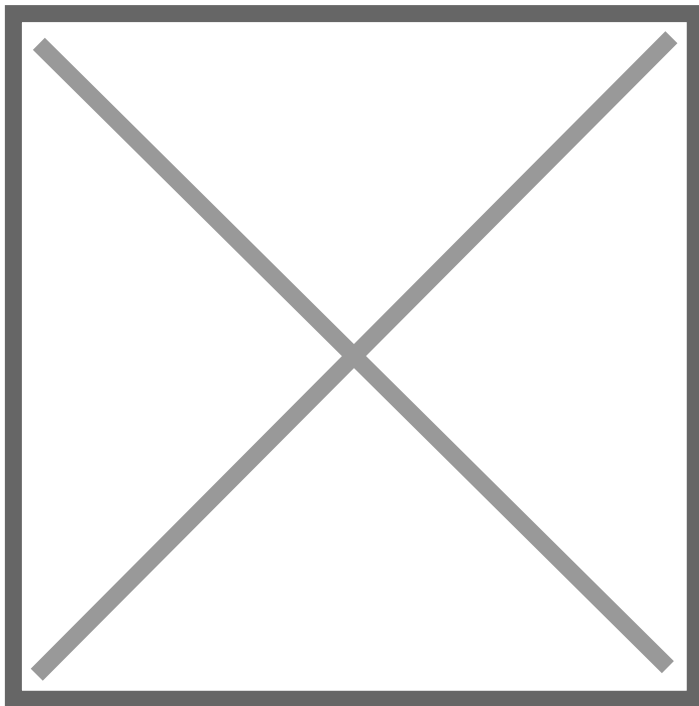


Filters applied:

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ESMA_QA_2127	08-03-2024
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ESMA_QA_1268	02-06-2023
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Submission Date

08/03/2024

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Subject Matter

Scope of Article 3(1)(b) of DLTR

Question

How should the following provision in Art. 3(1)(b) of DLTR (on the admissibility of bonds and other forms of securitised debt) be understood: “[...] excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved [...]”?

ESMA Answer

08-03-2024

Original language

Recital 23 of DLTPR sets out that the reason for the limitation in the types of instruments eligible for admission to trading or recording on a DLT market infrastructure is to strike a balance between allowing innovation and

experimentation in a sound regulatory environment and preserving investor protection, market integrity and financial stability.

The recital links this limitation in the scope of eligible instruments to the scope of instruments covered by the execution-only exemption set out in Article 25(4) of Directive 2014/65/EU.

Article 3(1) of DLTPR lays down some further limitations with regard to the eligible financial instruments as compared to the scope of said Article 25(4). Nevertheless, based on recital 23 of DLTPR and by broadly reflecting the wording of the said Article 25(4), Article 3(1) DLTPR ought to be interpreted in light of the scope of the execution-only exemption, including the quoted provision of Article 3(1)(b).

Whether a particular instrument qualifies under Article 3(1)(b) DLTPR should be determined on a case-by-case basis taking into account all the characteristics of the financial instrument as well as supervisory practice in the context of the scope limitations applicable to the execution-only exemption. To ensure ex ante legal clarity on the scope of eligible financial instruments under Article 3 of DLTPR, national competent authorities should make sure, to the extent possible, that such practice is made public or available to prospective applicants to the DLT Pilot Regime so that they can determine what financial instruments may be admitted to or recorded on DLT market infrastructures.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

Exemptions for DLT market infrastructures

Additional Legal Reference

Article 5(8) of DLTR

Subject Matter

Exemptions for DLT SS/TSS operators on cash settlement

Question

For a DLT SS/TSS operator benefitting from the exemption in Art. 5(8) of DLTR, is it possible for them to settle payments using e-money tokens (EMTs) issued by the DLT SS/TSS operator itself or by an e-money institution (as opposed to only settling payments with EMTs issued by a credit institution)?

Original language

The intention of Regulation EU No 2022/858 (DLTPR) is to ensure that Union financial services legislation is fit for the digital age and contributes to a future-proof economy that works for citizens, including by enabling the use of innovative technologies. Under that Regulation, a CSD operating a DLT SS/DLT TSS and an investment firm or market operator operating a DLT TSS (DLT SS/TSS operator) may be exempted from certain provisions of Regulation (EU) No 909/2014 (CSDR) that are likely to create regulatory obstacles for the development of DLT SSs/TSS. Those exemptions are subject to conditions attached to them, including certain minimum requirements, and any compensatory measures to meet the objectives of the CSDR to safeguard investor protection, market integrity and financial stability. The DLT SS/TSS operator must demonstrate that the exemption requested is proportionate and justified by the use of distributed ledger technology. With this in mind, any exemptions provided under the DLTPR are strictly limited to the activity taken in accordance with that Regulation and with the overall goal of allowing innovative technologies to develop within set parameters; It should not be construed as providing any guidance on or limitation to the application of the CSDR outside the application of the DLTPR.

Generally, in line with international standards, CSDR strongly encourages the settlement of transactions in central bank money; where settlement in central bank money is not practical and available, commercial bank money may be used. But because that rule can be difficult to apply for a DLT SS/TSS operator, as currently there is no tokenized central bank money available for such purposes, an exemption is provided from the provision of that Regulation on cash settlement in order to develop innovative solutions under the pilot regime by facilitating access to commercial bank money, or the use of ‘e-money tokens’ (EMTs) subject to safeguards.

It is assumed in the question that the DLT SS/TSS operator is authorised to provide the service and that the competent authority has agreed to exempt the CSD for the provision of such a service from the requirements under Article 40 of the CSDR in accordance with Article 5(8), first subparagraph, of the DLTPR. Where the exemption applies to DLT SS/TSS operators, it shall settle transactions on the basis of delivery versus payment and it shall comply with the requirements for the settlement of payments as listed in Article 5(8), second subparagraph, of the DLTPR.

Article 5(8), second subparagraph, of the DLTPR requires the settlement of payments to be made through the use of:

1. central bank money (including in tokenized form);
2. the CSD’s own account in accordance with Title IV of CSDR (banking type ancillary services for CSDs);
3. commercial bank money (including in tokenized form) in accordance with Title IV of CSDR (banking type ancillary services for CSDs); or
4. ‘e-money tokens’.

As described above, Title IV of CSDR does not apply to the settlement of payments in EMTs undertaken by a DLT SS/TSS operator benefiting from the exemption set out in Article 5(8) of the DLTPR. However, Article 5(8), fourth subparagraph, of the DLTPR would apply in this situation, providing certain requirements for the

CSD to comply with (further discussed below) where the settlement of payments occurs using EMTs. In addition, Article 5(8) fifth subparagraph, of the DLTPR needs to be respected where applicable (also further discussed below).

Article 5(8) does not specify that the EMT used for settlement must be issued by a specific type of a financial institution; it does however need to be issued in accordance with the applicable legislation, i.e. Directive (EU) 2009/110/EC and Regulation (EU) 2023/1114. Subject to those requirements being fulfilled it follows that DLT SS/TSS operator could use EMTs issued by electronic money institutions.

However, it should be noted that where a DLT SS/TSS operator provides services in relation to EMTs that are equivalent to the services listed in Section C, points (b) and (c), of the Annex to the CSDR, such services shall be provided by the DLT SS/TSS operator in accordance with Title IV of the CSDR or by a credit institution, as required under Article 5(8), fifth subparagraph, of the DLTPR. Hence, whilst Article 5(8), second subparagraph, of the DLTPR does not refer to Title IV of the CSDR where the settlement of payment is undertaken using EMTs, it is clear from Article 5(8), fifth subparagraph, of the DLTPR that such a DLT SS/TSS operator has to be authorized, or use a credit institution, to provide services listed in Section C, points (b) and (c), of the Annex to the CSDR.

To determine whether a service is covered by Article 5(8) fifth subparagraph, of the DLTPR such services (including equivalent services bearing in mind the different technology underpinning the DLT Pilot Regime) are being provided, it is important to take into account the specificities of settlement using DLT.

Only if the specific characteristics of the DLT allow for settlement using EMTs to be undertaken in a way that does not amount to the provision of services equivalent to those listed in Section C, points (b) and (c), of the Annex to the CSDR, would a DLT SS/TSS be able to use EMTs for settlement without the need to comply with Title IV of CSDR or rely on a credit institution.

An example of a settlement model that may be feasible (depending on its actual design and function and depending on supervisory assessment of each specific case) within the DLT Pilot, without amounting to any of the services referred to in the fifth subparagraph of Article 5(8), but whose operation would rather be covered by the service of settlement and that of providing accounts to participants in the DLT SS/TSS), is a model where EMTs are used to perform pre-funded atomic settlement on the DLT SS/TSS. Atomic settlement is a programmatically guaranteed settlement of both the asset and the payment leg of the transaction using DLT. In other words, where, in the context of the DLT Pilot regime, the elements of a transaction settlement process are such that market participants or persons acting on their behalf pre-fund their asset account and their cash account and submit transfer orders to the DLT SS/TSS for the purpose of atomic settlement, whereby the execution of those orders by the DLT infrastructure programmatically leads to the settlement of a transaction, this scheme (depending on its actual design and function) could be an example of where the settlement of payments could occur using EMTs without requiring an involvement of a credit institution in accordance with, and limited to, the DLT PR. Under the DLT PR the authorized DLT SS/TSS may provide, subject to complying with the requirements, settlement of payments in EMT (including an account related to EMT) to the participants in a DLT SS/TSS.

However, the validity of the example provided is strictly conditioned to atomic settlement models (a) which due to the considerations set out above may not amount to any of the services referred to in the fifth subparagraph of Article 5(8), (b) that are authorized under the DLT Pilot, (c) that are using EMT issued in accordance with the applicable legislation (see above for div) and (d) that are relying on appropriate derogations available.

Moreover, recital 29 expresses the expectation that the DLT SS/TSS operators should ensure that any novel forms of risks raised by the use of DLT SS/TSS are addressed to ensure investor protection, market integrity and financial stability. The DLT SS/TSS operator would therefore still comply with the requirements set out in Article 5(8), fourth subparagraph, of the DLTPR to “identify, measure, monitor, manage, and minimise any risks arising from the use of such means”.I

It is also important to note that Article 5(8), fifth subparagraph, of the DLTPR does not refer to the services specified under Section C, point (a), of the Annex to the CSDR, hence, subject to the DLT SS/TSS being exempted under the DLT pilot regime and fulfilling the requirements listed under Article 5(8), fourth subparagraph, of the DLTPR , such service (cash account related services) should not have to be provided by the DLT SS/TSS operator in accordance with Title IV of the CSDR nor by a credit institution. The term ‘cash accounts’ is not defined. Since the DLTPR explicitly allows settlement in EMTs, cash accounts should be understood, for the purpose of that Regulation, as including accounts that hold EMTs, which may also be provided by electronic money institutions in line with Article 6 of Directive 2009/110/EC, where those accounts are provided to participants in a DLT SS/TSS for the purpose of settling transactions.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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18/12/2023

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT market infrastructure

Subject Matter

Eligibility for operating a DLT SS under the DLT Pilot Regime

Question

Who can be the operator of a DLT SS under the DLT Pilot Regime?

ESMA Answer

18-12-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

An operator of a digital ledger technology settlement system (DLT SS) under Regulation (EU) 2022/858 (DLTR) can only be a legal person that is authorised as a central securities depository (CSD) under Regulation (EU) No 909/2014 (CSDR) and has received the specific permission to operate a DLT SS under the DLTR.

This follows from Article 9(1) DLTR which provides that “a legal person who is authorised as a CSD under Regulation (EU) No 909/2014 may apply for a specific permission to operate a DLT SS under this Regulation”.

This is also clearly stated in recital 18 of the DLTR: “[a] DLT SS should be a settlement system operated by a CSD authorised under Regulation (EU) No 909/2014 that has received a specific permission to operate a DLT SS under this Regulation”.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2045

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18/12/2023

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

Requirements for DLT market infrastructures

Additional Legal Reference

Articles 9(6)(b) and Article 10(7)(b) of Regulation (EU) 2022/858 (DLTR) and article 12(1)(b) of Regulation (EU) 909/2014

Subject Matter

Involvement of the authorities in Article 12(1)(b) of CSDR in the authorisation of a DLT SS/ DLT TSS using e-money tokens

Question

Should relevant authorities mentioned in Article 12(1)(b) of Regulation (EU) 909/2014 be involved in the authorisation process of a DLT SS or DLT TSS that aims to settle the cash leg of transactions using e-money tokens under the DLTR?

ESMA Answer

18-12-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Yes. Article 9(6), point (b), and Article 10(7), point (b), of Regulation (EU) 2022/858 (DLTR) provide that as soon as the competent authority considers the application to be complete, it shall send a copy of that application to the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014. That includes the central banks in the Union issuing the most relevant currencies in which settlement takes place, as referred to in Article 12(1), point (b), of Regulation (EU) No 909/2014.

Pursuant to Article 3(1), point (7), of Regulation (EU) 2023/1114, e-money token means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency. In that context, an official currency means an official currency of a country that is issued by a central bank or other monetary authority.

Consequently, for the purpose of the application of Article 9(6), point (b), and Article 10(7), point (b), of the DLTR, when a DLT SS or DLT TSS settled the cash leg of transactions in e-money tokens, the relevant authority referred to in Article 12(1), point (b) of Regulation (EU) No 909/2014 should be the central bank in the Union issuing the official currency referenced in the most relevant e-money tokens in which the settlement takes place.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2004

Submission Date

07/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

Requirements for DLT market infrastructures

Subject Matter

Capital requirements for a DLT TSS

Question

What are the capital requirements for a DLT TSS (digital ledger technology trading and settlement system) operated by: a) an investment firm; b) a credit institution; c) a CSD (central securities depository)?

ESMA Answer

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Capital requirements for DLT market infrastructures can be determined according to the underlying licence that the Pilot applicant will rely on to obtain a special licence under the DLTPR. Where a Pilot applicant relies on an investment firm licence to apply for a DLT TSS licence, it must comply with capital requirements applicable to investment firms in accordance with Article 15 of Directive 2014/65/EU and Article 11 of Regulation (EU) 2019/2033. An investment firm operating a DLT TSS is explicitly exempted from capital requirements set out in Article 47 of Regulation (EU) 909/2014 by virtue of Article 6(1)(b) DLTPR. Where a Pilot applicant relies on a CSD licence to apply for a DLT TSS licence, it must comply with capital requirements applicable to CSDs in accordance with Article 47 of Regulation (EU) 909/2014, as well as any other provisions relating to capital requirements set out in that regulation. A credit institution applying for a DLT TSS and leveraging on its authorisation under Directive 2013/36/EU to provide investment services, including that of operating an MTF, should apply capital requirements laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013. A credit institution authorized to provide investment services and applying for a DLT TSS licence is exempted from capital requirements set out in Article 47 of Regulation (EU) 909/2014 by virtue of Article 6(1)(b) DLTPR. Finally, in accordance with the third paragraph of Article 7(6) DLTPR, national competent authorities may require additional prudential safeguards from the operator of a DLT market infrastructure, which includes the DLT TSS.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2003

Submission Date

07/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Additional Legal Reference

Article 3 of DLTR

Subject Matter

Admission of subscription rights to trading or recording on a DLT market infrastructure

Question

Can subscription rights be covered under the DLTR?

ESMA Answer

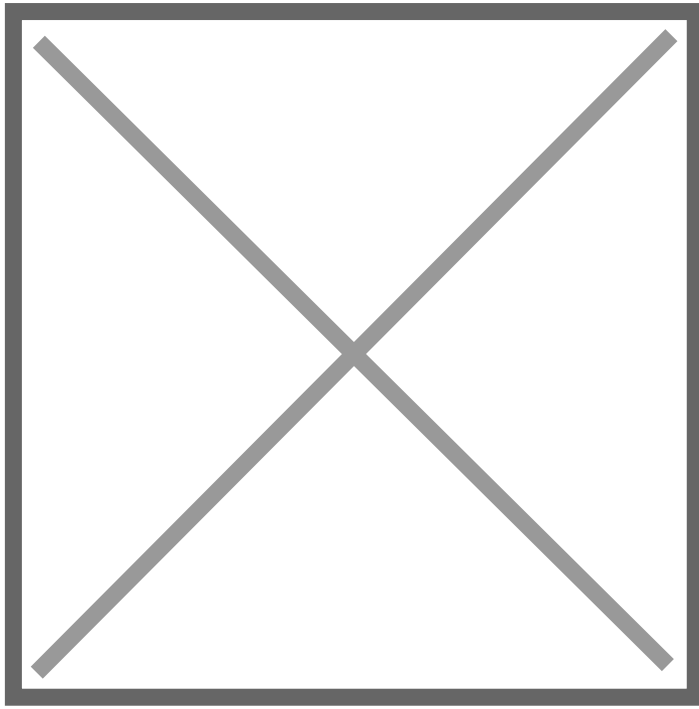
07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 3(1) restricts the types of DLT financial instruments that are eligible to be traded or recorded on a DLT market infrastructure. Subscription rights are usually defined as the right of existing shareholders to participate in the acquisition of newly issued shares in a company. Subscription rights are not mentioned as one of the categories of financial instruments eligible to be handled by DLT market infrastructure. Subscription rights should be considered as falling within the third category of transferable securities defined under Article 4(1) point (44) of Directive 2014/65/EU, which covers ‘any other securities giving the right to acquire or sell any such transferable securities’. That category of transferable security is not covered by Article 3(1) DLTPR.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.



ESMA_QA_2002

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07/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT multilateral trading facility (DLT MTF)

Additional Legal Reference

Article 8 of DLTR

Subject Matter

Authorisation for credit institutions to operate a DLT MTF

Question

Should a credit institution authorised in accordance with CRD IV/CRR and providing investment services or performing investment activities in accordance with MiFID II/MiFIR be required to apply for an authorisation as an investment firm in order to operate a DLT MTF (distributed ledger technology multilateral trading facility)?

ESMA Answer

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Recital 38 of Directive 2014/65/EU states that credit institutions authorized under Directive 2013/36/EU should not need a separate authorization under Directive 2014/65/EU to provide investment services or perform investment activities. It also notes that the national competent authority should verify compliance with Directive 2014/65/EU before granting an authorization to the credit institution to provide investment services or perform investment activities. This means that a credit institution does not need a separate license as an investment firm under Directive 2014/65/EU in order to apply for a DLT MTF licence under the DLTPR but can rather leverage its existing licence under Directive 2013/36/EU. In that sense, recital 13 of the DLTPR, which notes that a credit institution should only be allowed to operate a DLT MTF when it is authorised as an investment firm under Directive 2014/65/EU, should be interpreted such that the competent authority should ensure that the credit institution complies with the provisions of Directive 2014/65/EU applicable to the service of operating an MTF as well as other relevant provisions of that directive when considering the need for an application for a DLT MTF licence under the DLTPR.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1242

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02/06/2023

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Subject Matter

DLT Collective investment undertakings

Question

Should ETFs or other collective investment undertakings represented by shares be considered as units in collective investment undertakings, rather than shares (transferable securities), thus falling into the bucket specified in Article 3(1), point (c), DLTPR, and hence assessed against the criteria in Article 25(4), point (a), of MiFID II?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 7 - Question 5]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

Collective investment undertakings represented by shares fall within Article 3(1), point (c), DLTPR. Article 3(1), point (c), DLTPR refers to "units in collective investment undertakings covered by Article 25(4), point (a)(iv), of Directive 2014/65/EU". Since Article 25(4), point (a)(iv), of Directive 2014/65/EU refers to both "shares or units in UCITS" and considering the similar nature of shares and units in collective investment undertakings, shares in collective investment undertakings fall under Article 3(1), point (c), DLTPR. They do not fall under Article 3(1), point (a), which concerns shares, which are transferable securities. Likewise, ETFs which are defined in Article 4(1), point (46), MIFID as funds "of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker" fall within Article 3(1), point (c), DLTPR when they are UCITS using units or shares.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[ESMA_QA_1241](#)

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02/06/2023

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[Additional Information](#)

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT market infrastructure

Subject Matter

UCITS eligible under DLTPR

Question

Does Article 3(1), point (c), of the DLTPR require that a UCITS fund should be an ETF in order to be eligible?

ESMA Answer

27-06-2023

Original language

[ESMA70-460-189 - Heading 7 - Question 4]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

Under MIFID, units in UCITS funds fall under the category of financial instruments referred to in Section C point (3) of Annex I to that Directive, so-called units in collective investment undertakings. Under Article 3(1), point (c), DLTPR, that category of financial instruments is eligible to be admitted to trading on a DLT market infrastructure, or be recorded on a DLT market infrastructure provided that those units in collective investment undertakings are covered by Article 25(4), point (a)(iv), MIFID and that the market value of the assets under management of that fund is less than EUR 500 million. There are no requirements in Article 3(1), point (c), DLTPR that would require that a UCITS fund also needs to be an exchange-traded fund within the meaning of Article 4(1), point (46) MIFID in order to be eligible for the pilot regime.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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02/06/2023

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Subject Matter

Partially tokenised financial instruments

Question

Is partial tokenisation allowed under the DLTPR? Does the DLTPR apply to situations where not the entirety of an issuance of financial instruments is tokenised, but where, for example, only part of an issuance is registered with a DLT SS/TSS? In other terms, can financial instruments which have been regularly issued and subsequently partially tokenised be registered with a traditional CSD in their entirety, and be partially registered

with a DLT SS/TSS for the tokenised portion?

Can the tokenised part be issued by another party than the issuer of the original financial instruments?

Can a financial instrument recorded in a traditional CSD be fungible with one recorded in a DLT SS/TSS (having both the same rights and obligations)?

For bonds, can one option be to consider the tokenised financial instrument as different from the original underlying financial instrument, similar to the “depository receipts” model, in accordance with Article 3(1), point (b), of the DLT Pilot Regulation?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 7 - Question 3]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

Partial tokenisation should be understood as part of the total issuance of a given financial instrument being issued as a DLT financial instrument, i.e. using distributed ledger technology, with the other part of the issuance of that instrument existing as a traditional financial instrument, without reliance on DLT. The DLTPR does not explicitly prohibit partial tokenisation of an issuance. Moreover, when laying down the conditions for allowing derogations from Regulation (EU) No 909/2014 (CSDR) in its Article 5(2), the DLTPR acknowledges in point (b)(ii) of that Article the possibility for only a part of an issuance to be recorded on a distributed ledger. Where the tokenisation pertains to only a part of an existing issuance that is already registered with a CSD, the operator of the DLT SS or the DLT TSS is to ensure the integrity of the issue in accordance with Article 37 CSDR or Article 5(2), point (b), DLTPR, whichever is applicable.

The DLTPR does not explicitly address the question on whether any entity other than the issuer can tokenise part of an issuance. However, as noted, the DLTPR does not exclude tokenisation of existing financial instruments by DLT market infrastructures. Nevertheless, any such tokenisation should occur whilst fully respecting any contractual obligations between the CSD where the financial instruments are registered prior to tokenisation and the issuer, the CSD and the participants of the securities settlement system operated by it, as well as applicable Union and national law.

The notion of fungibility is not defined in the DLTPR, nor is defined in the legislative acts that underlie it – CSDR and Directive 2014/65/EU (MIFID). In its usual meaning of the word, fungibility means that the two assets are interchangeable and of equivalent value. In case financial instruments with the same economic and legal features are partially registered with a traditional CSD and partially with a DLT SS or a DLT TSS, they should be considered fungible in the economic and legal sense. However, from an operational perspective, it might be the case that the register of a traditional CSD and that of a DLT financial infrastructure are not technically linked in such a way that they ensure seamless interchangeability.

Regarding the question whether a tokenised bond can be regarded as different from the original underlying financial instrument, the DLTPR does not specify what is the relationship between the ‘underlying’ financial instrument, i.e. the instrument that was issued, recorded, transferred and stored outside a distributed ledger, using

traditional financial infrastructure, and the DLT financial instrument that came into existence through tokenisation. However, DLT market infrastructures participating in the pilot are to ensure that any DLT financial instrument onboarded on their systems belong to one of the categories of instruments referred to in Article 3 DLTPR to be eligible for the pilot, and that the creation of such instruments is done in accordance with applicable law. Furthermore, irrespective of the arrangement in place, the issuer CSD for the underlying bonds and the operator of the DLT SS or the DLT TSS are to be always able to ensure the integrity of the issue in accordance with Article 37 CSDR or Article 5(2), point (b), DLTPR, whichever is applicable.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts

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02/06/2023

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

Exemptions for DLT market infrastructures

Subject Matter

Exemption from CSDR

Question

Are DLT SS or DLT TSS and their participants exempted from the provisions of Article 9 of CSDR on internalised settlement regarding transactions settled on a DLT SS or a DLT TSS duly authorised under DLTR?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 10 - Question 1]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation.

Yes. DLT TSS are expressly exempted from the application of Article 9 CSDR under Article 6(1), point (b), of DLTR. Pursuant to Article 5(1) DLTR, DLT SS are only subject to those requirements applying to a CSD operating a securities settlement system under CSDR, thereby excluding Article 9 of CSDR. Like participants of CSDs, participants of DLT SS or DLT TSS are not subject to Article 9 of CSDR either since they do not internalise the settlement of transactions per se but use DLT SS or DLT TSS for that purpose. Pursuant to Article 11(4), point (c), DLTR, DLT SS and DLT TSS are nevertheless subject to reporting requirements similar, apart from the frequency, to those laid down in Article 9 of CSDR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

Exemptions for DLT market infrastructures

Subject Matter

Exemption from CSDR

Question

Do the applicants to the DLT SS/DT TSS status need to apply for the exemption from the application of Article 40 of CSDR, as set out in Article 5(8) of DLTR, whenever they use tokenised money, independently of whether it is central bank tokenised money or commercial bank tokenised money?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 9 - Question 2]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation.

DLT SS/TSS applicants need to request the exemption from Article 40 of CSDR, as set out in Article 5(8) of DLTR, for settling the cash leg of a transaction differently than as laid down in Article 40 CSDR. That in particular means that an exemption will be necessary if the cash payments are not settled through accounts opened with a central bank of issue of the relevant currency or accounts opened with a credit institution in accordance with Title IV of CSDR.

The notion of account should be understood as being technology-neutral in this context.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[ESMA_QA_1270](#)

Submission Date

02/06/2023

Status: Answer Published

[Additional Information](#)

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT settlement system (DLT SS)

Subject Matter

Settlement in e-money tokens

Question

Should 'e-money tokens' under the DLTR be interpreted under the MiCA definition of 'e-money tokens'?

Could settlement in e-money tokens be used by DLT MI operators even before MICA starts applying?

Does the issuer of the e-money tokens have to be authorised under EMD? Is it correct that a DLT SS/TSS operator does not need an authorisation as a credit institution or payment services institution if it uses e-money tokens for cash settlement that are issued by a duly authorised institution?

Would e-money tokens used for settlement on a DLT market infrastructure be allowed to be issued on a distributed ledger other than that used by the DLT market infrastructure?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 9 - Question 1]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation.

Until proposed Regulation on Markets in Crypto-assets (MICA) is adopted and applicable, e-money tokens referred to in Article 5(8) of the DLTR should be interpreted to mean electronic money that has been issued in compliance with Directive 2009/110/EC (E-money Directive, EMD). Electronic money tokens issued in that manner may be used by operators of DLT market infrastructures even before MICA applies. However, once MICA starts applying, the notion of e-money tokens under the DLTR should also be interpreted in light of that Regulation, which will comprehensively regulate the issuance and use of e-money tokens.

The issuer of e-money tokens should be authorised under the EMD as an electronic money institution or as a credit institution under Directive 2013/36/EU.

In accordance with Article 5(8), fifth subparagraph, of DLTR, services related to e-money tokens that are equivalent to the services listed in Section C, points (b) and (c) of the Annex to CSDR, must be provided by the operator of a DLT SS or a DLT TSS in accordance with Title IV of the CSDR or by a credit institution. Furthermore, Article 5(8) DLTR explicitly permits that e-money tokens are used by a DLT SS or a DLT TSS as a means of settlement of transactions related to DLT financial instruments under certain conditions.

The DLTR does not require that e-money tokens used for settlement on a DLT market infrastructure must be issued on the same distributed ledger as the one used by the DLT market infrastructure to trade or settle DLT financial instruments. Therefore, DLT market infrastructures are free to use distinct distributed ledgers for the ‘cash’ and the ‘asset’ leg of the transaction.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT market infrastructure

Subject Matter

Operation of DLT TSS

Question

Should an entity that applies for a permission to operate a DLT TSS provide both the DLT MTF and DLT SS services? Under which circumstances can an entity apply for the permission to operate a DLT MTF, without the need to operate a DLT TSS? Who can perform the settlement of transactions in DLT financial instruments, together with the initial recording of DLT financial instruments or the safekeeping services in relation to DLT financial instruments, in case an entity applies for the permission to operate a DLT MTF and not a DLT TSS?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 8 - Question 2]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation.

In Article 2, point (10), of DLTR, a DLT TSS is defined as a DLT MTF or DLT SS that combines services performed by a DLT MTF and a DLT SS. Therefore, an entity that applies for a permission to operate a DLT TSS is to perform both the DLT MTF and DLT SS services.

An entity can apply for the permission to operate a DLT MTF, without the need to operate a DLT TSS when that DLT MTF does not provide settlement services in DLT financial instruments against payment or against delivery together with initial recording services or safekeeping services in relation to DLT financial instruments.

In case an entity applies for the permission to operate a DLT MTF and not a DLT TSS, any entity who is licensed as a DLT SS, DLT TSS or CSD and with whom the DLT MTF has set up access arrangements in accordance with Article 53 of CSDR may perform the settlement of transactions in DLT financial instruments, together with the initial recording of DLT financial instruments or the safekeeping services in relation to DLT financial instruments.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

Exemptions for DLT market infrastructures

Subject Matter

Exemption from CSDR

Question

Would a DLT financial instrument traded on a DLT MTF be subject to the book-entry form obligation under Article 3 of CSDR unless it is registered in DLT form with a DLT SS/TSS that has applied for the exemption from that Article?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 10 - Question 2]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation.

Unless the DLT MTF is authorised as DLT TSS and obtains an exemption from applying Article 3 of CSDR, where a transaction in transferable securities takes place on a DLT MTF, the relevant securities shall be recorded in book-entry form in a CSD.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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02/06/2023

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT market infrastructure

Subject Matter

Off-chain trading

Question

Are DLT MTFs permitted to organise trading off-chain in relation to DLT financial instruments?

Should it be mandatory for a DLT MTF to operate its matching engine with a DLT technology?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 8 - Question 1]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation.

The DLTR does not require that a DLT MTF organises trading of DLT financial instruments on the blockchain (on-chain), which is a type of distributed ledger. Indeed, Article 2, point (6), DLTR defines DLT MTFs as a multilateral trading facility that only admits to trading DLT financial instruments. Article 2, point (11), DLTR defines DLT financial instruments as financial instruments that are “issued, recorded, transferred and stored using distributed ledger technology”. That definition does not entail that DLT financial instruments are to be traded using DLT, but rather that the DLT are to be used for maintaining accounts and records pertaining to the title over a financial instrument and to facilitate the transfer of such titles between market participants.

Since a DLT MTF is allowed to organise trading off-chain, it is free to operate its matching engine using technology that does not leverage DLT.

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Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_1239

Submission Date

02/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Subject Matter

Issuance of DLT financial instruments

Question

Are both of the modalities of issuing DLT financial instruments described below allowed under the DLT Pilot Regulation (DLTPR)?

1) Direct issuance of financial instruments on DLT, whereby financial instruments are initially and directly issued, recorded, transferred and stored using a DLT;

2) Issuance of existing non-DLT financial instruments in the form of DLT financial instruments as described in recital 3 of the DLTPR.

Are other issuance modalities of DLT financial instruments possible under the DLTPR?

ESMA Answer

02-06-2023

Original language

[ESMA70-460-189 - Heading 7 - Question 2]

Answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Both of the described modalities of issuance are indeed possible under the DLTPR. That is implied by its recital 3 which explicitly refers to two ways in which financial instruments can be issued on DLT – by digitally representing a financing instrument on DLT and by issuing a traditional asset class in tokenised form.

The former mechanism corresponds to the situation described under 1) of the question, whereby a financial

instrument begins its lifecycle by being issued directly on a DLT market infrastructure using DLT.

The latter mechanism corresponds to the situation described under 2) of the question, whereby an existing non-DLT financial instrument is recorded and thereby represented in tokenised form on a DLT, and continues its lifecycle as a DLT financial instrument. In such a case, the token serves as the main reference point for further events relevant to the lifecycle of that instrument, such as trading and settlement.

However, since the DLT Pilot regime is meant to enable DLT Pilot participants to flexibly experiment with DLT in organizing trading and settlement of financial instruments, it cannot be excluded that DLT Pilot participants might put forward models that do not clearly fit into the two modalities of issuance of DLT financial instruments described above. The legal feasibility of each contemplated model should be assessed on a case by case basis.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_1266

Submission Date

02/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Subject Matter

Admissibility of securities financing transactions under DLTPR

Question

Are SFT transactions admissible on a DLT MTF/TSS? In particular, should Article 3(1), point (b), DLTPR, which excludes instruments “that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved” be read as also excluding complex transactions like SFTs?

ESMA Answer

02-06-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

Securities financing transactions are not admissible within the DLT Pilot. The DLTPR provides under Article 3 for a limitative list of DLT financial instruments that can be admitted to trading on a DLT market infrastructure. Securities financing transactions do not fall within any of the categories of that limitative list. Furthermore, securities financing transactions usually consist of multiple transactions and are used to secure funding and gain leverage. Enabling such transactions on DLT market infrastructures would be contrary to the strict limitation on the types of financial instruments that can be admitted to trading or recorded on DLT market infrastructure in accordance with Article 3 DLTPR. The objective of such a limitation was to enable DLT-based experimentation with financial instruments which are more easily understandable by investors and less complex to handle by DLT market infrastructure, to preserve investor protection, market integrity and financial stability, as set out in recital 3 of the DLTPR. The fact that the DLTPR enables retail investors to have direct, disintermediated access to DLT market infrastructures and instruments offered by them, makes the objective of ensuring investor protection and limiting the type of transactions eligible for the DLT Pilot even more important.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation: these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_904

Submission Date

11/05/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Subject Matter

Relevant Authorities

Question

Since most of the (potential) applicants aim to settle the “cash leg” of transactions with or as a DLT-SS / DLT-TSS using e-money tokens the question arises if Article 12(1) b) CSDR regarding the relevant authorities is applicable (“the central banks in the Union issuing the most relevant currencies in which settlement takes

place”).

ESMA_QA_770

Submission Date

14/04/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Subject Matter

Capital requirements

Question

What are the capital requirements for a DLT TSS operated by: a) an investment firm; b) a credit institution; c) a CSD?

ESMA_QA_769

Submission Date

13/04/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Subject Matter

Subscription rights

Question

Can subscription rights be covered under the DLTR?

ESMA_QA_766

Submission Date

11/04/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT multilateral trading facility (DLT MTF)

Subject Matter

Credit institution providing investment services or performing investment activities

Question

Should a credit institution authorised in accordance with CRD IV/CRR and providing investment services or performing investment activities in accordance with MiFID II/MiFIR be required to apply for an authorisation as an investment firm in order to operate a DLT MTF (distributed ledger technology multilateral trading facility)?

ESMA Answer

11-04-2023

Original language

Recital 38 of Directive 2014/65/EU states that credit institutions authorized under Directive 2013/36/EU should not need a separate authorization under Directive 2014/65/EU to provide investment services or perform investment activities. It also notes that the national competent authority should verify compliance with Directive 2014/65/EU before granting an authorization to the credit institution to provide investment services or perform investment activities.

This means that a credit institution does not need a separate license as an investment firm under Directive 2014/65/EU in order to apply for a DLT MTF license under the DLTPR but can rather leverage its existing licence under Directive 2013/36/EU. In that sense, recital 13 of the DLTPR, which notes that a credit institution should only be allowed to operate a DLT MTF when it is authorised as an investment firm under Directive 2014/65/EU, should be interpreted such that the competent authority should ensure that the credit institution complies with the provisions of Directive 2014/65/EU applicable to the service of operating an MTF as well as other relevant provisions of that directive when considering the need for an application for a DLT MTF licence under the DLTPR.

ESMA_QA_778

Submission Date

27/03/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Additional Legal Reference

DLT shares valuation

Subject Matter

DLT shares valuation

Question

How should the tentative market capitalisation of DLT shares (referred to in Article 3(1)(a) of DLTR) be calculated?

ESMA Answer

27-03-2023

Original language

For DLT shares that are not yet admitted to trading or traded on a trading venue, the tentative market capitalisation could be calculated as the multiplication of:

- 1) the final offer price or the maximum price (where the final offer price and/or amount of shares to be offered to the public, whether expressed in number of shares or as an aggregate nominal amount, cannot be disclosed);
- 2) the total number of shares outstanding immediately after the share offer to the public, calculated either on the basis of the amount of shares offered to the public or on the basis of the maximum amount of shares offered to the public (where the final offer price and/or amount of shares to be offered to the public, whether expressed in number of shares or as an aggregate nominal amount, cannot be disclosed).

[ESMA_QA_791](#)

Submission Date

03/02/2023

Status: Answer Published

[Additional Information](#)

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Additional Legal Reference

RTS 1 and RTS 2

Subject Matter

Transparency

Question

Which identification code should be provided by trading venues, investment firms and approved publication arrangements (APA) in the reporting fields for the purpose of the post-trade transparency obligations under RTS 1 and RTS 2 in the context of DLT instruments?

ESMA Answer

03-02-2023

Original language

For the purpose of post-trade transparency reports, in order to identify equity or equity-like instruments (including DLT instruments), as per Table 3 of Annex I of RTS 1, and non-equity instruments (including DLT instruments) as per Table 2 of Annex II of RTS 2, trading venues, investment firms and APAs are required to populate the “instrument identification code field” with the ISIN code. Nevertheless, in order to provide for more granular instrument information on DLT instruments, ESMA recommends that trading venues, investment firms and APAs complement the identification code provided by including the Digital Token Identifier (DTI) when publishing post-trade information. The DTI would be reported as an optional additional field.

[DLT Transparency Q&A 1]

ESMA_QA_789

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03/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT financial instruments

Additional Legal Reference

RTS 23

Subject Matter

Financial Instruments Reference Data

Question

How should Field 5 of RTS 23 “Issuer or operator of the trading venue identifier” be populated for DLT financial instruments within Article 3(1)(a) and (b) DLTR that are exclusively created on the DLT and do not represent a previously issued financial instrument?

ESMA Answer

03-02-2023

Original language

As for the case of non-DLT shares, bonds and other forms of securitised debt, including depositary receipts, Field 5 should be populated with the LEI of the legal entity which issues or proposes to issue the financial instrument within the meaning of the Prospectus Regulation^[1] and, in case of depositary receipts, the entity which issues the debt instrument represented in line with MAR Article 3(1)(21).

[DLT Financial Instruments Reference Data Q&A 4]

[1] Article 2(h) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC. Text with EEA relevance.

ESMA_QA_788

Submission Date

03/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT multilateral trading facility (DLT MTF)

Additional Legal Reference

RTS 23

Subject Matter

Financial Instruments Reference Data

Question

How should Field 5 of RTS 23 “Issuer or operator of the trading venue identifier” be populated for DLT financial instruments that are the digital representation of a previously issued financial instrument?

ESMA Answer

03-02-2023

Original language

Where the full set of characteristics of the DLT financial instrument remain the same as the traditional financial instrument, with the only difference being the technology used for the respective issuances, the issuer of the DLT instrument should be the same as that of the pre-existing financial instrument that is represented by the DLT one. Its LEI should thus be reported in Field 5 of RTS 23.

[DLT Financial Instruments Reference Data Q&A 3]

ESMA_QA_790

Submission Date

16/12/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

RTS 24

Subject Matter

DLT MTF

Question

How should a DLT MTF populate Field 1 of RTS 24 “Identification of the entity which submitted the order” when an order is submitted by a natural person non eligible for an LEI?

ESMA Answer

16-12-2022

Original language

As natural persons are not eligible for LEIs, Field 1 should be populated with the LEI of the DLT MTF and the National ID of the natural person should be provided in Field 5 of RTS 24.

[DLT Order Recording Keeping Q&A1]

[ESMA_QA_787](#)

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16/12/2022

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[Additional Information](#)

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT multilateral trading facility (DLT MTF)

Additional Legal Reference

RTS 23

Subject Matter

Financial Instruments Reference Data

Question

How should Field 6 of RTS 23 “Trading venue” be populated for instruments being traded on the DLT MTF or on the TSS?

ESMA Answer

16-12-2022

Original language

Field 6 of RTS 23 should be populated with a separate segment MIC pertaining to the DLT MTF or TSS.

[DLT Financial Instruments Reference Data Q&A2]

ESMA_QA_786

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16/12/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

RTS 23

Subject Matter

Financial Instruments Reference Data

Question

How should the “Instrument identification code” fields (Table 2, Field 41 of RTS 22 and Table 3, Field 1 of RTS 23) be populated for DLT financial instruments that are the digital representation of a previously issued financial instrument?

ESMA Answer

16-12-2022

Original language

[DLT Financial Instruments Reference Data Q&A 1]

As a general principle, if the characteristics of the financial instrument are the same as its digital representation and the only difference is the technology used for creating the respective instruments, then the ISIN of both should be the same. This would be because the ISIN allocation principles in the ISO 6166:2021 standard are technology-agnostic, meaning that the type of technology used for issuance should not give rise to a different identification and classification system.

However, the assignment of the same ISIN is also dependent on whether the issuer of the traditional financial instrument considers that its tokenised version is fully “fungible” with the former, within the meaning of ANNA’s “ISIN uniform guidelines”. Thus, the issuer should inform the NNA about all the characteristics of the new instrument and advise the NNA as to whether the same ISIN of the traditional financial instrument or a new ISIN should be allocated.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

MiFID RTS 22

Subject Matter

Transaction reporting

Question

According to Article 26(5) of MiFIR, TVIs shall report on behalf of firms that are not subject to the transaction reporting regime. In a DLT MTF or TSS operating under the DLT Pilot regime, the DLT MTF or DLT TSS may admit natural persons as members executing transactions. How should DLT MTFs or DLT TSS report on behalf of natural persons that are not subject to Article 26 of MiFIR?

ESMA Answer

16-12-2022

Original language

[DLT Transaction reporting Q&A 6]

In case the reporting exemption[\[1\]](#) is granted by the NCA to the DLT MTF/TSS in the context of the DLTR, NCAs can request the DLT MTF/TSS to provide the access to all relevant data concerning natural persons executing transactions.

NCAs should request as a compensatory measure that DLT MTFs/TSSs provide the relevant regulatory information through an adapted version of RTS 22. The adapted RTS 22 template would require DLT MTFs/TSSs to populate its LEI in Field 4 “Executing entity identification code” and, given that natural persons are expected to always trade on own account on these platforms, the template would require the National ID[\[2\]](#) of the natural person executing the transaction to be populated in the respective Field 7 “Buyer identification code” and/or Field 16 “Seller identification code” as described in the tables below[\[3\]](#).

Field

Values

Example 1

4	Executing entity identification code	{LEI} of the DLT MTF/TSS
5	Investment Firm covered by Directive 2014/65/EU	TRUE
6	Submitting entity identification code	{LEI} of the DLT MTF/TSS
7	Buyer identification code	{National_ID} of the natural person
9	Buyer – first name	{ALPHANUM-140}
10	Buyer – surname	{ALPHANUM-140}
11	Buyer – date of birth	{DATEFORMAT}
16	Seller identification code	{MIC} of DLT MTF/TSS
29	Trading capacity	'AOTC'
59	Execution within the firm	'NORE'

Example 2

4	Executing entity identification code	{LEI} of the DLT MTF
5	Investment Firm covered by Directive 2014/65/EU	TRUE
6	Submitting entity identification code	{LEI} of the DLT MTF/TSS
7	Buyer identification code	{MIC} of DLT MTF
16	Seller identification code	{National ID} of the natural person

18 Seller – first name	{ALPHANUM-140}
19 Seller – surname	{ALPHANUM-140}
20 Seller – date of birth	{DATEFORMAT}
29 Trading capacity	'AOTC'
59 Execution within the firm	'NORE'

[1] ESMA Report on DLT Pilot regime. Paras 141: ESMA considers that while private individuals will not be subject to transaction reporting, a legal gap remains due to the fact that MiFIR Article 26(5) imposes an obligation on Trading Venues to report transactions on behalf of “firms” and not “natural persons”. A solution to address this gap would be for NCAs to grant the reporting exemption and request DLT MTFs to give access to all relevant data concerning natural persons executing transactions as a compensatory measure in exchange for the exemption.

[2] The concept of National ID in the transaction reporting regime is defined by RTS 22 Article 6. Annex II in RTS 22 provides the national client identifiers for natural persons to be used in transaction reports.

[3] ESMA Report on DLT Pilot regime. Paras 161: “a more robust solution to address this information gap that would not imply system changes affecting the whole market would be for NCAs to grant the reporting exemption and request DLT MTFs to give access to an adapted version of the RTS 22 template which would allow for the LEI of the DLT MTF to be included in the executing entity field while the IDs of natural persons would be populated in the respective buyer/seller fields as a compensatory measure in exchange for the reporting exemption.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

MiFID RTS 22

Subject Matter

Transaction reporting

Question

How should Field 3 “Trading venue transaction identification code” (TVTIC) of RTS 22 be populated in case the entity executing the transaction is a natural person and not an investment firm?

ESMA Answer

16-12-2022

Original language

Irrespective of whether an exemption from reporting was granted or not, DLT MTFs/TSS have an obligation under Article 12 of RTS 24 to maintain an individual transaction identification code for each transaction resulting from the full or partial execution of an order. As described in Field 3 of RTS 22, this number should be disseminated to both the buying and the selling parties regardless of whether such parties are investment firms or natural persons. Therefore Field 3 of RTS 22 must be populated also in case the entity executing the transaction is a natural person.

[DLT Transaction Reporting Q&A 5]

[ESMA_QA_783](#)

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[Additional Information](#)

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

MiFID RTS 22

Subject Matter

Transaction reporting

Question

Should DLT MTFs/TSS populate Field 40 – Complex trade ID of RTS 22?

ESMA Answer

16-12-2022

Original language

Irrespective of whether an exemption from reporting was granted or not, Field 40 “Complex trade ID” should not be populated because strategies do not fall into the scope as defined in Article 3(1) of the DLT Pilot regime

regulation^[1].

^[1] ESMA Report on DLT Pilot regime. Paras 184: ESMA clarifies that this field does not apply in this context because strategies do not fall within the DLT Pilot scope.

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Additional Information

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Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

MiFID RTS 22

Subject Matter

Transaction reporting

Question

How should a DLT transaction fee be considered in the context of populating Field 33 “Price” of RTS 22?

Should DLT transaction fees be included in the price related fields?

ESMA Answer

16-12-2022

Original language

Irrespective of whether an exemption from reporting was granted or not, DLT MTFs should not include DLT transaction fees in the price information, they should not be treated as commissions. Therefore Field 33 “Price” should reflect only the traded price of the transaction.

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Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

MiFID RTS 22

Subject Matter

Cancellations and corrections

Question

How should DLT MTFs/TSS ensure that cancellation and/or corrections are correctly reflected in the data to be provided to NCAs?

ESMA Answer

16-12-2022

Original language

DLT MTFs/TSSs operating multilateral trading systems on the distributed ledger (i.e., on-DLT), which benefit from the reporting exemption, could explore with their NCA the possibility of providing only the definitive version of the transactions after validation and recording on the ledger^[1].

DLT MTFs operating multilateral trading systems whereby some transactions in DLT financial instruments are executed outside the distributed ledger should have arrangements in place to ensure that the right sequencing as per traditional reporting under RTS 22 is respected (i.e., NEWT/CANC/NEWT)^[2]. The principles outlined in section 5.18 of the Guidelines on transaction reporting do apply to these DLT MTFs regardless of whether an exemption from reporting was granted or not.

DLT TSSs operating multilateral trading systems exclusively outside the distributed ledger (i.e., off-DLT) should have arrangements in place to ensure that the right sequencing as per traditional reporting under RTS 22 is respected (i.e., NEWT/CANC/NEWT)^[3]. The principles outlined in section 5.18 of the Guidelines on transaction reporting do apply to these DLT TSSs regardless of whether an exemption from reporting was granted or not.

^[1] ESMA Report on DLT Pilot regime. Paras 150: following the feedback received during the subsequent workshop with the respondents to the CfE (see Annex 1 of this Report), the cancellation under the traditional sequential reporting process might not be the most efficient approach in the context of the reporting exemption. Granting the reporting exemption and having direct access to DLT data will allow regulators to explore alternative approaches to the sequential cancellation process.

^[2] ESMA Report on DLT Pilot regime. Paras 149: DLT infrastructures that do not request the reporting exemption should have systems in place to ensure that the right sequencing is respected.

^[3] ESMA Report on DLT Pilot regime. Paras 149: “DLT infrastructures that do not request the reporting exemption should have systems in place to ensure that the right sequencing is respected”.

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Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic

DLT Pilot Regime

Additional Legal Reference

Article 26 RTS 22

Subject Matter

Transaction reporting

Question

a. How does the reporting obligation under MiFIR Article 26 and RTS 22 apply to transactions in DLT financial instruments?

b. Is there any lead-time envisaged to comply with such obligation or does it apply as soon as a DLT MTF/TSS is granted the permission to operate?

ESMA Answer

16-12-2022

Original language

a. In its [Report on the DLT Pilot Regime](#), ESMA concluded that at this stage RTS 22 does not need to be amended to be effectively applied also to securities issued, traded, and recorded on DLT. Therefore, unless an exemption from MiFIR Article 26 is requested as foreseen in Article 4 of the DLTR^[1], the obligations under MiFIR Article 26 and RTS 22 apply in full to DLT MTFs or TSSs and its members in relation to transactions in DLT financial instruments executed on DLT MTFs/TSS. DLT MTFs or TSS should report transactions on behalf of firms that are not subject to MiFIR pursuant to Article 26(5) MiFIR.

In addition, as the scope of the exemption from reporting can only cover the DLT MTF or TSS and its members, the obligations under MiFIR Article 26 and RTS 22 continue to apply to any investment firm that is not a member of the DLT MTF or TSS and is carrying out transactions in a DLT financial instrument under the DLTR irrespective of whether or not such transactions are ultimately executed on the DLT MTF or TSS. For examples of how transactions should be reported to NCAs depending on the specific trading scenario, investment firms executing transactions in DLT financial instruments and DLT MTFs/TSSs should refer to the [ESMA Guidelines](#) on MiFIR transaction reporting, order record keeping and clock synchronisation and [ESMA Q&As](#).

b. Unless an exemption from MiFIR Article 26 is granted, the reporting obligation applies as soon as the DLT-MTF/TSS is granted the permission to operate, no implementation lead-time is envisaged.

[\[1\]](#) Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1)

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