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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 | The World Federation of Exchanges Ltd. / 973382524675-69 |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | International |

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>

The WFE welcomes the European Commission's goal of enabling innovation through technology, particularly the ability for MIs to list and clear financial instruments using Distributed Ledger Technology (DLT). As a result, we endorse the proposal to include DLT securities and derivatives in the MiFID/ MiFIR financial instruments definition. Considering that anything that amounts to a financial instrument should be treated as such, it is vital for the purpose of level playing field and market integrity that a technology neutral approach is adopted. We consider that the primary advantage of a DLT Pilot Regime is its capacity to bring together DLT activities in a regulated environment where appropriate. Hence, as a basic argument, we believe that ‘same business, same regulation’ principles should be followed to maintain the pillars of investor protection and market integrity.

<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>

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<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>

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<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>

The WFE agrees with the proposed definitions. Some DLT based instruments may have characteristics of financial instruments, as well as characteristics of other payment instruments. With that in mind, it is important to capture those instruments that have any characteristic of a financial instrument, irrespective of whether they have a DLT component. Furthermore, the pilot points to the possibility of non-institutional participants having access to DLT MTFs. We appreciate the position whereby retail investors are not automatically barred from participating in the pilot regime, but we think that policymakers should consider the possible implications of this proposal and guarantee suitable protections.

<ESMA\_QUESTION\_DLTP\_6>

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

<ESMA\_QUESTION\_DLTP\_7>

Considering that DLT instruments are traded on a shared ledger, the proposed pilot appropriately incorporates thresholds for determining whether financial products can be admitted to an MTF. It also imposes a limit on the overall market value that a DLT MTF can record. Hence, OTC trading in the proposed regime is not just possible but likely – and possibly quite attractive to some participants, as is true with other financial instruments. And, as with other financial instruments, there then arises the question as to the transparency that should apply to non-venue transactions. This Regime, in our judgement, should be developed in such a way that it poses low risks, to safeguard financial market participants and preserve market integrity.

Because DLT MTFs would be allowed to perform some activities normally performed by other financial market infrastructures, the same level of safeguards as in the current regulatory environment should also apply. Fair, cross-border access to those providing services into the EU should apply, just as access to other markets for EU-based providers should. In the case of potential exemptions for DLT-based providers from rules that would apply to providers using other technology, the policy seems to stray from technology neutrality into discrimination in favour of DLT. This does not seem justified and should be monitored extremely carefully and reviewed at the earliest opportunity, in the interests of a level playing field. In this context, more specifically in the case of permissioned systems, the importance of centralised governance should not be neglected, as it is key in ensuring accountability among participants.

Furthermore, we would like to emphasize that the DLT Pilot Regime should be, as the name points out, a pilot. The focus should be on maintaining a level playing field for existing market participants regarding innovative technologies without establishing a more favorable, “parallel regime”.

<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>

Given that ‘DLT transactions’ in what amount to financial instruments should be treated no differently from any other transaction (ie, in securities or derivatives), the same standard should apply in terms of determining when execution has occurred and cannot be reversed. In other words, a lower standard of finality should not prevail, simply because different technology is used. Moreover, there should be the same legal standard as to authority to enter a contract, rather than relying on a ‘code as contract’ concept.

In the context of payment, clearing, and settlement, the phases of a DLT transactions are defined by the procedures and protocols to carry out transactions without necessarily relying on a central authority to maintain a single, main copy of the ledger. Hence, a transaction in a DLT would be considered executed when settlement finality has occurred; when an obligation by a transfer of funds and a transfer of securities that have become irrevocable and unconditional has been discharged. It is important to mention as well that, if a DLT MTF engages in such operations, the same degree of protections that exist in the present post-trade environment should be maintained. This means ensuring pre-post-trade transparency: what is about to be traded as well as what has been traded at what price.

<ESMA\_QUESTION\_DLTP\_41>

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

<ESMA\_QUESTION\_DLTP\_42>

DLT includes permissioned private ledgers which are suited to uses where the integrity of the market place is paramount, notably in public markets. Hence, participants in permissioned private ledgers are known to each other and the set of users who have the right to validate transactions is restricted. This promotes certainty, which is a vital component of defining a ‘transaction’.

The WFE believes the EU should also aim to promote a consistent idea across the EU (and ideally, through international standards fora, globally) as to what a financial instrument is.

<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>

TYPE YOUR TEXT HERE

<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>

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<ESMA\_QUESTION\_DLTP\_60>