

# Reply form

**on the Consultation Paper on guidelines on conditions and criteria for the classification of crypto-assets as financial instruments for MiCA implementation**

## Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. 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 **29 April 2024**.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION\_MIC3\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_MIC3\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_MIC3\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open Consultations" -> Consultation Paper on guidelines on conditions and criteria for the classification of crypto-assets as financial instruments").

### 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 publically 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 [Legal Notice](#).

**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.

### General information about respondent

Name of the company / organisation	BlackRock Asset Management
Activity	Investment Services
Are you representing an association?	<input type="checkbox"/>
Country/Region	International

## Questions

**Q1 Do you agree with the suggested approach on providing general conditions and criteria by avoiding establishing a one-size-fits-all guidance on the concepts of financial instruments and crypto-assets or would you support the establishment of more concrete condition and criteria?**

<ESMA\_QUESTION\_MIC3\_1>

We welcome ESMA's approach and appreciate that general conditions are less likely to disrupt markets. A technology agnostic view of financial instruments ensures that established supervision, regulation, market practices and market infrastructure remain efficient and reliable regardless of technological developments. This approach also provides flexibility given the evolving nature of the digital assets space. However, these guidelines also demonstrate the importance of having consistent definitions for financial instruments and crypto-assets across the EU. For example, definitions of money market instruments differ slightly across jurisdictions and various regulations. Consistent definitions will provide clarity for National Competent Authorities (NCAs) and market participants seeking to distinguish between digital assets and other financial instruments.<ESMA\_QUESTION\_MIC3\_1>

**Q2 Do you agree with the conditions and criteria to help the identification of crypto-assets qualifying as transferable securities? Do you have any additional conditions and/or criteria to suggest? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_2>

We agree that certain crypto-assets should be classified as transferable securities if they meet the definition and criteria outlined under MIFID II and we support the general principle in the MiCA regulation not to change the regulatory treatment of financial instruments because, for example, they have been tokenized for use on the blockchain. This approach should also provide clarity for crypto-assets that don't meet MIFID II criteria, such as bitcoin and ether, which BLK does not consider to be transferable securities. We would however suggest clarifying in paragraph 29 that tokenized financial instruments which feature self-executing smart contracts that alter their characteristics depending on external conditions (e.g., initiate interest or dividend payments) are categorized based on the core characteristics of the assets. Securities utilizing blockchain technology which automatically initiate dividend payments should be treated as transferable securities and not also be treated as crypto-assets.<ESMA\_QUESTION\_MIC3\_2>

**Q3 Based on your experience, how is the settlement process for derivatives conducted using crypto-assets or stablecoins? Please illustrate, if possible, your response with concrete examples**

<ESMA\_QUESTION\_MIC3\_3>

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<ESMA\_QUESTION\_MIC3\_3>

**Q4 Do you agree with the conditions and criteria to help the identification of crypto-assets qualifying as another financial instrument (i.e. a money market instrument, a unit in collective investment undertakings, a derivative or an emission allowance instrument)? Do you have any additional conditions, criteria and/or concrete examples to suggest?**

<ESMA\_QUESTION\_MIC3\_4>

We agree with ESMA's approach to defining certain cryptoassets as money market instruments pursuant to Article 4(1)(17) of MIFID II. However, the guidelines demonstrate the need for more coherence in the definitions across EU legislation. Any future alignments in this area should also include the requirements for managing reserve assets for stablecoins under Article 38 of MiCA. We would additionally suggest clarifying that the definition of a stablecoin as an instrument of payment has no consequences for the assets managed in its reserve. Reserve assets should be managed similarly to assets in a money market fund but the tokens circulating as stablecoins are not a direct tokenization of the reserve assets.

As for transferable securities we would suggest clarifying that additional features of a digital money market instrument don't alter the categorization of the asset as a money market instrument. As noted in the response to question 2, a tokenized bond which initiates interest payments at defined intervals, initiates the repayment of the nominal amount at maturity and automatically returns the principal to the investor after the repayment, is still a bond.

Additionally, we agree with the criteria for crypto-assets to be categorized as units in collective investment undertakings but would recommend clarifying that units qualifying as financial instruments with additional digital functionality remain out of scope of MiCA.

We also agree broadly with the definition of crypto assets which are derivatives, but an assessment should depend on the final guidance on derivatives which are settled in crypto assets. The definition of crypto assets which are derivatives should however ensure that smart contracts built into one of the crypto assets which are financial instruments have no impact on the categorization.<ESMA\_QUESTION\_MIC3\_4>

**Q5 Do you agree with the suggested conditions and criteria to differentiate between MiFID II financial instruments and MiCA crypto-assets? Do you have concrete conditions and/or criteria to suggest that could be used in the Guidelines? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_5>

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<ESMA\_QUESTION\_MIC3\_5>

**Q6 Do you agree with the conditions and criteria proposed for NFTs in order to clarify the scope of crypto-assets that may fall under the MiCA regulation? Do you have any additional conditions and/or criteria to suggest? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_6>

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<ESMA\_QUESTION\_MIC3\_6>

**Q7 Do you agree with the conditions and criteria proposed for hybrid-type tokens? Do you have any additional conditions and/or criteria to suggest that could be used in the Guidelines? Please illustrate, if possible, your response with concrete examples.**

<ESMA\_QUESTION\_MIC3\_7>

We agree with the proposed approach for hybrid tokens and specifically with the guidance in paragraph 79 of the consultation stating that hybrid tokens displaying features of a financial instrument shall be categorized based on this characteristic. We understand that national supervisors may need to assign newly developed assets to a category before the ESAs have a chance to agree on EU wide clarification, but we would urge national and European supervisors to agree on coherent EU wide standards as soon as possible and to dynamically adopt this guidance for future developments.<ESMA\_QUESTION\_MIC3\_7>