CONSOB

Initial Coin Offerings and Crypto-Assets Exchanges

Call for evidence

19 march 2019

Interested parties are welcome to submit their comments to the call for evidence:
on-line via

SIPE – Integrated system for external users,

or at the following address:

C O N S O B
Divisione Strategie Regolamentari
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Comments should reach us by **5 June 2019**.
Comments received will be published on Consob website unless a specific request for nondisclosure is made.

INTRODUCTION

This Discussion Paper aims to launch debate at the national level on Initial Coin Offerings (ICOs) and Crypto-Assets Exchanges, as detailed hereinafter, in connection with the recent spread of ICOs and therefore, of crypto-assets invested in by Italian investors. Pending the establishment of a shared European orientation on the legal qualification of crypto-assets and in particular, their possible qualification as securities, CONSOB, as the Authority responsible for investor protection according to the duties and powers conferred on it by the law, is sensitive to this relevant topic.

The Discussion Paper is addressed to the following categories of potentially concerned entities: investors, issuers of crypto-assets, entities that intend to promote crypto-asset offerings that target Italian investors or have as their purpose the promotion of crypto-asset related products/services, entities trading crypto-assets, entities providing crypto-asset safekeeping services, professional financial intermediaries, managers of trading venues, crowdfunding portal managers, financial trade associations, Authorities, consumers and consumer associations, professionals and professional firms, and the academia.

The Discussion Paper is organised as follows: section 1 provides a synthetic representation of the spread of ICOs and related aspects that are of interest to CONSOB; section 2 is a first attempt to identify the constituent elements of the phenomenon at issue; section 3 outlines a possible regulatory approach to offerings of newly-issued crypto-assets; finally, section 4 outlines a possible regulatory approach to the subsequent stage in which the issued crypto-assets are traded and distributed to the public of investors.

CONSOB is interested in receiving comments and proposals on the topics discussed herein - in particular with regard to the proposed definition and the ad-hoc regulatory approach - on the occasion of a Public Hearing whose date and place will be announced on CONSOB website after the publication of this document.

1. BRIEF DESCRIPTION OF THE PHENOMENON

The rapid evolution and spread of Initial Coin Offerings (ICOs) are relevant and important to CONSOB's institutional purposes, because both primary offerings of crypto-assets (or tokens) and crypto-assets themselves may be characterised by elements that make them significantly similar to public offerings of financial instruments/products. It should be added that the representation of legal relationships through a 'token' (the so-called 'tokenisation') shows some similarity to the 'securities creation' mechanism, i.e., the embedding of the subscriber's rights in a certificate which entitles its holder to exercise subscriber rights, and which is a tool for facilitating transfer of these rights. Tokens are actually intended to be traded in exchanges, or in other words, in 'secondary markets' in which initial subscribers may disinvest or realise any capital gain or loss (in tokens) that are not always and only linked to the funded entrepreneurial initiatives, but are also linked to the supply and demand mechanism in the trading facility.

Most ICOs[1] are issued for the funding of an activity/project. Tokens may be issued by companies, natural persons or networks of product developers. Very often, the company's business activity is merely in the phase of being planned (more or less organised start-ups), and the production of goods/services is scheduled to start after the end of funding.

An Initial Coin Offering is similar in substance to an Initial Public Offering as both aim at raising capital from the public made up of a potentially undetermined number of investors, and involves a set of activities aimed at promoting/advertising the offering itself. Compared to conventional offerings of financial instruments, ICOs are characterised by the following:

- Use of blockchain technology, which allows to disintermediate the typical capital markets infrastructure (e.g., custodian banks, underwriters, secondary markets);
- The means of payment used for the transaction settlement, as payments for purchasing tokens are made in crypto-currencies (e.g., Ethereum, Bitcoin) instead of fiat currency;
- They are advertised and promoted via the World Wide Web, which allows promotion and funding at a cross-border level, with no territorial constraints either for the issuer or the promoter;
- The publication of a so-called 'white paper' in place of a prospectus, describing the main characteristics of the investment scheme and the object of the offering.

Due to their characteristics, some types of token may qualify as financial instruments or, as financial products (investment tokens or security-like tokens). Other tokens present a variable mix of characteristics and are therefore called 'hybrid tokens'; these are the most difficult to discuss and qualify in the light of the current regulatory framework. In particular, this last set of tokens may have a remarkable financial content, in addition to being placed to retail investors via public offerings.

In the light of the foregoing, it is appropriate to launch a reflection on the topics and approaches presented hereinafter, taking into account the following:

- The initiatives that are being designed and developed by the industry for funding businesess by investor solicitation, in the form of ICOs with the issue of tokens against payments in crypto-currencies; these tokens will then be exchanged on trading platforms both in Italy and abroad;
- The initiatives of some market operators (the so called "incumbents") who are developing ways to diversify their activities, offsetting up trading facilities where tokens can be exchanged;
- The fact that ICOs are increasingly addressed to the general public of retail investors, but where, the tokens issued do not qualify as financial instruments or financial products, they are not subject to investor protection rules and regulations.

[1] The expression 'Initial Coin Offering' initially only referred to issues of crypto-currencies (e.g., Bitcoin, Ethereum), and today it is used to identify any offering of tokens which do not necessarily represent a crypto-currency but however embed various rights and can be purchased against payment either in fiat currency or crypto-currency.

Initiatives at the European level

This Discussion Paper takes into account the most recent initiatives on ICOs undertaken both at the European level and in the Member States.

At the European level, ESMA published an Advice (https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf) for the European Commission concerning in particular the issues related to the application of investment services legislation to tokens that qualify as financial instruments. The said document also addresses in summary the topic of tokens that do not qualify as financial instruments suggesting a specific regulation, without however does not propose univocal regulatory solutions.

As far as the single Member States are concerned, the most significant initiatives have been undertaken in France, the United Kingdom and Malta.

In France, in relation to the specific regulations introduced in 2014 for products other than MiFID financial instruments (called '*biens divers*'), on October 26, 2017, the AMF published a Discussion Paper with specific reference to ICOs (https://www.amf-france.org/en_US/Actualites/Communiques-de-presse/AMF/annee-2017?docId=workspace%3A%2F%2FSpacesStore%2F5097c770-e3f7-40bb-81ce-db2c95e7bdae) and subsequently, on February 22, 2018, published a summary document on the responses received as the outcome of market consultation (https://www.amf-france.org/en_US/Publications/Consultations-publiques/Archives?docId=workspace%3A%2F%2FSpacesStore%2Fa9e0ae85-f015-4beb-92d2-ece78819d4da). In the aforementioned document, the French Authority identified a regulatory approach based on an optional authorisation scheme. This hypothesis envisages that ICO promoters may: (i) decide to apply for authorisation with the AMF, which will then issue its approval; or conversely, ii) decide not to apply for authorisation with the AMF. According to this approach, offerings without a formal authorisation would not be prohibited, but when proposed in France they should necessarily include a warning clearly stating that they have not been authorised by the AMF.

On October 2018 the joint task force for crypto-assets created in the United Kingdom between HM Treasury, Financial Conduct Authority (FCA) and the Bank of England, drew up a report in which it examined the risks and potential benefits of crypto-assets and the use of Distributed Ledger Technology and illustrated the Authority's action plan. Following the said document, on January 23, 2019, the FCA launched a public consultation (which will close on April 5) on the *Guidance on Crytpoassets* (https://www.fca.org.uk/publications/consultation-papers/cp19-3-guidance-cryptoassets) with the aim of clarifying to market operators what the regulations applicable to the different types of crypto-asset.

On July 4, 2018, the Maltese Parliament approved the new law, '*AN ACT to regulate the field of Initial Virtual Financial Asset Offerings and Virtual Financial Assets and to make provision for matters ancillary or incidental thereto or connected therewith*' (http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29079&l=1). In summary, the new Maltese legal framework requires operators to carry out a test to check the following: 1) if the tokens are 'virtual tokens', to which no financial market regulation applies; 2) if tokens not belonging to the said category 1 are qualified as MiFID financial instruments to which EU legislation applies; 3) if tokens not belonging to categories 1 or 2 can be considered as virtual

financial assets to which new and specific rules concerning offerings (Prospectus), Market Abuse and investment services apply. According to the analysis made by the Maltese Authority (MFSA), certain types of offerings would be likely to fall within the perimeter of current legislation on financial services, and in particular the law on investment services (ISA); however, numerous other offerings would remain non-regulated, because they do not fall within the current regulatory framework.

2. DEFINITORY ASPECTS

Definitory aspects suitable for typifying crypto-assets other than financial instruments as an independent category, are an important element for outlining a regulatory approach to the matter. Definitory aspects are important in order to give certainty to addressees; they are also important to neutralise any elusive objective that may underlay the engineering of tokens that do not qualify as financial instruments but may still present elements susceptible to subsume the domestic notion of financial product, with latter understood as an investment of a financial nature that is different from other instruments.

It should be preliminarily reminded that through its supervisory activities, CONSOB has contributed to qualify the domestic notion of financial product. In its pronouncements (publication of replies to queries, as well as suspension, prohibition and sanctioning measures), CONSOB has clarified that so called investments of a financial nature part of the financial product category consist of investment schemes involving the three following elements: *(i)* the investment of capital; *(ii)* the promise/expectation of a financial return[2]; and *(iii)* the assumption of a risk directly connected and related to the investment of capital.

To cope with the progressing of financial innovation, CONSOB has further specified these positions over time, up to identifying the following additional elements for assessment, in order to determine whether a transaction has the distinctive elements of an "investment of a financial nature":

a) Prevalence of the financial aspects over the material benefits related to the availability of the asset acquired with the transaction;
b) '*actual and predetermined promise, upon the establishment of the contractual relationship, of a return connected to the asset*', with such a promise suggesting that '*the expected increase in the value of the capital invested (and the related risk) is intrinsic to the transaction itself*', which is different from the mere appreciation of the asset over time, thus accessing the cause of the underlying contract[3].

In the case of tokens, the 'returns' are usually promised are not clearly linked to a 'financial return' (with the latter being an essential requirement for a 'financial product'; cf *supra*). According to the characteristics of the tokens offered, the ICOs may raise in investors the expectation of an economic return consisting, in broad terms, of the following: *(i)* direct income (returns linked to the

[2] Intended as an increase of the invested money, with the investor providing money as his/her only contribution. *Cf* Cass. Sect. II Civ. Jdg. no. 2736 of 2013 according to which, '*The contract cause is financial* [when] *the reason underlying the contract - and not simply the internal reason of the contract, which is not relevant for qualification - consists precisely of the investment of capital (the 'blocking' of the invested money) in view of an increase of the invested amount, with the investor providing money as his/her only contribution*'.
[3] Cf Communication no. DTC/13038246 of May 6, 2013.

development of revenues, the volumes of goods and services sold, or profits from the business); *(ii)* indirect income, related to the potential appreciation of the tokens when traded in dedicated exchanges (appreciation may depend on the positive performance of the business or on the market dynamics only).

Box 1

With regard to the foregoing - and having clarified that we are involved in a process of establishing definitions outside the perimeter of financial instruments and investment products (PRIIPs, PRIPs and IBIPs) as designed by the EU legislator - it seems viable to define '*crypto-assets*' in such a way as to focus on their nature of *digital recordings representing rights related to investments in entrepreneurial projects.* In order to understand, in particular, the peculiarity of the use of Distributed Ledger Technology (DLT) or Blockchain Technology, the aforesaid digital recordings should be *created, kept and transferred by means of Distributed Ledger Technology*, and this technology should allow *the identification of the holder of the rights* relating to the investments underlying or embedded into the crypto-assets. At last, the category should only include those crypto-assets that are *intended to be traded or are traded in one or more trading systems.*

In other words, without prejudice to the presence of the investment element (common to financial products and instruments), the hallmarks of crypto-assets are the following:
- Use of innovative technologies of the blockchain type, in order to embed the rights of those who invested for funding the underlying entrepreneurial project; and
- The ultimate purpose of the subsequent trading of tokens (crypto-assets), whose transferability is also closely connected to the technology used, i.e., its ability to record and maintain evidence of the ownership of the rights connected with the crypto-assets traded.

With particular regard to the aspect of technology, it is appropriate to recall that according to the definition dictated by the national legislator on the occasion of the adoption of the so-called 'Simplification Decree' (Decree-law no. 135 of December 14, 2018), *'Distributed Ledger Technology':* [means] *IT technologies and protocols that use a ledger that is shared, distributed, replicable, simultaneously accessible and with an architecture decentralised on cryptographic bases; these IT technologies and protocols allow the recording, validation, updating and storage of data in a non-encrypted form as well as in an encrypted form for additional protection, allowing verification of data by every participant, with data remaining non-alterable and non-editable.*

The advantage that CONSOB attaches to the identification of an ad-hoc category - different from that of financial products - is connected, in the first place, with the possibility to limit the burden - on both the market and the Authority - of conducting case-by-case analyses for checking for the presence or absence of the typical characteristics of investment of a financial nature. Furthermore, the provision of special regulations on crypto-assets allows to tackle the matter while taking in account its peculiarities, and therefore avoids the promoters of these schemes (issuer/offerer/proponent) to be subjected to the applicable national legislation (on prospectuses and remote marketing) when their offerings present the characteristic elements of financial products (i.e., of investments of a financial nature other than financial instruments). This of course, provided that dedicated platforms supervised by CONSOB and meeting the relevant requirements are used.

For example specific prospectus formats currently available for the different types of financial instruments do not allow adequate representation neither of the issue of the tokens nor of the characteristics of the issuer. Moreover, the token issuer is often involved in a very initial stage of the related business project, but this very initial stage may be relevant regardless of whether it already results in a true business activity.

As regards the definition of 'crypto-assets', it is understood that part of the investment falling into the new 'crypto-assets' category may also include the defining elements of financial products (as defined in Article 1, paragraph 1, letter u), of the Consolidated Law on Finance), since in any case, they are characterised by an investment of financial capital, the assumption of the related risk and the expectation of a return. In such cases, the peculiarity of the distinctive/defining characteristics of crypto-assets suggests that investments other than financial instruments and packaged investment and insurance-based investments products should be included in the ad-hoc category of crypto-assets, and subjected to the same regulations, thus exempting them from the rules set forth by the Consolidated Law for financial instruments. Differently, when a crypto-asset clearly and indisputably qualifies as a financial instrument (as regulated by the MiFID) or an investment product (PRIIP, PRIP and IBIP), the related issue, trading and post-trading activities should obviously be subject to the EU provisions applicable to financial instruments and investment products, as these provisions are higher in hierarchy of sources of law.

Q1: Do you agree with the definition of '*crypto-assets*' in Box 1? Does this definition capture the relevant specificity of crypto-assets with respect to the approach outlined in this document?

Q2: In particular, do you agree about the centrality of the finalisation of the funding of entrepreneurial projects, the use of Distributed Ledger Technology and the ultimate objective of trading of crypto-assets in special trading platforms?

Q3: Does this definition clearly exclude those crypto-assets that do not fall within the scope of the approach outlined herein (i.e., pure-commodity tokens not intended for trading on secondary trading facilities, securities /financial instruments as codified by EU regulations)?

Q4: The regulations applicable to financial instruments and products provide for entry rules aimed at grading the various investor protection arrangements. Do you agree with the opportunity of establishing, for regulated crypto-assets, that specific regulations shall not provide for, e.g., threshold values for exemptions (for issues below the thresholds), or additional arrangements (for issues above the thresholds)?

3. CRYPTO-ASSET OFFERING PLATFORMS

A suitable regulatory framework should be created for the conduct of offerings upon the issue of crypto-assets, which normally takes place in a blockchain context (better known as Distributed Ledger Technology), with the aim of reaching a wide public of buyers/investors. The aforementioned regulatory framework would therefore be aimed at protecting potential buyers, at least with reference to the characteristics of the issuers of crypto-assets and to the public availability of adequate information on the entrepreneurial projects for which investment is solicited (cf *infra*).

Box 2

Considering it functional to defining the said regulatory framework on offerings, the following definition is proposed of the venue in which offerings should be conducted:

'*crypto-asset offering platform*': an online platform exclusively aimed at the promotion and conduct of offerings of newly-issued crypto-assets.

At present, at the domestic level, the operators that are in the best position to offer professional assistance for the offering of crypto-assets to a potentially undetermined number of investors are the crowdfunding portal managers authorised pursuant to Article 50-*quinquies* of Legislative Decree no. 58 of 1998 (Consolidated Law on Finance), whose activity is regulated by CONSOB Regulation no. 18592 of June 26, 2013 (Crowdfunding Regulation).

It might also be envisaged the possibility for crypto-asset offering platforms to be managed by different entities that meet the subjective requirements established for the aforesaid category of crowdfunding portal operators. This would be aimed at not precluding the development of alternative business models, i.e., business models in which the manager entity intends to specialise, provided that it meets subjective requirements similar to those considered reasonable for crowdfunding portal managers; this only for the sector of Initial Coin Offerings.

Box 3

In such a framework, the entities already authorised for crowdfunding portal management could be allowed to manage crypto-asset offering platforms, provided that they priorly inform CONSOB (which is responsible for managing applications for authorisations from the said entities), and provided that the activity connected with the promotion of crypto-asset offerings is somehow kept separate from that connected with crowdfunding offerings (e.g., the manager may be required to set up and manage separate platforms for the two activities).

Other entities which may be authorised to manage crypto-asset offering platforms on an exclusive basis, would still be bound to meet subjective requirements similar to those provided for the crowdfunding portal managers.

Moreover, the said entities - as well as portal managers authorised by CONSOB (other than banks and investment firms), which would see an extension of the scope of the activities they are authorised to carry out - should also be required to implement information, procedural, organisational and control arrangements properly structured and proportionate to the risks underlying their 'new' operations, for the purpose of investor protection.

As regards the issuers of crypto-assets, as explained above they can be companies, natural persons or networks of product developers; very often, the company's business activity is merely in the phase of being planned (more or less organised start-ups). In this regard, the issue arises of the characteristics of the said entities and the assessment of possible minimum requirements to be imposed, and their type, for these entities to be eligible candidates for authorisation to the promotion of related offerings on the platforms in question. Therefore, the detail requirements could include suitable arrangements for the selection of entrepreneurial projects deserving access to the platform for the promotion of the relative crypto-asset offerings, as well as rules of conduct that the entities managing crypto-asset offering platforms would be bound to respect in their relationship with investors.

It is also important that platform managers require issuers of crypto-assets to provide all information necessary to enable potential investors to form a judgement on the proposed investments. In this context, it would be advisable to properly standardise information on offering transactions, also in order to allow comparison between the different offerings.

Additional details may be identified to ensure continuity and IT security of the offering platform operation (especially considering the fact that the platform would use blockchain technology, as actually happens based on our findings in real cases).

CONSOB has questioned on the possibility of imposing such a regime for any offering promoted in Italy, coming however to the conclusion that, in this phase in which the phenomenon is evolving rapidly, any attempt to crystallise it into a rigid pre-determined regime entails the risks of not seizing the opportunity that it would represent for the capital market, as well as the risk of only having a static picture that does not enable to follow the constant evolution of the phenomenon. Nevertheless, in order to respond to those who intend to approach this phenomenon in the context of a regulatory framework of reference which guarantees investor protection while also clearly outlining the perimeter of the responsibilities of the parties that design, issue and promote crypto-assets, the Authority consider it useful to design a regime that by virtue of an opt-in mechanism allows to the investment scheme promoter (issuer/offerer/proponent) to choose to use a dedicated platform (meeting the requirements outlined above) for addressing the public of investors within a regulated framework.

As a consequence, offerings promoted outside the regulated platforms would still be lawful (provided that they present no aspects that could be considered as abuse within the meaning of the Consolidated Law on Finance, should the token subsume the notion of financial product). These offerings, however, would be clearly recognisable by the general public as deprived of the protection provided for by the applicable regime to the offerings that, by the will of the issuer/offerer/proposer, are proposed within the regulated offering facility.

A form of incentive to accessing offering facilities that guarantee regulatory protection could be represented by the provision of a derogation from the application of the regulations on public provision and remote marketing in parallel with the application of the special regime to crypto-asset offerings that subsume the domestic notion of financial product.

It is understood that, after having applied for authorisation to manage crypto-asset offering platforms, both the platforms and their managers would be subject to supervision by CONSOB. Supervision would therefore be extended to include the offerings promoted on the said platforms.

For the sake of completeness, it should be finally pointed out that any special offerings on crypto-asset offering platforms managed by entities authorised by CONSOB to do so, and whose object however subsumes the characteristics of financial instruments, would be subject to supervisory assessment in order to verify their compliance with applicable EU regulations (Prospectus, MiFID II, etc.). In this hypothesis, any infringement of the reference regulations by the platform manager (i.e., infringement of ad-hoc rules on the management of crypto-asset offering platforms and provisions on the provision of investment services and activities involving financial instruments) would be responded to with appropriate sanctioning remedies of the administrative type as well as of the criminal type (cf rule on unauthorised activity in Article 166 of the Consolidated Law on Finance). Moreover, the issuer/offerer/proponent would be directly exposed to the liability arising from non-compliance with the regulations on door-to-door selling and the prospectus (when the conditions for their application are fulfilled, i.e., in the event of an offering of financial instruments that does not come under the possible cases for exemption provided for in Article 100 of the Consolidated Law on Finance).

Q5: Do you agree with the proposal to extend the range of activities that can be carried out by crowdfunding portal managers to also include promotion of newly-issued crypto-asset offerings? Please provide motivations and/or supporting data for identifying possible synergies/opportunities that may arise from the conduct of both activities, or with respect to any reasons for opposition.

Q6: Do you agree with the proposal to extend the possibility to manage crypto-asset offering platforms even to entities that have been exclusively operating in the field the crypto-assets from the outset (i.e., entities that have not already begun operating as managers of crowdfunding portal with CONSOB authorisation)?

Q7: Can the approach outlined for the conduct of offerings upon new issues of crypto-assets effectively reconcile the characteristics of the phenomenon in question with investor protection needs and requirements? In particular, do you agree with the hypothesis of an opt-in regime, structured as described in the foregoing?

Q8: Do you consider it appropriate, in view of greater investor protection, to establish a close link between the offering of newly-issued crypto-assets - conducted through supervised platforms - and their subsequent access to a dedicated trading system that is subject to regulation and supervision (cf following section)?

Q9: In your opinion, what are the minimum requirements that issuers of crypto-assets should meet for their crypto-assets to be admitted to trading?

4. CRYPTO-ASSET TRADING SYSTEMS

The regulatory proposals discussed herein have as their subject crypto-assets that, in the initial placement phase, are directly transferred by issuers to subscribers through blockchain technology and can subsequently be disinvested through dedicated trading systems. Based on that already seen in reality, these systems are functional to facilitate - according to business models that, indeed, are often diversified - the matching of demand and supply (trading) as well as the safekeeping and transfer of tokens (post-trading). Usually, platforms that allow the trading of tokens are referred to as 'exchanges', whereas the safekeeping and the transfer of tokens occurs via 'wallets'. The two concepts are often superimposed as exchanges very often also operate as wallet providers.

With reference to the business models that characterise the trading phase, a main distinction is that between platforms organised with a true *trading book* for matching orders ('platform with order book'), and platforms that allow direct trading between the parties (direct or P2P trading). Finally, there are platforms in which the traders - similarly to that which happens on the systems of 'systematic internalisers' of financial instruments - exclusively trade with the platform manager (dealer), which organises an 'own book' (dealer type model).

As regards the aspects related to the safekeeping and transfer of tokens, investors use digital wallets, i.e., computer systems that allow both to keep private and public keys that identify each user in the blockchain, and to interact within the distributed ledger to check/transfer one's own tokens[4].

The operational model that is currently dominant is that of the so-called centralised platforms, which operate both as trading platforms as well as wallet providers. To participate in trading, investors transfer their crypto-assets (and in certain cases, fiat currency) to the trading platform, which records these activities in the accounts it keeps - on behalf of the investors - on its own database (and therefore outside the blockchain). In addition to this safekeeping service, the trading platform also acts as a ' settlement internaliser'[5], by recording on its own systems the transfer of tokens (and in case, fiat currency) consequent to trading. In this operating model, therefore, the trading activities do not generate any transfer of crypto-assets on the blockchain, which is updated only to record transfers that occur between investors and the exchange in the token deposit and withdrawal phases.

In the current state, the management and the operation of trading systems for the trading of crypto-assets that cannot be qualified as financial instruments, are not subject to any reservation of activity within the meaning of MiFIDII, nor to the relevant rules.

[4] The wallet can be: *(i)* managed by an entity acting as an intermediary between investors and the blockchain, or *(ii)* installed on a device owned by the investor. In the first case, private and public keys that allow one to check the tokens on the blockchain are managed by the wallet provider, which in fact operates as the depositary of the crypto-assets, whereas in the second case, the keys are kept directly by the investors, who have full control of their own tokens and personally send the settlement instructions to the blockchain.

[5] It should be noted in this regard that this expression is used herein as merely evocative, with no intention to qualify centralised trading platforms as settlement internalisers within the meaning of Regulation (EU) no. 909/2014 (CSDR).

Box 4

Under the definitory profile, the notion could therefore be codified of '*crypto-asset trading system*' as a set of rules and automated facilities which allow to collect and disseminate proposals for crypto-asset trading and to implement them, including via Distributed Ledger Technology.

This said, similarly to that indicated in the foregoing with regard to offerings of newly-issued crypto-assets, systems for the trading of crypto-assets that do not qualify as financial instruments but still have the required distinctive features, also require appropriate forms of control and regulation. Without replicating the regulatory system of MiFIDII/MiFIR, in the face of functionally similar activities (management of financial instrument trading venues and crypto-asset trading systems), it would therefore be useful to introduce regulations providing for minimum governance and operational requirements for the platforms in question (i.e., platform where crypto-assets are traded that do not qualify as financial instruments). As a point of balance between the need not to hinder innovation of the financial industry and to attract secondary markets of crypto-assets into the regulated area, a possible hypothesis approach is that of a system that does not create a true reservation of activities for the management of these trading systems (thus leaving it to their organisers to choose whether to submit or not to applicable regulations), but that at the same time creates an incentive to opt-in, which could consist of a close link with offerings (in the primary market phase) that have been conducted through dedicated and regulated platforms (cf *supra*).

In other words, the intended result of the double opt-in regime - i.e., the possibility of choosing the channel (regulated or non-regulated), possibility offered in the first place to the issuer/offerer/promoter and in second place, to the trading system operator - would be that of laying the foundations for final investors to make conscious choices, as final investors would be aware that investment schemes involving crypto-assets offered on regulated platforms and traded on regulated systems are more reliable than those offered in a non-regulated environment.

Even from the point of view of the incentive to trading facility operators to access a regulated system, the attribution of a special 'label' (consisting in the registration of the trading system with CONSOB for authorised trading of crypto-assets), should contribute to attract business/interest volumes for the further spread of ICOs. Last but not less important, the acquisition of the said 'label' could be a ground for interest also for incumbents.

Box 5

An hypothesis for regulation of the matter could envisage, on the one hand, admission to trading of only those crypto-assets that have been offered to the public through one or more dedicated crypto-asset offering platforms (see section 2 of this document) and, on the other hand, the registration of the crypto-asset trading system in a special register kept by CONSOB, upon request from the system operator and provided that the candidate system meets the following requirements:

(a) Has transparent and non-discriminatory rules and procedures for trading, the initial selection of crypto-assets, system access and identification of system participants;

(b) Has effective procedures in place to ensure that when a crypto-asset is launched for trading, the necessary, duly up-to-date information are available on the system for potential buyers/sellers;

(c) Has procedures in place for the identification and management of the risks to which the system is exposed;

(d) Has measures in place to facilitate the efficient settlement of the transactions conducted in the system (taking into account the fact that the said settlement and the attribution of ownership of crypto-assets would occur by blockchain technology);

(e) Has suitable organisation and operational arrangements (e.g., for operational continuity and IT security);

(f) Has suitable procedures in place for managing conflicts of interest;

(g) Has suitable rules and procedures for investment of financial resources as well as safekeeping of crypto-currencies and crypto-assets by the system operator.

Registration in the said register may be applied for by trading venue operators, managers of crowdfunding portals aimed at funding small- and medium-sized enterprises and social enterprises, managers of crypto-asset offering platforms as well as other entities that meet the ad-hoc subjective requirements established by CONSOB.

Even in this case, the crypto-asset trading systems, i.e., systems whose operators have opted in, would be subject to supervision by CONSOB to verify their compliance with the relevant subjective, organisational and operational requirements, as well for ensuring the orderly conduct of trading.

Taking account of the different business models actually used, it would be advisable to envisage that the trading systems at issue be equipped with specific rules and procedures for participant access and identification; this in order to make permissionless Distributed Ledger Technology - i.e., DLT that is freely accessible, including by anonymous users - not be usable by the system organisers (which are responsible for admission processes) for the management of the trading and transfers of crypto-assets onto the same ledger.

Q10: Is the proposed definition of 'crypto-asset trading system' suitable to understand the (currently known) business models used by crypto-asset trading facilities?

Q11: With regard to the requirements identified above, compliance with which is necessary for a system to be recognised as a crypto-asset trading system by CONSOB, are they sufficient to neutralise the risks inherent to the trading of crypto-assets?

Q12: With regard to the requirements identified above, compliance with which is necessary for a system to be registered in the register kept by CONSOB, are they sufficient to neutralise the risks related to the safekeeping of financial resources, crypto-currencies and crypto-assets on the part of the system, and are they sufficient for the efficient and safe settlement of the trading transactions carried out through the system?

Q13: What characteristics should the blockcha in present in order to en sure an adequate security lev el of the distributed ledger on w hich the cry pto-assets are recorded and transferred?

Q14: Do you agr ee with the decision to intro duce an opt-in mechanism for inclusion in the register of crypto-asset trading systems to be kept by CONSOB?

Q15: In connection w ith the possible introduc tion of a special reg ime for the issu e and trading of crypto-assets, aimed at investor pr otection, do you deem it appropriate that the Authorities should evaluate the possibi lity for a transitional r egime that w ould make it pos sible to con tinue trading already -issued tokens only on condition that the organiser of the tradin g system registered with CONSOB has verified that ad equate information on the tr aded tokens are made available to investors, and ar e duly publicised?