



September 20, 2023

RE: Reply to the Consultation on the Technical Standards specifying certain requirements of MiCA (1st package)

Q0: Please make your introductory comments below, if any:

The Hedera Council (“Council”) is an international coalition of twenty-nine (29) independent and unaffiliated organizations, including five (5) headquartered in European Union member states, who collectively operate and govern a Distributed Ledger Technology (“DLT”) network based on the hashgraph consensus algorithm (the “Hedera Network”). As with other DLT networks, the Hedera Network provides a network-native digital asset for application developers and users to utilize when making the micropayments required whenever they consume a Hedera Network service, i.e., whenever their application makes an API call to the network.

In the case of the Hedera Network, that digital asset is called an “hbar.” This is a fundamental requirement of any public implementation of digital asset technology because anyone can use such APIs to build Web3 applications with high throughput, fair ordering, and low-latency consensus finality in seconds without relying on centralized infrastructure, but this model only works if there is a cryptographically secure method of fairly compensating all of the decentralized infrastructure providers responsible for making these services available to the public.

In the case of the Hedera Network, our coalition of independent network node operators provides these services in an environmentally and financially sustainable manner, as documented in a 2021 study from University College London.¹ This is partially due to the fact that the Hedera Network uses a proof-of-stake security model, which is an increasingly popular and environmentally sustainable method of securing a distributed public ledger.

We welcome the opportunity to provide the European Securities and Markets Authority (“ESMA”) with our response to the consultation on Technical Standards specifying certain requirements of the Markets in Crypto Assets Regulation (MiCA). We appreciate the efforts of ESMA to protect purchasers of digital assets and ensure orderly markets for Hedera network users, and we understand that industry participants play a significant role in ensuring policy is effective and well implemented across the global environment in which DLT networks operate. Our response to this first consultation briefly focuses on operating rules with respect

¹ <http://blockchain.cs.ucl.ac.uk/blockchain-energy-consumption/>

to admission of crypto-assets. We look forward to providing additional responses to the second and third consultations.

Q2: Do you agree with the list of information to be provided with an application for authorisation as a crypto-asset service provider? Please also state the reasons for your answer.

Yes. The Hedera Council agrees with paragraph 21 of the consultation that “by screening the market participants able to provide crypto-asset services, NCAs provide a safer space for investors, despite the risks that any investment in crypto-assets represents.” Specifically, we endorse the requirement from paragraph 13 of the RTS on authorisation of crypto-asset service providers that applicants “should provide detailed information on rules governing the admission of crypto-assets to trading, the way in which the admitted crypto-assets comply with the applicant’s rules, the types of crypto-assets that the applicant will not admit to its platform and the reasons for these exclusions and fees applicable to the admission to trading.” We believe that strong, objective criteria for the admission of crypto-assets to trading achieves at least two significant beneficial outcomes: (1) reduction of conflicts of interest and unfair commercial practices at crypto-asset service providers, (2) standardization and promotion of quality crypto-asset governance objectives which reduces investors’ exposure to crypto-asset risk.

First, objective criteria for the admission of crypto-assets to trading ensures the consistent treatment of crypto-assets by services providers. This can reduce the existence or impact of conflicts of interest where crypto-asset service providers are also issuers of or investors in a particular crypto-asset and therefore prioritize or overlook risks inherent in the crypto-asset in order to offer trading services to customers. It also has the effect of reducing the opportunity for unfair commercial practices for both issuers and users, as fees and criteria for listing are predetermined rather than a result of subjective selection and negotiation.

Second, objective criteria for the admission of crypto-assets to trading has the effect of improving and standardizing crypto-asset governance objectives. Crypto-asset issuers, developers, and governors will be motivated to achieve consistency with admission standards and therefore self-regulate crypto-assets and platforms to be consistent with the consumer protection and risk-mitigating goals of MiCA. The objective criteria for trading also indirectly reduces the risks that “any investment in crypto-assets represents” by increasing access to objectively safer crypto-assets and reducing access to those that are sub-standard.