

Questions and Answers

On the implementation of 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

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1. Legislative references and abbreviations

1.1 Legislative references

CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
E-money Directive (EMD)	Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
MAR	Market Abuse Regulation – Regulation 596/2014 of the European Parliament and of the Council
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
Prospectus Regulation	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.
RTS 1	Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (Text with EEA relevance.)
RTS 2	Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (Text with EEA relevance).
RTS 22	Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

RTS 23

Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities

1.2 Abbreviations

CBDC	Central Bank Digital Currency
DLTR	DLT Pilot Regime Regulation - Regulation (EU) 2022/858 of the European Parliament and of the Council
ESMA	The European Markets and Securities Authority
ETF	Exchange Traded Fund
EU	European Union
FIGI	Financial Instrument Global Identifier
FIRDS	Financial Instruments Reference Data System
FITRS	Financial Instruments Transparency System
GLEIF	Global Legal Entity Identifier Foundation
ISIN	International Securities Identification Number
ITS	Implementing Technical Standards
LEI	ISO 17 442 Legal Entity Identifier
LIS	Large in Scale
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NT	Negotiated trade
OTC	Over-the-counter
OTF	Organised Trading Facility
OMF	Order Management Facility
PoS	Proof-of-stake
Q&A	Question and answer
RM	Regulated Market
RTS	Regulatory Technical Standard

SS	Settlement Systems
SSTI	Size specific to the Instrument
UCITS	Undertakings for Collective Investments in Transferable Securities

Table of questions

		Topic of the Question	Level 1/Level 2 issue	Last Updated
Transaction reporting	1	Scope of reporting obligations	MiFIR RTS 22	16/12/2022
	2	Cancellations and corrections	MiFIR RTS 22	16/12/2022
	3	Price and price currency	MiFIR RTS 22	16/12/2022
	4	Complex trade ID	MiFIR RTS 22	16/12/2022
	5	TVTIC	MiFIR RTS 22	16/12/2022
	6	Reporting of natural persons	MiFIR RTS 22	03/02/2023
Financial Instruments Reference Data	1	Instrument identification code	MiFIR RTS 23	16/12/2022
	2	Instrument full name	MiFIR RTS 23	16/12/2022
	3	Issuer for DLT financial instruments that are the digital representation of a previously issued financial instrument	MiFIR RTS 23	03/02/2023
	4	Issuer for DLT financial instruments that are directly issued using a DLT	MiFIR RTS 23	03/02/2023
Order Record Keeping	1	Submitter of the order natural person	MiFIR RTS 24	16/12/2022
Transparency	1	Instrument ID for transparency publication	MiFIR RTS 1 and 2	03/02/2023
DLT Financial Instruments	1	DLT shares valuation		
	2	Financial instruments issued using DLT [NEW]	DLTR	27/03/2023
			DLTR	02/06/2023
	3	Partial tokenisation [NEW]		
	4	UCITS, other than ETFs [NEW]	DLTR	02/06/2023
			DLTR	02/06/2023
	5	Collective investment undertakings represented by shares [NEW]	DLTR	02/06/2023
	6	SFTs [NEW]	DLTR	02/06/2023

DLT Market Infrastructures	1	DLT MTF and off-chain trading [NEW]	DLTR	02/06/2023
	2	DLT TSS services [NEW]	DLTR	02/06/2023
Cash Settlement	1	E-money tokens [NEW]	DLTR, MiCA, EMD	02/06/2023
	2	Exemptions from Article 40 CSDR [NEW]	DLTR, CSDR	02/06/2023
Exemptions from CSDR	1	Internalised settlement reporting Article 9 CSDR [NEW]	DLTR, CSDR	02/06/2023
	2	Book-entry form Article 3 CSDR [NEW]	DLTR, CSDR	02/06/2023

2. Introduction

Background

1. The final legislative text of Regulation (EU) 2022/858¹ was approved by the European Parliament and by the Council of the European Union on 30 May 2022. The text was published in the Official Journal on 2 June 2022 and entered into force on the twentieth day following this publication, i.e. on 22 June 2022. The DLT Pilot Regime will be applicable from 23 March 2023.

Purpose

2. The purpose of this document is to promote common supervisory approaches and practices in the application of the DLT Pilot Regime in relation to regulatory data reporting, trading and settlement topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of CSDR, MiFID II, MiFIR in the DLT Pilot Regime.
3. The content of this document is aimed at competent authorities and firms by providing clarity on the application of the CSDR, MiFID II and MiFIR requirements under the DLT Pilot Regime.
4. The content of this document is not exhaustive, and it does not constitute new policy.

Status

5. The questions and answers (Q&As) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 16b of the ESMA Regulation².
6. Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Groups or, where specific expertise is needed, with other external parties.
7. Where the question received requires interpretation of Union law, ESMA forwards the question to the European Commission. Replies from the Commission will be published on ESMA's website and included in Q&A documents, together with the explicit mention that the answer was provided by the Commission.
8. ESMA will review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and Recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

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)

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84)

9. **Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation²:** 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.

Questions and answers process

10. This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

3. Transaction Reporting [Last update: 03/02/2023]

Question 1 [Last update: 16/12/2022]

1. *How does the reporting obligation under MiFIR Article 26 and RTS 22 apply to transactions in DLT financial instruments?*
2. *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?*

Answer 1

1. 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 DLTR³, 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](#).

2. 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.

Question 2 [Last update: 16/12/2022]

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

Answer 2

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

³ 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)

providing only the definitive version of the transactions after validation and recording on the ledger⁴.

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)⁵. 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)⁶. 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.

Question 3 [Last update: 16/12/2022]

How should a DLT transaction fee⁷ be considered in the context of populating Field 33 “Price” of RTS 22? Should DLT transaction fees be included in the price related fields?

Answer 3

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.

Question 4 [Last update: 16/12/2022]

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

⁴ 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.

⁵ 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.

⁶ 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”.

⁷ ESMA report on the DLT Pilot regime, paras 145: the transactions recorded on a blockchain are immutable, so it is not possible to modify such records. To report a modification or a cancellation a new block should be created and a “gas fee” is requested to cover the costs arising from the creation of a new block. Gas fees (more generally “blockchain transaction fees”) are the costs to conclude a transaction on a DLT.

Answer 4

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 regulation⁸.

Question 5 [Last update: 16/12/2022]

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?

Answer 5

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.

Question 6 [Last update: 03/02/2023]

According to Article 26(5) of MiFIR, TVs 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?

Answer 6

In case the reporting exemption⁹ 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

⁸ 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.

⁹ 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.

code” and, given that natural persons are expected to always trade on own account on these platforms, the template would require the National ID¹⁰ 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 below¹¹.

#	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		

¹⁰ 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.

¹¹ 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.

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'

In the case no reporting exemption is granted, DLT MTF/TSS are not legally required to report the National ID of the natural person executing the transaction as part of the RTS 22 template.

4. Financial Instruments Reference Data [Last update: 03/02/2023]

Question 1 [Last update: 16/12/2022]

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?

Answer 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 issuance¹² 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”¹³. 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.

Question 2 [Last update: 16/12/2022]

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

Answer 2

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

Question 3 [Last update: 03/02/2023]

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?

Answer 3

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.

Question 4 [Last update: 03/02/2023]

¹² The term “issued” has to be understood within the meaning of the DLT Pilot regime and without prejudice to national requirements according to civil and corporate laws, it is for the market operators (including by liaising with competent authorities) to assess legal/practical difficulties and feasibility of different ways to issue or record securities on distributed ledger and, in any event, any such issuance would need to comply with applicable national rules.

¹³ Association of National Numbering Agencies “ISIN Uniform Guidelines relating to ISO 6166”, 9th edition of November 2020

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?

Answer 4

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 Regulation¹⁴ and, in case of depositary receipts, the entity which issues the debt instrument represented in line with MAR Article 3(1)(21).

5. Order Record Keeping [Last update: 16/12/2022]

Question 1 [Last update: 16/12/2022]

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?

Answer 1

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.

6. Transparency [Last update: 03/02/2023]

Question 1 [Last update: 03/02/2023]

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?

Answer 1

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)

¹⁴ 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.

when publishing post-trade information. The DTI would be reported as an optional additional field.

7. DLT Financial Instruments [Last update: 02/06/2023]

Question 1 [Last update: 27/03/2023]

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

Answer 1

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).

Question 2 [Last update: 02/06/2023] **[NEW]**

Are both of the modalities of issuing DLT financial instruments described below allowed under the DLTR?

- 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 DLTR.*

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

Answer 2 **[NEW]**

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

Both of the described modalities of issuance are indeed possible under the DLTR. 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.

Question 3 [Last update: 02/06/2023] [NEW]

Is partial tokenisation allowed under the DLTR? Does the DLTR 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 DLTR?

Answer 3 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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 DLTR does not explicitly prohibit partial tokenisation of an issuance. Moreover, when laying down the conditions for allowing derogations from CSDR in its Article 5(2), the DLTR 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), DLTR, whichever is applicable.

The DLTR does not explicitly address the question on whether any entity other than the issuer can tokenise part of an issuance. However, as noted, the DLTR 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 DLTR, nor is defined in the legislative acts that underlie it – CSDR and MIFID II. 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 DLTR 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 DLTR 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), DLTR, whichever is applicable.

Question 4 [Last update: 02/06/2023] [NEW]

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

Answer 4 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

Under MIFID II, 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), DLTR, 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 II 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), DLTR 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 II in order to be eligible for the DLT Pilot Regime.

Question 5 [Last update: 02/06/2023] [NEW]

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), DLTR, and hence assessed against the criteria in Article 25(4), point (a), of MiFID II?

Answer 5 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

Collective investment undertakings represented by shares fall within Article 3(1), point (c), DLTR. Article 3(1), point (c), DLTR 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), DLTR. 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 II 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), DLTR when they are UCITS using units or shares.

Question 6 [Last update: 02/06/2023] [NEW]

Are SFT transactions (SFTs) admissible on a DLT MTF/TSS? In particular, should Article 3(1), point (b), DLTR, 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?

Answer 6 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

Securities financing transactions are not admissible within the DLT Pilot. The DLTR 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 DLTR. 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 DLTR.

The fact that the DLTR 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.

8. DLT Market Infrastructures [Last update: 02/06/2023]

Question 1 [Last update: 02/06/2023] **[NEW]**

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?

Answer 1 **[NEW]**

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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.

Question 2 [Last update: 02/06/2023] **[NEW]**

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?

Answer 2 **[NEW]**

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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.

9. Cash Settlement [Last update: 02/06/2023]

Question 1 [Last update: 02/06/2023] [NEW]

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?

Answer 1 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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.

Question 2 [Last update: 02/06/2023] [NEW]

Do the applicants to the DLT SS/DLT 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?

Answer 2 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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.

10. Exemptions from CSDR [Last update: 02/06/2023]

Question 1 [Last update: 02/06/2023] [NEW]

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?

Answer 1 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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.

Question 2 [Last update: 02/06/2023] [NEW]

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?

Answer 2 [NEW]

Answer provided by the European Commission in accordance with article 16b(5) of the ESMA Regulation (please see the related Disclaimer in the Introduction section):

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.