EBA's work is critical to maintaining EU competitiveness. Countries around the world are watching to see if the EU achieves the right balance of fulfilling important regulatory objectives: financial stability, market integrity, consumer protection, and creating the right conditions to spur innovation and growth. We want to see a flourishing stablecoin market in the EU, both for Euro and non-Euro stablecoins, and we stand ready to support EBA in their standard-setting in this important area.

Yours sincerely,



Tom Duff Gordon
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Introduction

Coinbase welcomes the opportunity to respond to the EBA's third consultation package under the Markets in Crypto-Assets Regulation ("**MiCAR**").

We wanted to raise some observations / concerns where the proposed rules will not deliver the intended outcome around supporting innovation and growth for the EU stablecoin market. We offer below a summary of our key points:

1. **Reserve assets requirements are unachievable**: The EBA's proposed concentration limits will be unachievable for the majority of EMT issuers. The EBA's proposed 10% concentration limit combined with the MiCAR Article 36(1) requirement for at least 60% of reserve assets to be held in deposit accounts for significant issuers, means that an issuer will need at least 6 banking partners. This increases to 20 banking partners if 100% of their reserve assets are held in deposit accounts when combined with the EBA's proposed 5% concentration limit for accounts with non-large credit institutions. Fintechs, E-money issuers and crypto-asset businesses struggle to secure a single banking partner today, given many European banks have limited appetite to offer safeguarding accounts or to be exposed to new market entrants. There is also significant increased operational risk resulting from having to manage multiple counterparties. Given these significant challenges, it would be more practicable for the concentration limits to apply on a tiered basis. For example, if a significant EMT's market capitalisation is below a certain threshold, the concentration limit could be 20%, and if its market capitalisation is above that threshold, the concentration limit could be 15%. Alternatively or in addition, there could be a phased approach with a change in concentration limit over time if NCA's deem appropriate, considering the risk profile of the banking partner. As EMT issuers build a track-record under MiCA regulation, establishing banking partnerships may likely become progressively easier, underscoring the value of a phased introduction of requirements.

2. **Over-collateralisation is not required to mitigate liquidity risk**: The EBA's proposal for mandatory over-collateralisation of reserve assets is unnecessary. We understand the rationale of the measure is to ensure that the market value of reserve assets always covers redemption requests. However, this objective is already met through other MiCAR requirements, such as the requirement for issuers to hold reserve assets with little to no market or liquidity risk, and on a diversified basis, as well as for any shortfall in reserve assets to be covered by the issuer under MiCAR Article 38(4). We note that the over-collateralisation obligation does not exist under other comparable regimes, notably for e-money issuers who have the same obligation as ART/signification EMT issuers to meet redemption requests, on demand. Further, the own funds requirements of 2-3% is equivalent to

overcollateralization given the current restrictions/requirements for the reserve assets.

3. **Meaning of "a means of exchange" requires clarification**: The EBA should clarify that the concept of a "means of exchange" captures transactions where there is an obvious payments use case. As it currently stands, most transactions in ARTs/EMTs relate to custody or trading and therefore it should not be assumed that they are being used as a means of exchange as this would inflate the number and value of transactions reported under Article 22(1)(d) of MiCAR. We suggest that transactions should only be reported where the CASP or issuer knows, or has a reasonable belief, that the purpose of the transaction is to use the ART/EMT as means of exchange (e.g. payment for a good or service).

4. **Geographical scope of transactions in ARTs/EMTs used as means of exchange to be wholly in the Union**: We disagree with the EBA's interpretation that the scope of the reporting obligation under Article 22(1)(d) of MiCAR includes transactions where only one of the payer or payee is located within the Union / single currency area. Article 22(1)(d) refers to reporting transactions "***within*** *a single currency area*" (our emphasis), implying that both parties to the transaction are in the single currency area, otherwise the transaction would not be within, but partly outside the single currency area.

5. **CASPs reporting customer data to issuers:** We support CASPs reporting to issuers unique identifier information for each payee / payer rather than their personal information (e.g. name). However, the EBA should clarify that unique identifiers should be pseudonymous to meet EU data minimisation principles and to reduce data privacy concerns.

6. **Transactions between non-custodial wallets should be out of scope for reporting purposes:** Issuers and CASPs should not be required to report transactions involving non-custodial wallets. Doing so may result in inaccurate, unreliable data given the challenges in defining all transactions with certainty (e.g. the geographical location of the wallet holder may be outside of the EU).

7. **The own funds requirements (particularly for significant EMTs) are disproportionate:** Issuers of significant EMTs are required to meet "own fund requirements" of 3% of the average reserve assets. This amount can be increased by 20-40% under Article 35(5) of MiCAR (to account for stress scenarios). We think that even the base capital requirement of 2% (3% if significant) is disproportionate to the risks posed, and whilst we recognise that the MiCAR Level 1 text is finalised, the EBA should include guidance, for example by way of recitals, that this additional power to increase "own funds" by 20-40% should only be

utilised by competent authorities in exceptional cases. In addition, the deadline for an issuer to respond to a competent authority's direction to increase their own funds (20 days), and for compliance (3 months) are too short and not viable in some circumstances. The EBA should expressly permit issuers and their competent authorities to agree to longer deadlines as necessary.

Consultation on reserve asset requirements, liquidity requirements and liquidity stress testing of relevant issuers of tokens

(A) DRAFT RTS TO FURTHER SPECIFY THE LIQUIDITY REQUIREMENTS OF THE RESERVE OF ASSETS UNDER ARTICLE 36(4) OF MICA

Q3. Do respondents have any comment on the proposed approach in Article 3 of the draft RTS to not increase the minimum amount of deposits from 30% (or 60% if the token is significant) of the asset referenced in each official currency?

We agree with and welcome the EBA's decision to not set a higher minimum percentage of reserve assets which must be held as deposits in credit institutions, than what is set in the MiCAR Level 1 text. Given many European banks have limited appetite to offer safeguarding accounts or to be exposed to new market entrants which means opening bank accounts will be challenging for most issuers, it is crucial that issuers have optionality over reserve asset composition.

Q5. Do respondents have any comment about the definition of the requirement of a maximum concentration limit of deposits with credit institutions by counterparty in Article 5 of these draft RTS? And about the definition of the general limit considering, in addition to deposit with a bank, also the covered bonds issued by and unmargined OTC derivatives with the same bank counterparty?

We have concerns with the proposed concentration limits. Opening deposit and safeguarding accounts is a major hurdle today for many fintech, e-money issuers and even harder for crypto-asset firms (which EMT issuers will be), as many banks have been discouraged from, and have limited risk appetite to be exposed to, crypto-asset businesses and new market entrants. The EBA's proposed concentration limits does not account for this reality. There are also increased operational risks presented by having to manage multiple counterparties.

The proposed 10% concentration limit combined with the MiCAR Article 36(1) requirement for at least 60% of reserve assets to be held in deposit accounts, means that an issuer of a significant EMT will need at least 6 banking partners. This increases to 20 banking partners if 100% of their reserve assets are held in deposit accounts when combined with the EBA's proposed 5% concentration limit (for accounts held with non-large institutions). There is a chance that the number may be even higher as Article 5(4) of the draft RTS states that the limit "*shall include those deposits placed with, instruments issued by or exposures to all other entities with whom that credit institution has close links*."

Although diversification of holdings is sensible, we need to balance contagion risk in the case of a crisis arising from the interconnectedness between crypto activities and the

financial system, and the commercial burden and practicability of the proposal. As the current proposal is unachievable, a more practicable approach is for concentration limits to apply on a tiered basis. For example, if a significant EMT's market capitalisation is below a certain threshold, the concentration limit could be 20%, and if its market capitalisation is above that threshold, the concentration limit could be 15%. Alternatively or in addition, there could be a phased approach with a change in concentration limit over time, if NCA's deem appropriate at their discretion after considering the risk profile of a banking partner.

Further, there should be a removal or at least an increase of concentration limits afforded to issuers to enable EMT issuers to invest more than 35% (5% in the case of significant issuer) of its reserves in government bonds or assets backed by government bonds. These are safer and more liquid in many instances than covered bonds, which may carry both credit and market risk. This could therefore have the unintended consequence of pushing issuers into investing in higher risk assets than if the level of exposure to government bonds permitted were increased.

Q6. Do respondents have any concern about compliance with these concentration limits in Article 5, considering in particular paragraph 14 of the cost/benefit analysis in relation to the potential operational burden and risk of a wrong direction diversification, linked to the minimum required liquidity soundness and creditworthiness of deposits with banks, and taking into account the minimum amount required of deposits with credit institutions by MiCAR for tokens referenced to official currencies?

We have concerns with the proposed concentration limits. Please refer to our comments at Question 5.

Q7. Do respondents have any comment about the definition of the mandatory over-collateralisation in Article 6 of these draft RTS and the rationale for it? Do respondents find it challenging from an operational perspective, in particular with respect to envisaging 5 days windows rather than 1-day windows for observation periods of the market value of the assets referenced versus the reserve of assets and over the previous 5 years? Please elaborate your response with detailed reasoning

The EBA's proposal for mandatory over-collateralisation of reserve assets is unnecessary and should be removed.

We understand the rationale of the measure is to ensure that the market value of reserve assets always cover the market value of the ART / significant EMT for the purposes of meeting redemption requests. However, this objective is met through other MiCAR requirements, such as the requirement for issuers to hold reserve assets with little to no market or liquidity risk, and on a diversified basis. Further, issuers of ARTs/ significant

EMTs are required to manage the reserve of assets to ensure that the market value of the reserve assets is at least equal at any time to the market value of the assets referenced.

As part of this obligation, any loss of value of the former relative to the latter will need to be covered by the issuer (under Article 38(4) of MiCAR). Accordingly, any shortfall will need to be covered by the issuer's proprietary capital (and similarly any excess 'swept out' into the issuer's proprietary accounts) on an intraday basis and by the end of each day. This makes the proposed permanent and mandatory over-collateralisation requirement redundant. Further, the own funds requirements of 2-3% is equivalent to over-collateralisation given the current restrictions/requirements for the reserve assets.

We note that the over-collateralisation obligation – beyond own funds capital requirements – does not exist under other comparable regimes, notably for e-money issuers who have the same obligation as ART/signification EMT issuers to meet redemption requests, on demand. Therefore applying this requirement to issuers is at odds with the principle of "same risk, same regulation".

(B) DRAFT RTS TO SPECIFY THE MINIMUM CONTENTS OF THE LIQUIDITY MANAGEMENT POLICY AND PROCEDURES UNDER ARTICLE 45(7)(b) OF MICA

Q1. Do respondents have any concerns of Article 1 for the identification, measurement and monitoring of liquidity risk of issuers? Do respondents think that the main aspects in the processes for issuers of tokens to properly manage liquidity risk are captured?

The EBA's proposal for mandatory over-collateralisation of reserve assets is unnecessary and should be removed. For the same reasons set out in our response to Q7 in relation to the draft RTS "*to further specify the liquidity requirements of the reserve of assets under Article 36(4) of MiCA*" which is also currently being consulted on, the objective of ensuring that the market value of reserve assets cover the market value of the ART/significant EMT for the purposes of meeting redemption requests is already met through other MiCA requirements.

(C) DRAFT RTS SPECIFYING THE HIGHLY LIQUID FINANCIAL INSTRUMENTS WITH MINIMAL MARKET RISK, CREDIT RISK AND CONCENTRATION RISK UNDER ARTICLE 38(5) OF MICA; AND GUIDELINES ESTABLISHING THE COMMON REFERENCE PARAMETERS OF THE STRESS TEST SCENARIOS FOR THE LIQUIDITY STRESS TESTS REFERRED IN ARTICLE 45(4) OF MICA

We do not have material comments with respect to the proposals in the above draft RTS and Guidelines.

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Consultation on reporting transactions in ARTs/EMTs, associated to their use as a means of exchange

References to ARTs/EMTs in this section of our response refers to ARTs/EMTs denominated in a non-EU currency unless stated otherwise.

(A) DRAFT RTS SPECIFYING THE METHODOLOGY TO ESTIMATE THE NUMBER AND VALUE OF TRANSACTIONS ASSOCIATED TO USES OF ARTS/EMTS AS A MEANS OF EXCHANGE UNDER ARTICLE 22(1)(D) OF MICA

Q1: Do you agree with the EBA's proposals on how issuers should estimate the number and value of transactions associated to uses of an ART or of an EMT denominated in a non-EU currency "as a means of exchange", as reflected in Article 3 of the draft RTS? If not, please provide your reasoning and the underlying evidence, and suggest an alternative approach for estimating the number and value of these transactions.

Our understanding of the EU Commission's policy intention in the Level 1 text was not to capture EMT transactions carried out on crypto platforms eg in relation to trading or custodial activity and was only meant to capture pure payment use cases eg for goods and services. However given there is a degree of ambiguity around the definition of "means of exchange" we would welcome the EBA's further clarification on scope and would respectfully ask that EBA clarify that only true payments for goods and services are captured. We agree that the concept of "a means of exchange" should exclude: (i) transfers between accounts/addresses of the same person; and (ii) the exchange of these tokens for funds or other crypto-assets with the issuer or with a CASP, unless where the token is used for settlement of transactions in other crypto-assets. The EBA should also reiterate Article 22(1) of MiCAR which states that a transaction must involve a change in the natural or legal person entitled to the ART/EMT. For example, this could be added to the recitals or to Article 3(4) of the draft RTS.

In addition, the EBA should clarify that the concept of a "means of exchange" should be limited to transactions where there is an obvious "payments" use case. Obvious payments use cases should exclude: (i) the exchange of ART / EMT for funds or other crypto-assets with another person (as this is simply swap of one property for another); (ii) transfer of the ART / EMT to third parties free of payment, for example by way of a "gift"; (iii) transactions where the ART / EMT is used to physically settle a derivative contract; (iv) use of the ART / EMT as collateral connected with derivative contracts or for margin trading, and the associated posting / removing of the tokens as collateral. We understand that the intention of the Level 1 text was that EMT/ART transactions occurring or settling on an exchange shouldn't be categorised as a payment or means of exchange.

As it currently stands, most transactions in ARTs / EMTs relate to custody or trading and therefore it should not be assumed that they are being used as a means of exchange. Doing so would inflate the number and value of transactions reported under Article 22(1)(d) of MiCAR. Therefore, an obvious payments use case will require the CASP or issuer to have knowledge, or a reasonable belief, that the purpose of the transaction is for the ART/EMT to be used as means of exchange (e.g. payment for a good or service). Without the requisite knowledge or reasonable belief, the CASP/issuer should not be expected to report the transactions.

Q3: Do you agree with the EBA's proposals regarding the geographical scope of the transactions covered by Article 22(1), point (d) of MiCAR, as reflected in Article 3(5) of the draft RTS? If not, please provide your reasoning and the underlying evidence.

We disagree with the EBA's proposals regarding the geographical scope of the reporting obligation. Please refer to our comments at Question 4.

Q4: Do you agree with the EBA's proposals on how issuers should assign the transactions in scope of Article 22(1)(d) of MiCAR to a single currency area, as reflected in Article 4 of the draft RTS? If not, please provide your reasoning and the underlying evidence.

We disagree with the EBA's interpretation that the scope of the reporting obligation includes transactions where only one of the payer or payee is located within the Union or a single currency area. In particular, the reporting obligation in Article 22(1)(d) and 22(6) refers to reporting transactions "***within*** *a single currency area*" (our emphasis). This implies that both parties to the transaction (i.e., the payer and the payee) must be in the single currency area, otherwise the transaction would not be 'within' the area but partly outside. The same analysis applies to transactions within the Union.

Alternatively, if we accept that the reporting obligation applies to transactions wholly within the Union, regardless of whether the payer and payee are in the same or different currency areas, the RTS as currently drafted requires cross-currency area transactions to be reported twice. This double reporting would inflate the number of transactions for a specific ART/significant EMT. To mitigate this, we suggest that issuers only report the transaction once, for example by only reporting the payer or the payee leg but not both.

Question 6: In your view, does the transactional data to be reported by CASPs to the issuer, as described in paragraph 43 above, cover the data needed to allow the issuer to reconcile the information received from the CASP of the payer and the CASP of the payee before reporting the information in Article 22(1), point (d) to the competent authority? If not, please provide your reasoning with details and examples of which data should be added or removed.

We do not agree with the proposal for issuers to report transactions with non-custodial (or self hosted wallets). Further, the reporting by CASPs of transactional information and the public distributed ledger addresses used for making transfers on behalf of their clients, will not allow issuers to definitively identify whether an on-chain transaction involves a non-custodial wallet and therefore to comprehensively reconcile reported data. This is because a wallet address may belong to a CASP that is not within the scope of MiCAR or the TFR e.g., a non-EU CASP. (See response to Qn 9 below)

Question 7: Do you agree that, based on the transactional data to be reported by CASPs to the issuer as described in paragraph 43 above, issuers will be able to reconcile the data received the CASP of the payer and the CASP of the payee on a transactional basis and in automated manner? If not, what obstacles do you see and how could these be overcome?

We support the reporting of unique identifier information for each holder by the CASP to the issuer for the purpose of avoiding the double counting of transactions reported by the CASP of the payer and the CASP of the payee. However, this unique identifier should be pseudonymous. Requiring CASPs to provide issuers with the personally identifiable information (PII) of their customers such as the originators address, personal document number, date and place of birth serves no net benefit over a unique pseudonymous identifier and would create significant data privacy concerns and be at odds with EU data minimisation principles.

Question 8: In your view, how can an issuer estimate, in the case of transactions between noncustodial wallets, or between other type of distributed ledger addresses where there is no CASP involved: (i) whether the transfer is made between addresses of different persons, or between addresses of the same person, and (ii) the location of the payer and of the payee? Please describe the analytics tools and methodology that could be used for determining such aspects, and indicate what would be, in your view, the costs associated to using such tools and the degree of accuracy of the estimates referred to above?

We are supportive of estimations. Issuers can use the data available on the distributed ledger coupled with distributed ledger analytics tools to estimate transactions.

Question 9: Do you consider the EBA's proposals set out in recital 3 of the draft RTS and further explained in paragraphs 48-55 above as regards the reporting of transactions between non-custodial wallets and between other type of distributed ledger addresses where there is no CASP involved to be achieving an appropriate balance between the competing demands of ensuring a high degree of data quality and imposing a proportionate reporting burden? If not, please provide your reasoning and the underlying evidence.

We strongly oppose reporting requirements in relation to non-custodial wallets or between other types of distributed ledger addresses where there is no CASP involved, as data quality is likely to be poor and create false volumes (for example an individual could be sending assets to their own wallet address) and will divert resources away from other critical programs. Further, this proposal risks undermining the value of non-custodial wallets for users. These wallets are software tools that enable users to securely interact with blockchain networks by empowering whoever controls the private key to interact with the data related to the respective public key address. Non-custodial wallets are used as a convenient way to interact with blockchain networks, just as web users tend to use web browsers to access the Internet. With a self-hosted wallet, users are able to hold their private keys and digital assets, as well as send and receive digital assets in a peer-to-peer manner. Neither the provider of the self-hosted wallet software, nor the self-hosted wallet itself "effectuate" transactions on a user's behalf.

If the EBA continues to favour non-custodial transaction reporting requirements, a more balanced standard of conduct such as commercially reasonable efforts would be more appropriate and manageable. The EBA suggests at paragraph 50 of its consultation that issuers should be required to comply with their reporting obligations under Article 22(1) on a best-efforts basis which we consider too high a bar. Some courts have previously stated that this standard requires the obliged person to "leave no stone unturned", essentially requiring issuers to do everything in their power to ensure they can identify, for example whether a transaction is between non-custodial wallets or between other type of distributed ledger addresses where no CASP is involved, or whether a transaction was associated to an ART/EMT being used as a means of exchange.

(B) DRAFT ITS ESTABLISHING STANDARD FORMS, FORMATS AND TEMPLATE FOR THE PURPOSES OF REPORTING RELATED TO ARTS AND EMTS IN ARTICLE 22(1) OF MICA

Q3: Do you agree with template S 02.00 - S 03.01 - and S 03.02 - related to the requirements specified on the RTS developed under Articles 36(4) and 38(5) of MiCAR? If not, please provide your reasoning and suggest an alternative approach.

The EBA in the draft ITS adds granularity to the information that an ART/EMT issuer must provide when reporting the items listed under Article 22(1) of MiCA. We welcome the majority of EBA's proposals in this regard. However, the EBA has included Form S 03.01 which requires issuers to report granular detail about the composition of an ART's/EMT's reserve assets, which is not an item mandated under Article 22(1) of MiCA. The form therefore prescribes more information than what is permitted under the EBA's mandate to prepare this ITS and accordingly should be removed to give issuers flexibility over how they report the composition of reserve assets.

Q4: Do you agree with templates S 04.01 - S 04.02 - and S 05.00 - on how issuers should report transactions under Article 22(1)(c) and (d) of MiCAR? In particular, do you agree to include a separate template (S 04.03) requesting information on transactions and transfers made between non-custodial wallets or other types of distributed ledger addresses where there is no CASP involved? If not, please provide your reasoning and suggest an alternative approach.

The EBA has suggested in Form S 04.01 that issuers report transaction data on a country-by-country basis. We understand the EBA's rationale is to obtain more data on the geographical location of token holders as there is limited information on this today. We consider that this policy objective is already achieved by form S 01.00 which requires data on token holders to be provided on a country by country basis and therefore requiring this level of granularity with respect to transactions is unnecessary.

With respect to Form S 04.03 (which requires issuers to report information on transactions and transfers made between non-custodial wallets or other types of distributed ledger addresses where there is no CASP involved), we query the quality of the data that will be reported, as the calculations would be, at most, a rough approximation and unreliable. This is because there is no accurate way for issuers to determine, in the case where there is no CASP involved: (i) whether the transfer is made between addresses of different persons or of the same person, and (ii) the location of the payer and of the payee, which is needed to assign transactions to the relevant country. Given the challenges with compliance and associated data issues, we suggest that the EBA removes this reporting requirement.

Q5: Do you agree with template S 07.01? Do you agree with template S 07.02? If not, please provide your reasoning and suggest an alternative approach.

Template S 07.01 requires CASPs to report to an issuer, the crypto-asset account number for the originator and beneficiary for each transaction. However, different account numbers do not necessarily mean that there is a "transaction", which is defined under Article 22(1) of MiCAR as requiring "*a change of the natural or legal person entitled to the token*", as one holder may have multiple accounts with the same CASP, or accounts across different CASPs. Therefore, the currently proposed data set may result in transactions which do not meet the Article 22(1) definition being erroneously included in reports.

CASPs should therefore also report the unique identifier of the originator and beneficiary. These unique identifiers should be pseudonymous, for example a client number (or similar) rather than personally identifiable information (PII) such as the originator's/beneficiary's national identification number, national tax number, passport

number etc. Providing PII instead of a pseudonymous unique identifier serves no additional benefit and would create significant data privacy concerns.

Regarding template S 07.02, please note that to ensure a high standard of security in relation to customer assets Coinbase operates a dynamic wallet address solution that utilises a high number of regularly changing wallet addresses across all supported blockchain protocols. This enables Coinbase to ensure that wallet addresses are not capable of being exploited by bad actors and significantly increases the security of customer assets held in custody. As a result, a report of all wallet addresses used for making transfers on behalf of clients would be extremely long, and out of date very quickly.

Question 7: Do you have any other comments on the ITS, the templates or instructions?

Template S 06.00 requires CASPs to provide to issuers the full name of holders of ARTs/EMTs, as well as their national identification number, national tax number, passport number, or other type of identification number. The EBA should remove these personally identifiable information requirements from the template, as it is irrelevant to an issuer's obligation to make quarterly reports on the number of holders (under Article 22(1)(a) of MiCAR) and raises material data privacy concerns. The CASP could provide instead a pseudonymous unique identifier for each holder to avoid the risk of double-counting (please refer to our comments at Question 6 in this respect).

Consultation on issuer own funds requirements

(A) DRAFT RTS TO SPECIFY THE ADJUSTMENT OF OWN FUNDS REQUIREMENTS AND STRESS TESTING OF ISSUERS OF ARTS/EMTS UNDER ARTICLE 35 OF MICA

Issuers of significant EMTs are required to meet "own fund requirements" of 3% of the average reserve assets. This amount can be increased by 40% under Article 35(5) of MiCAR (to account for stress scenarios). Whilst we recognise that the MiCAR Level 1 text is finalised we believe this is disproportionate to the risks posed and, the EBA should include guidance, for example by way of recitals, that this power should only be utilised by competent authorities in exceptional cases.

We've spent significant time researching the own capital fund requirements collaborating with third parties on an in depth study on what capital requirements should be for this type of offering. We believe that the own funds requirement should be closer to 0.6% to 1% of total reserves. We arrived at this figure after conducting an operational and financial risk analysis (including credit risk exposure and market risk). Provided that the reserve assets of a significant EMT are held in safe, liquid assets, financial risks to a stablecoin arrangement can be effectively minimised, such that the risks remaining are solely operational in nature. Competent authorities should take this into consideration and avoid imposing own funds requirements beyond what is necessary to address operational risks.

Q1: Is the procedure clear and the timelines for the issuer to provide views on the assessment and submit the plan reasonable?

Regulatory procedure for increases in own funds under Article 35(3)

We understand that an issuer has 25 working days from receipt of a competent authority's intention to direct the issuer to increase their own funds (to account for higher risk under Article 35(3) of MiCAR), to provide comments. On receipt of the competent authority's final decision, the issuer then has 20 working days to submit an implementation plan. These timeframes may be too short in exceptional circumstances. For example, in times of market volatility, it would be challenging for an issuer to raise additional CET 1 assets such as obtaining long term debt). Certain jurisdictions may also require the issuer to obtain regulatory approval to convert stock into CET 1 stock. In these circumstances, an issuer may require more time to assess and/or engage with regulators, to determine how it can meet the higher own funds requirements. The EBA should allow for flexibility and permit issuers and their competent authorities to agree to longer deadlines as they consider necessary.

Regulatory procedure for increases in own funds under Article 35(5)

For completeness, we understand that there is no regulatory procedure to be followed when a competent authority requires an issuer to increase their own funds (due to stress scenarios under Article 35(5) of MiCA). Although the Level 1 text does not specifically mandate EBA to prepare a regulatory procedure for this adjustment, for consistency and to ensure regulatory clarity and certainty, a similar procedure should be introduced. It is imperative that issuers have the opportunity to engage with their regulator in circumstances where capital will need to be materially diverted to meet own funds requirements and which may have a material and detrimental impact on the issuer's potential revenue.

Q2: Are the timeframes for issuers to adjust to higher own funds requirements feasible?

We understand that issuers have a period of three months to meet the higher own funds requirements.

It is unclear from the consultation paper and draft RTS when the three-month period starts. We consider that the period should start from the date the issuer submits their implementation plan as before this point, the issuer and competent authority are still negotiating the own funds measures which will apply to the issuer. We would welcome the EBA making this timing clear in the draft RTS.

In addition, and for the reasons set out at Question 1, a three-month deadline to increase own funds may be too short in exceptional circumstances. The EBA should allow for flexibility and permit issuers and their competent authorities to agree to a longer deadline as they consider necessary.

(B) DRAFT RTS TO SPECIFY THE PROCEDURE AND TIMEFRAME TO ADJUST ITS OWN FUNDS REQUIREMENTS FOR ISSUERS OF SIGNIFICANT ARTS/EMTS UNDER ARTICLE 45(5) OF MICA

Q1. Is the procedure clear and the timelines for the issuer to submit the plan reasonable?

We understand that a competent authority has 25 working days from receipt of the EBA's classification or an ART/EMT as significant, to direct the issuer to increase their own fund. The issuer then has 20 working days to submit an implementation plan.

Our comments at Question 1 in relation to the draft RTS to specify the adjustment of own funds requirements and stress testing of issuers of ARTs/EMTs under Article 35 of MiCAR also apply here.

Q2. Are the timeframes for issuers to adjust to higher own funds requirements feasible?

We understand that issuers have a period of three months to meet the higher own funds requirements.

Our comments at Question 2 in relation to the draft RTS to specify the adjustment of own funds requirements and stress testing of issuers of ARTs/EMTs under Article 35 of MiCAR also apply here.