

## Legal Update

# ESMA updates MiCA Guidance in Q&As

The European Securities and Markets Authority (“ESMA”) has recently issued an updated questions and answers document (the “MiCA Q&A”) with responses to two additional queries arising in relation to compliance with the Markets in Crypto-Assets Regulation (“MiCA”). The MiCA Q&A and other guidance issued by ESMA set out the regulatory expectations of ESMA for National Competent Authorities (“NCAs”) including the Central Bank of Ireland, regarding compliance with this legislation.

### Background

MiCA has extended the European financial services regulatory framework to the crypto world. It became applicable to issuers of Asset Referenced tokens (ARTs) and Electronic Money Tokens (EMTs) from the end of June 2024 and to the issuers of utility tokens and CASPs from December 2024. However, some existing businesses will be grandfathered for up to 18 months.

### The Updated MiCA Q&A

The MiCA Q&A has been updated to address whether Registered AIFMs can provide crypto services as defined under MiCA and on the interpretation of auto trading, or copy trading, as it applies under MiCA.

### Registered AIFMs -ESMA\_QA\_2397

Article 60(5) of MiCA provides that both UCITS management companies and AIFMs may provide crypto-asset services equivalent to the management of portfolios of investment and non-core services for which they are authorised following notification to their home state regulator.

ESMA has now confirmed in Q&A 2397 that Registered or sub-threshold AIFMs may not take advantage of this provision as they are not authorised under the AIFMD.

### Auto trading -ESMA\_QA\_2463

The second question responded to relates to whether auto trading services related to crypto-assets fall within the scope of portfolio management or any other crypto-asset services as listed in Article 3(1)(16) of MiCA. ESMA has clarified that the guidance provided under MiFID II in the Q&A and the supervisory briefing on this topic apply to such services under MiCA but depending on the type of crypto-asset service(s) are provided. Therefore, CASPs should assess, on a case-by-case basis, what type of crypto-asset service(s) is(are) triggered when providing auto trading services in relation to crypto-assets according to different models.

### How Clerkin Lynch Can Help

Clerkin Lynch’s regulatory services team can assist with registering or obtaining authorisation under MiCA as well as advising on potential exemptions from these requirements. We can also advise upon the classification of crypto assets under MiCA for those unsure as to whether they fall under MiCA definitions and assist with on ongoing compliance issues.

Reach out to the contact details below for more information.



Mark Browne  
Partner  
email:  
[markbrowne@clerkinlynch.com](mailto:markbrowne@clerkinlynch.com)  
Phone: 01 611 4400



