

Response of Nasdaq to the European Commission consultation on an EU framework for markets in crypto-assets

Brussels 19 March 2020

NB: 5000 character(s) maximum per answer, including spaces and line breaks.

Questions 1-4 are addressed to EU citizens.

Classification of crypto-assets

Q5 - Do you agree that the scope of this initiative should be limited to crypto-assets (and not be extended to digital assets in general)?

- Yes
- No
- Don't know / no opinion/not relevant

Please explain your reasoning (if needed).

Digital assets is for us a broad term that can apply to anything created in a digital way whereas crypto-asset is narrower and a widely referenced term.

For the purposes of the envisaged classification, we believe that the focus should be put on the key features of the assets and not the form that they take through the technology used.

Applying to crypto assets a binding set of rules based on existing EU financial market regulations would allow for a consistent and stable regulatory approach for digital assets that have the characteristics of financial instruments, which we see as needed.

The application of the principle of “same business, same rules” as well as technology neutrality in the above-mentioned set of rules would be key. This would ensure that the core values enshrined in financial markets legislation are part of the framework applicable to crypto assets and in particular transparency, fairness, stability, investor protection and market integrity.

Q6 - In your view, would it be useful to create a classification of crypto-assets at EU level?

- Yes

- No
- Don't know / no opinion/ not relevant

If yes, please indicate the best way to achieve this classification (non- legislative guidance, regulatory classification, a combination of both...). Please explain your reasoning.

A classification would be useful in determining which regulation apply to which products as well as the trading platforms where they are available.

The harmonisation that such a classification will allow should be beneficial for aligning national regimes and foster possible cross border transactions.

We believe the classification should be a regulatory one to ensure consistent enforcement.

Q7 - What would be the features of such a classification? When providing your answer, please indicate the classification of crypto-assets and the definitions of each type of crypto-assets in use in your jurisdiction (if applicable).

For Nasdaq, the main distinction that the classification should take into account is between crypto-assets which are on a public network and those which are on a private one. Crypto assets on private permission network i.e. with limited number of participants should remain outside of the scope of the crypto-assets classification.

Q8 - Do you agree that any EU classification of crypto-assets should make a distinction between 'payment tokens', 'investment tokens', 'utility tokens' and 'hybrid tokens'?

- Yes
- No
- Don't know / no opinion/not relevant

Please explain your reasoning (if needed). If yes, indicate if any further sub- classification would be necessary.

Nasdaq agrees that any EU classification of crypto-assets should make a distinction between ‘payment tokens’, ‘investment tokens’, ‘utility tokens’ and ‘hybrid’ tokens as they capture various branches of crypto. Only those tokens on a public network and that have the characteristic of a financial instruments would be included on the crypto asset category. Other tokens would be under the broader category of digital assets.

Q9 - Would you see any crypto-asset which is marketed and/or could be considered as ‘deposit’ within the meaning of Article 2(3) DGSD?

Crypto-assets that are not currently covered by EU legislation

Q10 - In your opinion, what is the importance of each of the potential benefits related to crypto-assets listed below?

Please rate each proposal from 1 to 5, 1 standing for "not important at all" and 5 for "very important".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Issuance of utility tokens as a cheaper, more efficient capital raising tool than IPOs | | X | | | | |
| Issuance of utility tokens as an alternative funding source for start-ups | | | X | | | |
| Cheap, fast and swift payment instrument | | | | X | | |
| Enhanced financial inclusion | | | | X | | |
| Crypto-assets as a new investment opportunity for investors | | | X | | | |
| Improved transparency and traceability of transactions | | | | X | | |
| Enhanced innovation and competition | | | X | | | |
| Improved liquidity and tradability of tokenised ‘assets’ | | | | X | | |
| Enhanced operational resilience (including cyber resilience) | | | X | | | |
| Security and management of personal data | | | X | | | |
| Possibility of using tokenisation to coordinate social innovation or decentralised governance | | | X | | | |

Q10.1 - Is there any other potential benefits related to crypto-assets not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

Q10.2 - Please justify your reasoning for your answers to question 10.

With respect to the assessment of whether the issuance of utility tokens are a cheaper, more efficient capital raising tool than IPOs, Nasdaq wants to underline the need for the EU to remain technology neutral and to apply consistently the principle of “same business, same rules”.

This appears key to maintain a level playing field between service providers applying different technologies or tools for what are essentially the same or very similar services. This is also important to adequately protect users of services based on new technologies. This said, on the other hand, legislation should not be used to stifle innovation and new technologies, this is one of the key point of creating rules that are technology neutral.

Q11 - In your opinion, what are the most important risks related to crypto-assets? Please rate each proposal from 1 to 5, 1 standing for "not important at all" and 5 for "very important".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Fraudulent activities | | | | X | | |
| Market integrity (e.g. price, volume manipulation...) | | | | X | | |
| Investor/consumer protection | | | | X | | |
| Anti-money laundering and CFT issues | | | | X | | |
| Data protection issues | | | | X | | |
| Competition issues | | | X | | | |
| Cyber security and operational risks | | | | X | | |
| Taxation issues | | | X | | | |
| Energy consumption entailed in crypto-asset activities | | | | X | | |
| Financial stability | | | | X | | |
| Monetary sovereignty/monetary policy transmission | | | | X | | |

Q11.1 - Is there any other important risks related to crypto-assets not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

Q11.2 - Please justify your reasoning for your answers to question 11:

Important risks include indeed market manipulation and lack of investor protection which can lead to distrust in crypto-assets. Market integrity is probably one the most important aspect to look at and where increased regulation for new entrants would be beneficial.

Q12 - In our view, what are the benefits of “stablecoins” and “global stablecoins”? Please explain your reasoning.

Stablecoins can be used as cheap, fast and swift payment instrument and support enhanced financial inclusion.

Q13 - In your opinion, what are the most important risks related to “stablecoins”?

Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Fraudulent activities | | | X | | | |
| Market integrity (e.g. price, volume manipulation...) | | | X | | | |
| Investor/consumer protection | | | X | | | |
| Anti-money laundering and CFT issues | | | X | | | |
| Data protection issues | | | X | | | |
| Competition issues | | | X | | | |
| Cyber security and operational risks | | | X | | | |
| Taxation issues | | | X | | | |
| Energy consumption | | | X | | | |
| Financial stability | | | | X | | |
| Monetary sovereignty/monetary policy transmission | | | | X | | |

Q13.1 - Is there any other important risks related to “stablecoins” not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

Q13.2 - Please explain in your answer potential differences in terms of risks between “stablecoins” and “global stablecoins” (if needed).

Q14 - In your view, would a bespoke regime for crypto-assets (that are not currently covered by EU financial services legislation) enable a sustainable crypto-asset ecosystem in the EU (that could otherwise not emerge)?

- Yes
- No
- Don't know / no opinion/ not relevant

Q14.1 - Please explain your reasoning (if needed).

The creation of a bespoke regime for “crypto-assets” considered as financial instruments would risk creating an unlevel playing field with traditional financial instruments and possibly create issues around investor protection.

Q15 - What is your experience (if any) as regards national regimes on crypto-assets? Please indicate which measures in these national laws are, in your view, an effective approach to crypto-assets regulation, which ones rather not.

EU countries have taken varied stances on crypto assets, supported by new disruptive technology. Whilst there seems to be a common acceptance that tokens can take the form of security, payment and utility, the regulations of these tokens vary from one member state to the other.

Q16 - In your view, how would it be possible to ensure that a bespoke regime for crypto-assets and crypto-asset service providers is proportionate to induce innovation, while protecting users of crypto-assets?

Please indicate if such a bespoke regime should include the above-mentioned categories (payment, investment and utility tokens) or exclude some of them, given their specific features (e.g. utility tokens).

Q17 - Do you think that the use of crypto-assets in the EU would be facilitated by greater clarity as to the prudential treatment of financial institutions' exposures to crypto-assets? (See the discussion paper of the Basel Committee on Banking Supervision (BCBS))

- Yes
- No
- Don't know / no opinion/not relevant

Q17.1 - Please explain your reasoning for your answer to question 17:

Q18 - Should harmonisation of national civil laws be considered to provide clarity on the legal validity of token transfers and the tokenization of tangible (material) assets?

Q19 - Can you indicate the various types and the number of service providers related to crypto-assets (issuances of crypto-assets, exchanges, trading platforms, wallet providers...) in your jurisdiction?

1.1 Issuance of crypto-assets in general

Q20 - Do you consider that the issuer or sponsor of crypto-assets marketed to EU investors/consumers should be established or have a physical presence in the EU?

- Yes
- No
- Don't know / no opinion/not relevant

Q20.1 - Please explain your reasoning (if needed).

A physical presence of issuers and sponsors of digital-assets marketed to EU investors is not necessary, if “digital-assets” are covered by the definition of financial instruments and financial services, as EU equivalence rules would apply or national competencies would ensure investor protection.

Q21 - Should an issuer or a sponsor of crypto-assets be required to provide information (e.g. through a ‘white paper’) when issuing crypto-assets?

- Yes
- No
- This depends on the nature of the crypto-asset (utility token, payment token, hybrid token...)
- Don't know/no opinion/not relevant

Q21.1 - Please indicate the entity that, in your view, should be responsible for this disclosure (e.g. the issuer/sponsor, the entity placing the crypto-assets in the market) and the content of such information (e.g. information on the crypto- asset issuer, the project, the rights attached to the crypto-assets, on the secondary trading, the underlying technology, potential conflicts of interest...).

An issuer or provider of a security/ investment tokens available for retail investor should provide the same level of information to investors than for any other equivalent financial instruments.

Q22 - If a requirement to provide the information on the offers of crypto-assets is imposed on their issuer/sponsor, would you see a need to clarify the interaction with existing pieces of legislation that lay down information requirements (to the extent that those rules apply to the offers of certain crypto-assets, such as utility and/or payment tokens)? Please rate each proposal from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| The Consumer Rights Directive | | | | | | |
| The E-Commerce Directive | | | | | | |
| The EU Distance Marketing of Consumer Financial Services Directive | | | | | | |

Q22.1 - Is there any other existing piece of legislation laying down information requirements with which the interaction would need to be clarified?

Please specify which one(s) and explain your reasoning:

Q22.2 - Please explain your reasoning and indicate the type of clarification (legislative/non legislative) that would be required.

Q23 - Beyond any potential obligation as regards the mandatory incorporation and the disclosure of information on the offer, should the crypto-asset issuer or sponsor be subject to other requirements?

Please rate each proposal from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| The managers of the issuer or sponsor should be subject to fitness and probity standards | | | | | | |
| The issuer or sponsor should be subject to advertising rules to avoid misleading marketing/promotions | | | | | | |
| Where necessary, the issuer or sponsor should put in place a mechanism to safeguard the funds collected such as an escrow account or trust account | | | | | | |

Q23.1 - Is there any other requirement not mentioned above to which the crypto-asset issuer should be subject?

Please specify which one(s) and explain your reasoning:

Q23.2 - Please explain your reasoning for your answer to question 23:

Q24 - In your opinion, what would be the objective criteria allowing for a distinction between “stablecoins” and “global stablecoins” (e.g. number and value of “stablecoins” in circulation, size of the reserve...)? Please explain your reasoning.

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Q25.1 - To tackle the specific risks created by “stablecoins” and “global stablecoins”, what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for both “stablecoins” and “global stablecoins” if each proposal is relevant (leave it blank if you have no opinion).

| | “Stablecoins” | | “Global stablecoins” | |
|--|---------------|--------------|----------------------|--------------|
| | Relevant | Not relevant | Relevant | Not relevant |
| The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds...) | | | | |
| The issuer should contain the creation of “stablecoins” so that it is always lower or equal to the value of the funds of the reserve | | | | |
| The assets or funds of the reserve should be segregated from the issuer’s balance sheet | | | | |
| The assets of the reserve should not be encumbered (i.e. not pledged as collateral) | | | | |
| The issuer of the reserve should be subject to prudential requirements rules (including capital requirements) | | | | |
| The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating | | | | |
| Obligation for the assets or funds to be held in custody with credit institutions in the EU | | | | |
| Periodic independent auditing of the assets or funds held in the reserve | | | | |
| The issuer should disclose information to the users on (i) how it intends to provide stability to the “stablecoins”, (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve | | | | |

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|---|--|--|--|--|
| The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically | | | | |
| Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer | | | | |

Q25.1 - a) Is there any other requirements not mentioned above that could be imposed on “stablecoins” issuers and/or the manager of the reserve?

Please specify which one(s) and explain your reasoning:

Q25.1 - b) Please illustrate your response for “Stablecoins” (if needed).

Q25.2 - a) Is there any other requirements not mentioned above that could be imposed on “global stablecoins” issuers and/or the manager of the reserve?

Please specify which one(s) and explain your reasoning:

Q25.2 - b) Please illustrate your response for “Global Stablecoins” (if needed).

Q26 - Do you consider that wholesale “stablecoins” (those limited to financial institutions or selected clients of financial institutions, as opposed to retail investors or consumers) should receive a different regulatory treatment than retail “stablecoins”?

- Yes
- No
- Don’t know / no opinion/not relevant

Q26.1 - Please explain your reasoning (if needed).

Trading platforms

Q27 - In your opinion and beyond market integrity risks (see section III. C. 1. below), what are the main risks in relation to trading platforms of crypto-assets?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Absence of accountable entity in the EU | | | X | | | |
| Lack of adequate governance arrangements, including operational resilience and ICT security | | | X | | | |
| Absence or inadequate segregation of assets held on the behalf of clients (e.g. for 'centralised platforms') | | | X | | | |
| Conflicts of interest arising from other activities | | | X | | | |
| Absence/inadequate recordkeeping of transactions | | | X | | | |
| Absence/inadequate complaints or redress procedures are in place | | | X | | | |
| Bankruptcy of the trading platform | | | X | | | |
| Lacks of resources to effectively conduct its activities | | | X | | | |
| Losses of users' crypto-assets through theft or hacking (cyber risks) | | | X | | | |
| Lack of procedures to ensure fair and orderly trading | | | X | | | |
| Access to the trading platform is not provided in an indiscriminating way | | | X | | | |
| Delays in the processing of transactions | | | X | | | |
| For centralised platforms: Transaction settlement happens in the book of the platform and not necessarily recorded on DLT. In those cases, confirmation that the transfer of ownership is complete lies with the platform only (counterparty risk for investors vis-à-vis the platform) | | | X | | | |
| Lack of rules, surveillance and enforcement mechanisms to deter potential market abuse | | | X | | | |

Q27.1 - Is there any other main risks posed by trading platforms of crypto-assets not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

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Q27.2 - Please explain your reasoning (if needed).

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|---|
| <p>Regarding the main risks in relation to trading platforms of digital/crypto-assets, this strongly depends on the type of digital/crypto asset, the governance structure (i.e. centralised vs. decentralised, permissioned vs. non permissioned access) and the underlying technology. Trading platforms which operate trading in digital/crypto assets, which are classified as investment tokens/financial instruments, should follow established financial market rules and therefore the risks should be mitigated by that.</p> |
|---|

Q28 - What are the requirements that could be imposed on trading platforms in order to mitigate those risks? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Trading platforms should have a physical presence in the EU | | | X | | | |
| Trading platforms should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security) | | | | | X | |
| Trading platforms should segregate the assets of users from those held on own account | | | | | X | |
| Trading platforms should be subject to rules on conflicts of interest | | | | | X | |
| Trading platforms should be required to keep appropriate records of users' transactions | | | | | X | |
| Trading platforms should have an adequate complaints handling and redress procedures | | | | | X | |
| Trading platforms should be subject to prudential requirements (including capital requirements) | | | | | X | |
| Trading platforms should have adequate rules to ensure fair and orderly trading | | | | | X | |
| Trading platforms should provide access to its services in an undiscriminating way | | | | | X | |
| Trading platforms should have adequate rules, surveillance and enforcement mechanisms to deter potential market abuse | | | | | X | |
| Trading platforms should be subject to reporting requirements (beyond AML/CFT requirements) | | | | | X | |
| Trading platforms should be responsible for screening crypto-assets against the risk of fraud | | | X | | | |

Q28.1 - Is there any other requirement that could be imposed on trading platforms in order to mitigate those risks?

Please specify which one(s) and explain your reasoning:

Another issue related to crypto-assets used as a form of investment and/or security token i.e. financial instruments, is the requirements in relation to the organisation of secondary markets where these are traded. All such platforms should be regulated as MTFs or OTFs under MiFID II/MiFIR.

Q28.2 - Please indicate if those requirements should be different depending on the type of crypto-assets traded on the platform and explain your reasoning for your answers to question 28:

Regarding requirements that could be imposed on trading platforms to mitigate risks, this strongly depend on the type of crypto asset, the governance structure and the underlying technology. Trading platforms who operate trading in crypto assets, which are classified as investment tokens/financial instruments, should follow established financial market rules and therefore the risks should be mitigated.

Exchanges (fiat-to-crypto and crypto-to-crypto)

Q29 - In your opinion, what are the main risks in relation to crypto-to-crypto and fiat- to-crypto exchanges? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Absence of accountable entity in the EU | | | X | | | |
| Lack of adequate governance arrangements, including operational resilience and ICT security | | | | | X | |
| Conflicts of interest arising from other activities | | | | | X | |
| Absence/inadequate recordkeeping of transactions | | | | | X | |
| Absence/inadequate complaints or redress procedures are in place | | | | | X | |
| Bankruptcy of the exchange | | | | | X | |
| Inadequate own funds to repay the consumers | | | | | X | |
| Losses of users' crypto-assets through theft or hacking | | | | | X | |
| Users suffer loss when the exchange they interact with does not exchange crypto-assets against fiat currency (conversion risk) | | | X | | | |
| Absence of transparent information on the crypto-assets proposed for exchange | | | | | X | |

Q29.1 - Is there any other main risks in relation to crypto-to-crypto and fiat-to-crypto exchanges not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

While the word 'Exchange' is not formally defined in legislation, it is commonly used to refer to Regulated Markets and other trading venues as defined in MiFID/MiFIR.

Considering that the types of crypto platform described above do not fulfil requirements applicable to trading venues, it is important not to create ambiguities in terms of the language used to describe these, as calling them exchanges may wrongly create the impression that these are regulated entities subject to, inter alia, investor protection requirements.

Q29.2 - Please explain your reasoning for your answer to question 29:

Lack of adequate governance arrangements, including operational resilience and ICT security: similarly to exchanges that trade standard financial instruments, crypto asset trading venues must have proper governance arrangements, including on operational resilience and ICT in order to limit risks for investors. More specifically, when the trading platform also acts as a custodian on behalf of its clients (even on a temporary basis), specific requirements should be established to prevent hacks and thefts of wallets with proper cybersecurity standards and clear and transparent rules regarding the conditions under which the clients' assets will be guaranteed by the crypto-asset trading venue in case of such security breaches.

Conflicts of interest arising from other activities: most crypto trading platforms currently combine potentially conflicting activities. Adequate arrangements have to be put in place to eliminate these risks or inform on such conflicts when they cannot be eliminated.

Absence/inadequate recordkeeping of transactions: in order to be able to investigate potential market abuses, crypto trading platforms should be required to properly record transactions, in the exact same manner as trading venues on standard instruments.

Absence/inadequate complaints or redress procedures are in place: trading platforms should have clear, transparent and non-discretionary complaint or redress procedures to provide investors with a safe and predictable trading environment in this respect and hence foster investor trust.

Bankruptcy of the exchange: a first step to prevent risks of losses for investors would be to require trading platforms that conduct activities linked to custody to have procedures and/ or sufficient funds in place to guarantee their clients' assets in case of a bankruptcy.

Losses of users' crypto-assets through theft or hacking: please see our answers above on the risks related to the "lack of adequate governance arrangements, including operational resilience and ICT security" and "Conflicts of interest arising from other activities"

Users suffer loss when the exchange they interact with does not exchange crypto-assets against fiat currency (conversion risk): trading platforms providing crypto to crypto trading should be required to provide clients with proper information about the types of crypto assets involved on their operating platforms, including their volatility profile and any related conversion risk.

Absence of transparent information on the crypto-assets proposed for exchange: "Crypto-asset"-trading platforms should provide clients and prospective clients with clear information on the crypto assets they provide, notably regarding their level of volatility, the issuing entity (its location and project), the types of rights allocated to clients holding these assets and potential conflicts of interests when the exchange is the issuer of the asset or has invested in it.

Q30 - What are the requirements that could be imposed on exchanges in order to mitigate those risks?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Absence of accountable entity in the EU | | | | X | | |
| Exchanges should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security) | | | | X | | |
| Exchanges should segregate the assets of users from those held on own account | | | | X | | |
| Exchanges should be subject to rules on conflicts of interest | | | | X | | |
| Exchanges should be required to keep appropriate records of users' transactions | | | | X | | |
| Exchanges should have an adequate complaints handling and redress procedures | | | | X | | |
| Exchanges should be subject to prudential requirements (including capital requirements) | | | | X | | |
| Exchanges should be subject to advertising rules to avoid misleading marketing/promotions | | | | X | | |
| Exchanges should be subject to reporting requirements (beyond AML/CFT requirements) | | | | X | | |
| Exchanges should be responsible for screening crypto-assets against the risk of fraud | | | | X | | |

Q30.1 - Is there any other requirement that could be imposed exchanges in order to mitigate those risks?

Please specify which one(s) and explain your reasoning:

While the word 'Exchange' is not formally defined in legislation, it is commonly used to refer to Regulated Markets and other trading venues as defined in MiFID/MiFIR.

Considering that the types of crypto platform described above do not fulfil requirements applicable to trading venues, it is important not to create ambiguities in terms of the language used to describe these, as calling them exchanges may wrongly create the impression that these are regulated entities subject to, inter alia, investor protection requirements.

Q30.2 - Please indicate if those requirements should be different depending on the type of crypto-assets available on the exchange and explain your reasoning (if needed).

Generally the requirements should be applied to all types of assets.

- **"Crypto-asset"-trading platforms should be responsible for screening crypto-assets against the risk of fraud:** an alternative would be to require exchanges to properly disclose that the asset they propose to trading has not (or could not) be screened for risks of fraud.
- For all other requirements, please refer to the answers given above (question 29.2).

Provision of custodial wallet services for crypto-assets

Q31 - In your opinion, what are the main risks in relation to the custodial wallet service provision? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| No physical presence in the EU | | | | | | |
| Lack of adequate governance arrangements, including operational resilience and ICT security | | | | | | |
| Absence or inadequate segregation of assets held on the behalf of clients | | | | | | |
| Conflicts of interest arising from other activities (trading, exchange) | | | | | | |
| Absence/inadequate recordkeeping of holdings and transactions made on behalf of users | | | | | | |
| Absence/inadequate complaints or redress procedures are in place | | | | | | |
| Bankruptcy of the custodial wallet provider | | | | | | |
| Inadequate own funds to repay the consumers | | | | | | |
| Losses of users' crypto-assets/private keys (e.g. through wallet theft or hacking) | | | | | | |
| The custodial wallet is compromised or fails to provide expected functionality | | | | | | |
| The custodial wallet provider behaves negligently or fraudulently | | | | | | |
| No contractual binding terms and provisions with the user who holds the wallet | | | | | | |

Q31.1 - Is there any other risk in relation to the custodial wallet service provision not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

Q31.2 - Please explain your reasoning (if needed).

Q32 - What are the requirements that could be imposed on custodial wallet providers in order to mitigate those risks? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Custodial wallet providers should have a physical presence in the EU | | | | | | |
| Custodial wallet providers should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security) | | | | | | |
| Custodial wallet providers should segregate the asset of users from those held on own account | | | | | | |
| Custodial wallet providers should be subject to rules on conflicts of interest | | | | | | |

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|--|--|--|--|--|--|--|
| Custodial wallet providers should be required to keep appropriate records of users' holdings and transactions | | | | | | |
| Custodial wallet providers should have an adequate complaints handling and redress procedures | | | | | | |
| Custodial wallet providers should be subject to capital requirements | | | | | | |
| Custodial wallet providers should be subject to advertising rules to avoid misleading marketing/promotions | | | | | | |
| Custodial wallet providers should be subject to certain minimum conditions for their contractual relationship with the consumers/investors | | | | | | |

Q32.1 - Is there any other requirement that could be imposed on custodial wallet providers in order to mitigate those risks?

Please specify which one(s) and explain your reasoning:

Q32.2 - Please indicate if those requirements should be different depending on the type of crypto-assets kept in custody by the custodial wallet provider and explain your reasoning for your answer to question 32:

Q33 - Should custodial wallet providers be authorised to ensure the custody of all crypto-assets, including those that qualify as financial instruments under MiFID II (the so-called 'security tokens', see section IV of the public consultation) and those currently falling outside the scope of EU legislation?

Yes

No

Don't know / no opinion/not relevant

Q33.1 - Please explain your reasoning for your answer to question 33:

Yes, provided that custodial wallet providers are compliant with all applicable rules as regards the custody of financial instruments. In any case, CSDs and custody banks holding financial instruments should be allowed to also hold crypto-assets.

Q34 - In your opinion, are there certain business models or activities/services in relation to digital wallets (beyond custodial wallet providers) that should be in the regulated space?

Other service providers

Q35 - In your view, what are the services related to crypto-assets that should be subject to requirements?

(When referring to execution of orders on behalf of clients, portfolio management, investment advice, underwriting on a firm commitment basis, placing on a firm commitment basis, placing without firm commitment basis, we consider services that are similar to those regulated by Annex I A of MiFID II.)

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Reception and transmission of orders in relation to crypto-assets | | | | | | |
| Execution of orders on crypto-assets on behalf of clients | | | | | | |
| Crypto-assets portfolio management | | | | | | |
| Advice on the acquisition of crypto-assets | | | | | | |
| Underwriting of crypto-assets on a firm commitment basis | | | | | | |
| Placing crypto-assets on a firm commitment basis | | | | | | |
| Placing crypto-assets without a firm commitment basis | | | | | | |
| Information services (an information provider can make available information on exchange rates, news feeds and other data related to crypto-assets) | | | | | | |
| Processing services, also known as 'mining' or 'validating' services in a DLT environment (e.g. 'miners' or validating 'nodes' constantly work on verifying and confirming transactions) | | | | | | |
| Distribution of crypto-assets (some crypto-assets arrangements rely on designated dealers or authorised resellers) | | | | | | |
| Services provided by developers that are responsible for maintaining/updating the underlying protocol | | | | | | |
| Agent of an issuer (acting as liaison between the issuer and to ensure that the regulatory requirements are complied with) | | | | | | |

Q35.1 - Is there any other services related to crypto-assets not mentioned above that should be subject to requirements?

Please specify which one(s) and explain your reasoning:

Q35.2 - Please illustrate your response, by underlining the potential risks raised by these services if they were left unregulated and by identifying potential requirements for those service providers.

Q36 - Should the activity of making payment transactions with crypto-assets (those which do not qualify as e-money) be subject to the same or equivalent rules as those currently contained in PSD2?

- Yes
- No
- Partially
- Don't know/no opinion/not relevant

Q36.1 - Please explain your reasoning for your answer to question 36:

C. Horizontal questions

Q37 - In your opinion, what are the biggest market integrity risks related to the trading of crypto-assets?

Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Price manipulation | | | | X | | |
| Volume manipulation (wash trades...) | | | | X | | |
| Pump and dump schemes | | | | X | | |
| Manipulation on basis of quoting and cancellations | | | | X | | |
| Dissemination of misleading information by the crypto-asset issuer or any other market participants | | | | X | | |
| Insider dealings | | | | X | | |

Q37.1 - Is there any other big market integrity risk related to the trading of crypto-assets not mentioned above that you would foresee?

Please specify which one(s) and explain your reasoning:

Q37.2 - Please explain your reasoning for your answer to question 37:

If trading of crypto-asset continues on platforms not subject to financial market regulations i.e. MiFID/MiFIR nor the Market Abuse regulation, it should be noted that all of the above options would pose significant risks.

Q38 - In your view, how should market integrity on crypto-asset markets be ensured?

Another issue related to crypto-assets, in the context of trading, is the requirements in relation to the organisation of secondary markets where these are traded. All such platforms should be regulated as MTFs or OTFs under MiFID II/MiFIR.

Q39 - Do you see the need for supervisors to be able to formally identify the parties to transactions in crypto-assets?

- Yes
- No
- Don't know / no opinion/not relevant

Q39.1 - Please explain your reasoning (if needed). If yes, please explain how you would see this best achieved in practice.

Q40 - Provided that there are new legislative requirements to ensure the proper identification of transacting parties in crypto-assets, how can it be ensured that these requirements are not circumvented by trading on platforms/exchanges in third countries?

Q41 - Do you consider it appropriate to extend the existing 'virtual currency' definition in the EU AML/CFT legal framework in order to align it with a broader definition (as the one provided by the FATF or as the definition of 'crypto- assets' that could be used in a potential bespoke regulation on crypto- assets)?

- Yes
- No
- Don't know / no opinion/not relevant

Q41.1 - Please explain your reasoning (if needed).

Q42 - Beyond fiat-to-crypto exchanges and wallet providers that are currently covered by the EU AML/CFT framework, are there crypto-asset services that should also be added to the EU AML/CFT legal framework obligations? If any, please describe the possible risks to tackle.

- Yes
- No
- Don't know / no opinion/not relevant

Q42.1 - Please explain your reasoning for your answer to question 42:

Any "crypto-asset"-trading platform that is able to provide trading venue or Financial Market Infrastructure services, especially those available to retail investors, should confirm and abide by the AML/CFT regulatory requirements imposed on traditional market infrastructures.

Q43 - If a bespoke framework on crypto-assets is needed, do you consider that all crypto-asset service providers covered by this potential framework should become 'obliged entities' under the EU AML/CFT framework?

- Yes

- No
- Don't know / no opinion/not relevant

Q43.1 - Please explain your reasoning for your answer to question 43:

Q44 - In your view, how should the AML/CFT risks arising from peer-to-peer transactions (i.e. transactions without intermediation of a service provider) be mitigated?

Q45 - Do you consider that these requirements should be introduced in the EU AML/CFT legal framework with additional details on their practical implementation?

- Yes
- No
- Don't know / no opinion/not relevant

Q45.1 - Please explain your reasoning (if needed).

Q46 - In your view, do you consider relevant that the following requirements are imposed as conditions for the registration and licensing of providers of services related to crypto-assets included in section III. B? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Directors and senior management of such providers should be subject to fit and proper test from a money laundering point of view, meaning that they should not have any convictions or suspicions on money laundering and related offences | | | | | | |
| Service providers must be able to demonstrate their ability to have all the controls in place in order to be able to comply with their obligations under the anti-money laundering framework | | | | | | |

Q46.1 - Please explain your reasoning for your answer to question 46:

Q47 - What type of consumer protection measures could be taken as regards crypto- assets?
Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Information provided by the issuer of crypto-assets (the so-called 'white papers') | | | | | | |
| Limits on the investable amounts in crypto-assets by EU consumers | | | | | | |
| Suitability checks by the crypto-asset service providers (including exchanges, wallet providers...) | | | | | | |
| Warnings on the risks by the crypto-asset service providers (including exchanges, platforms, custodial wallet providers...) | | | | | | |

Q47.1 - Is there any other type of consumer protection measures that could be taken as regards crypto-assets?

Please specify which one(s) and explain your reasoning:

Q47.2 - Please explain your reasoning and indicate if those requirements should apply to all types of crypto assets or only to some of them.:

Q48 - Should different standards of consumer/investor protection be applied to the various categories of crypto-assets depending on their prevalent economic (i.e. payment tokens, stablecoins, utility tokens...) or social function?

- Yes
- No
- Don't know / no opinion

Q48.1 - Please explain your reasoning for your answer to question 48.

Q49 - Should different standards in terms of consumer/investor protection be applied depending on whether the crypto-assets are bought in a public sale or in a private sale?

- Yes
- No
- Don't know / no opinion

Q49.1 - Please explain your reasoning for your answer to question 49.

Q50 - Should different standards in terms of consumer/investor protection be applied depending on whether the crypto-assets are obtained against payment or for free (e.g. air drops)?

- Yes
- No
- Don't know / no opinion/not relevant

Q50.1 - Please explain your reasoning for your answer to question 50:

Q51 - In your opinion, how should the crypto-assets issued in third countries and that would not comply with EU requirements be treated? Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Those crypto-assets should be banned | | | | | | |
| Those crypto-assets should be still accessible to EU consumers/investors | | | | | | |
| Those crypto-assets should be still accessible to EU consumers/investors but accompanied by a warning that they do not necessarily comply with EU rules | | | | | | |

Q51.1 - Is there any other way the crypto-assets issued in third countries and that would not comply with EU requirements should be treated?

Please specify which one(s) and explain your reasoning:

Q51.2 - Please explain your reasoning for your answer to question 51:

In order to enable cross-border trade, appropriate measures should be taken to ensure that such products can be traded with recognised third countries.

Q52 - Which, if any, crypto-asset service providers included in Section III. B do you think should be subject to supervisory coordination or supervision by the European Authorities (in cooperation with the ESCB where relevant)? Please explain your reasoning (if needed).

Any crypto-asset service provider which operates/provides the services of market infrastructures should be subject to the supervision of the jurisdictions' regulatory authorities.

Q53 - Which are the tools that EU regulators would need to adequately supervise the crypto-asset service providers and their underlying technologies?

Crypto-assets that are currently covered by EU legislation

Q54 - Please highlight any recent market developments (such as issuance of security tokens, development or registration of trading venues for security tokens...) as regards security tokens (at EU or national level)?

| |
|--|
| |
|--|

Q55 - Do you think that DLT could be used to introduce efficiencies or other benefits in the trading, post-trade or asset management areas?

| | |
|-------------------------|---|
| Completely agree | |
| Rather agree | X |
| Neutral | |
| Rather disagree | |
| Completely disagree | |
| Don't know / No opinion | |

Q55.1 - Please explain your reasoning for your answer to question 55:

Combining innovative technologies, for instance blockchain based technologies, with established, highly regulated market infrastructures would be the natural choice in order to ensure market stability while making use of the innovative potential brought about through FinTech.

DLT has the potential to accelerate, decentralise, automate and standardise data-driven processes and therefore to alter the way in which assets are transferred and records are kept. DLT allows cross-verification of information in a transparent and dependable way and can simplify complex verification and validation processes.

Q56 - Do you think that the use of DLT for the trading and post-trading of financial instruments poses more financial stability risks when compared to the traditional trading and post-trade architecture?

| | |
|-------------------------|---|
| Completely agree | |
| Rather agree | |
| Neutral | X |
| Rather disagree | |
| Completely disagree | |
| Don't know / No opinion | |

Q56.1 - Please explain your reasoning for your answer to question 56:

| |
|--|
| |
|--|

Q57 - Do you consider that DLT will significantly impact the role and operation of trading venues and post-trade financial market infrastructures (CCPs, CSDs) in the future (5/10 years' time)? Please explain your reasoning.

CSDs and other market infrastructures can become the network service providers for crypto-assets; although the underlying technology they operate may be different, many of the functions they perform would be relevant for crypto-assets.

Q58 - Do you agree that a gradual regulatory approach in the areas of trading, post- trading and asset management concerning security tokens (e.g. provide regulatory guidance or legal clarification first regarding permissioned centralised solutions) would be appropriate?

| | |
|--------------------------------------|---|
| Completely agree | |
| Rather agree | |
| Neutral | |
| Rather disagree | X |
| Completely disagree | |
| Don't know / No opinion/not relevant | |

Q58.1 - Please explain your reasoning (if needed).

We would apply the “same business same rule” principle

MiFID II

1.1. Financial Instruments

Q59 - Do you think that the absence of a common approach on when a security token constitutes a financial instrument is an impediment to the effective development of security tokens?

| | |
|-------------------------|---|
| Completely agree | |
| Rather agree | X |
| Neutral | |
| Rather disagree | |
| Completely disagree | |
| Don't know / No opinion | |

Q59.1 - Please explain your reasoning for your answer to question 59:

Nasdaq wants to underline the need for the EU to remain technology neutral and to apply consistently the principle of “same business, same rules”.

This appears key to maintain a level playing field between service providers applying different technologies or tools for what are essentially the same or very similar services. This is also important to adequately protect users of services based on new technologies. This said, on the other hand, legislation should not be used to stifle innovation and new technologies, this is one of the key point of creating rules that are technology neutral.

Q60 - If you consider that this is an impediment, what would be the best remedies according to you?

Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

| | | | | | | |
|--|---|---|---|---|---|-------------------------------------|
| | 1 | 2 | 3 | 4 | 5 | Don't know/ no opinion/not relevant |
|--|---|---|---|---|---|-------------------------------------|

| | | | | | | |
|---|--|--|--|---|--|--|
| Harmonise the definition of certain types of financial instruments in the EU | | | | X | | |
| Provide a definition of a security token at EU level | | | | X | | |
| Provide guidance at EU level on the main criteria that should be taken into consideration while qualifying a crypto-asset as security token | | | | X | | |

Q60.1 - Is there any other solution that would be the best remedies according to you?

Q60.2 - Please explain your reasoning for your answer to question 60:

Q61 - How should financial regulators deal with hybrid cases where tokens display investment-type features combined with other features (utility-type or payment-type characteristics)?

Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Hybrid tokens should qualify as financial instruments/security tokens | | | | X | | |
| Hybrid tokens should qualify as unregulated crypto-assets (i.e. like those considered in section III. of the public consultation document) | | X | | | | |
| The assessment should be done on a case-by-case basis (with guidance at EU level) | | | | | X | |

Q61.1 - Is there any other way financial regulators should deal with hybrid cases where tokens display investment-type features combined with other features?

Overall hybrid tokens should be considered as financial instruments with specific requirements. For instance, issuers should be required to publish information on the hybrid features of the token including: the specific rights attached to investors, the description of the project funded, etc.

Q61.2 - Please explain your reasoning for your answer to question 61:

1.2. Investment firms

Q62 - Do you agree that existing rules and requirements for investment firms can be applied in a DLT environment?

| | |
|---------------------|--|
| Completely agree | |
| Rather agree | |
| Neutral | |
| Rather disagree | |
| Completely disagree | |

| | |
|-------------------------|--|
| Don't know / No opinion | |
|-------------------------|--|

Q62.1 - Please explain your reasoning for your answer to question 62:

| |
|--|
| |
|--|

Q63 - Do you think that a clarification or a guidance on applicability of such rules and requirements would be appropriate for the market?

| | |
|--------------------------|--|
| Completely appropriate | |
| Rather appropriate | |
| Neutral | |
| Rather appropriate | |
| Completely inappropriate | |
| Don't know / No opinion | |

Q63.1 - Please explain your reasoning for your answer to question 63:

| |
|--|
| |
|--|

1.3. Investment services and activities

Q64 - Do you think that the current scope of investment services and activities under MiFID II is appropriate for security tokens?

| | |
|--------------------------|--|
| Completely appropriate | |
| Rather appropriate | |
| Neutral | |
| Rather inappropriate | |
| Completely inappropriate | |
| Don't know / No opinion | |

Q64.1 - Please explain your reasoning for your answer to question 64:

Q65 - Do you consider that the transposition of MiFID II into national laws or existing market practice in your jurisdiction would facilitate or otherwise prevent the use of DLT for investment services and activities? Please explain your reasoning.

1.4. Trading venues

Q66 - Would you see any particular issues (legal, operational) in applying trading venue definitions and requirements related to the operation and authorisation of such venues to a DLT environment which should be addressed? Please explain your reasoning.

A company offering a security token trading platform should be subject to the same transparency regime as “traditional” trading platforms. Considering security tokens as “traditional” securities implies that the existing regulatory frameworks also apply to security token trading platforms to allow for a safe and transparent trading environment for both investors and issuers.

The existing MiFID framework for trading venues can therefore be applied to security token platforms, as the level of transparency thresholds can be calculated, as well as the reference market in terms of liquidity. There is therefore no reason to adopt special provisions for security token offerings in this respect. Similarly, the obligations currently in place to guarantee the successful completion of transactions should be retained for token platforms.

1.5. Investor protection

Q67 - Do you think that current scope of investor protection rules (such as information documents and the suitability assessment) are appropriate for security tokens?

Please explain your reasoning.

Yes, security tokens meets the definition of a specified investment and therefore fall within the regulatory perimeter of the supervisory authorities.

Investor protection rules are appropriate for “digital-assets”. Potential amendments of such rules, as a result of the MiFID Review, should consider specific risks attached to “digital-assets”. To realise the potential of the new asset class, the usual rules should

apply and, if necessary, additional IT related requirements shall also apply (e.g. safeguarding the integrity of a DLT-network).

Q68 - Would you see any merit in establishing specific requirements on the marketing of security tokens via social media or online?

Please explain your reasoning.

Q69 - Would you see any particular issue (legal, operational,) in applying MiFID investor protection requirements to security tokens?

Please explain your reasoning.

1.6. SME Growth Markets

Q70 - Do you think that trading on DLT networks could offer cost efficiencies or other benefits for SME Growth Markets that do not require low latency and high throughput?

Please explain your reasoning.

We do not see specific benefits for SME growth markets.

1.7. Systems resilience, circuit breakers and electronic trading

Q71 - Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed?

Please explain your reasoning (if needed).

We see no particular issues as long as security tokens fall under existing financial market regulation.

1.8. Admission of financial instruments to trading

Q72 - Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed?

Please explain your reasoning.

We see no particular issues as long as security tokens fall under existing financial market regulation.

1.9. Access to a trading venues

Q73 - What are the risks and benefits of allowing direct access to trading venues to a broader base of clients?

Please explain your reasoning.

Today, only financial intermediaries are allowed to have access to trading venues. The expansion to a broader base of clients not subject to prudential supervision contradicts the current understanding of a Financial Market Infrastructure. The current restriction to supervised participants is intended to ensure compliance with and enforcement of financial market regulations.

1.10. Pre and post-transparency requirements

Q74 - Do you think these pre- and post-transparency requirements are appropriate for security tokens?

| | |
|-------------------------|---|
| Completely agree | X |
| Rather agree | |
| Neutral | |
| Rather disagree | |
| Completely disagree | |
| Don't know / No opinion | |

Q74.1 - Please explain your reasoning for your answer to question 74:

Security tokens should be treated as normal transferable securities and therefore existing Financial market regulations should comply with corresponding transparency rules. Lower transparency standards are therefore not justifiable.

Q75 - Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed (e.g. in terms of availability of data or computation of thresholds)? Please explain your reasoning.

No particular issues as long as security tokens fall under existing financial market regulation.

1.11. Transaction reporting and obligations to maintain records

Q76 - Would you see any particular issue (legal, operational) in applying these requirement to security tokens which should be addressed?

Please explain your reasoning.

No particular issues as long as security tokens fall under existing financial market regulation.

Market Abuse Regulation (MAR)

2.1. Insider dealing

Q77 - Do you think that the current scope of Article 8 of MAR on insider dealing is appropriate to cover all cases of insider dealing for security tokens?

Please explain your reasoning

2.2. Market manipulation

Q78 - Do you think that the notion of market manipulation as defined in Article 12 of MAR is sufficiently wide to cover instances of market manipulation of security tokens?

Please explain your reasoning

Market manipulation is generally closely linked with the way trading venues' rules are designed and the way rules are embedded in the trading engine. The way a blockchain trading platform will be designed can have an impact on the market manipulation scenarios. MAR Annex 1 will have to be reviewed to include provisions for trading platforms using DLT technology.

Q79 - Do you think that there is a particular risk that manipulative trading in crypto- assets which are not in the scope of MAR could affect the price or value of financial instruments covered by MAR?

This risk exists if the relevant "crypto-assets" have a correlation in their value with any financial instruments covered by MAR, via their smart contracts or their underlying features. Thus, it could be foreseeable that extensive changes in the demand of said "crypto-assets" could potentially have cross implications with the financial instruments to which they are correlated.

Short Selling Regulation (SSR)

Q80 - Have you detected any issues that would prevent effectively applying SSR to security tokens? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| transparency for significant net short positions | | | | | | |
| restrictions on uncovered short selling | | | | | | |
| competent authorities' power to apply temporary restrictions to short selling | | | | | | |

Q80.1 - Is there any other issue that would prevent effectively applying SSR to security tokens?

Please specify which one(s) and explain your reasoning:

Q80.2 - Please explain your reasoning for your answer to question 80:

Q81 - Have you ever detected any unregulated crypto-assets that could confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt?

Please explain your reasoning:

Prospectus Regulation (PR)

2.3. Scope and exemptions

Q82 - Do you consider that different or additional exemptions should apply to security tokens other than the ones laid down in Article 1(4) and Article 1(5) of PR?

| | |
|--------------------------------------|---|
| Completely agree | |
| Rather agree | |
| Neutral | |
| Rather disagree | X |
| Completely disagree | |
| Don't know / No opinion/not relevant | |

Q82.1 - Please explain your reasoning (if needed).

New technology based services cannot justify reduced the protection of investors, especially retail.

2.4. The drawing up of the prospectus

Q83 - Do you agree that Delegated Regulation (EU) 2019/980 should include specific schedules about security tokens?

- Yes
 No
 Don't know / no opinion/not relevant

If yes, please indicate the most effective approach: a 'building block approach' (i.e. additional information about the issuer and/or security tokens to be added as a complement to existing schedules) or a 'full prospectus approach' (i.e. completely new prospectus schedules for security tokens). Please explain your reasoning (if needed).

More specifically, prospectus schedules for security token offerings should take into account the technology accompanying these products as it constitutes an important part of the listing operation. This means certain points related to this technology should be included in the prospectus for the benefit of investors, in particular:

- a. type of blockchain used (private/public/permissioned);
- b. type of safety and resilience measures applied to smart contracts (the description of cybersecurity devices and which technical malfunction detection tools are used);
- c. typology of smart contracts;
- d. token governance mechanisms or, otherwise, the divisibility of tokens;
- e. costs associated with the use of the underlying blockchain;
- f. different guarantees in relation to the underlying technology (financial guarantees, private key regeneration, etc.);
- g. detailed description of the risks incurred by the investor, whether they are economic, technological or related to the project itself;
- h. type of customers, as well as the jurisdictions, that have access to the subscription (coded information on the smart contracts);

Nature and classification of the investment token should be readily identifiable by investors (and regulators). Summary should contain brief description of:

- Underlying value and nature of investor rights/ claim (membership/ voting and financial participation rights, claim against legal counterparty - right to receive funds, underlying base value)
- Existence of underlying assets
- Hybrid features of the token/ target use beyond investment (eg. unit of exchange, utility). In case of utility, a description of ecosystem token is attached to, development stage, milestones and utilization rights of tokenholder)

Offer:

- Structure of the offering - incl. stages, price and volume at each

- Trading/ transfer - secondary market liquidity (availability on Reg Market, MTF or 'unregulated' / out-of-scope crypto-exchange)

Q84 - Do you identify any issues in obtaining an ISIN for the purpose of issuing a security token?

Q85 - Have you identified any difficulties in applying special types of prospectuses or related documents (i.e. simplified prospectus for secondary issuances, the EU Growth prospectus, the base prospectus for non-equity securities, the universal registration document) to security tokens that would require amending these types of prospectuses or related documents?

Please explain your reasoning.

Q86 - Do you believe that an *ad hoc* alleviated prospectus type or regime (taking as example the approach used for the EU Growth prospectus or for the simplified regime for secondary issuances) should be introduced for security tokens?

- Yes
 No
 Don't know / no opinion/not relevant

Please explain your reasoning for your answer to question 86:

Q87 - Do you agree that issuers of security tokens should disclose specific risk factors relating to the use of DLT?

| | |
|--------------------------------------|---|
| Completely agree | |
| Rather agree | |
| Neutral | X |
| Rather disagree | |
| Completely disagree | |
| Don't know / No opinion/not relevant | |

Q87.1 - If you agree, please indicate if ESMA's guidelines on risks factors should be amended accordingly. Please explain your reasoning.

Central Securities Depositories Regulation (CSDR)

Q88 - Would you see any particular issue (legal, operational, technical) with applying the following definitions in a DLT environment?

Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern"

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Definition of 'central securities depository' and whether platforms can be authorised as a CSD operating a securities settlement system which is designated under the SFD | x | | | | | |
| Definition of 'securities settlement system' and whether a DLT platform can be qualified as securities settlement system under the SFD | x | | | | | |
| Whether records on a DLT platform can be qualified as securities accounts and what can be qualified as credits and debits to such an account; | x | | | | | |
| Definition of 'book-entry form' and 'dematerialised form' | x | | | | | |
| Definition of settlement (meaning the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both); | x | | | | | |
| What could constitute delivery versus payment in a DLT network, considering that the cash leg is not processed in the network | x | | | | | |
| What entity could qualify as a settlement internaliser | | | | | | |

Q88.1 - Is there any other particular issue with applying the following definitions in a DLT environment?

Please specify which one(s) and explain your reasoning:

Q88.2 - Please explain your reasoning for your answer to question 88:

Q89 - Do you consider that the book-entry requirements under CSDR are compatible with security tokens?

- Yes
- No
- Don't know / no opinion/not relevant

Q89.1 - Please explain your reasoning for your answer to question 89:

CSDR do not prescribe any technical execution method for the registration of securities and at the same time, the notion of a 'securities account' is defined in CSDR in a broad way, i.e. "an account on which securities can be credited or debited". It is our view that this definition could encompass recording on a permissioned DLT account. If questions about legal certainty and "compatibility" arise at national level as the recognition of ownership and other entitlement in securities transferred through registration in account is governed by domestic legislation, the national legislator could consider clarifying it.

Q90 - Do you consider that national law (e.g. requirement for the transfer of ownership) or existing market practice in your jurisdiction would facilitate or otherwise prevent the use of DLT solution?

Please explain your reasoning.

Q91 - Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment?

Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Rules on settlement periods for the settlement of certain types of financial instruments in a securities settlement system | x | | | | | |
| Rules on measures to prevent settlement fails | x | | | | | |
| Organisational requirements for CSDs | x | | | | | |
| Rules on outsourcing of services or activities to a third party | | x | | | | |
| Rules on communication procedures with market participants and other market infrastructures | x | | | | | |
| Rules on the protection of securities of participants and those of their clients | | x | | | | |
| Rules regarding the integrity of the issue and appropriate reconciliation measures | | x | | | | |
| Rules on cash settlement | | x | | | | |
| Rules on requirements for participation | x | | | | | |
| Rules on requirements for CSD links | | x | | | | |
| Rules on access between CSDs and access between a CSD and another market infrastructure | | | x | | | |

Q91.1 - Is there any other particular issue with applying the current rules in a DLT environment, (including other provisions of CSDR, national rules applying the EU acquis, supervisory practices, interpretation, applications...)?

Please specify which one(s) and explain your reasoning:

No, although these requirements need to be clarified on the way they could be met.

Q91.2 - Please explain your reasoning for your answer to question 91:

Q92 - In your Member State, does your national law set out additional requirements to be taken into consideration, e.g. regarding the transfer of ownership (such as the requirements regarding the recording on an account with a custody account keeper outside a DLT environment)?

Please explain your reasoning.

Settlement Finality Directive (SFD)

Q93 - Would you see any particular issue (legal, operational, technical) with applying the following definitions in the SFD or its transpositions into national law in a DLT environment? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Definition of a securities settlement system | | | | | | |
| definition of system operator | | | | | | |
| Definition of participant | | | | | | |
| Definition of institution | | | | | | |
| Definition of transfer order | | | | | | |
| What could constitute a settlement account | | | | | | |
| What could constitute collateral security | | | | | | |

Q93.1 - Is there any other particular issue with applying the following definitions in the SFD or its transpositions into national law in a DLT environment?

Please specify which one(s) and explain your reasoning:

Q93.2 - Please explain your reasoning for your answer to question 93.

Q94 - SFD sets out rules on conflicts of laws. According to you, would there be a need for clarification when applying these rules in a DLT network (in particular with regard to the question according to which criteria the location of the register or account should be determined and thus which Member State would be considered the Member State in which the register or account, where the relevant entries are made, is maintained)?

Please explain your reasoning.

Q95 - In your Member State, what requirements does your national law establish for those cases which are outside the scope of the SFD rules on conflicts of laws?

Q96 - Do you consider that the effective functioning and/or use of DLT solution is limited or constrained by any of the SFD provisions?

- Yes
- No
- Don't know / no opinion/not relevant

Q96.1 - If you do agree that the effective functioning and/or use of DLT solution is limited or constrained by any of the SFD provisions, please provide specific examples (e.g. provisions national legislation transposing or implementing SFD, supervisory practices, interpretation, application,...). Please explain your reasoning.

Q96.1 - Please explain your reasoning for your answer to question 96:

Financial Collateral Directive (FCD)

Q97 - Would you see any particular issue (legal, operational, technical) with applying the following definitions in the FCD or its transpositions into national law in a DLT environment?

Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| If crypto-assets qualify as assets that can be subject to financial collateral arrangements as defined in the FCD | | | | | | |
| If crypto-assets qualify as book-entry securities collateral | | | | | | |
| If records on a DLT qualify as relevant account | | | | | | |

Q97.1 - Is there any other particular issue with applying the following definitions in the FCD or its transpositions into national law in a DLT environment?

Please specify which one(s) and explain your reasoning:

Q97.2 - Please explain your reasoning for your answer to question 97:

Q98 - FCD sets out rules on conflict of laws. Would you see any particular issue with applying these rules in a DLT network?

Q99 - In your Member State, what requirements does your national law establish for those cases which are outside the scope of the FCD rules on conflicts of laws?

Q100 - Do you consider that the effective functioning and/or use of a DLT solution is limited or constrained by any of the FCD provisions?

- Yes
- No
- Don't know / no opinion / not relevant

Q100.1 - If you do agree that the effective functioning and/or use of a DLT solution is limited or constrained by any of the FCD provisions, please provide specific examples (e.g. provisions national legislation transposing or implementing FCD, supervisory practices, interpretation, application, ...).

Please explain your reasoning.

Q100.1 - Please explain your reasoning for your answer to question 100:

European Markets Infrastructure Regulation (EMIR)

Q101 - Do you think that security tokens are suitable for central clearing?

| | |
|--------------------------|--|
| Completely appropriate | |
| Rather appropriate | |
| Neutral | |
| Rather inappropriate | |
| Completely inappropriate | |
| Don't know / No opinion | |

Q101.1 - Please explain your reasoning (if needed).

Q102 - Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| Rules on margin requirements, collateral requirements and requirements regarding the CCP's investment policy | | | | | | |
| Rules on settlement | | | | | | |
| Organisational requirements for CCPs and for TRs | | | | | | |
| Rules on segregation and portability of clearing members' and clients' assets and positions | | | | | | |
| Rules on requirements for participation | | | | | | |
| Reporting requirements | | | | | | |

Q102.1 - Is there any other particular issue (including other provisions of EMIR, national rules applying the EU acquis, supervisory practices, interpretation, applications, ...) with applying the current rules in a DLT environment?

Please specify which one(s) and explain your reasoning:

Q102.2 - Please explain your reasoning for your answer to question 102:

Q103 - Would you see the need to clarify that DLT solutions including permissioned blockchain can be used within CCPs or TRs?

Q104 - Would you see any particular issue with applying the current rules to derivatives the underlying of which are crypto assets, in particular considering their suitability for central clearing?

Please explain your reasoning (if needed).

The Alternative Investment Fund Directive

Q105 - Do the provisions of the EU AIFMD legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please rate each proposal from 1 to 5, 1 standing for "not suited" and 5 for "very suited".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|--|---|---|---|---|---|------------|
| AIFMD provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens; | | | | | | |
| AIFMD provisions requiring AIFMs to maintain and operate effective organisational and administrative arrangements, including with respect to identifying, managing and monitoring the conflicts of interest; | | | | | | |
| Employing liquidity management systems to monitor the liquidity risk of the AIF, conducting stress tests, under normal and exceptional liquidity conditions, and ensuring that the liquidity profile and the redemption policy are consistent; | | | | | | |
| AIFMD requirements that appropriate and consistent procedures are established for a proper and independent valuation of the assets; | | | | | | |
| Transparency and reporting provisions of the AIFMD legal framework requiring to report certain information on the principal markets and instruments. | | | | | | |

Q105.1 - Is there any other area in which the provisions of the EU AIFMD legal framework are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please specify which one(s) and explain your reasoning:

Q105.2 - Please explain your reasoning for your answer to question 105:

Q106 - Do you consider that the effective functioning of DLT solutions and/or use of security tokens is limited or constrained by any of the AIFMD provisions?

- Yes
- No
- Don't know / no opinion/not relevant

Q106.1 - If you do consider that the effective functioning of DLT solutions and/or use of security tokens is limited or constrained by any of the AIFMD provisions, please provide specific examples with relevant provisions in the E U a c q u i s .

Please explain your reasoning (if needed).

Q106.2 - Please explain your reasoning for your answer to question 106:

The Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive)

Q107 - Do the provisions of the EU UCITS Directive legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please rate each proposal from 1 to 5, 1 standing for "not suited" and 5 for "very suited".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Provisions of the UCITS Directive pertaining to the eligibility of assets, including cases where such provisions are applied in conjunction with the notion "financial instrument" and/or "transferable security" | | | | | | |
| Rules set out in the UCITS Directive pertaining to the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS, including where such rules are laid down in the applicable national law, in the fund rules or in the instruments of incorporation of the investment company; | | | | | | |
| UCITS Directive rules on the arrangements for the identification, management and monitoring of the conflicts of interest, including between the management company and its clients, between two of its clients, between one of its clients and a UCITS, or between two - UCITS; | | | | | | |
| UCITS Directive provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens; | | | | | | |
| Disclosure and reporting requirements set out in the UCITS Directive. | | | | | | |

Q107.1 - Is there any other area in which the provisions of the EU UCITS Directive legal framework are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please specify which one(s) and explain your reasoning:

Q107.2 - Please explain your reasoning for your answer to question 107:

Other final comments and questions as regards security tokens

Q108 - Do you think that the EU legislation should provide for more regulatory flexibility for stakeholders to develop trading and post-trading solutions using for example permissionless blockchain and decentralised platforms?

- Yes
- No
- Don't know / no opinion/not relevant

Q108.1 - If you do think that the EU legislation should provide for more regulatory flexibility for stakeholders to develop trading and post-trading solutions using for example permissionless blockchain and decentralised platforms, please explain the regulatory approach that you favour.

Please explain your reasoning.

Q108.2 - Please explain your reasoning for your answer to question 108:

Q109 - Which benefits and risks do you see in enabling trading or post-trading processes to develop on permissionless blockchains and decentralised platforms?

“Decentralised” solutions risk operating with an absence of proper accountability and raise practical question of how existing regulatory frameworks (MAR, MiFID II, Transparency Directive, Anti-Money Laundering Directive, GDPR) can be effectively applied in the absence of an identifiable “operator”, “controller” or centralized governance scheme. In some cases, there may still be entities (developers or controllers) with enough residual control/ influence to apply accountability. Other models may be less clear. In either case, it would be logical to address risks (consumer protection, financial stability, and money laundering and terrorist financing risk categories) by regulating the functions of identifiable participants that interact with the venue.

Decentralised/ permissionless trading solutions should attract a higher level of regulatory scrutiny - particularly to governance models (roles and functions distributed among members should be clearly defined) and consensus protocols employed. The degree of decentralisation should be a factor taken into account by competent authorities when considering platforms applications for authorisation (eg. to operate as an MTF)

Q110 - Do you think that the regulatory separation of trading and post-trading activities might prevent the development of alternative business models based on DLT that could more efficiently manage the trade life cycle?

- Yes
- No
- Don't know / no opinion/not relevant

Q110.1 - If you do think that the regulatory separation of trading and post-trading activities might prevent the development of alternative business models based on DLT that could more efficiently manage the trade life cycle, please identify the issues that should be addressed at EU level and the approach to address them.

Please explain your reasoning.

Q110.2 - Please explain your reasoning for your answer to question 110:

Q111 - Have you detected any issues beyond those raised in previous questions on specific provisions that would prevent effectively applying EU regulations to security tokens and

transacting in a DLT environment, in particular as regards the objective of investor protection, financial stability and market integrity?

- Yes
- No
- Don't know / no opinion/not relevant

Q111.1 - Please provide specific examples and explain your reasoning for your answer to question 111:

Q112 - Have you identified national provisions in your jurisdictions that would limit and/or constraint the effective functioning of DLT solutions or the use of security tokens?

- Yes
- No
- Don't know / no opinion/not relevant

Q112.1 - Please provide specific examples (national provisions, implementation of EU acquis, supervisory practice, interpretation, application...) and explain your reasoning for your answer to question 112.

Assessment of legislation for 'e-money tokens'

Q113 - Have you detected any issue in EMD2 that could constitute impediments to the effective functioning and/or use of e-money tokens?

- Yes
- No
- Don't know / no opinion/not relevant

Q113.1 - Please provide specific examples (EMD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application...) and explain your reasoning for your answer to question 113:

Q114 - Have you detected any issue in PSD2 which would constitute impediments to the effective functioning or use of payment transactions related to e-money token?

- Yes
- No
- Don't know / no opinion/not relevant

Q114.1 - Please provide specific examples (PSD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application...) and please explain your reasoning for your answer to question 114:

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| |
|--|

Q115 - In your view, do EMD2 or PSD2 require legal amendments and/or supervisory guidance (or other non-legislative actions) to ensure the effective functioning and use of e-money tokens?

- Yes
- No
- Don't know / no opinion/not relevant

Q115.1 - Please provide specific examples and explain your reasoning for your answer to question 115:

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| |
|--|

Q116 - Do you think the requirements under EMD2 would be appropriate for “global stablecoins” (i.e. those that reach global reach) qualifying as e-money tokens?

Please rate each proposal from 1 to 5, 1 standing for "completely inappropriate" and 5 for "completely appropriate".

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|------------|
| Initial capital and ongoing funds | | | | | | |
| Safeguarding requirements | | | | | | |
| Issuance | | | | | | |
| Redeemability | | | | | | |
| Use of agents | | | | | | |
| Out of court complaint and redress procedures | | | | | | |

Q116.1 - Is there any other requirement under EMD2 that would be appropriate for “global stablecoins”?

Please specify which one(s) and explain your reasoning:

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|--|
| |
|--|

Q116.2 - Please explain your reasoning for your answer to question 116:

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|--|
| |
|--|

Q117 - Do you think that the current requirements under PSD2 which are applicable to e-money tokens are appropriate for “global stablecoins” (i.e. those that reach global reach)?

| | |
|--------------------------------------|--|
| Completely appropriate | |
| Rather appropriate | |
| Neutral | |
| Rather inappropriate | |
| Completely inappropriate | |
| Don't know / No opinion/not relevant | |

Q117.1 - Please explain your reasoning for your answer to question 117:

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload additional documents.