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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.

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