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Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT financial instruments

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

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

ESMA Answer

08-03-2024

Original language

Recital 23 of DLTPR sets out that the reason for the limitation in the types of instruments eligible for admission to trading or recording on a DLT market infrastructure is to strike a balance between allowing innovation and experimentation in a sound regulatory environment and preserving investor protection, market integrity and financial stability.

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

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

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

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