SPECIFIC SERVICE-RELATED OBLIGATIONS

FOR CASPS UNDER MICA

MiCA EXCERPT
Specific Obligations of CASPs
Based on the services

Obligations for provision of custody and administration of crypto-assets on behalf of clients

☐ Draw up an **agreement with clients** (to specify their duties and their responsibilities, with certain mandatory provisions);

☐ keep a **register of positions** corresponding to each client's rights to the crypto-assets (opened in the name of each client) and record in it any movements as soon as possible, also any event which is likely to create or modify the rights of a client attached to the crypto-assets;

☐ establish and implement of a **custody policy** (about the nature of the service provided, the holding of crypto-assets belonging to a client etc.), an electronic summary of which has to be available to clients upon request;

☐ **facilitate the exercise of the rights** attached to the crypto-assets (notifying client about any change of rights) - where applicable;

☐ provide a **statement of position** of the crypto-assets recorded in the name of the clients (once every three months or upon request);

☐ ensure that necessary **procedures** are in place to **return the crypto-assets** held to clients;

☐ ensure the **segregation of holdings** of crypto-assets on behalf of the clients from CASP's own holdings;

☐ have **liability** to clients for the loss of any crypto-assets or of the means of access to the crypto-assets (as a result of an incident that is attributable to them). The liability is capped at the market value of the crypto-asset that was lost, at the time the loss occurred;

☐ **only work with CASP** which were **authorized** according to Article 59 and inform the clients about that;

☐ ensure that all **crypto-assets** held are always **unencumbered**;

☐ check whether the **provided service** overlaps with payment services as defined in **PSD2** (Directive (EU) 2015/2366);

☐ have in place a **plan** that is appropriate to support an **orderly wind-down** of the activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers.

Obligations for operation of a trading platform for crypto-assets
(ESMA technical standards are to be expected by June 2024)

☐ Lay down and maintaining and implement clear and transparent **operating rules** (more in detail in Art. 76 sec. 1. (a)-(h), and also it should be in one of the official languages of every Member State where service is provided);

☐ ensure that the applied systems and procedures are sufficiently **resilient** (more in detail in Art. 76 sec. 7);

☐ ensure that the **crypto-asset complies** with the operating rules of the trading platform and assessing the suitability of the crypto-asset concerned;

☐ **prevent** the admission to trading of crypto-assets that have an **inbuilt anonymization** function (except when the holders of those crypto-assets and their transaction history can be identified by CASP);

☐ **not deal on own account** on the trading platform for crypto-assets they operate (including where they provide the exchange of crypto-assets for funds or other crypto-assets);

☐ engage in **matched principal trading** only where the client has **consented** to that process (and providing the competent authority with information explaining CASP's use of matched principal trading);

☐ **inform** the competent **authority** when they identify cases of **market abuse** or attempted market abuse occurring (on or through their trading systems);

☐ **make public** any **bid and ask prices** and the depth of trading interests at those prices which are advertised for crypto-assets through CASP's trading platforms (it shall be available to the public on a continuous basis during trading hours);

☐ **make public the price, volume and time of the transactions** executed in respect of crypto-assets traded on CASP's trading platforms (it shall be public as close to real-time as is technically possible) (it is so to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions);

KassaiLaw
Stockholm / Budapest
www.kassailaw.com

+46 76 324 4410
+36 30 241 1578
office@kassailaw.com

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☐ make the information regarding the above two criteria **available to the public** on a reasonable commercial basis and ensure non-discriminatory access to that information (free of charge 15 minutes after publication in a machine-readable format and it shall remain published for at least two years);

☐ ensure the timely settlement to transactions executed on trading platforms on-chain and off-chain, in the framework of which: **initiating the final settlement** of a crypto-asset transaction **on the distributed ledger** within 24 hours of the transaction being executed on the trading platform (or in the case of transactions settled outside the distributed ledger, by the closing of the day at the latest);

☐ ensure that CASP's **fee structures** are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse (referred to in Title VI.);

☐ maintain **resources** and have back-up facilities in place to enable them **to report** to the competent authority at all times;

☐ keep at the disposal of the competent authority **(for 5 years) the relevant data** relating to all orders in crypto-assets that are advertised through CASP's systems, or give the competent authority access to the order book so that the competent authority is able to monitor the trading activity (the data shall contain the characteristics of the order);

☐ have in place effective systems, procedures and arrangements to ensure that CASP's **trading systems** are up to **standard** (more in detail in Art. 76 sec. 7. (a)-(h));

☐ check whether the **provided service** overlaps with payment services as defined in **PSD2** (Directive (EU) 2015/2366);

☐ be able to **settle transactions** executed on trading platforms on-chain and off-chain;

☐ provide clients with **hyperlinks** to any crypto-asset **white papers** for the crypto-assets in relation to which they are providing those services;

☐ have in place a **plan** that is appropriate to support an **orderly wind-down** of the activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers.

Obligations for exchange of crypto-assets for funds & for other crypto-assets

☐ Establish a non-discriminatory **commercial policy (**that indicates the type of clients and conditions they require for transaction);

☐ **publish firm prices** of the crypto-assets _OR_

☐ publish the **method** used for determining the price of the crypto-assets they wish to exchange;

☐ publish **any limit** the CASP wishes to establish on the amount to be exchanged;

☐ **execute client orders** at the prices displayed at the time when the order for exchange is final;

☐ **inform** clients of the conditions for their **order** (it is a requirement for the order to be deemed final);

☐ **publish information** about the **transaction** concluded by them (e.g. transaction volumes and prices);

☐ provide clients with **hyperlinks** to any crypto-asset **white papers** for the crypto-assets in relation to which they are providing those services;

☐ have in place a **plan** that is appropriate to support an **orderly wind-down** of the activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers.

Obligations for execution of orders for crypto-assets on behalf of clients

☐ Aim to obtain the **best possible result** for the clients (including when CASP acts as a client's counterparty, but not when CASP executes specific instructions gave by client);

☐ establish and implement effective **execution arrangements** (it should provide for the prompt, fair and expeditious execution of orders);

☐ provide appropriate and clear **information** to clients **on** their **orders** and any significant change regarding the latter (CASP need prior consent from each client regarding the **order execution policy**);

☐ take all necessary steps to **avoid the misuse** by employees of **information** related to client orders;

☐ **notify clients** of any **material changes** to their order execution arrangements or execution policy (with whom the CASP has an ongoing client relationship);

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Stockholm / Budapest
www.kassailaw.com

+46 76 324 4410
+36 30 241 1578
office@kassailaw.com

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☐ be able to **demonstrate** to clients that the **orders** have been executed in accordance with the clients wishes;

☐ implement **procedures** for the prompt and proper **sending** of those **orders** (if CASP receives orders and transmit those to other CASP);

☐ **inform** the clients about the possibility of executing client's order **outside a trading platform** and obtaining the prior express **consent** of the client before proceeding (either in the form of a general agreement or with respect to individual transactions);

☐ ensure to **not receive any monetary or non-monetary benefits** for transmitting the orders to any particular trading platform for crypto-assets or any other CASPs (if CASP receives orders and transmit those to other CASP);

☐ **monitor** the effectiveness of **order execution** arrangements and execution policy (assessing whether the execution venues provide for the best possible result for the client or whether they need to make changes);

☐ have in place a **plan** that is appropriate to support **an orderly wind-down** of the activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers.

Obligations for placing of crypto-assets

Communicate to potential holders on how CASP intends to perform the **service** (before the conclusion of a contract) especially regarding:

☐ the type of placement under consideration (including whether a minimum amount of purchase is guaranteed or not);

☐ an indication of the amount of transaction fees associated with the proposed placing;

☐ the likely timing, process and price for the proposed operation;

☐ information about the targeted purchasers.

☐ Have in place specific and adequate **procedures** to prevent, monitor, manage and disclose any **conflicts of interest** (arising from the placing of crypto-assets with own clients and arising where the proposed price for the placing of crypto-assets has been overestimated or underestimated) arising from the following:

- CASPs place the crypto-assets with own clients;
- the proposed price for placing of crypto-assets has been overestimated or underestimated;
- incentives, including non-monetary incentives, are paid or granted by the offeror to CASPs.

☐ check whether the **provided service** overlaps with payment services as defined in **PSD2** (Directive (EU) 2015/2366)

☐ Have in place a **plan** that is appropriate to support an **orderly wind-down** of the activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers.

Requirements for reception and transmission of orders for crypto-assets on behalf of clients

☐ Establish and implement **procedures** and arrangements that provide for the **prompt and proper transmission** of client orders for execution (on a trading platform for crypto-assets or to another CASP);

☐ ensure to **not receive any remuneration, discount or non-monetary benefit** in return for routing orders received from clients (to a particular trading platform for crypto-assets or to another CASP);

☐ ensure to **not misuse information** relating to pending client orders;

☐ take all reasonable steps to **prevent the misuse of information** to pending client orders by any of employees.

Obligations for providing advice on crypto-assets
(ESMA guideline is to be expected by December 2024)

☐ **Suitability assessment**: make assessment whether the crypto-asset services or crypto-assets are suitable for the client (taking into consideration client's knowledge and experience in investing in crypto-assets, client's investment objectives, including risk tolerance, and client's financial situation including their ability to bear losses).

☐ **Inform prospective clients** whether the advice is:

KassaiLaw
Stockholm / Budapest
www.kassailaw.com

+46 76 324 4410
+36 30 241 1578
office@kassailaw.com

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- provided on an independent basis;
- based on a broad or on a more restricted analysis of different crypto-assets (including whether the advice is limited to crypto-assets issued or offered by entities having close links with the CASP or any other legal or economic relationships).

☐ If the advice is provided **on an independent basis**: **assess a sufficient range of crypto-assets available** on the market (which must be sufficiently diverse to ensure that the client's investment objectives can be suitably met) and which must not be limited to crypto-assets issued or provided by
- that same CASP;
- entities having close links with that same CASP <u>or</u>
- other entities with which that same CASP has such close legal or economic relationships (e.g. contractual relationships).

☐ **Not** to accept and retain **fees, commissions or any monetary or non-monetary benefits** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients (except minor non-monetary benefits that do not impair compliance with CASP's obligation to act in the best interests of client shall be permitted, in cases where they are clearly disclosed);

☐ Provide prospective clients with **information on all costs** and related **charges** (including the cost of advice);

☐ If the advice is provided **on a non-independent basis**, CASP **may receive inducements** subject to the conditions that the payment or benefit:
- is designed to enhance the quality of the relevant service to the client <u>and</u>
- does not impair compliance with the CASP's obligation to act honestly, fairly, and professionally in accordance with the best interests of its clients.

☐ Ensure that natural **persons** giving advice or information about crypto-assets, or a crypto-asset service, on CASP's behalf possess the **necessary knowledge and competence** to fulfil their obligations;

☐ obtain from clients or prospective clients the necessary **information** regarding their knowledge of, and experience in, investing, (including in crypto-assets, their investment objectives, including risk tolerance, their financial situation including their ability to bear losses, and their basic understanding of the risks involved in purchasing crypto-assets,) so as to enable CASPs to recommend to clients or prospective clients whether or not the crypto-assets are suitable for them and, in particular, are in accordance with their risk tolerance and ability to bear losses.

Warn clients *or* prospective clients that:

☐ the value of crypto-assets might fluctuate;

☐ the crypto-assets might be subject to full or partial losses;

☐ the crypto-assets might not be liquid;

☐ where applicable, the crypto-assets are not covered by the investor compensation schemes (Directive 97/9/EC);

☐ the crypto-assets are not covered by the deposit guarantee schemes (Directive 2014/49/EU).

☐ Establish, maintain, and implement policies and **procedures** to enable CASP to collect and assess all information necessary for each client to conduct the **suitability assessment** (CASP shall ensure that the information collected is reliable);

☐ **not to recommend** crypto-asset services or crypto-assets **which do not suit** the client or when client **did not provide** the necessary **information**;

☐ **regularly review** for each client the **suitability assessment** of the service or asset at least every two years after the initial assessment made;

☐ **provide clients with a report** including the suitability assessment specifying the advice given and how it meets the preferences and objectives of clients. That report shall, as a minimum:
- include an updated information on the suitability assessment;
- provide an outline of the advice given.

☐ Provide clients with **hyperlinks** to any crypto-asset **white papers** for the crypto-assets in relation to which they are providing those services.

Obligations for providing portfolio management on crypto-assets

KassaiLaw
Stockholm / Budapest
www.kassailaw.com

+46 76 324 4410
+36 30 241 1578
office@kassailaw.com

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☐ **Suitability assessment**: make assessment whether the crypto-asset services or crypto-assets are suitable for the client (taking into consideration client's knowledge and experience in investing in crypto-assets, client's investment objectives, including risk tolerance, and client's financial situation including their ability to bear losses).

☐ **Not to accept and retain fees, commissions or any monetary or non-monetary benefits** paid or provided by an issuer, offeror, person seeking admission to trading, or any third party, or a person acting on behalf of a third party (in relation to the provision of portfolio management of crypto-assets to clients);

☐ obtain from clients or prospective clients the necessary **information** regarding their knowledge of, and experience in, investing, (including in crypto-assets, their investment objectives, including risk tolerance, their financial situation including their ability to bear losses, and their basic understanding of the risks involved in purchasing crypto-assets,) so as to enable CASPs to recommend to clients or prospective clients whether or not the crypto-assets are suitable for them and, in particular, are in accordance with their risk tolerance and ability to bear losses.

Warn clients *or* prospective clients that:

☐ the value of crypto-assets might fluctuate;

☐ the crypto-assets might be subject to full or partial losses;

☐ the crypto-assets might not be liquid;

☐ where applicable, the crypto-assets are not covered by the investor compensation schemes (Directive 97/9/EC);

☐ the crypto-assets are not covered by the deposit guarantee schemes (Directive 2014/49/EU).

☐ Establish, maintain, and implement policies and **procedures** to enable CASP to collect and assess all information necessary for each client to conduct the **suitability assessment** (CASP shall ensure that the information collected is reliable);

☐ **not to begin** the provision of portfolio management of crypto-assets **which do not suit** the client or when client **did not provide** the necessary **information;**

☐ **regularly review** for each client the **suitability assessment** of the service or asset at least every two years after the initial assessment made;

☐ provide **periodic statements to clients** including a review of their activities and of the performance (every three months, except in cases where a client has access to an online system where up-to-date valuations);

☐ provide clients with **hyperlinks** to any crypto-asset **white papers** for the crypto-assets in relation to which they are providing those services.

Requirements for providing transfer services
(ESMA guideline is to be expected)

Conclude an **agreement with clients** to specify their duties and their responsibilities. It shall include:

☐ the identity of the parties to the agreement;

☐ a description of the modalities of the transfer service provided;

☐ a description of the security systems used by CASP;

☐ fees applied by CASP;

☐ the applicable law.

☐ Check whether the **provided service** overlaps with payment services as defined in **PSD2** (Directive (EU) 2015/2366).

KassaiLaw
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