

# 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

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 <sup>1</sup>
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, depository 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

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

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
<b>Transaction reporting</b>	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	<b>*new</b> Reporting of natural persons	MiFIR RTS 22	03/02/2023
<b>Financial Instruments Reference Data</b>	1	Instrument identification code	MiFIR RTS 23	16/12/2022
	2	Instrument full name	MiFIR RTS 23	16/12/2022
	3	<b>*new</b> Issuer for DLT financial instruments that are the digital representation of a previously issued financial instrument	MiFIR RTS 23	03/02/2023
	4	<b>*new</b> Issuer for DLT financial instruments that are directly issued using a DLT	MiFIR RTS 23	03/02/2023
<b>Order Record Keeping</b>	1	Submitter of the order natural person	MiFIR RTS 24	16/12/2022
<b>Transparency</b>	1	<b>*new</b> Instrument ID for transparency publication	MiFIR RTS 1 and 2	03/02/2023

## 2 Introduction

### Background

The final legislative text of Regulation (EU) 2022/858<sup>2</sup> 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

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.

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.

The content of this document is not exhaustive, and it does not constitute new policy.

### Status

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 Regulation<sup>3</sup>.

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.

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.

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

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<sup>2</sup> 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)

<sup>3</sup> 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)

Recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

## Questions and answers

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 DLTR<sup>4</sup>, 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?*

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<sup>4</sup> 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)

## 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 providing only the definitive version of the transactions after validation and recording on the ledger<sup>5</sup>.

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)<sup>6</sup>. 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)<sup>7</sup>. 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 fee<sup>8</sup> 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.

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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”.

<sup>8</sup> 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.

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

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

**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 regulation<sup>9</sup>.

**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**

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<sup>9</sup> 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.

In case the reporting exemption<sup>10</sup> 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 code” and, given that natural persons are expected to always trade on own account on these platforms, the template would require the National ID<sup>11</sup> 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 below<sup>12</sup>.

#	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}

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.

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		
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 issuance<sup>13</sup> 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”<sup>14</sup>. 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.

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<sup>13</sup> 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.

<sup>14</sup> Association of National Numbering Agencies “ISIN Uniform Guidelines relating to ISO 6166”, 9th edition of November 2020

**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]**

*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 Regulation<sup>15</sup> 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]**

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<sup>15</sup> 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.

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