ISDA

September 29, 2026

European Commission
Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)
Unit on Digital Finance
1049 Brussels, Belgium
Submitted via the online questionnaire / fisma-mica-review@ec.europa.eu

Re: Targeted Consultation on the Review of the Regulation on Markets in Crypto-Assets (MiCA)

Dear Sir or Madam,

The International Swaps and Derivatives Association, Inc. ("ISDA") appreciates the opportunity to respond to the European Commission's Targeted Consultation on the Review of the Regulation on Markets in Crypto-Assets (the "consultation"). ISDA is at the forefront of new technological developments in the derivatives markets and has extensive experience with collateral management. We take this opportunity to set out a number of principle-based observations on the safe and appropriate incorporation of tokenised assets into derivatives transactions, in particular the use of tokenised collateral to facilitate atomic settlement and reduce operational frictions, and to highlight the areas of the consultation most relevant to derivatives and collateral markets. Consistent with the Commission's invitation to reply only to those questions that are relevant to the respondent, the question-specific responses set out below address only the discrete subset of questions that fall squarely within ISDA's remit; the present letter is not intended to respond to the numbered questions individually.

As a global trade association representing participants in the derivatives markets, ISDA's mission is to foster safe and efficient derivatives markets that support economic growth and resilience. This includes the development of legal and regulatory standards for both traditional and emerging product structures, including those within the digital asset ecosystem. Our response is primarily concerned with the legal, liquidity, credit-risk and documentation issues relevant to the over-the-counter ("OTC") derivatives markets, and with the financial market infrastructure processes and procedures that participants rely upon.

Tokenisation presents a significant opportunity in the derivatives market. The accelerated movement of collateral can improve risk management and is an important enabler of 24/7 trading underpinned by sound risk-management practices. However, to realise these benefits it is fundamental that the risk-management, legal-enforceability and deep-liquidity foundations that underpin collateral movements in traditional markets are maintained as the market transitions to distributed ledger technology ("DLT") and to the use of tokenised assets and tokenised cash as collateral. As new forms of tokenisation are contemplated, industry analysis should remain focused on both the benefits and the risks. We welcome the consultation's confirmation that financial regulation should remain technology-neutral, which we regard as the organising principle for the issues discussed below.

ISDA's work on tokenised collateral and digital assets

ISDA has developed a body of work that is directly relevant to the matters raised in the consultation. This includes ISDA's Guidance Note on Tokenized Collateral (May 2024) and the ISDA Tokenized Collateral Model Provisions, which address the legal treatment of tokenised collateral in the EU, the UK and the US, and the mechanics of establishing possession or control through technological means. ISDA has also published Digital Asset Definitions to support the documentation of digital-asset

derivatives, and has contributed, together with FINOS, the International Securities Lending Association ("ISLA") and the International Capital Market Association ("ICMA"), to the Common Domain Model ("CDM"), an open-source, standardised model for financial products and transaction lifecycles, including collateral representation, margin-call and collateral-settlement processes, and the representation of those processes in smart contracts. ISDA has further contributed to industry analysis of DLT in capital markets and to work on collateral mobility using money-market funds. We stand ready to bring this experience to bear in support of the Commission's review, and to continue engaging with ESMA, the EBA and international standard-setters.

Core principles

It is critical that new technology and infrastructure function safely and efficiently. It is in this broader context that we comment on the opportunities and challenges of tokenisation in wholesale derivatives markets and, in particular, in collateral management and mobility. As a statement of core principle, any tokenisation or other use of new technology in financial markets:

- should not adversely affect legal and regulatory certainty or systemic stability, including settlement finality; and
- should facilitate the safe and efficient management of risks, including liquidity, market and credit risk.

We would also emphasise a third, cross-cutting principle: the regulatory treatment of an instrument or arrangement should follow its economic characteristics and risk profile, not the technology used to record, transfer or settle it. A derivative, a security, a fund unit or a unit of cash does not change its economic substance, or the risks it poses, merely because it is issued or recorded on a distributed ledger. It follows that a tokenised representation of an existing regulated financial instrument, including a regulated fund interest or other traditional asset commonly used as collateral, should generally retain the regulatory treatment applicable to the underlying asset, provided the applicable legal, liquidity and prudential standards continue to be satisfied. Technology neutrality, applied consistently, both protects the existing acquis and allows tokenisation to develop without unnecessary friction. Technology neutrality of regulatory treatment does not, however, of itself deliver equivalence of private-law effect. That depends on the tokenisation model: in a digitally native structure the ledger is the primary register; in a digital twin the token evidences a title recorded off-chain; and in a wrapped or asset-backed structure the holder may have a claim against the issuing vehicle rather than rights mirrored to the underlying asset. Consistent sectoral classification is therefore necessary but not sufficient for collateral purposes, which is precisely why the clarifications ISDA seeks on the FCD, the SFD and conflicts of law matter.

The benefits of tokenised collateral for derivatives markets

The opportunities presented by asset tokenisation vary by use case and implementation. The benefits of greatest relevance to derivatives and collateral markets include the following.

Reducing risk through near-instantaneous and atomic settlement. Tokenisation can facilitate almost-instantaneous settlement, rather than the usual T+1/T+2 or longer timeframes. This offers the opportunity substantially to reduce counterparty, settlement and market risk, and to improve the management of liquidity, including intraday liquidity. In its strict sense, atomic settlement refers to the simultaneous exchange of a tokenised instrument against tokenised cash (delivery-versus-payment), so that neither leg settles unless both do; the settlement of tokenised financial instruments against tokenised cash is, in our view, among the most compelling wholesale use cases for the technology. The same

atomicity can be applied to the exchange and substitution of collateral, removing the "give-before-get" risk that arises in those processes. ISDA would add one qualification. Atomic settlement applied transaction by transaction settles on a gross basis, and so does not of itself deliver the liquidity savings that netting provides; were it to displace netting, it could increase the cash and collateral that counterparties must hold and move. ISDA therefore sees atomic settlement as an additional capability that should complement, rather than replace, netting and other liquidity-saving mechanisms, with the choice between them remaining a matter for counterparties.

Enhancing the usability of non-cash assets as collateral. Recent stress events, including the March 2020 "dash for cash" and the September 2022 UK gilt crisis, have underscored the importance of efficiency and data standardisation in collateral management. The exchange of collateral is one of the central planks of efforts to mitigate counterparty credit risk and maintain the resilience of the financial system. Using tokenised forms of collateral, such as tokenised money-market fund units, tokenised securities, and other regulatory-eligible assets, could mitigate operational and liquidity constraints that today deter counterparties (including pension funds and insurers) from posting non-cash collateral as variation margin, as that term is used in the applicable margin requirements for uncleared derivatives (a decision that also reflects balance-sheet and other commercial considerations, and ultimately remains a bilateral choice), for example the difficulties of managing collateral substitutions, corporate actions and dividends on posted securities. The ability to mobilise collateral instantly is particularly valuable during market stress, when it can support margin calls being met without fire-sales of assets to generate cash. Because derivatives and collateral markets are inherently cross-border, these benefits are realised most fully where collateral can move efficiently across jurisdictions, market infrastructures and legal entities; supporting cross-border collateral mobility, and avoiding unnecessary fragmentation, reinforces the case for the legal certainty and interoperability discussed below.

Lowering transaction costs and automating workflows. Tokenisation may reduce transaction costs by reducing reliance on intermediaries and improving the capital efficiency of the asset, and many slow and manual processes can be automated through smart contracts. These include collateral substitutions, the return of excess collateral, and the management and distribution of income such as interest, coupons, dividends, staking rewards or distributions. Tokenised collateral can also bridge the operational workflows and cumbersome legal mechanics (such as account control agreements and transfers) that are relevant when enforcing a security interest in a pledged asset.

Conditions for safe adoption

The benefits described above can only be realised if the foundations of legal enforceability and prudent risk management are preserved. As a general matter, any tokenisation structure will require analysis to understand the token mechanics, the rights and interests the token conveys, and the relevant jurisdictional legal environment, in order to confirm that there is no adverse impact on legal certainty. We highlight the following conditions as being of particular importance to the Commission's review. ISDA also recognises that tokenisation introduces risks of its own. In particular, the programmatic re-pledging of collateral could allow leverage to build up with less visibility than in traditional collateral chains, and could transmit stress between regulated and unregulated markets. In ISDA's view the appropriate response is transparency, through consistent reporting and clear contractual limits on reuse, rather than restriction of the reuse of collateral itself.

Legal certainty and enforceability. The safe use of tokenised assets as collateral depends on legal certainty as to the proprietary characterisation of tokens, the constitution and transfer of title, the creation, perfection and enforcement of security and title-transfer collateral arrangements, the treatment of tokens in insolvency (including intermediary risk), and the operation of settlement finality. Existing

concepts such as "possession", "control", "accounts" and "book-entry", which are central to the Financial Collateral Directive ("FCD") and the Settlement Finality Directive ("SFD"), do not always translate neatly to DLT-based arrangements, and divergence across Member States compounds the uncertainty. We would encourage technology-neutral clarification, at EU level, that these frameworks apply to DLT-based collateral arrangements and that their core concepts can be satisfied by functionally equivalent technological mechanisms, including control exercised through multi-signature arrangements or smart contracts. These points are developed in the question-specific responses below. We would encourage the Commission to pursue this clarification as part of its broader work on the settlement finality framework, so that the core collateral and settlement concepts on which the market relies apply consistently to DLT-based arrangements. In that connection, ISDA notes the Commission's December 2025 Market Integration and Supervision Package, which proposes the conversion of the SFD into a directly applicable Settlement Finality Regulation, targeted amendments to the FCD, the unbundling of certain services under CSDR, and an expansion of the DLT Pilot Regime. ISDA welcomes those proposals insofar as they advance the technology-neutral clarifications described above. They do not, however, resolve every question that matters for derivatives markets: a DLT arrangement must still qualify as a system in order to benefit from settlement finality, and further calibration is needed as regards erga omnes effects, the position of token holders in intermediated custody chains, and insolvency. ISDA would welcome the opportunity to comment on those files as they develop. These questions are time-critical, not merely a matter of principle: the compression of settlement cycles, including the Union's migration to T+1 settlement for transferable securities, shortens the window within which collateral must be positioned, and unresolved private-law uncertainty is today priced as intraday liquidity buffers and margin add-ons rather than resolved. As collateral selection, margin forecasting, substitution and enforcement become increasingly automated, ISDA would also welcome confirmation of how responsibility is allocated where an automated process executes erroneously, and of how existing requirements governing automated systems and controls apply to collateral workflows.

Prudential and capital treatment. It is important that policymakers calibrate the capital treatment of tokenised assets used as collateral by reference to the underlying or like-asset. Prudential frameworks that exclude assets recorded on permissionless ledgers from preferential treatment, and so subject them to punitive risk weights, would, in practice, prevent institutions from holding such assets and from recognising them as eligible financial collateral capable of reducing counterparty exposure. Capital rules should reflect market regulation and recognise tokenised equivalents of eligible collateral, where they satisfy existing frameworks for security, legal enforceability and liquidity, consistently with their non-tokenised counterparts.

Liquidity, credit and wrong-way risk of tokenised cash used as collateral. Where tokenised cash instruments are used as collateral, their eligibility and any applicable haircuts should reflect a look-through assessment of the instrument's reserve composition, the issuer and potential wrong-way risk, the legal structure under which it is issued, and the redemption and liquidity rights available to holders, alongside market and credit risk. These considerations apply to tokenised cash generally, and not only when it is used as collateral. Not all tokenised cash carries the same risk profile: tokenised deposits and tokenised central bank money, which are redeemable at par and carry no de-peg risk, preserve the singleness of money and will typically present a lower risk profile than instruments that rely on a separate reserve. Market participants will determine whether to use such instruments by reference to their own risk-management and investment guidelines. More generally, the availability of a wholesale central-bank settlement anchor is directly relevant to which settlement assets members will accept, and ISDA would encourage continued work on the settlement of tokenised transactions in central bank money, alongside the digital euro.

Interoperability and standards. Common, open standards are essential to avoid fragmentation of liquidity and collateral pools, both across DLT platforms and, so far as the legal and regulatory framework allows, across jurisdictions, market infrastructures and legal entities, so that collateral can be mobilised efficiently to where it is needed. We encourage the Commission to support the development and adoption of open-source standards such as the CDM for data consistency and interoperability, with the goal of reducing technological and operational friction, and to promote operational-resilience and cybersecurity standards for tokenised-collateral infrastructure. Separately, ISDA welcomes the Eurosystem's work on the eligibility of DLT-based assets as Eurosystem collateral, which demonstrates that a Union authority has been able to assess and accommodate the operational and legal risks involved within an established eligibility framework, and would encourage that work to be taken forward, in particular for assets issued using DLT and not represented in eligible securities settlement systems to become eligible as Eurosystem collateral in the future. Interoperability also has a cross-ledger dimension that the framework does not yet address. Where a tokenised asset originates on a public ledger and is bridged to a permissioned infrastructure so that it can be accepted by a central counterparty or a collateral taker, it is unclear at what point settlement finality attaches, and bridge protocols have themselves proved a significant source of operational loss. ISDA would encourage the Commission and ESMA to consider what finality and risk-management expectations should apply to cross-ledger transfers.

Coherence with broader regulatory and international standards. Tokenised financial instruments, including tokenised derivatives, tokenised securities and tokenised fund units, should continue to be governed by the existing financial-services legislation (MiFID II/MiFIR, MAR, the Prospectus Regulation, CSDR, the MMFR, the FCD and the SFD, as applicable), rather than being drawn within MiCA. Bringing economically equivalent instruments within a different perimeter would fragment the framework and invite arbitrage. We would also encourage the Commission to coordinate with international standard-setters, and to have regard to the UNIDROIT Principles on Digital Assets and Private Law, so that the EU approach is compatible with emerging international frameworks and supports cross-border derivatives activity. Coordination matters because the principal comparator jurisdictions have already acted: the 2022 amendments to the US Uniform Commercial Code introduced a regime for controllable electronic records built on the concept of control, and the United Kingdom has taken forward reform of the law of digital assets. Alignment on functional concepts would reduce the cost of the netting and collateral-enforceability opinions on which the market relies and support their mutual recognition across the principal collateral centres. ISDA would add that the UNIDROIT Principles are a source to which the Commission should have regard, rather than a template for transplantation, given the divergent reception of some of their mechanisms among Member States.

Conclusion

ISDA supports the Commission's objective of ensuring that MiCA, and the broader EU framework, remain fit for purpose as digital and tokenised-asset markets evolve. We believe that a technology-neutral approach, one that preserves legal and regulatory certainty and systemic stability while enabling the safe and efficient management of risk, will allow the EU to seize the opportunities that tokenisation and DLT bring to derivatives and collateral markets, in particular the reduction of counterparty and settlement risk through atomic settlement and the reduction of operational frictions in collateral management, and the cross-border mobility of collateral within a coherent legal and regulatory framework. We would welcome the opportunity to engage further with the Commission, ESMA and the EBA, and we stand ready to assist with education and market outreach in support of safe and efficient markets.

ISDA

We thank the Commission for its leadership on these issues and for the opportunity to contribute to this review.

Sincerely,

Roger Cogan
International Swaps and Derivatives Association, Inc.

ISDA

Annex: Question-specific responses

This document sets out ISDA's draft responses to the discrete subset of consultation questions that fall squarely within ISDA's remit, namely swaps and derivatives and directly related topics, principally the use of tokenised assets and tokenised cash as collateral, settlement finality, and the legal certainty on which collateral enforceability depends. Consistent with the Commission's invitation to reply only to relevant questions, ISDA does not respond to questions concerning, for example, CASP authorisation and conduct; NFTs; environmental disclosure; or DeFi certification, which fall outside ISDA's core remit. Where ISDA comments below on the stablecoin regime for ARTs and EMTs (Questions 14, 15, 16 and 27), it does so only from the perspective of a user of these instruments as collateral and settlement assets, and it does not take a position on the issuer-side prudential calibration, which is a matter for issuers, the banking sector and their prudential supervisors. The general matters of principle are set out in ISDA's general response above. ISDA's silence on the remaining questions should not be read as indifference to them. The quality of CASP authorisation and supervision affects the reliability of the infrastructure through which tokenised collateral is held and transferred; DeFi protocols are increasingly used for collateral management and automated settlement; and MiCA's market-abuse provisions, which are distinct from those of MAR, affect the integrity of the crypto-asset markets to which members are exposed. ISDA may comment on those matters separately.

Questions addressed: 1, 14, 15, 16, 27, 72 (and 73), 74, 75, 76, 77, 78, 80, 81 (including 81.1 and 81.2) and 84 (including 84.1 and 84.2). Questions 9 and 10 are noted as placeholders pending member interest.

Drafting convention: Text in italics within square brackets identifies information or internal confirmation ISDA would need before finalising the relevant answer.

Part 1: Scope and definitions

Question 1. Should crypto-assets that qualify as financial instruments as defined in Directive 2014/65/EU continue to be governed by sectoral legislation (MiFID/MiFIR/MAR/Prospectus Regulation, etc.), or should all assets recorded and transacted on distributed ledgers that meet the definition of a crypto-asset, or the services provided on such assets, in principle be covered by MiCA?

Yes, crypto-assets that qualify as financial instruments should remain governed by the main sectoral legislation.

Consistent with the principle of technology neutrality affirmed in the consultation, the regulatory treatment of an instrument should follow its economic characteristics and risk profile, not the technology used to record, transfer or settle it. A derivative, a security or a fund unit does not change its economic substance, or the risks it poses, merely because it is issued or recorded on a distributed ledger. Tokenised financial instruments, including tokenised derivatives, tokenised securities, and tokenised money-market fund units that ISDA members expect to use as collateral, should therefore continue to be governed by the existing financial-services legislation (MiFID II/MiFIR, MAR, the Prospectus Regulation and CSDR, together with the Money Market Funds Regulation ("MMFR") for fund units, and the Financial Collateral Directive ("FCD") and the Settlement Finality Directive ("SFD") as applicable). Bringing such instruments within MiCA would fragment the framework, create duplicative or conflicting requirements, and undermine the legal and regulatory certainty on which derivatives and collateral markets depend.

On whether the MiFID/MiCA distinction is sufficiently clear: clarification is needed. ESMA's guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments do substantially what they were mandated to do: they confirm that the technological format is not a determining factor, that classification turns on the rights conferred rather than on the medium of representation, and that financial-instrument characteristics take precedence in the case of hybrid instruments. ISDA supports those guidelines and does not seek their reopening. The residual difficulty lies elsewhere: in the divergent national transposition of the definition of a financial instrument, which allows the same instrument to be treated as a transferable security in one Member State and as another category of crypto-asset in another; in genuine boundary cases, principally tokenised money-market fund units and tokenised deposits; and in the private-law layer beneath classification, where the recognition of DLT registers, and the position under the FCD as a minimum-harmonisation directive, differ across Member States. ISDA recommends that the Commission and ESMA confirm that tokenised equivalents of MiFID financial instruments retain their sectoral classification, and that the definitions in the relevant sectoral legislation are interpreted in a technology-neutral manner so as to encompass tokenised forms. This is consistent with ISDA's position, in its response to the consultation on the integration of EU capital markets, that the definitions of "cash" and "financial instruments" should be clarified to be technology-neutral so that they adequately capture tokenised equivalents.

Part 2: Liquidity and reserve requirements

Question 14. MiCA requires issuers of ARTs to establish, maintain and prudently manage a reserve of assets and appropriate liquidity arrangements, with enhanced requirements for significant ARTs. How, if at all, should each element of the MiCA liquidity and reserve regime for ARTs be adjusted?

ISDA responds from the perspective of a user of these instruments, not an issuer.

ISDA members' interest in the ART liquidity and reserve regime is as potential holders and takers of ARTs used as collateral and settlement assets, rather than as issuers. From that perspective, the reserve, liquidity, custody and audit requirements in Articles 36 and 37 are important safeguards: the usability of an ART as eligible collateral or as a settlement asset depends on confidence that it can be redeemed in full, including under stress, and a look-through to the composition, quality and liquidity of the reserve is what underpins eligibility and haircut decisions and mitigates liquidity and wrong-way risk. ISDA would therefore not support relaxation of the core obligation to constitute and maintain a reserve, or of the liquidity, custody and independent audit requirements, and it sees merit in a reserve composed of high-quality, liquid assets that are legally and operationally segregated from the issuer. Accordingly, ISDA would not seek any adjustment, for either non-significant or significant ARTs, to the obligation to constitute, maintain and prudently manage the reserve, or to the liquidity, custody and independent audit requirements.

Consistent with the general response, ISDA does not take a position on the issuer-side prudential calibration of these requirements, such as the minimum proportion of the reserve to be held as deposits, which is a matter for issuers and their prudential supervisors. ISDA's concern is limited to ensuring that the regime supports the reliable use of ARTs as collateral and settlement assets.

Question 15. MiCA sets out liquidity and reserve requirements for issuers of EMTs, including segregation of reserve assets and a limit on bank/token concentration, with enhanced requirements for significant EMTs. Should any of these aspects be adjusted?

ISDA's perspective on the EMT regime is the same as for ARTs: as a user of EMTs as collateral and settlement assets, ISDA regards robust reserve, liquidity, custody and audit requirements as supporting the reliability and collateral-eligibility of these instruments. ISDA places particular weight on the legal and operational segregation of reserve assets from the issuer's own estate and from other token reserves (Article 36(2) and (3)): segregation and bankruptcy-remoteness protect the holder's redemption claim, and are central to the assessment of an EMT's reliability as collateral and to the mitigation of intermediary and wrong-way risk. ISDA would not support any weakening of the segregation requirements. Accordingly, ISDA would not seek any adjustment, for either non-significant or significant EMTs, to the reserve, liquidity, custody or independent audit requirements, or to the segregation of reserve assets.

As with ARTs, ISDA does not take a position on the issuer-side prudential calibration, including the deposit-concentration limit, which is a matter for issuers and their prudential supervisors.

Question 16. Should MiCA be adjusted to require credit institutions that issue EMTs to maintain, and to segregate, a reserve of assets, from which they are currently exempt under Article 58?

ISDA's interest is that the assets backing an EMT are protected and available to satisfy redemption, including on the insolvency of the issuer, whatever the nature of the issuer. From the perspective of a holder and collateral-taker, arrangements that make the reserve backing identifiable, protected and bankruptcy-remote support the reliability of EMTs as collateral and settlement assets and mitigate intermediary and wrong-way risk. Either of the two approaches identified in the question, ring-fencing and segregation of reserve assets within the credit institution or issuance through a legally separate entity, could in principle achieve that protection.

Whether, and by which of these means, credit-institution EMTs should be brought within a reserve and segregation requirement turns on banking-law considerations, including consistency with the CRD/CRR framework and with deposit-guarantee arrangements, on which the banking sector and prudential supervisors are better placed to comment. ISDA therefore does not express a preference between the options, beyond supporting the underlying objective of protecting the reserve backing for the benefit of holders.

Part 2: Global stablecoin arrangements

Question 27. What are the potential benefits of global stablecoins for EU holders across the listed use cases? Respondents are asked to rate each use case on a scale of 1 to 5.

For ISDA's members, the benefits of global stablecoins are greatest in wholesale and institutional use cases rather than in retail payments. ISDA would rate as most beneficial International payments, corporate treasury and liquidity management, and crypto trading and liquidity provision, with the clearest benefits in cross-border contexts that today involve multiple intermediaries, fragmented operating hours and higher costs. For the settlement of large, high-value tokenised instruments, tokenised deposits and central bank money may in time be the preferred settlement assets, given their freedom from de-peg risk. Global, predominantly US dollar, stablecoins are nonetheless today the principal form of tokenised cash used to settle wholesale digital-asset and tokenised-collateral transactions, so the ability of EU holders to access them, through EU-authorised issuers and CASPs, supports atomic settlement, the mobility of collateral, and the management of liquidity and counterparty

risk across a 24/7 market. These are the same benefits identified in the general response and in ISDA's answers on tokenised deposits.

As ISDA emphasises throughout, these benefits can only be realised safely where the accompanying conditions are met: a look-through assessment of the reserve, the redemption and liquidity rights available to holders, the legal structure and potential wrong-way risk, and legal certainty as to the treatment of the instrument as collateral. Market participants will determine whether to use a given global stablecoin by reference to their own risk-management and investment guidelines.

Part 4: Perpetual futures on crypto-assets

Question 72. Should perpetual futures on crypto-assets, and services towards such perpetual futures, be governed by MiCA or MiFID?

By MiFID.

Consistent with the principle of technology neutrality and the economic-substance approach set out in our response to Question 1, a contract that is a derivative by virtue of its economic characteristics should be regulated under the derivatives framework (MiFID II/MiFIR, EMIR for clearing and margin, and MAR for market abuse), irrespective of whether the underlying is a crypto-asset or whether the contract is recorded or settled using DLT and smart contracts. Regulating crypto-asset derivatives under MiCA would create an inconsistent regulatory perimeter for economically equivalent products and invite arbitrage. The use of tokenised collateral or DLT-based settlement does not change the classification of a derivative, which should be determined by the economic characteristics and risk profile of the transaction rather than by the technological infrastructure used. ISDA notes that ESMA has reached the same conclusion, confirming in its guidelines on the qualification of crypto-assets as financial instruments that perpetual futures are derivative contracts, to be assessed against the relevant points of Annex I, Section C of MiFID II, notwithstanding the absence of an expiry or settlement date. The classification rules are therefore not the difficulty. What warrants attention is supervisory reach over venues that offer these instruments to EU clients without the requisite authorisation, whether under a MiCA authorisation alone or from a third country outside any recognised route: a MiCA authorisation does not extend to financial instruments, and national competent authorities have existing powers to address that.

Question 73. What substantive requirements should be considered for perpetual futures on crypto-assets and service providers providing services for such perpetual futures?

As a matter of principle, the existing derivatives requirements (under MiFID II/MiFIR, EMIR and MAR) should apply to perpetual futures on crypto-assets, calibrated where necessary to reflect the 24/7 nature of trading and the volatility of the underlying. ISDA does not, at this stage, take a firm position on the precise substantive calibration.

Part 4: Tokenised deposits

Question 74. Please assess the potential relevance and benefit of tokenised deposits for the listed use cases in the EU.

ISDA's members see the greatest relevance of tokenised deposits in wholesale capital-markets and collateral use cases rather than in retail payments. ISDA would rate as high to very high relevance/benefit the following use cases: settlement of tokenised securities and other financial instruments; delivery-versus-payment (DvP) and atomic settlement; intraday liquidity management; on-chain collateral or margining in regulated markets; improved settlement speed and operational efficiency; and reduction of counterparty and settlement risk. The benefit in each case derives from the capacity of tokenised deposits, alongside other forms of tokenised cash, to support the simultaneous ("atomic") exchange of cash against collateral or securities, eliminating "give-before-get" exposures, compressing settlement timeframes, and enabling better intraday liquidity management, including the ability to meet margin calls during stress without fire-sales of assets to raise cash. Unlike some other forms of tokenised cash, tokenised deposits carry no de-peg risk: they are a direct claim on the issuing bank, redeemable at par into commercial bank money and, through the bank, into central bank money, and so preserve the singleness of money. This makes them particularly well suited to settlement and collateral use.

Question 75. Please select one or two use cases that you consider most promising in the EU and explain why.

On-chain collateral and margining in regulated markets, and DvP / atomic settlement. These are the use cases most directly aligned with ISDA's mandate and where the operational and risk-management benefits are clearest. The instantaneous, simultaneous exchange of tokenised cash against tokenised collateral reduces counterparty, settlement and market risk, removes the give-before-get problem in collateral substitutions, and improves the velocity and mobility of collateral. This directly addresses the operational and liquidity frictions, such as managing collateral substitutions, corporate actions and dividends on posted securities, that today deter counterparties such as pension funds and insurers from posting non-cash collateral as variation margin, as that term is used in the applicable margin requirements for uncleared derivatives. A further promising use case, though less directly aligned with ISDA's core mandate, is intraday liquidity and treasury management.

Question 76. What factors, if any, constrain the development and uptake of tokenised deposits in the EU?

ISDA would highlight the following constraints:

- Legal and private-law uncertainty over the proprietary characterisation, transfer and enforceability of tokens and tokenised cash under national law, and divergence across Member States (see our responses to Questions 80, 81 and 84).
- Uncertainty over how the core collateral and settlement concepts under the FCD and SFD ("possession", "control", "accounts", "book-entry" and settlement finality) apply to DLT-based arrangements and to tokenised cash. Two of these constraints are structural. A platform may operate lawfully under the DLT Pilot Regime and yet, by taking exemptions from the participation requirements, fail to qualify as a designated system, so that transfers through it fall outside statutory settlement finality; finality conferred by a platform rulebook binds participants but does not displace national insolvency law. Separately, CSDR requires recording with a central securities depository, so instruments recorded solely on a ledger are typically ineligible for on-venue trading and for circulation through CSD accounts.

- Prudential and capital treatment that penalises tokenised assets, in particular those recorded on permissionless ledgers, relative to their non-tokenised equivalents (see our response to Question 78). Also, under the Basel crypto-asset standard (SCO60), even tokenised deposits sharing the same legal and economic characteristics as traditional deposits (group 1a) cannot be treated as stable retail deposits for LCR/NSFR purposes, and remain exposed to a discretionary "infrastructure risk add-on". Both features penalise economically identical liabilities solely because of the recording technology.
- The absence of interoperability and data standards across DLT platforms, which risks fragmenting liquidity and collateral pools.
- Uncertainty over the regulatory classification of tokenised cash instruments (tokenised deposits as distinct from EMTs) and the interaction between MiCA, PSD3/PSR, the e-money framework, CRD/CRR, the FCD and the SFD. Three further frameworks bear on usability: anti-money-laundering and travel-rule requirements, which in practice call for each address involved in a transfer to be attributable to an identified party and so constrain transferability; the deposit-guarantee framework, and in particular whether a tokenised deposit retains protection and how payout operates where the claim is evidenced on a ledger; and the application of DORA to tokenised-deposit infrastructure.

Question 77. If you identify any regulatory issue(s) in your answer to the previous question, please indicate what regulatory action is appropriate to address the issue(s) identified.

ISDA would suggest the following regulatory actions:

- Technology-neutral clarification, at EU level, that the FCD and SFD apply to DLT-based collateral arrangements and to tokenised cash and tokenised financial instruments, and that the concepts of possession, control, accounts and book-entry can be satisfied by functionally equivalent DLT mechanisms, including control exercised through multi-signature arrangements or smart contracts. ISDA's Tokenized Collateral Model Provisions and its response to the EU capital-markets-integration consultation develop these points.
- Targeted measures to increase legal certainty over the issuance, holding, transfer, enforcement and insolvency treatment of tokens (see our response to Question 81).
- Recalibration of capital and prudential treatment so that tokenised equivalents of eligible collateral and exposures are treated according to their underlying economic substance rather than penalised for the recording technology (see our response to Question 78).
- Support for common, open standards for interoperability and data consistency across DLT platforms, such as the Common Domain Model (CDM). ISDA would go further and propose that standardised documentation for transfers of tokenised collateral be developed on existing architecture, including the ISDA Credit Support Annex and the Tokenized Collateral Model Provisions. Much of this could be delivered through supervisory guidance and industry standards rather than legislative change, beginning with bilateral uncleared margin, where operational flexibility is greatest. ISDA stands ready to lead that work.
- Confirmation of the classification boundary between tokenised deposits, EMTs and ARTs, and of coherence across MiCA, PSD3/PSR, the e-money framework and CRD/CRR.

Question 78. Do tokenised deposits raise any specific issues under the CRD/CRR framework? If so, please indicate what issues arise and what regulatory or supervisory action may be appropriate.

The principal issue is capital treatment. Under the Basel cryptoasset prudential standard, as implemented in the EU through the CRR, the classification conditions can exclude assets recorded on permissionless or public ledgers from preferential ("Group 1") treatment, pushing them toward the most punitive treatment (a 1250% risk weight). In practice this would prevent institutions from holding or transacting in such assets and from recognising them as eligible financial collateral capable of reducing counterparty exposure. Capital rules should be calibrated so that a tokenised deposit (or other tokenised eligible asset) is treated consistently with its non-tokenised equivalent where it satisfies the institution's existing frameworks for security, legal enforceability and liquidity, by reference to the underlying or like-asset. ISDA recommends that the Commission and the EBA ensure that the EU's implementation of the cryptoasset prudential standard recognises tokenised deposits and tokenised eligible collateral as eligible financial collateral, and that the treatment does not turn solely on whether the ledger is permissioned or permissionless. ISDA notes that the Basel Committee is considering targeted adjustments to the prudential treatment of cryptoassets, and it will be important both that the EU's implementation aligns with those adjustments and that the standard is implemented consistently across jurisdictions, so as to avoid an uneven playing field. ISDA's point is one of proportionality rather than uniformity. Public permissionless ledgers raise distinct considerations, including the difficulty of unwinding erroneous or fraudulent transactions, the absence of an identifiable administrator able to intervene, and pseudonymity, which bears on anti-money-laundering and know-your-customer processes. ISDA does not suggest that every form of ledger should be treated identically, and it is not aware of significant institutions proposing to issue tokenised deposits on a public permissionless ledger. The point is narrower: the permissioned or permissionless character of the ledger should not be the sole determinant of eligibility or risk weight. Where a tokenised asset satisfies the institution's existing frameworks for security, legal enforceability and liquidity, its treatment should follow that of the underlying asset, with any residual ledger-specific risk addressed proportionately through those frameworks rather than through a blanket punitive weight.

Part 4: Legal treatment of tokens

Question 80. Is there legal uncertainty as to the private-law treatment of issuance, holding and transfers of tokens under national law? If so, which issues are most significant and how urgent is action?

For ISDA's members, the issues of highest significance and urgency are: using tokens as collateral; enforcement and exercise of rights arising from or over tokens or the underlying assets; recognising tokens as objects of property; the rights of token holders in intermediated custody chains; custody of tokens; and the treatment of tokens in insolvency proceedings, including intermediary risk.

These map directly to the concerns ISDA raised in its response[1] to the questions addressing the Financial Collateral Directive in the 2025 European Commission consultation on capital-markets-integration[2]. In

[1] https://www.isda.org/a/oojgE/ISDA-Response-to-European-Commission-Consultation-on-Integration-of-EU-Capital-Markets.pdf

[2] Targeted consultation on integration of EU capital markets 2025 - Finance

particular: existing legal precedent on "possession or control" does not necessarily provide the same degree of certainty for tokenised assets as it does for traditional assets, especially where the operational movement of assets is governed by an automated smart contract; the legal mechanism for the effective transfer of a token that is itself an object of property (a "Digital Object of Property", e.g. in a Bearer Structure) can be unclear; and DLT records may not map neatly onto the concepts of "accounts" or "book-entry". The uncertainty is generally greater for native tokens and Bearer Structures than for non-native tokens recorded over an off-chain asset, and the analysis may differ depending on whether the token records a tokenised financial instrument or a MiCA crypto-asset. The analysis also depends on national law: even for the same type of asset, Member States take divergent approaches, so that, for example, custody services for tokens may be available in some jurisdictions but restricted or unavailable in others. ISDA acknowledges that the proposed Settlement Finality Regulation and the targeted amendments to the FCD in the Market Integration and Supervision Package address several of these issues. In ISDA's view they are a necessary step, but not by themselves sufficient for derivatives-market purposes, in particular as regards erga omnes effects, the position of token holders in intermediated custody chains, and insolvency treatment (see our responses to Questions 81 and 84).

Question 81 / 81.1 / 81.2. Would you recommend increasing legal certainty in the treatment of tokens through EU law; if so, what are the three most important elements; and through which mechanism should legal certainty be achieved?

Question 81: Yes.

Question 81.1: the three most important elements:

1. Proprietary status and transfer. Confirm that a token can be an object of property and specify how title is constituted and transferred, including good-faith acquisition and third-party (erga omnes) effects, so that both outright transfers and security interests in tokens are recognised and enforceable.

2. Collateral, enforcement and insolvency. Ensure that the creation, perfection and enforcement of security and title-transfer collateral arrangements over tokens are legally certain, including that "possession" or "control" can be established by technological means such as multi-signature arrangements or smart contracts, and that the treatment of tokens, and of token holders in intermediated custody chains, on the insolvency of a counterparty or intermediary is clear and protective, consistent with the FCD and SFD. ISDA would put the operative ask more precisely: because the netting and collateral-enforceability opinions on which the market relies turn on the safe harbours, the Commission should confirm expressly that the safe harbours under the FCD, the SFD or its successor Regulation, and EMIR extend to tokenised instruments and to qualifying crypto-assets; that close-out netting and title-transfer collateral arrangements remain enforceable where the collateral is recorded on a ledger and control is exercised by technological means; and that performance by a smart contract constitutes legally effective discharge. The interaction between autonomous execution and an insolvency moratorium or resolution stay also requires attention, including whether automated enforcement should be capable of suspension where a stay applies.

3. Coherence and technology neutrality. Align any new rules with the existing framework (the FCD, the SFD, MiFID II/MiFIR, CSDR and CRR) and with international work (notably the UNIDROIT Principles on Digital Assets and Private Law), so that tokenised financial instruments retain their sectoral treatment and conflict-of-law gaps are closed (see our response to Question 84).

Question 81.2: mechanism. ISDA would favour measures that deliver certainty and erga omnes effects while preserving coherence with national property law. A functional, harmonised set of rules on the

legal effects of DLT registers (including good-faith acquisition and opposability to third parties), together with the closing of conflict-of-law gaps, would be the most valuable. ISDA would be cautious about full harmonisation of Member States' private and property law where this risks disrupting well-functioning national regimes; partial or targeted harmonisation, focused on the effects relevant to collateral, enforceability and conflicts of law, is likely to be more proportionate and achievable. In the near term, and to avoid a lengthy legislative process, much of the needed certainty could be delivered first through interpretative guidance or FAQs, for example from ESMA or the EBA, with legislative change reserved for those elements that require it. As regards the ownership models in Question 82, a functional approach, broadly Model 3, which attaches defined legal consequences to ledger entries with full third-party effect and certainty for collateral use, is likely to interoperate best across Member States' property-law structures. ISDA recognises that substantive property law remains largely a matter of Member State competence. The ask is therefore directed not at redefining national property categories, but at the legal effects that attach to a ledger entry or to control, and at the evidentiary standards by which those effects are established, which is both what the Union can deliver and what collateral enforcement requires.

Part 4: Conflicts of law

Question 84 / 84.1 / 84.2. Should EU law introduce a conflict-of-law rule for tokens; if so, why are the current rules insufficient; and what should be the preferred connecting factors?

Question 84: Yes.

Question 84.1: why current rules are insufficient. The current conflict-of-law rules are insufficient for tokens because the connecting factors on which they rely on, namely the location of the asset, the account, or the relevant intermediary or office (the PRIMA-type approach under the FCD and SFD), do not map onto DLT-based holding, where there may be no intermediary, no account in the traditional sense, and no single ascertainable physical location of the asset or of the register. As the consultation notes, this leaves a gap where a token does not fall within the scope of the FCD or SFD, or where the existing rules do not lend themselves to application to tokens. This gap is most acute for bearer or native tokens; where an identifiable issuer or administrator maintains the definitive register, as with many tokenised real-world assets, existing connecting factors may retain greater traction, a distinction we develop in our answer to Question 84.2. For derivatives and collateral markets, the ex ante ascertainability of the law governing proprietary questions (title, transfer, perfection, priority, enforcement and insolvency) is essential to legal certainty and to the netting and collateral-enforceability opinions on which the market relies.

Question 84.2: preferred connecting factors. The appropriate connecting factor depends on the type of token. Where a token represents a tokenised real-world asset and an identifiable issuer or administrator maintains the definitive register and can mint or burn tokens to reflect the correct holder (for example, a tokenised money-market fund whose transfer agent maintains the register, or tokenised securities recorded through a central securities depository), the asset remains anchored to an issuer and a register. For such tokens, existing conflict-of-law rules based on the location of the issuer, the register or the relevant intermediary (the PRIMA-type approach) may continue to provide sufficient certainty. The novel connecting factors developed in the UNIDROIT Principles on Digital Assets and Private Law are most relevant for bearer or native tokens, where there is no issuer, administrator or intermediary maintaining a definitive record to which a traditional connecting factor can attach. For those tokens, ISDA would prioritise connecting factors that are ascertainable ex ante and least susceptible to manipulation: a waterfall that begins with the law expressly specified in the token, then the law specified

in the rules or principles of the system on which the token is recorded, before falling back to issuer-related and supervisory factors (the law of the state where the issuer is established or under whose supervision the issuer operates, and the law of the state under whose supervision the register is maintained). Factors such as the residence of the master-keyholder (PREMA) would rank lower given concerns over ascertainability. In all cases, the chosen connecting factors should align with those applied under the FCD and SFD, to avoid a divergent characterisation of the same arrangement.