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**Blockchain for Europe Response to ESMA's consultation on the draft guidelines on reverse solicitation under the Markets in Crypto Assets Regulation (MiCA)**

**Q1: Do you agree with the approach chosen by ESMA? Do you see any potential loophole that could be exploited by third-country firms to circumvent the MiCA authorisation requirements?**

The proposed guidelines appear to forbid third-country firms that offer MiCA services that would otherwise be regulated under Article 59 of MiCA from engaging in certain promotional activities that are not directed towards offering specific regulated services, but rather towards building a brand, even when they do not relate to crypto-assets and services. Blockchain for Europe disagrees with this approach because it could discourage well-established financial institutions from non-EU countries, with a presence in the EU, from being able to respond to EU client requests regarding any regulated crypto-asset service in the future if they promote their brand or other services to EU markets. Therefore, the suggested guidelines need adjustments to guarantee a broader adoption and to allow entities from non-EU countries with diverse business lines, whose brand is not primarily associated with crypto-assets or services.

This restriction becomes even more problematic with the assumption that having a website in an official EU language would strongly indicate solicitation of EU clients. For non-EU financial service providers that already have strong ties to EU countries due to their diversified and international presence, or in the case of Switzerland, due to shared language roots, there's a risk that purely local activities could be misconstrued as targeting EU customers. For instance, Swiss Crypto-Asset Service Providers (CASPs) might have a domestic website aimed at Swiss customers in Italian, French, or German.

Furthermore, Article 61.1 MiCA on reverse solicitation indicates that the exemption pertains to a "relationship" between a client and a firm, implying a long-term commitment. This contradicts ESMA's assertion that the exemption can only be utilised for a very brief period.

The distinction between a one-time service and an ongoing relationship concerning reverse solicitation is well-established, including in ESMA's Q&A on MiFID/R investor protection and intermediaries topics.

Lastly, the scope of the guidelines is limited to the activities of firms that would otherwise be subject to Article 59 of MiCA if their head or registered office were located within the Union. The guidelines do not apply to the promotional or other crypto-asset activities of firms or individuals not subject to MiCA Article 59, whether based in the EU or not. Given the broad type of activities prohibited by the guidelines, we believe that the finalised guidelines should clarify that they are limited to activities that would be subject to Article 59 to avoid any confusion. Overall we believe there should be more consistency with MiCA Level I in order to offer legal clarity and allow swift compliance by the interested organisations.

**Q2: Are you able to provide further examples of pairs of crypto-assets that would not belong to the same type of crypto-assets for the purposes of Article 61 of MiCA? Or are you able to provide other criteria to be taken into account to determine whether two crypto-assets belong to the same type?**

Overall, while we acknowledge the significance of preventing third-country firms from exploiting and circumventing rules that hinder reverse solicitation, we emphasise the importance of safeguarding the right of EU citizens to access services outside the EU at their own discretion.

In this regards, when determining whether two crypto-assets belong to the same type, there are several criteria beyond their basic functionality that can be considered, such as: 1) different cryptocurrencies may utilise different consensus mechanisms, such as Proof of Work (PoW), Proof of Stake (PoS), Delegated Proof of Stake (DPoS), etc; or 2) the technical aspects of the blockchain, including its structure, scalability, interoperability, and governance model; 3) the security measures implemented by each cryptocurrency, including measures to prevent double spending, protect against attacks, and ensure network resilience; and, last but not least

4) take into account the regulatory landscape surrounding each crypto-asset, including legal status, compliance with regulations, and any regulatory challenges or uncertainties that may impact its long-term viability.

**Q3: Do you consider the proposed supervision practices effective with respect to detecting undue solicitations? Would you have other suggestions?**

We would like to underline that an investigation into a firm for potential breaches of reverse solicitation requirements should be triggered by a credible suspicion of wrongdoing, supported by reasonable grounds. For instance, established financial entities or CASPs from non-EU countries might maintain an EU presence for specific business lines other than crypto products and services under MiCA. In such cases, the use of local email or website addresses should not automatically imply engagement in prohibited activities. Clarifying this point would ensure that investigations are conducted with due diligence and respect for the nuances of cross-border business operations.