coinbase

To:

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EBA/CP/2023/15 Consultation Paper on RTS for application to offer ARTs, and ITS on forms and templates

Coinbase Global, Inc. and its EU subsidiaries (together, Coinbase) welcome the opportunity to respond to the EBA's consultation paper on the RTS and ITS around applications for asset referenced token issuers.

Coinbase started in 2012 with the idea that anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the US and provide a trusted and easy-to-use platform relied on by millions of verified users in over 100 countries around the world to access the broader crypto economy.

Coinbase is committed to the EU, where we have a significant presence reflecting its importance as one of our core markets outside of the US. The EU has taken a leadership role globally in its approach to crypto assets via the Markets in Crypto Assets Regulation ("MiCAR"), and we are keen to support the EBA and other EU organisations on the Level 2 requirements to make MiCAR a successful framework that encourages sensible innovation within the EU market in crypto assets.

We look forward to engaging with the EBA's work on the MiCAR Level 2 requirements.

Yours sincerely,

Tom Duff Gordon, Vice President, International Policy

Introduction

The diversity of types of crypto assets available within the crypto asset ecosystem is a core part of the innovation that we have seen within the sector. Projects creating new crypto asset types to meet market demand have led to a huge volume of different structures, solutions and other models in order to differentiate their crypto asset from the next one. Crucially, this has led to the creation of crypto assets that are backed by a range of different concepts and models, including fiat-backed stablecoins, algorithmic-backed tokens, and asset-backed tokens.

To date the majority of this innovation has been in fiat-backed stablecoins and (to a lesser extent) algorithmic-backed tokens; asset-backed tokens do exist but they are not significant in number, primarily due to the cost of creation of them and the regulatory uncertainty that surrounds them in the EU and in other developed markets.

Coinbase sees significant opportunity for innovation in asset-backed tokens. They can take many forms and in our view are capable of bridging the gap between the power of distributed ledger technology and real-world assets. Accordingly, our view is that the approach to Asset-Referenced Tokens under MiCAR needs to be carefully considered in order to ensure that this particularly important potential area for innovation is allowed to flourish, as we set out in the responses to consultation paper questions below.

ART definition

One point we want to raise alongside our responses to the consultation paper questions below, is in relation to the definition of "Asset-Referenced Token" ("ART"). The definition is as follows:

"*a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies*"

In our view, and having reviewed the associated publications and documentation that is currently published in relation to ARTs, there is still some ambiguity regarding the type of asset that is intended to be caught by this definition. Our reading of the MiCA ART definition, is that it is intended to capture a token that is used for payment and maintains a stable value by referencing a fixed fiat value, supported by one or more of underlying assets and their value. An ART therefore maintains an "objective" stable value, against a fixed fiat value, and backed by assets in the background to maintain that value - for example an asset that is designed to have a fixed 1 EUR value, backed by sovereign bonds that are managed to ensure that each asset maintains that value.

We have had discussions with others within the market who take a different view: that the ART definition captures assets that are designed to have a value that tracks the value of the underlying asset, so the value is not "objectively" stable but instead is stable against

the value of the underlying asset - for example a token that is backed by gold, with each token representing an ounce of gold held with a custodian, and therefore having a floating value that is stable against the price of an ounce of gold.

Clarity on this point is extremely important in our view, as clearly the result of this debate will determine what types of assets are subject to the strict requirements in MiCAR around ARTs. Our understanding, having reviewed in particular the requirements in Article 36 of MiCAR but also the recitals to MiCA (in particular recital 18 that confirms that the ART concept is designed to be an anti-avoidance measure to avoid differing reserve structures being used to avoid the electronic money token concept), is that our reading of the definition above is correct - ARTs are assets that are used for payments and maintain a stable value against a particular fiat currency (rather than having a value fixed at the value of a defined portion of the reserve assets), but we would encourage the EBA to provide clarity on this point as far in advance as possible of the stablecoin regime coming into force in June 2024.

Consultation Paper Questions

QUESTION 1. DO YOU CONSIDER THAT LETTER (A) OF ARTICLE 3(2) CAPTURES IN A CLEAR AND REALISTIC MANNER ALL NECESSARY REQUIREMENTS OF THE OFFER TO THE PUBLIC OR ADMISSION TO TRADING OF THE ASSET-REFERENCED TOKENS, INCLUDING THE MECHANISM FOR THE ISSUANCE, REDEMPTION AND DISTRIBUTION OF THE ASSET-REFERENCED TOKENS?

We believe that Art 3(2) is comprehensive in capturing the core requirements.

Having said that, we would make the following comment with respect to Article 3(2) of the RTS. Article 3(2)(c) suggests that applicants need to provide extensive information relating to other entities in their group, in particular looking at overall strategy, customers and other information. We do not believe this information is strictly necessary to enable a regulator to authorise an ART and therefore would suggest that Art 3(2)(c) is reduced in scope to ensure that the requirements in relation to the applicant's group are clear and require disclosure of information relating to the group only to the extent necessary for the applicant's application to be assessed.

QUESTION 2: DO YOU CONSIDER THAT THE INFORMATION REQUIREMENTS ABOUT THE INTERNAL CONTROL FRAMEWORK ARE SUFFICIENTLY CLEAR AND EXHAUSTIVE?

No further comments.

QUESTION 3: DO YOU CONSIDER THAT ARTICLE 6(4) CAPTURES IN A CLEAR AND CORRECT MANNER ALL NECESSARY INFORMATION ABOUT THE FUNCTIONING OF PROPRIETARY DLT OR OTHER SIMILAR TECHNOLOGY WHERE ARTS ARE ISSUED, TRANSFERRED AND STORED AND THAT IS OPERATED BY THE ISSUER OR A THIRD-PARTY OPERATOR ACTING ON THE ISSUER'S BEHALF?

No further comments.

QUESTION 4: DO YOU CONSIDER THAT THE INFORMATION REQUIREMENTS ABOUT THE POLICIES AND PROCEDURES ON THE COMPOSITION AND MANAGEMENT OF THE RESERVE OF ASSETS, AS WELL AS ON THE CUSTODY AND INVESTMENT OF THE RESERVE OF ASSETS ARE SUFFICIENTLY CLEAR AND COMPREHENSIVE?

No further comments.

QUESTION 5: DO YOU AGREE WITH THE GENERAL CONTENT AND LEVEL OF DETAIL OF THE INFORMATION TO BE CONTAINED IN THE APPLICATION?

Generally we agree with the form and content requirements for the application as set out in the RTS and the ITS, with the following specific comments:

- It remains unclear to us how the authorisation concept for ART issuers works, in terms of what it attaches to. Primarily our question is if the authorisation is granted in respect of the ART that is being applied for, or if the issuer itself is being authorised to issue the ART in question. We would request that the application process provides some clarity in respect of this, to reflect in particular the point in

the fourth paragraph of Art 16(1) of MiCAR that allows an issuer to engage others to issue an ART that has been authorised, which presupposes that it is the issuer that is authorised, but in respect of a particular ART.

- We would request that the concept of allowing "other undertakings" (that are not legal entities - see Art 16(1)(a)) to be authorised to issue ARTs is reflected more clearly within the application requirements in the RTS and ITS. For example, an undertaking that isn't a legal person will not have a legal entity identifier under Art 2(1)(d) of the RTS, nor would they be likely to have an accounting reference date (under Art 2(1)(k). We would suggest that the requirements in the RTS and ITS be considered alongside the concept of allowing "other undertakings" to be applicants here, so that the requirements for those entities are clear.
- Related to the point above, we would suggest that the requirement in Art 2(1)(j) to obtain a legal opinion around the protections offered by the structure adopted is extremely onerous and will be unlikely to be capable of being met in practice, given the difficulties of being able to obtain an unambiguous legal opinion on points such as these from a law firm, and considering the diversity of legal structures available across the Union giving rise to a lack of clarity around what the baseline requirement will be. We would suggest further clarity is given here in relation to this requirement, that takes into account that absolute legal comfort will be unlikely to be achievable here. We believe this is an important point to enable the EU to deliver on the promise of potentially allowing innovative entity structures to develop within the crypto assets industry
- Art 4(5)(iv) of the RTS requires evidence of the own-funds requirement being paid up, or held in escrow with an appropriate credit institution. Generally our experience is that start-up issuers who have to engage in getting regulatory authorisation will not be able to raise the appropriate funds to meet the own-funds requirement unless and until they receive authorisation to carry on the activities they propose. We would therefore suggest that Art 4(5)(iv) take into account that firms may not have the appropriate funds in place prior to authorisation, but may have firm commitments from investors or group companies to fund the own-funds requirement when authorisation is received - and authorisation may be granted with a restriction on issuance until evidence has been given to the regulator that the funds are in place.
- Article 4(6) of the RTS should take into account that some applicants may not have three years of prior financial statements (due to them being early stage businesses), and that will not be a barrier to applicants.

QUESTION 6: DO YOU CONSIDER THAT ANNEX II TO THE ITS IS SUFFICIENTLY CLEAR IN THE IDENTIFICATION OF THE INFORMATION REQUESTED FOR EACH FIELD AND SUB-FIELD?

Yes, we would agree that the ITS is sufficiently clear, although we would anticipate regulators providing guidance at member state level of how they would expect certain elements of the application to be delivered, to supplement the RTS and the ITS.

Currently the ITS fits well with the requirements set out in the RTS, and if the RTS is changed in light of comments received, we anticipate the ITS being appropriately updated to reflect those changes.