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| 4 January 2022 |

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| Reply form for the Call for Evidence (CfE) on the DLT Pilot Regime |
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| Date: 4 January 2022 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Call for Evidence (CfE) on the DLT Pilot Regime for published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_DLTP\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_DLTP\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_DLTP\_ESMA\_REPLYFORM or

ESMA\_DLTP\_ANNEX1

***Deadline***

Responses must reach us by **4 March 2022.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | European Central Securities Depositories Association |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Belgium |

1. Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

<ESMA\_QUESTION\_DLTP\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DLTP\_1>

1. Please indicate whether you/your organisation is planning to operate a DLT MI under the DLT Pilot and provide some high-level explanation of the business model

<ESMA\_QUESTION\_DLTP\_2>

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<ESMA\_QUESTION\_DLTP\_2>

1. What are the key elements supporting the increased use of DLT in the field of financial services? What are the main obstacles, including in the technical standards, for the development and up-take of DLT-based solutions (listing, trading and settlement)? Do you plan to operate a restricted (permissioned) or unrestricted (permissionless) distributed ledger?

<ESMA\_QUESTION\_DLTP\_3>

**Key elements supporting the increased use of DLT by the financial infrastructure**

Financial infrastructure has the potential to unlock new opportunities and benefit from efficiencies offered by the use of DLT in the financial services industry, such as the following:

1. **Complete traceability of transactions**: the operators and participants of a DLT infrastructure may trace information flows along the entire chain. Furthermore, the ledger is immutable as entries may not be changed without consensus.
2. **Increased efficiency in disseminating information:** as the ledger may be updated without reconciliation, all nodes may source identical information.

**Main obstacles for the development and up-take of DLT-based solutions**

Although the benefits of DLT may be readily appreciated, ECSDA holds the following concerns relating to some DLT models:

1. **Accountability and liability framework**: Certain distributed technology protocols provide for an ecosystem of user anonymity and the lack of a centralised service – two aspects that render the identification of liability problematic. This is the case for public permission-less chains. In this context, clarity regarding the contractual relationships between the different service providers and the nature of the rights associated with the financial instrument recorded on a DLT system is critical. It would also be important to understand against whom the contractual rights can be exercised, and who can enforce them.

It may be useful that the EU legislation for financial market infrastructures caters for a category of distributed technology that condition its use on an appropriate mechanism ensuring the appointment of liability. This may ensure technology neutrality of the legislation and also not stymie innovation.

Building on the need for identifiable and responsible legal entities, the lack of a clear allocation of responsibility and accountability of certain DLT protocols may be solved by incorporating a permissioned private DLT environment. This will create an ecosystem where market infrastructures can accept and monitor participants to the protocol. In this context, Trusted Third Parties (TTP) may act as the master/full node, which in turn would help in creating a clear liability regime.

1. **Probabilistic settlement:** In the case of a DLT SS or DLT MTF operating a settlement system, clear and final settlement should be ensured regardless of the underlying technology and the operational method used. Guidance should prevent operators from using DLT models that entail probabilistic settlement rather than requesting them to mitigate the uncertainties it creates.
2. **Appropriate risk control mechanisms:** Due to the high potential risks, we believe that attention should be focused on the need to set up an appropriate risk control mechanism aimed at pre-emptively avoiding, not mitigating, the potential emergence of a settlement finality misalignment. This mechanism should be structured in light of the specificities of the given technology and operating arrangements.

**There are no regulatory obstacles in the present level 1 legislation**

As already mentioned in previous consultations, Regulation (EU) 909/2014 (CSDR) level 1 does not constitute a barrier to the development of DLT within the financial sector and retains its technology neutrality.

<ESMA\_QUESTION\_DLTP\_3>

1. Would you consider operating a DLT MTF Would you consider operating a DLT SS without operating at the same time a DLT MTF? If yes, under which conditions?

<ESMA\_QUESTION\_DLTP\_4>

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<ESMA\_QUESTION\_DLTP\_4>

1. Please provide an overview of how DLT securities trade in the current market structure (incl. what types of trading system are used, the relevance of secondary market trading)? Do you see any challenges with the current market structure following the application of the DLT Pilot?

<ESMA\_QUESTION\_DLTP\_5>

Challenges with the current market structure following the application of the DLT Pilot include how the DLT systems will integrate the present landscape and exit from the pilot to the real and permanent requirements.

We are concerned that, in practice, due to the ambiguity regarding the winding- down and transitioning out obligations, entities making use of the Pilot Regime may not be able to demonstrate that they can exit the regime successfully within the given timeframe, as they may need to fundamentally change their business model and operational set-up.

Although the entity will be confronted with the need to address the winding-down and transitioning obligations from the moment of applying for an exemption, the ambiguity regarding the actual requirements may lead to unrealistic processes envisaged by the entity which may not be in a position to comply with its initial predictions.

Consequently, without transitioning agreements with legacy systems the volumes of settlement within the Pilot Regime may not be smoothly transitioned into the ‘real-world’.

<ESMA\_QUESTION\_DLTP\_5>

1. Instrument status: Do DLT financial instruments have different characteristics than ‘standard’ shares, UCITS-ETFs and bonds? If yes, please elaborate and explain whether these different characteristics call for a different approach for the application of the transparency requirements?

<ESMA\_QUESTION\_DLTP\_6>

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1. Transactions: Where are DLT financial instruments traded? Could there be OTC trading in those instruments?

<ESMA\_QUESTION\_DLTP\_7>

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<ESMA\_QUESTION\_DLTP\_7>

1. Transactions: Do the lists of transactions in Article 13 of RTS 1 and Article 12 of RTS 2 reflect relevant transaction types for DLT financial instruments? If not, please explain which types of transactions are missing and why they should be added to the lists of transactions.

<ESMA\_QUESTION\_DLTP\_8>

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<ESMA\_QUESTION\_DLTP\_8>

1. Can the current transparency requirements in RTS 1 and 2 be applied for DLT financial instruments (e.g. liquidity assessment, thresholds, flags, reporting fields) or would they need to be adjusted? If not, what should be the appropriate approach?

<ESMA\_QUESTION\_DLTP\_9>

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<ESMA\_QUESTION\_DLTP\_9>

1. Are there any standards (e.g. messaging, identification of accounts/users, product identifiers, reporting, etc.) in a DLT environment that should be taken into account when revising the RTS 1 and 2?

<ESMA\_QUESTION\_DLTP\_10>

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<ESMA\_QUESTION\_DLTP\_10>

1. Do you anticipate any problems that may emerge from the current liquidity concepts in Delegated Regulation (EU) 2017/567 and RTS 2 for the application of related transparency requirements for DLT financial instruments? Please explain and make proposals on how such problems could be solved.

<ESMA\_QUESTION\_DLTP\_11>

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<ESMA\_QUESTION\_DLTP\_11>

1. Are DLT securities traded on different trading systems as ‘standard’ shares and UCITS-ETFs (mostly continuous trading and periodic auctions) or bonds (RFQ, voice trading)? Please explain.

<ESMA\_QUESTION\_DLTP\_12>

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<ESMA\_QUESTION\_DLTP\_12>

1. To what extent would the choice of trading protocols and applications have an impact on the trading of instruments and on the requirements to publish information according to RTS 1 and 2?

<ESMA\_QUESTION\_DLTP\_13>

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<ESMA\_QUESTION\_DLTP\_13>

1. Do the systems on which DLT financial instruments trade require tailored pre-trade transparency requirements as those per Table 1 Annex I of RTS 1 and Annex I of RTS 2?

<ESMA\_QUESTION\_DLTP\_14>

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<ESMA\_QUESTION\_DLTP\_14>

1. Would the use of restricted (permissioned) vs unrestricted (permissionless) DLT represent any difference in how the pre-trade transparency requirements should be applied?

<ESMA\_QUESTION\_DLTP\_15>

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<ESMA\_QUESTION\_DLTP\_15>

1. Is it in your view necessary to make changes to the calibration of waivers for DLT shares and UCITS-ETFs in RTS 1? Do you expect any implementation issues in the application of waivers also taking into account the above considerations?

<ESMA\_QUESTION\_DLTP\_16>

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<ESMA\_QUESTION\_DLTP\_16>

1. Is it in your view necessary to make changes to the calibration of waivers for DLT bonds in RTS 2? Do you expect any implementation issues in the application of wavers also taking into account the above considerations?

<ESMA\_QUESTION\_DLTP\_17>

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<ESMA\_QUESTION\_DLTP\_17>

1. What can be considered as close to real-time as possible for the publication of post-trade reports in the context of DLT-securities on DLT MIs?

<ESMA\_QUESTION\_DLTP\_18>

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<ESMA\_QUESTION\_DLTP\_18>

1. Are the current deferral periods for equity and non-equity instruments appropriate for DLT securities? Please, distinguish between DLT shares, ETFs and bonds.

<ESMA\_QUESTION\_DLTP\_19>

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<ESMA\_QUESTION\_DLTP\_19>

1. Is it necessary to amend the current fields and flags for post-trade transparency (modifications/cancellations/additions) for their application to DLT shares, ETFs (Tables 2, 3 and 4 of Annex I of RTS 1) and bonds (Annex 2 of RTS 2)? Do you expect any implementation issues on basis of the current fields and flags?

<ESMA\_QUESTION\_DLTP\_20>

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<ESMA\_QUESTION\_DLTP\_20>

1. Is it necessary to amend RTS 3 for the purpose of the DLT Pilot? Do you anticipate any problems with the application of RTS 3 under the DLT Pilot?

<ESMA\_QUESTION\_DLTP\_21>

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<ESMA\_QUESTION\_DLTP\_21>

1. Do you agree with the approach indicated in the above paragraph? Please justify your answer.

<ESMA\_QUESTION\_DLTP\_22>

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<ESMA\_QUESTION\_DLTP\_22>

1. Private individuals: Do you agree that DLT MTFs could report transactions on behalf of the private individual as part of the compensatory measure foreseen by Article 4(1)(c) of the pilot regime? Please explain your statement. What other solutions can be explored to address this data gap?

<ESMA\_QUESTION\_DLTP\_23>

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<ESMA\_QUESTION\_DLTP\_23>

1. Reporting status and transaction reference numbers (Fields 1 and 2): How will DLT MTF treat cancellations to correct previously submitted information as per Section 5.18 of ESMA Guidelines on transaction reporting being the information stored on DLTs immutable? Is it necessary to amend the current fields 1 and 2 for their application in the context of a DLT environment? Do you foresee any other reporting status other than New and Cancellation in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_24>

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<ESMA\_QUESTION\_DLTP\_24>

1. Trading Venue Transaction Identification, TVTIC (Field 3): Is it necessary to amend the current field for its application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_25>

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<ESMA\_QUESTION\_DLTP\_25>

1. Executing entity and submission entity identification codes; MiFID II Investment Firm indicator (Fields 4-6); Buyer details and decision maker (Fields 7-15); Seller details and decision maker (Fields 16-24): Is it necessary to amend the current fields for their application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_26>

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<ESMA\_QUESTION\_DLTP\_26>

1. Transmission of an order (Fields 25-27): Is it necessary to amend the current fields for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_27>

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<ESMA\_QUESTION\_DLTP\_27>

1. Trader, algorithms, waivers and indicators (Fields 57-65): Is it necessary to amend the current fields for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_28>

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<ESMA\_QUESTION\_DLTP\_28>

1. Short selling field (Field 62): Is short selling possible? Does it depend whether it is a DLT MTF or a DLT MTF+DLT SSS? Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields?

<ESMA\_QUESTION\_DLTP\_29>

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<ESMA\_QUESTION\_DLTP\_29>

1. Transaction details (Fields 28-40): Is it necessary to amend the current fields for their application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_30>

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<ESMA\_QUESTION\_DLTP\_30>

1. What are your views on the arrangements that DLT MTFs would need to establish to ensure the provision of complete and accurate reference data to ESMA? Do you think that the current arrangements described in RTS 23 should be amended to ensure its application in the DLT environment? Do you expect any implementation issues on basis of the current RTS 23?

<ESMA\_QUESTION\_DLTP\_31>

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<ESMA\_QUESTION\_DLTP\_31>

1. Issuer related fields (Field 5): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_32>

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<ESMA\_QUESTION\_DLTP\_32>

1. Venue related fields (Fields 6-12): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_33>

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<ESMA\_QUESTION\_DLTP\_33>

1. Notional (Field 13): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_34>

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<ESMA\_QUESTION\_DLTP\_34>

1. Bonds or other forms of securitised debt related fields (Fields 14 – 23): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_35>

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<ESMA\_QUESTION\_DLTP\_35>

1. Do you agree with ESMA’s assessment that no major amendments to RTS 25 appear necessary for the implementation of the DLT Pilot?

<ESMA\_QUESTION\_DLTP\_36>

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<ESMA\_QUESTION\_DLTP\_36>

1. Do you think the definition of “order” is still applicable to the DLT context? Are the order record keeping requirements in Article 25 and related RTS 25 applicable in the DLT context? If yes, how do you envisage to comply with such requirements? If no, please justify your answer.

<ESMA\_QUESTION\_DLTP\_37>

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<ESMA\_QUESTION\_DLTP\_37>

1. Can chains of transmission on DLT financial instruments occur?

<ESMA\_QUESTION\_DLTP\_38>

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<ESMA\_QUESTION\_DLTP\_38>

1. Is it possible to split or aggregate orders? In or out the DLT? Or both?

<ESMA\_QUESTION\_DLTP\_39>

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<ESMA\_QUESTION\_DLTP\_39>

1. Does the concept of “Transmission of an order” defined in Article 4 of RTS 22 make sense in the context of DLT? If so, when would you consider an order to be transmitted?

<ESMA\_QUESTION\_DLTP\_40>

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<ESMA\_QUESTION\_DLTP\_40>

1. What do you consider are the phases of a DLT transaction? At what point in time can such a transaction in DLT securities be considered executed? How do you think “broadcast the transaction to the network” should be defined?

<ESMA\_QUESTION\_DLTP\_41>

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<ESMA\_QUESTION\_DLTP\_41>

1. Do you think the definition of “transaction” is still applicable to the DLT context?

<ESMA\_QUESTION\_DLTP\_42>

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<ESMA\_QUESTION\_DLTP\_42>

1. General fields (Fields 1 - 3), ISIN for RTS 1-3: Is it necessary to amend the current fields for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA\_QUESTION\_DLTP\_43>

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<ESMA\_QUESTION\_DLTP\_43>

1. Should a new field indicating the DTI be added to RTS 23 and RTS 1-3? What kind of analysis could be performed on a tokenised security by coupling ISIN and DTI information?

<ESMA\_QUESTION\_DLTP\_44>

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<ESMA\_QUESTION\_DLTP\_44>

1. Is the ISIN sufficient to ensure uniqueness of a given tokenised financial instrument? Is there any element of the DTI standard that you consider should be added as a separate field in RTS 23 and RTS 1-3?

<ESMA\_QUESTION\_DLTP\_45>

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<ESMA\_QUESTION\_DLTP\_45>

1. Traditional reporting systems - RTS 22/23: Does the setting up of the traditional reporting systems as illustrated in Annex 1 of the ESMA Guidelines on transaction reporting make sense in the context of the pilot regime?

<ESMA\_QUESTION\_DLTP\_46>

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<ESMA\_QUESTION\_DLTP\_46>

1. Execution and IT infrastructure - RTS 22/23: Does the fact that execution takes place on a DLT has an impact on the investment firm’s reporting system and requires setting up of separate/new IT infrastructures?

<ESMA\_QUESTION\_DLTP\_47>

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<ESMA\_QUESTION\_DLTP\_47>

1. ISO standards 20022 and RTS 22/23: Can ISO 20022 be implemented and used by DLT MTFs or DLT TSS and/or their members/participants to comply with the reporting required under Article 26 and 27 of MiFIR. Do you think ISO 20022 would represent an opportunity or an issue for DLT MTF? Please explain your statement.

<ESMA\_QUESTION\_DLTP\_48>

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<ESMA\_QUESTION\_DLTP\_48>

1. XML template of RTS 22/23: do you think that different formats might be more suitable to the DLT while keeping the common ISO 20022 methodology? If yes, please explain what the most appropriate format would be and for which reasons.

<ESMA\_QUESTION\_DLTP\_49>

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<ESMA\_QUESTION\_DLTP\_49>

1. Do you/your organisation plan to offer settlement of DLT securities in e-money tokens? If yes, what would be the most appropriate way for reporting these transactions? Do you agree with ESMA’s proposal on how to populate the currency fields when the financial instrument is priced in e-money tokens?

<ESMA\_QUESTION\_DLTP\_50>

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<ESMA\_QUESTION\_DLTP\_50>

1. Do you consider it possible that transactions in DLT securities could be settled in different currencies and/or different e-money tokens? If yes, please explain what would be the most appropriate way for converting such transactions in EUR.

<ESMA\_QUESTION\_DLTP\_51>

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<ESMA\_QUESTION\_DLTP\_51>

1. What are your views on the arrangements that DLT MTFs and DLT TSSs would need to establish to grant direct and immediate access to transaction data to regulators by admitting them as regulatory observer participants? Do you expect any implementation issues in relation to the obligation to make MiFIR transaction data available to the NCAs and MiFIR transparency/ reference data to ESMA?

<ESMA\_QUESTION\_DLTP\_52>

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<ESMA\_QUESTION\_DLTP\_52>

1. Is it technically feasible to store on the DLT the details of the transaction according to ISO 20022 methodology in order to enable regulators to pull that data directly into a readable format without any transformation of the data? Do you believe that the use of ISO 20022 could have a significant negative impact in terms of scalability of the system and the related congestion risk? If yes, please justify your answer and specify if the impact is dependent on the type of governance model and technology that the DLT is using.

<ESMA\_QUESTION\_DLTP\_53>

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<ESMA\_QUESTION\_DLTP\_53>

1. Can all information to be reported under MiFIR Article 27 pursuant to Table III of the Annex to RTS 23 be recorded on the DLT according to the ISO 20022 methodology? Please explain your answer also in relation to scalability impact at DLT level.

<ESMA\_QUESTION\_DLTP\_54>

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<ESMA\_QUESTION\_DLTP\_54>

1. Can all data necessary to perform the transparency (Article 2 of RTS 3) and DVC (Article 6 of RTS 3) calculations be recorded on the DLT according to the ISO 20022 methodology? Please explain your answer also in relation to scalability impact at DLT level.

<ESMA\_QUESTION\_DLTP\_55>

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<ESMA\_QUESTION\_DLTP\_55>

1. Do you see any issue with obtaining the data elements required by RTS 22 and 23 from external databases like GLEIF, ISO 4217 list (currencies), ISO 10383 (MIC) or ANNA-DSB (ISIN) before the data is permanently stored into the distributed ledger? Please explain your answer.

<ESMA\_QUESTION\_DLTP\_56>

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<ESMA\_QUESTION\_DLTP\_56>

1. Do you see any major impediments for the regulator as a regulatory observer participant to pull large size of encrypted data from the distributed ledger? Please explain your answer in the context of encryption of data and key management, and in relation to any scalability impact at DLT level.

<ESMA\_QUESTION\_DLTP\_57>

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<ESMA\_QUESTION\_DLTP\_57>

1. Taking into consideration the variety of technologies available in the DLT world, what is, in your opinion, the most efficient way to admit regulators as regulatory observer participants? Please explain your answer.

<ESMA\_QUESTION\_DLTP\_58>

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<ESMA\_QUESTION\_DLTP\_58>

1. Do you have any suggestion to ensure interoperability among DLT MTFs, DLT TSS and the regulators as described in Paragraph 126? Please explain your answer.

<ESMA\_QUESTION\_DLTP\_59>

DLT SSs must be taken into consideration along with DLT MTFs and DLT TSS for the different aspects raised in Paragraph 126. Please also see our answer to the next question.

<ESMA\_QUESTION\_DLTP\_59>

1. Do you have any suggestion to ensure interoperability among different DLT MTFs and/or DLT TSS as described in Paragraph 127? Please explain your answer.

<ESMA\_QUESTION\_DLTP\_60>

Without interoperability between DLT MTFs and DLT TSSs with DLT SSs, an issuer trading its DLT financial instrument on a DLT MTF may not freely choose the DLT SS in which it wishes to record and settle securities, and vice-versa – hampering competition and reversing the open-access improvements brought by CSDR. The need for this interoperability between DLT TSSs and DLT SSs is also true if financial instruments need to be moved from one DLT MI to another.

DLT financial instruments recorded in a DLT TSS and a DLT SS should be interoperable with SSSs/CSDs authorised under CSDR. If not, the CSD authorised under CSDR chosen by the DLT MI in its transition strategy will not be able to continue the latter’s operations (“against a reasonable commercial fee” as foreseen by Article 6(6b) of the DLT Pilot Regime Regulation).

<ESMA\_QUESTION\_DLTP\_60>