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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.

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