



**Nasdaq's Position
On the
European Commission's Legislative Proposal on a Regulation on Markets in Crypto-assets
(MiCA)**

Nasdaq welcomes and supports the European Commission's legislative proposal on a Regulation on Markets in Crypto-assets (MiCA). This legislation is significant as it establishes an EU regime for crypto assets. At the same time, it also needs to ensure market integrity, the level playing field in financial markets, and the rights and protection of investors/consumers.

Technology neutrality and “same business, same risks, same rules”

For Nasdaq, it is important that the crypto asset regulatory framework put in place remains technology neutral and applies consistently the principle of “same business, same risks, same rules”. This is key to maintain a level playing field between service providers using different technologies or tools, financial markets transparency, stability and integrity as well as investor protection.

Crypto assets categorisation, scope of MICA and treatment of “hybrid” crypto-assets

The proposed regulatory regime distinguishes between three categories of crypto-assets: e-money tokens, asset-referenced tokens and other crypto-assets. A distinction between financial and non-financial crypto-asset is established since DLT is included in the MIFID II definition by the Amending Directive accompanying the Digital Financial Package. As a result, crypto-assets falling within the definition of a financial instrument under MiFID II would be governed by MIFID II and not MiCA.

Nasdaq supports this approach, which is crucial to ensuring the level playing field and protection of investors referred to above. Nonetheless, we consider that for the avoidance of doubts and consistency purposes, it would be even better that MiCA clarifies in its definition (Art. 3) that it applies solely to non-financial crypto-assets.

We also note that the treatment of “hybrid” crypto-assets require further clarification to ensure an appropriate categorisation, including to cater for future developments in crypto assets that can take place in the EU but also in third countries. For us, “hybrid tokens” containing financial characteristics should be excluded from the scope of MiCA as these instruments should be subject to the same set of rules as financial instruments. National Competent authorities should be tasked with determining, before any issuance of crypto-assets and asset-referenced tokens,

whether such assets qualify as financial instruments or not. In case they are considered as financial instruments, the MiFID II/R regime should then apply.

Single market and supervision

Issuers of crypto-assets that meet the criteria under the proposed applicable regime will enjoy passporting rights i.e. they will be permitted to offer those crypto-assets to the public or admit them to trading anywhere in the EU. This approach should allow creating a harmonised regime across Member States, which is one of the key goals of this legislation and which Nasdaq supports.

The legislative proposal foresees that authorised crypto-asset service providers must comply with general requirements as well as specific requirements applicable to the services they provide. Issuers of crypto assets also have to respect a number of obligations and requirements. It is important that the details of these requirements and their practical implementation is consistent throughout Europe. Further precision is needed with respect to the supervision of issuers and service providers to ensure that National Competent Authorities remain unswerving in their supervision of the underlying products and activities.

Relevance and status of FMIs

Financial Market Infrastructures (FMIs), such as Trading Venues, CCPs and CSDs, provide important functions to markets as they ensure resilient and transparent markets, and deliver the highest levels of investor protection and ensure market integrity. Markets serve the needs of participants to raise capital, manage investments, access cash, and manage the risk that affects both retail and institutional investors.

FMIs should explicitly be allowed to handle all forms of “digital assets” as they are governed by stringent regulatory regimes and will foster trust in the markets in a new digital or DLT environment. FMIs should therefore be included among the “crypto-assets service providers” listed in Art. 3 of MiCA, together with further guidance to ensure the consistent application of similar provisions under MiFID II and MiCA (e.g. conflict of interests).

Art. 2 of MiCA foresees an authorisation regime for crypto asset service providers with certain exemptions. We believe that FMIs should be included in the exemption list, like banks and investment firms as CCPs, CSDs, and Trading Venues are also authorised entities by ESMA and NCAs.

Relations with Third Countries

In the interest of EU investors and service providers, it is important that the EU regime of crypto assets is well calibrated in terms of interactions with Third Countries crypto assets and service providers.

Consequently, the determination of whether or not the documentation for a non-EU crypto asset is equivalent to a EU white papers should be efficient and practical otherwise EU investors will access crypto assets abroad whereas there will be no possibility for EU infrastructures to provide services on such third country crypto assets.

Furthermore, we believe that the issuer or sponsor of crypto-assets marketed to EU investors/consumers should not be obliged to be established or have a physical presence in the

EU. Third country issuers or sponsors should be able to access the EU crypto-assets market in line with the existing EU regulatory framework. To this end, Art. 15(2) of MiCA should be rephrased to allow third-country providers to offer asset-referenced tokens (so-called “stablecoins”) to EU customers also in case these do not have a legal entity established in the Union.

Similarly, as already existing stablecoins are not expected to apply for an EU authorization (based on grandfathering), they will not be admitted to trading on EU regulated trading platforms. This will limit the EU trading platforms in their trading activities and drive EU consumers towards unregulated exchanges in foreign countries.

Clear and coordinated market abuse rules

Finally, the proposal seeks to establish market abuse rules for crypto-asset markets. Under the proposal, crypto-assets admitted to trading on a crypto-asset trading platform would be subject to the new rules. The proposal includes requirements relating to the disclosure/unlawful disclosure of inside information, prohibitions of insider dealing, and market manipulation. It would be useful to ensure consistency between this regime and Market Abuse Regulation, both in terms of practical implementation and enforcement.

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