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From: General Secretariat of the Council

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To: Permanent Representatives Committee (Part 2)

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
on a pilot regime for market infrastructures based on distributed ledger  
technology  
- Mandate for negotiations with the European Parliament

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**Proposal for a**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on a pilot regime for market infrastructures based on distributed ledger technology**  
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the European Central Bank,<sup>2</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) It is important to ensure that the Union financial services legislation is fit for the digital age and contributes to a future-ready economy that works for the people, including by enabling the use of innovative technologies. The Union has a policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including distributed ledger technology ('DLT'). Crypto-assets are one of the main DLT applications for finance.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C [...], [...], p. [...].

- (2) The majority of crypto-assets fall outside of the scope of EU legislation and raise, among others, challenges in terms of investor protection, market integrity and financial stability. They therefore require a dedicated regime at Union level. By contrast, other crypto-assets qualify as financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council (Markets in Financial Instruments Directive, MiFID II)<sup>3</sup>. In so far as a crypto-asset qualifies as a financial instrument under that Directive, a full set of Union financial rules, including Regulation (EU) 2017/1129 of the European Parliament and of the Council (the Prospectus Regulation)<sup>4</sup>, Directive 2013/50/EU of the European Parliament and of the Council (the Transparency Directive)<sup>5</sup>, Regulation (EU) No 596/2014 of the European Parliament and of the Council (the Market Abuse Regulation)<sup>6</sup>, Regulation (EU) No 236/2012 of the European Parliament and of the Council (the Short Selling Regulation)<sup>7</sup>, Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation)<sup>8</sup> and Directive 98/26/EC of the European Parliament and of the Council (the Settlement Finality Directive)<sup>9</sup> may apply to its issuer and firms conducting activities related to it. The so-called tokenisation of financial instruments, that is to say their

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<sup>3</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>4</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

<sup>5</sup> Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (OJ L 294, 6.11.2013, p. 13).

<sup>6</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

<sup>7</sup> Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

<sup>8</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

<sup>9</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

transformation into crypto-assets to enable them to be issued, stored and transferred on a distributed ledger, is expected to open up opportunities for efficiency improvements in the entire trading and post-trading area.

- (3) The Union financial services legislation was not designed with DLT and crypto-assets in mind<sup>10</sup>, and there are provisions in existing EU financial services legislation that may preclude or limit the use of DLT in the issuance, trading and settlement of crypto-assets which qualify as financial instruments. There is also currently a lack of market infrastructures using DLT and providing trading and settlement services for crypto-assets that qualify as financial instruments. Without a secondary market able to provide liquidity and to enable investors to buy and sell such assets, the primary market for crypto-assets that qualify as financial instruments may never expand in a sustainable way.
- (4) At the same time, regulatory gaps exist due to legal, technological and operational specificities related to the use of DLT and crypto-assets that qualify as financial instruments. For instance, there are no transparency, reliability and safety requirements imposed on the protocols and smart contracts underpinning crypto-assets that qualify as financial instruments. The underlying technology could also pose some novel forms of cyber risks that are not appropriately addressed by existing rules. Several projects for the trading and post-trading of crypto-assets qualifying as financial instruments have been developed in the Union, but few are already in operation or they have limited scale. Given this limited experience as regards the trading and post-trading of transactions in crypto-assets that qualify as financial instruments, it would currently be premature to bring significant modifications to the Union financial services legislation to enable the full deployment of such crypto-assets and their underlying technology. At the same time, the creation of financial market infrastructures for crypto-assets that qualify as financial instruments is currently constrained by some requirements embedded in the Union's financial services legislation that would not be fully adapted to crypto-assets qualifying as financial instruments and to the use of DLT. For instance, trading platforms for crypto-assets usually give direct access to retail investors, while traditional trading venues usually give access through financial intermediaries.

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<sup>10</sup> European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

- (5) In order to allow for the development of crypto-assets that qualify as financial instruments and DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be useful to create a pilot regime for DLT market infrastructures. A pilot regime for DLT market infrastructures should allow such DLT market infrastructures to be temporarily exempted from some specific requirements under the Union financial services legislation that could otherwise prevent them from developing solutions for the trading and settlement of transactions in crypto-assets that qualify as financial instruments. The creation of the pilot regime should be without prejudice to the tasks and responsibilities of the European Central Bank (ECB) and the national central banks in the European System of Central Banks (ESCB), as provided for in the Treaty on the Functioning of the European Union and the Statute of the ESCB and of the ECB, to promote the smooth operation of payment systems and to ensure efficient and sound clearing and payment systems within the Union and with third countries. The pilot regime should also enable the European Securities and Markets Authorities (ESMA) and competent authorities to gain experience on the opportunities and specific risks created by crypto-assets that qualify as financial instruments, and by their underlying technology.
- (6) To meet this objective, a new Union status of DLT market infrastructures should be created. This status of DLT market infrastructure should be optional and should not prevent financial market infrastructures, such as trading venues, central securities depositories and central counterparties, from developing trading and post-trading services and activities for crypto-assets which qualify as financial instruments or are based on DLT, under the existing Union financial services legislation.
- (6a) Union legislation on financial services should be neutral as regards the use of one particular technology over another and therefore the reference to a specific type of DLT is avoided. Operators of DLT market infrastructures should ensure that they are able to comply with all applicable requirements irrespectively of the technology used.

- (6b) Where members of the ESCB, other Member States' national bodies performing similar functions, or other public bodies charged with or intervening in the management of public debt in the Union, operate a DLT settlement system, they should not be required to seek permissions from a competent authority to benefit from the exemptions of this Regulation, since such entities are not required to report to competent authorities or to comply with their orders, and are subject to a limited set of requirements under Regulation (EU) No 909/2014.
- (7) A DLT market infrastructure should be defined either as a DLT multilateral trading facility (DLT MTF) or a DLT settlement system.
- (8) A DLT MTF should be a multilateral trading facility that is operated by an investment firm or a market operator that operate the business or a regulated market and maybe the regulated market itself, authorised under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), and that has received a specific permission under this Regulation. Such a DLT MTF should be subject to all the requirements applicable to a multilateral trading facility under the framework of Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), Regulation EU No 600/2014 of the European Parliament and of the Council (the Markets in Financial Instruments Regulation, MiFIR)<sup>11</sup>, or any other EU financial services legislation, except if it has been granted one or several exemptions by its national competent authority, in accordance with this Regulation and Directive (EU) .../... of the European Parliament and of the Council<sup>12</sup>.

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<sup>11</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>12</sup> Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596

- (8a) The access to the pilot regime should not be limited to incumbents but should be open to new entrants. Any legal person may operate a DLT MTF or DLT settlement system, provided that it applies for authorisation as an investment firm under Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) or as CSD under Regulation (EU) No 909/2014 (the Central Securities Depository Regulation) and, at the same time, applies for a specific permission under this Regulation with the sole purpose of operating a DLT MTF or DLT settlement system. The applicant will need to comply with all the authorisation requirements and obligations under Directive 2014/65/EU or Regulation (EU) 909/2014 for which an exemption is not granted by the competent authority under this Regulation. The applicant should submit in its application all the information required in Chapter I of Title II of Directive 2014/65/EU or Chapter I of Title III of Regulation (EU) No 909/2014, except for those for which the applicant has requested an exemption pursuant to Article 4 or 5 of this Regulation. Those entities will only be able to operate DLT market infrastructures under this Regulation and their authorisation will be revoked once their permission has expired, provided that they do not submit a complete authorisation request.
- (8b) In order to allow CSDs operating a DLT settlement system to reap the full benefits of DLT technology and enable them to experiment with, develop and offer integrated trading and post-trading services, they should have a possibility to operate DLT MTF. A CSD operating a DLT settlement system should therefore be allowed to operate a DLT MTF if it has been granted a specific permission to operate such infrastructure. The DLT MTF operated by a CSD should be subject to the requirements applicable to a multilateral trading facility under the framework of Directive 2014/65/EU and Regulation EU No 600/2014, as specified in Article 73 of the CSDR, except if it has been granted an exemption by its national competent authority, in accordance with Article 19(2b) of Directive 2014/65/EU. However, such a CSD operating DLT settlement system should not be subject to an authorisation under Directive 2014/65/EU, as that authorisation is not required under Article 73 of Regulation (EU) No 909/2014 where CSDs provide investment services and perform investment activities in addition to providing the services explicitly listed in Sections A and B of the Annex to Regulation (EU) No 909/2014.

- (9) The use of distributed ledger technology, with all transactions recorded in a decentralised ledger, can expedite and condense trading and settlement to nearly real-time and could enable the merger of trading and post-trading activities. However, the current rules envisage the performance of trading and settlement activities by separate market infrastructures as Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation) requires that financial instruments admitted to trading on a trading venue within the meaning of Directive 2014/65/EU (Market in Financial Instruments Directive, MiFID II) be recorded with a central securities depository ('CSD'). Therefore, it would be justified to allow a DLT MTF to perform some activities normally performed by a CSD. Therefore, when granted the relevant exemption(s), a DLT MTF should be allowed to ensure the initial recording of DLT financial instruments, the settlement of transactions in DLT financial instruments and the safekeeping of DLT financial instruments.
- (10) A DLT settlement system should be a settlement system of financial instruments operated by a CSD authorised under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) that has received a specific permission under this Regulation. A DLT settlement system, and the CSD operating it, should be subject to the relevant requirements of Regulation (EU) No 909/2014 (the Central Securities Depository Regulation), except where the national competent authority has granted the CSD operating the DLT securities settlement system with one or several exemptions, in accordance with this Regulation.
- (11) A DLT MTF or a CSD operating a DLT settlement system should only admit to trading or record DLT financial instruments on the distributed ledger they use. DLT financial instruments should be crypto-assets that qualify as 'financial instruments' within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) and that are issued, transferred and stored on a distributed ledger.



- (12) In order to allow innovation and experimentation in a sound regulatory environment while preserving financial stability and investor protection, the type of financial instruments admitted to trading or recorded in a DLT market infrastructure should be limited to shares, bonds and units in collective investment undertakings that are less liquid and that are subject to the execution-only exemption under Article 25(4)(a) of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II). In order to determine whether a share, a bond or a unit in collective investment undertakings is liquid or not, this Regulation should set some value thresholds that can be further reduced by competent authorities. To avoid the creation of any risk to financial stability, the total market value of DLT financial instruments recorded in a DLT market infrastructure, should also be limited. To verify that the DLT financial instruments traded on or recorded by a DLT market infrastructure meets the conditions imposed under this Regulation, national competent authorities should be allowed to require such DLT market infrastructures to submit reports.
- (13) In order to ensure a level playing field with financial instruments admitted to trading on a traditional trading venue within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) and a high level of market integrity, the DLT financial instruments admitted to trading on a DLT MTF should always be subject to the provisions prohibiting market abuse in Regulation (EU) No 596/2014 (the Market Abuse Regulation).
- (14) A DLT MTF should be able to request one or several exemptions on a temporary basis, as listed under this Regulation, to be granted by the competent authority, if it complies with the conditions attached to such exemptions as well as additional requirements set under this Regulation to address novel forms of risks raised by the use of DLT. The DLT MTF should also comply with any compensatory measure imposed by the competent authority in order to meet the objectives pursued by the provision for which an exemption has been requested.

- (15) Where a financial instrument is admitted to trading on an MTF, it is to be recorded with an authorised Central Securities Depository in accordance with Regulation (EU) No 909/2014 (the Central Securities Depository Regulation). While the recording of a financial instrument and the settlement of related transactions could potentially take place on a distributed ledger used by the DLT MTF, Regulation (EU) No 909/2014 imposes an intermediation by a CSD and would oblige to replicate the recording on the distributed ledger at the CSD level, potentially imposing a functionally redundant overlay to the trade lifecycle of a financial instrument handled by DLT market infrastructures subject to this Regulation. Therefore, a DLT MTF should be able to request an exemption of the book-entry requirement and the recording with a CSD set by Regulation (EU) No 909/2014, where the DLT MTF complies with equivalent requirements to those applying to a CSD. The DLT MTF should record the financial instruments on its distributed ledger, ensure the integrity of the issues on the distributed ledger, establish and maintain procedures to ensure the safekeeping of the DLT financial instruments, complete the settlement of transactions, and prevent settlement fails.
- (16) Where performing the settlement of transactions in DLT financial instruments, the DLT MTF should ensure that the payment or delivery for DLT financial instruments from the buyer occurs at the same time as DLT financial instruments are delivered from the seller (*delivery versus payment* and *delivery versus delivery*). Where practicable and available, the cash payments should be settled through central bank money, including in a tokenised form, and, where not practicable or available, through accounts open with a CSD authorised to provide banking services or a credit institution. In order to test innovative solutions and to allow for the cash payments to occur on a distributed ledger, the DLT MTFs should also be allowed to use so-called settlement coins, that is to say commercial bank money in a tokenised form from credit institutions, or e-money tokens as defined in the Regulation No 2021/XX on Markets in Crypto-Assets<sup>13</sup>. When using commercial bank money for cash payments, the DLT MTF should limit risks by establishing and monitoring adherence by the credit institutions or the CSD authorised to provide banking services used for the settlement of cash payments to strict criteria, such as their regulation and supervision, creditworthiness, capitalisation, access to liquidity and operational reliability.

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<sup>13</sup> Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937– COM(2020)593

- (16a) When settlement of payments is carried out in e-money tokens the relevant requirements from Directive 2009/110/EC and Regulation No 2021/XX on Markets in Crypto-Assets<sup>14</sup> shall be complied with when the operator of the DLT market infrastructure issues the e-money tokens or when it provides custody services for e-money tokens.
- (17) Under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), as amended by Directive (EU) .../...<sup>15</sup>, a DLT MTF is able to request an exemption from the obligation of intermediation. Traditional MTFs may admit as members or participants only investment firms, credit institutions and other persons who have sufficient level of trading ability, competence and with adequate organisational arrangements and resources. By contrast, many trading platforms for crypto-assets offer a disintermediated access and provide direct access to retail clients. One potential regulatory hurdle to the development of MTFs for DLT financial instruments could be the obligation of intermediation embedded in Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II). A DLT MTF is allowed to request a temporary derogation to such an obligation of intermediation, to provide access to retail investors and to enable them to deal on their own account, provided that adequate safeguards in terms of investor protection would be in place and that such retail investors are fit and proper for anti-money laundering and combatting the financing of terrorism purpose.
- (18) To be granted an exemption under this Regulation, the DLT MTF should demonstrate that the exemption is proportionate and limited to the use of DLT as described in its business plan and that the exemption requested is limited to the DLT MTF and not extended to any other MTF operated by the same investment firm or market operator.
- (18a) The operation of a DLT market infrastructure should not undermine Member-States climate policies. Thus, it is important to further encourage the development of and investments in low or zero emission DLTs, including by integrating this technology in the sustainable finance taxonomy.

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<sup>14</sup> Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937– COM(2020)593

<sup>15</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive EU/2013/36, Directive 2014/65/EU, Directive (EU) 2015/2366, Directive 2009/138/EC, Directive EU/2016/2341, Directive 2009/65/EC, Directive 2011/61/EC and Directive 2006/43/EC - COM(2020)596

- (19) A CSD operating a DLT settlement system should be able to request one or several exemptions on a temporary basis, as listed under this Regulation, to be granted by the relevant competent authority, if it complied with the conditions to such exemptions as well as additional requirements to address novel forms of risks raised by the use of DLT. The CSD operating the DLT settlement system should comply with any compensatory measure imposed by the competent authority in order to meet the objectives pursued by the provision for which an exemption has been requested.
- (20) A CSD operating a settlement system should be allowed to request exemptions from different provisions that are likely to create regulatory obstacles for the development of settlement securities systems for transferable securities. For instance, a CSD should be able to request an exemption from some definitions of Regulation (EU) 909/2014 (the Central Securities Depositories Regulation), such as the notion of *'dematerialised form'*, *'security account'*, *'transfer orders'* as well as exemptions from provisions which refers to the notion of *'security account'*, such as the rules on the recording of securities, integrity of issue or segregation of accounts. CSDs operate securities settlement system by crediting and debiting the securities accounts of its participants. However, double-entry (or multiple-entry) book keepings securities accounts may not always exist in a DLT system. Therefore, a CSD operating a DLT settlements system should be able to request an exemption from the rules referring to the notion of *'securities account'* or *'book-entry form'* should it be necessary to allow the recording of DLT financial instruments on a distributed ledger, to ensure the integrity of the DLT financial instrument issue on the distributed ledger and the segregation of the DLT financial instruments belonging to various participants.

- (21) Under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), a CSD can only outsource one of its core activities, after receiving an authorisation from the competent authority. The CSD is also required to respect several conditions, so that the outsourcing does not result in a delegation of its responsibility or in a modification of the obligations of the CSD towards its participants or issuers. Depending on its business plan, a CSD using a DLT settlement system could be willing to share the responsibility of running the distributed ledger on which the transferable securities are recorded with other entities, including with its participants. The DLT settlement system should be able to request an exemption from the outsourcing requirements to develop such innovative business models. In such a case, they should demonstrate that the provisions on outsourcing are incompatible with the use of DLT as envisaged in their business plan and they should also demonstrate that some minimum requirements on outsourcing are met.
- (22) The obligation of intermediation through a credit institution or an investment firm so that retail investors are not able to obtain direct access to the settlement and delivery systems operated by a CSD could potentially create a regulatory obstacle to the development of alternative models of settlement based on a DLT that allow direct access by retail clients. Therefore, the CSD operating a DLT settlement system should be allowed to request an exemption from the notion of participant, as set out by Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation). Where seeking an exemption from the obligation of intermediation under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), the CSD operating a DLT settlement system should ensure that these persons are of sufficient good repute and fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. The CSD operating the DLT settlement system should ensure that these participants have sufficient level of ability, competence, experience and knowledge of post-trading and the functioning of DLTs.

- (23) The entities that are eligible to participate in a CSD covered by Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) are based on the entities that are eligible to participate in a securities settlement system that is designated and notified in accordance with Directive 98/26/EC (the Settlement Finality Directive) because Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) requires securities settlement systems operated by CSDs to be designated and notified under Directive 98/26/EC. A securities settlement system based on DLT that applies to be exempted from the participation requirements of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) would not be compliant with the participation requirements of Directive 98/26/EC. Consequently, such a securities settlement system could not be designated and notified under that Directive and for that reason is not referred to as DLT securities settlement system in this Regulation but rather DLT settlement system. Therefore, the DLT pilot regime allows CSDs to operate a DLT securities system which is not a securities settlement system designated pursuant the SFD. However, this would not preclude a DLT settlement system that complies with all of the requirements of Directive 98/26/EC from being so designated and notified.
- (24) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) encourages the settlement of transactions in central bank money. Where the settlement of cash payments in central bank money, including in a tokenised form, is not available and practicable, this settlement can take place through accounts opened with a credit institution or through its own accounts. That provision can be difficult to apply for a CSD operating a DLT settlement system, as such a CSD would have to effect movements in cash accounts at the same time as the delivery of securities on the DLT. A CSD operating a DLT settlement system should be allowed to request an exemption from the rules of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) on cash settlement in order to develop innovative solutions, such as the use of ‘e-money tokens’ as defined in the Regulation No 2021/XX on Markets in Crypto-Assets<sup>16</sup>.

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<sup>16</sup> Proposal for a Regulation of the European Parliament and of the Council on markets in crypto-assets, and amending Directive (EU) 2019/1937 – COM(2020)593

- (25) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) requires that a CSD gives access to another CSD or to other market infrastructures. The access to a CSD operating a DLT settlement system can be burdensome or difficult to achieve, as the interoperability of legacy systems with DLT has not been tested yet. A DLT settlement system should also be able to request an exemption from such rules, if it can demonstrate that the application of such rules are disproportionate to the size of the DLT settlement system.
- (26) Irrespective of the rule for which an exemption is requested, a CSD operating a DLT settlement system should demonstrate that the exemption requested is proportionate and justified by the use of DLT. The exemption should also be limited to the DLT settlement system and not cover other settlement systems operated by the same CSD.
- (27) DLT market infrastructures should also be subject to additional requirements, compared to traditional market infrastructures. These requirements are necessary to avoid risks raised by the use of DLT or by the new way the DLT market infrastructure would carry out its activities. Therefore, DLT market infrastructure should establish a clear business plan that details how the DLT would be used and the legal arrangements put in place.
- (28) A CSD operating a DLT settlement system, or DLT MTF where they are permitted to settle the transactions in DLT financial instruments themselves, should establish the rules on the functioning of the DLT they use, including the rules to access, admission and authentication on the DLT, the rules for the participating nodes and the rules to address potential conflicts of interest, as well as risk management measures.
- (29) A DLT market infrastructure should be required to inform members, participants, issuers and clients on how they intend to perform their activities and how the use of DLT will create deviations compared to the way the service is normally provided by a traditional MTF or a CSD operating a securities settlement system.

- (30) A DLT market infrastructure should have specific and robust IT and cyber arrangements related to the use of DLT. These arrangements should be proportionate to the nature, scale and complexity of the DLT market infrastructure's business plan. These arrangements should also ensure the continued reliability, continuity and security of the services provided, including the reliability of smart contracts that are potentially used. DLT market infrastructures should also ensure the integrity, security, confidentiality, availability and accessibility of data stored on the DLT. The competent authority of a DLT market infrastructure should be allowed to request an audit to ensure that the overall IT and cyber arrangements are fit for purpose. The costs of such an audit should be borne by the DLT market infrastructure.
- (31) Where the business plan of a DLT market infrastructure would involve the safekeeping of clients' funds, such as cash or cash equivalent, or DLT financial instruments, or the means of access to such DLT financial instruments, including in the form of cryptographic keys, the DLT market infrastructure should have adequate arrangements in place to safeguard their clients' assets. They should not use clients' assets on own account, except with prior express consent from their clients. The DLT market infrastructure should segregate clients' funds or DLT financial instruments, or the means of access to such assets, from its own assets or other clients' assets. The overall IT and cyber arrangements of DLT market infrastructures should ensure that clients' assets are protected against fraud, cyber threats or other malfunctions.
- (32) At the time where the specific permission is granted, DLT market infrastructures should also have a credible exit strategy in place in case the regime on DLT market infrastructures should be discontinued or the specific permission or some of the exemptions granted should be withdrawn.



- (33) The specific permission granted to a DLT market infrastructure should broadly follow the same procedures as the authorisation under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) or Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation). However, when applying for a permission, the applicant DLT infrastructure should indicate the exemptions it would be seeking. Before granting a permission to a DLT market infrastructure, the competent authority should seek ESMA opinion. ESMA should issue a non-binding opinion and make any recommendations on the application or the exemptions requested. ESMA should also consult the competent authorities of the other Member States. Where issuing its non-binding opinion, ESMA should aim at ensuring financial stability, market integrity and investor protection. In order to ensure the level-playing field and fair competition across the single market, ESMA's non-binding opinion and guidelines should aim at ensuring the consistency and proportionality of the exemptions granted by different competent authorities across the Union, including when evaluating the adequacy of different types of DLT used by operators in terms of compliance with this Regulation.
- (33a) The recording of securities, maintenance of securities accounts and management of settlement systems are activities interconnected with large parts of non-harmonized national law, such as corporate and securities law, which is also reflected in Regulation (EU) No 909/2014. It is therefore important that the operator of a DLT market infrastructures also ensures compliance, and allows its users to comply, with all the related applicable rules.
- (34) The competent authority which would examine the application submitted by a prospective DLT market infrastructure should have the possibility to refuse a permission if there were reasons to believe that the DLT market infrastructure would not be able to comply with applicable rules laid down by Union Law or national laws covering matters outside of the scope of Union Law, would pose a threat to financial stability, investor protection or market integrity or if the application was an attempt to circumvent existing requirements.

- (35) The specific permission given by a competent authority to a given DLT market infrastructure should indicate the exemptions granted to that DLT market infrastructure. Such a permission should be valid for the Union. ESMA should publish on its website the list of DLT market infrastructures and the list of exemptions granted to each of them.
- (36) The specific permission and the exemptions granted by national competent authorities should be granted on a temporary basis, for a period of up to six years from the date of the specific permission. After a five-year period from the entry into application of the Regulation, ESMA and the Commission would be required to make an assessment of this pilot regime for market infrastructures based on digital ledger technology. The aforementioned six-year period provides DLT market infrastructures sufficient time to adapt their business models to any modifications of this regime and operate under the pilot in a commercially viable manner. It would allow ESMA and the Commission to gather a useful data set encompassing around three calendar years of the operation of the pilot regime following the grant of a critical mass of specific permissions and related exemptions and to report thereon. It would also allow time for DLT market infrastructures to take the necessary steps either to wind down their operations or to transition to a new regulatory framework following ESMA's and the Commission's reports.

- (37) Without prejudice to the relevant provisions of Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) or Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), the competent authorities should have the power to withdraw the specific permission or any exemptions granted to the DLT market infrastructure, where a flaw has been discovered in the underlying technology or the services or activities provided by the DLT market infrastructure, and provided that this flaw outweighs the benefits provided by the service at stake, or where the DLT market infrastructure has breached any conditions attached to the exemptions imposed by the competent authority at the time of the granting of the specific permission, or where the DLT market infrastructure has recorded financial instruments that do not meet the conditions of DLT financial instruments under this Regulation. In the course of its activity, a DLT market infrastructure should have the possibility to ask for additional exemptions to those requested at the time of the permission. In such a case, these additional exemptions requested by the DLT market infrastructures should be subject to a specific permission by the competent authorities, in the same way as those requested at the time of the initial permission of the DLT market infrastructure.
- (38) Since DLT market infrastructures could receive temporary exemptions from existing Union legislation, they should closely cooperate with competent authorities and the European Securities and Markets Authority (ESMA) during the time of their specific permission. DLT market infrastructures should inform the competent authorities about any material change to its business plan and its critical staff, any evidence of cyber threats or attacks, fraud or serious malpractice, of any change in the information provided at the time of the initial application for permission, of any technical difficulties, and in particular those linked to the use of DLT, and of any new risks to investor protection, market integrity and financial stability that was not envisaged at the time where the specific permission was granted. Where notified of such a material change, the competent authority should request the DLT market infrastructure to apply for a new permission or exemption or it should take any corrective measures it deems appropriate. DLT market infrastructures should also provide any relevant data to competent authorities, whenever such data is requested. To ensure investor protection, market integrity and financial stability, the competent authority which granted the specific permission to the DLT market infrastructure should be able to recommend any corrective measures, after consultation with ESMA.

- (39) DLT market infrastructures should also make regular reports to their competent authorities. Competent authorities should make regular reports to ESMA, which should organise discussions on these reports to enable all competent authorities across the Union to gain experience on the impact of the use of DLT and on any adaptations to the Union financial services legislation that could be necessary to allow for the use of DLT on a greater scale.
- (40) Five years after the entry into application of this Regulation, ESMA should report to the Commission on this pilot regime for DLT market infrastructures, including on the potential benefits linked to the use of DLT, the risks raised and the technical difficulties. Based on ESMA's report, the Commission should report to the Council and European Parliament. This report should assess the costs and benefits of extending this regime on DLT market infrastructures for another period of time, extending this regime to new type of financial instruments, making this regime permanent with or without modifications, bringing modifications to the Union financial services legislation or terminating this regime.

- (41) Some potential gaps have been identified in the existing EU financial services rules as regards their application to crypto-assets that qualify as financial instruments<sup>17</sup>. In particular, some regulatory technical standards under the Regulation EU No 600/2014 (the Markets in financial instruments Regulative) relative to certain data reporting requirements and pre- and post-trade transparency requirements are not well adapted to financial instruments issued on a distributed ledger technology. Secondary markets in financial instruments issued on distributed ledger technology or similar technology are still nascent and therefore their features may differ from markets in financial instruments using traditional technology. The rules set out in these regulatory technical standards should be capable of being effectively applied to all financial instruments, regardless of the technology used. Therefore, ESMA should be mandated to carry out a comprehensive assessment of these regulatory technical standards adopted in application of Regulation EU No 600/2014 and propose any needed amendments aimed at ensuring that the rules set out therein can be effectively applied to financial instruments issued on distributed ledger technology. In carrying out this assessment, ESMA should take into account the specificities of those financial instruments issued on a distributed ledger technology and whether they require adapted standards which would allow for their development without undermining the objectives of the rules laid down in the regulatory technical standards adopted in application of Regulation EU No 600/2014.
- (42) Where the objectives of this Regulation cannot be sufficiently achieved by the Member States, because any regulatory obstacles to the development of DLT market infrastructures for crypto-assets that qualify as financial instruments under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) are embedded in Union financial services legislation such objectives can rather be better achieved at Union level. Therefore, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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<sup>17</sup> European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

- (43) In order for the Union to keep pace with innovation, it is important that the regime of DLT market infrastructures enters into application, as soon as possible.
- (44) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725(EC) of the European Parliament and of the Council<sup>18</sup>, and delivered their opinion on...[date of the opinion(s)].
- (45) The operation of DLT market infrastructures could involve the processing of personal data. Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulations (EU) 2016/679<sup>19</sup> and (EU) 2018/1725<sup>20</sup>.
- (46) Article 54(2) of Regulation (EU) No 600/2014 provides for a transitional period during which Article 35 or 36 of that Regulation would not apply to those CCPs or trading venues which applied to their competent authority to benefit from the transitional arrangements, in respect of exchange-traded derivatives. The transitional period during which a trading venue or a CCP can be exempted by its national competent authority, in respect of exchange-traded derivatives from the application of Articles 35 and 36 of that Regulation expired on 3 July 2020.

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<sup>18</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>19</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>20</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

The market environment at that time, with a high degree of uncertainty and volatility driven by the COVID-19 pandemic, negatively impacted CCPs and trading venues' operations by increasing their operational risks. Those increased risks, combined with limited capacity for assessing access requests and for managing the migration of transactions flows, might have impacted the orderly functioning of markets or financial stability. In addition, that Regulation provides for a novel exchange-traded derivatives regime on access to critical market infrastructures which aims to balance more competition amongst those infrastructures with the need to preserve their operational integrity. Therefore, while that Regulation seeks to create a competitive market for financial infrastructures, economic operators should not have expected that existing rules and priorities are maintained when economic circumstances change as a consequence, in particular, of a major economic crisis. This is particularly the case in an area where the interaction between critical market infrastructures, such as trading and clearing infrastructures, requires an exceptional level of operational resilience, as any failures in such critical infrastructures would pose a high risk to financial stability. As a consequence of the COVID-19 pandemic, the application date of the new open access regime for trading venues and CCPs offering trading and clearing services in relation to exchange-traded derivatives was postponed by Article 95 of Regulation (EU) 2021/23 by one year, until 3 July 2021.

The COVID-19 pandemic is ongoing and the above-mentioned reasons for postponing the application date of the new open access regime persist. In addition, the UK's withdrawal from the Union has a significant economic impact on financial markets in the Union and expected changes to the regulatory framework in the UK, including on open access for exchange-traded derivatives, will further impact financial markets in the Union. As a consequence, the date of application of the new open access regime should be postponed by two more years, until 3 July 2023.

## Article 1

### *Subject matter and scope*

- (1) This Regulation lays down requirements on DLT market infrastructures, which are granted with specific permissions to operate in accordance with Article 7 and Article 8.
- (2) This Regulation establishes the requirements for:
  - (a) granting and withdrawing such specific permissions;
  - (b) granting, modifying and withdrawing related exemptions;
  - (c) mandating, modifying and withdrawing attached conditions, compensatory or corrective measures;
  - (d) operating DLT market infrastructures;
  - (e) supervising DLT market infrastructures; and
  - (f) cooperation between operators of DLT market infrastructures, competent authorities and ESMA.



## Article 2

### *Definitions*

For the purposes of this Regulation, the following definitions apply:

- (1) ‘distributed ledger technology’ or ‘DLT’ means DLT as defined in Article 3(1)(1) of Regulation [MiCA];
- (2) ‘DLT market infrastructure’ means either a ‘DLT multilateral trading facility’ or a ‘DLT settlement system’;
- (3) ‘DLT multilateral trading facility’ or ‘DLT MTF’ means a ‘multilateral trading facility’, operated by an investment firm, a market operator or CSD, that only admits to trading DLT financial instruments and that may be permitted, on the basis of transparent, non-discretionary, uniform rules and procedures, to:
  - (a) ensure the initial recording of DLT financial instruments;
  - (b) settle transactions in DLT financial instruments against payment; and
  - (c) provide safekeeping services in relation to DLT financial instruments, or where applicable, to related payments and collateral, provided using the DLT MTF;
- (4) ‘DLT settlement system’ means a settlement system, operated by a ‘central securities depository’ and that settles transactions in DLT financial instruments against payment, irrespective of its designation and notification in accordance with Directive 98/26/EC;

- (5) ‘DLT financial instruments’ means ‘financial instruments’ within the meaning of Article 4(1)(15) of Directive 2014/65/EU that are issued by means of distributed ledger technology;
- (6) ‘multilateral trading facility’ means a ‘multilateral trading facility’ as defined in Article 4(1)(22) of Directive 2014/65/EU;
- (7) ‘central securities depository’ or ‘CSD’ means a ‘central securities depository’ as defined in Article 2(1) of Regulation (EU) No 909/2014 and which may also operate a DLT settlement system;
- (8) ‘financial instrument’ means a ‘financial instrument’ as defined in Article 4(1)(15) of Directive 2014/65/EU;
- (9) ‘settlement’ means ‘settlement’ as defined in Article 2(7) of Regulation (EU) No 909/2014;
- (10) ‘business day’ means ‘business day’ as defined in Article 2(14) of Regulation (EU) No 909/2014;
- (11) ‘delivery versus payment’ or ‘DVP’ means ‘delivery versus payment’ as defined in Article 2(27) of Regulation (EU) No 909/2014;
- (12) ‘settlement fail’ means a ‘settlement fail’ as defined in Article 2(1)(15) of Regulation (EU) No 909/2014;
- (13)
  - (a)
  - (b)
  - (c)

(14)

(a)

(b)

(c)

(d)

(e)

(15)

(16)

(17)

(18)

(19) ‘investment firm’ means an ‘investment firm’ as defined in Article 4(1)(1) of Directive 2014/65/EU;

(20) ‘market operator’ means a ‘market operator’ as defined in Article 4(1)(18) of Directive 2014/65/EU;

(21) ‘competent authority’ means one or more competent authorities designated either in accordance with:

(a) Article 67 of Directive 2014/65/EU for investment firms, market operators or CSD which operate or apply for a permission to operate a DLT MTF according to this Regulation;

(b) Article 11 of Regulation (EU) No 909/2014 for a CSD which operate or apply for a permission to operate a DLT settlement system according to this Regulation

(c)

(22) ‘home Member State’ means in the case of:

(a) an investment firm operating a DLT MTF, the Member State determined in accordance with Article 4(55)(a) (ii) and (iii) of Directive 2014/65/EU;

(b) a market operator operating a DLT MTF, the Member State in which the market operator of the DLT MTF is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the marker operator of the DLT MTF is situated;

(c) a CSD operating a DLT settlement system, the Member State determined in accordance with Article 2(23) of Regulation (EU) No 909/2014.

(23) ‘e-money tokens’ means ‘e-money tokens’ as defined in Article 3(1)(4) of Regulation No 2021/XX on Markets in Crypto-Assets<sup>21</sup>.

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<sup>21</sup> Proposal for a Regulation of the European parliament and of the Council on Markets in Crypto-assets and amending Directive (EU) 2019/1937 – COM(2020)593

### Article 3

#### *Limitations on the financial instruments admitted to trading on or settled by a DLT market infrastructure*

1. Only DLT financial instruments that meet the following conditions may be admitted to trading and be recorded on a DLT market infrastructure:
  - (a) shares, the issuer of which has a market capitalisation or a tentative market capitalisation of less than EUR 500 million; or
  - (b) bonds, other forms of securitised debt, including depositary receipt in respect of such securities, and money market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved, with an issuance size of less than EUR 1 billion; or
  - (c) Units in collective investment undertakings which are covered by Article 25(4)(a) of Directive 2014/65/EU and with market value of assets under management of less than EUR 500 million.

The thresholds specified in the first sub-paragraph are applicable at the moment of admission to trading or recording on a distributed ledger.

- 2.
3. The total market value of DLT financial instruments recorded in a CSD operating a DLT settlement system or by a DLT MTF where it records such instruments instead of a CSD in accordance with paragraphs 2 and 3 of Article 4, at the time of recording a new DLT financial instrument, shall not exceed EUR 6 billion.

Where the recording of a new DLT financial instrument would result in the total market value referred to in the first subparagraph reaching EUR 6 billion, the DLT market infrastructures shall not admit to trading or record such new DLT financial instrument.

4.

(a)

(b)

5. Where the total market value of the DLT financial instruments recorded on a DLT market infrastructure has reached EUR 10 billion, the investment firm or the market operator operating the DLT MTF concerned, or the CSD operating the DLT settlement system concerned shall activate the transition strategy, referred to in Article 6(6). They shall notify the competent authority of the activation of their transition strategy, in their monthly report and of the time-horizon for such transition.

5a. The CSD, or the investment firm or market operator when there is no CSD, shall calculate the average total market value of DLT financial instruments of each month.

They shall use such monthly average:

(a) when assessing the impact of the recording of new financial instruments in the following month as laid down in paragraph 3;

(b) to activate the transition strategy as laid down in paragraph 5.

The monthly average shall be equal to the average of the sum of the daily closing prices of each DLT financial instrument, multiplied by the number of DLT financial instruments with the same ISIN that are recorded on the DLT market infrastructure.

5b. The operator of a DLT market infrastructure shall submit to its competent authority monthly reports, demonstrating that all the DLT financial instruments that are recorded on a DLT market infrastructure, fulfil the conditions under paragraphs 3 and 5.

- 5c. The competent authorities may set lower thresholds than those referred to in paragraphs 1 and 3. In the case of the modification of the total market value referred to in paragraph 3, the values in paragraph 5 shall be adapted accordingly.

When deciding about the thresholds, the competent authority shall consider the market size and the average capitalization of financial instruments of a given type admitted to trading platforms in the Member States where the services and activities will be carried out and the risks related to the issuers, to the DLT used and to the services and activities of the DLT infrastructure.

6. Regulation (EU) No 596/2014 shall apply to DLT financial instruments admitted to trading on a DLT MTF.

#### **Article 4**

##### *Requirements and exemptions regarding DLT multilateral trading facilities*

1. A DLT MTF operated by an investment firm or a market operator shall be subject to all the requirements applicable to an MTF under Directive 2014/65/EU and Regulation (EU) No 600/2014, except if the investment firm or the market operator operating the DLT MTF:
- (a) has requested an exemption as specified in paragraph 2 or under Article 19(2b) of Directive 2014/65/EU and has been granted such an exemption by the competent authority that granted the specific permission in accordance with Article 7; and
  - (b) complies with the obligations set out in Article 6; and
  - (c) complies with the obligations set out in paragraph 4.

- 1a. A CSD operating a DLT MTF in accordance with Article 5(9) shall be subject to the requirements applicable to an MTF under Directive 2014/65/EU and Regulation (EU) No 600/2014 as specified in Article 73 of Regulation (EU) No 909/2014, except if it has requested an exemption set out in Article 19(2b) of Directive 2014/65/EU, demonstrating the exemption is proportionate and justified by the use of a DLT, and has been granted such an exemption by the competent authority that granted the specific permission in accordance with Article 7.
  
2. At its request, an investment firm or a market operator operating a DLT MTF may be permitted to admit to trading DLT financial instruments that are not recorded in a CSD in accordance with Article 3(2) of Regulation (EU) 909/2014 but instead recorded on the distributed ledger used by the DLT MTF's.

An investment firm or a market operator requesting a permission pursuant to the previous subparagraph shall propose compensatory measures to meet the objectives pursued by the provisions from which an exemption is requested, and ensure at a minimum:

- (a) the recording of the DLT financial instruments on the DLT MTF's distributed ledger;
  
- (b) that the number of DLT financial instruments recorded on the DLT MTF equals the total number of such DLT financial instruments in circulation on the DLT MTF's distributed ledger at any given time;
  
- (c) that the DLT MTF keeps records which enable the investment firm or the market operator operating the DLT MTF, without delay at any given time, to segregate the DLT financial instruments of a member, participant, issuer or client from those of any other member, participant, issuer or client;



- (d) that the securities overdrafts, debit balances or undue securities creation or deletion are not allowed.

Where no request for permission has been made by the operator of the DLT MTF in accordance with the first subparagraph, the DLT financial instruments shall be recorded in book-entry form in a CSD or on the distributed ledger of a CSD operating a DLT settlement system.

3. Where an investment firm or a market operator operating a DLT MTF has requested a permission under paragraph 2, it shall propose compensatory measures to meet the objectives pursued by Articles 7, 37(2) and 39 of Regulation (EU) No 909/2014 and ensure at minimum, by means of robust procedures and arrangements, that the DLT MTF:
  - (a) guarantees that the number of DLT financial instruments in an issue or in part of an issue admitted by investment firm or market operator operating the DLT MTF, is equal to the sum of DLT financial instruments making up such an issue or part of an issue, recorded on the DLT MTF's distributed ledger, at any given time;
  - (b) guarantees the safekeeping of any DLT financial instruments, as well as any funds to effect payments for such securities or any collateral provided in respect of such transactions using the DLT MTF;
  - (c) enables clear, accurate and timely confirmation of the details of transactions in DLT financial instruments including any payments made in respect thereof as well as the discharge of or calling for any collateral in respect of the same;

- (d) provides clear, accurate and timely information in relation to the settlement of transactions, including settlement finality, by defining the moment from which transfer orders or other pre-identified instructions may not be revoked by a member, participant, issuer or client;
- (e) settles transactions in DLT financial instruments close to real time or intraday, and in any case, no later than on the second business day after the conclusion of the trade;
- (f) ensures delivery versus payment or delivery versus delivery for all transactions against cash or financial instruments, respectively, between direct participants in a distributed ledger used by the DLT MTF's and settled therein;

The settlement of payments shall be carried out through central bank money, including in tokenised form, where practicable and available, or where not practicable and available, through accounts opened with a CSD in accordance with the provisions of Title IV of Regulation (EU) No 909/2014 or with a credit institution, including in a tokenised form, or through e-money tokens.

Where settlement occurs through accounts opened with a CSD or credit institutions or through e-money tokens, the investment firm or the market operator operating the DLT MTF shall identify, measure, monitor, manage, and minimise any risk arising from the use of such means; and

Banking-type ancillary services of Section C of the Annex of Regulation (EU) No 909/2014 can only be performed by a CSD in accordance with the provisions of Title IV of Regulation (EU) No 909/2014 or credit institutions. Services associated to e-money tokens equivalent to the services listed in letters b) and c) of Annex III of Regulation (EU) No 909/2014 can only be performed by a CSD in accordance with the provisions of Title IV of Regulation (EU) No 909/2014 or credit institutions.

- (g) either prevents or, if not possible, addresses settlement fails;
  - (h) mitigate risk arising from the non-designation of the DLT securities system as a system for the purposes of Directive 98/26/EC, in particular with regard to insolvency proceedings.
- 3a. Where an operator of a DLT MTF has been granted a permission in accordance with paragraphs 1 or 2 it shall comply with any additional compensatory measures that the competent authority which granted the specific permission may deem appropriate in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity or financial stability.
4. where an operator of a DLT MTF requests an exemption in accordance with paragraph 2 or with Article 19(2b) of Directive 2014/65/EU, it shall in any case demonstrate that the exemption requested is:
- (a) proportionate to and justified by the use of a DLT; and
  - (b) limited to the DLT MTF and does not extended to any other MTF operated by the said investment firm or market operator.
5. ESMA shall prepare guidelines on the additional compensatory measures, referred to in paragraph 3a, that the competent authority may require in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity or financial stability.

## Article 5

### *Requirements and exemptions regarding DLT settlement systems*

1. A CSD operating a DLT settlement system shall be subject to the requirements applicable to a CSD operating a securities settlement system under Regulation (EU) No 909/2014, except if such a CSD:
  - (a) has requested exemptions as specified in paragraphs 2 to 6 and has been granted such exemptions by the competent authority that granted the specific permission in accordance with Article 8;
  - (b) complies with the obligations set out in Article 6; and
  - (c) complies with the conditions set out in paragraphs 2 to 8 and with any additional compensatory measures that the competent authority which granted the specific permission may deem appropriate in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity and/or financial stability.

2. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Article 2(4) on dematerialised form, Article 2(9) on transfer of orders, Article 2(28) on securities accounts, Article 3 on the recording of securities, Article 37 on the integrity of issue, Article 38 on the segregation of assets of Regulation (EU) No 909/2014, provided that the CSD operating the DLT securities settlement system:
- (a) demonstrates that the use of a ‘securities account’ as defined under Article 2(28) of Regulation (EU) No 909/2014 or the use of book-entry form are incompatible with the use of its particular DLT;
  - (b) proposes compensatory measures to meet the objectives pursued by the provisions from which an exemption is requested, and ensures at minimum that:
    - (i) the recording of the DLT financial instruments is done on the distributed ledger; and
    - (ii) the number of DLT financial instruments in an issue or in part of an issue admitted by the CSD operating the DLT settlement system, is equal to the sum of DLT financial instruments making up such issue or part of an issue, recorded on the distributed ledger at any given time; and
    - (iii) it keeps records which enable the CSD, without delay at any given time, to segregate the DLT financial instruments of a member, participant, issuer or client from those of any other member, participant, issuer or client; and
    - (iv) securities overdrafts, debit balances or undue securities creation or deletion are not allowed.

- 2a. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Article 7 of Regulation (EU) No 909/2014 provided that it demonstrates that it implements mechanisms to prevent or, if not possible, to address settlement fails.
3. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Article 19 of Regulation (EU) No 909/2014 when outsourcing a core service to a third party and Article 30 of that Regulation, provided that:
- (a) such provisions are incompatible with the use of a DLT as envisaged by the particular DLT operated by the CSD concerned; and
  - (b) the CSD operating the DLT settlement system ensures that the conditions set out in points (c) to (i) of Article 30(1) and in Article 30(2) of Regulation (EU) No 909/2014 are complied with.
4. At its request, a CSD operating a DLT settlement system may be permitted by the competent authority to admit as participants natural and legal persons other than those referred to in Article 2(19), provided that such persons:
- (a) are of sufficient good repute and are fit and proper; and
  - (b) have sufficient level of ability, competence, experience and knowledge of the post-trading and the functioning of DLT.

5. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Article 40 of Regulation (EU) No 909/2014 on cash settlement, provided that the CSD ensures delivery versus payment or delivery versus delivery.

The settlement of payments shall be carried out through central bank money, including in tokenised form, where practicable and available, or where not practicable and available, through a accounts opened with the CSD in accordance with the provisions of Title IV of Regulation (EU) No 909/2014 or with a credit institution including in a tokenised form, or through e-money tokens.

Where settlement occurs through accounts opened with a credit institution or through e-money tokens, the CSD operating the DLT settlement system shall identify, measure, monitor, manage, and minimise any risk arising from the use of such means, also taking into account any risk arising from designation or non-designation of the DLT securities system as a system for the purposes of Directive 98/26/EC in accordance with paragraph 8.

Banking type-ancillary services of Section C of the Annex to Regulation (EU) No 909/2014 shall only be provided by the CSD in accordance with the provisions of Title IV of Regulation (EU) No 909/2014 or by a credit institution.

Services associated to e-money tokens equivalent to the services listed in letters b) and c) of Section C of the Annex to Regulation (EU) No 909/2014 shall only be provided by the CSD in accordance with the provisions of Title IV Regulation (EU) No 909/2014 or by a credit institution.

6. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Articles 50 or 53 on standard link access and access between a CSD and another market infrastructure of Regulation (EU) No 909/2014, provided that it demonstrates that the use of a DLT is incompatible with legacy systems of other CSDs or other market infrastructures or that granting such access to another CSD or another market infrastructure using legacy systems would trigger disproportionate costs, given the size of the DLT settlement system.

Where a CSD operating a DLT settlement system has requested an exemption in accordance with the first sub-paragraph, it shall give access to other CSDs operating a DLT settlement system or to DLT MTFs.

7. Where a CSD operating a DLT settlement system requests an exemption in accordance with paragraphs 2 to 6, it shall in any case demonstrate that:
  - (a) the exemption requested is proportionate to and justified by the use of its DLT, and;
  - (b) the exemption requested is limited to the DLT settlement system and does not extend to any securities settlement system as defined in Article 2(10) of Regulation (EU) No 909/2014 operated by the same CSD.
8. Where a CSD has requested and been granted an exemption under paragraph 4, the requirement in Article 39(1) of Regulation (EU) No 909/2014/EU for Member States to designate and notify the securities settlement system operated by the CSD in accordance with Directive 98/26/EC shall not apply to the DLT settlement system. For the purpose of operating a DLT settlement system, the requirement in Article 2(1) of Regulation (EU) No 909/2014 for CSDs to operate a securities settlement system shall not require Member States to designate and notify a securities settlement system under Directive 98/26/EC. The foregoing shall not preclude Member States from designating and notifying a DLT settlement system in accordance with Directive 98/26/EC where the DLT settlement system fulfils all of the requirements of that Directive.



Where the DLT settlement system is not designated and notified in accordance with Directive 98/26/EC the CSD shall propose compensatory measures to mitigate risks arising from insolvency where insolvency protections under Directive 1998/26 EC do not apply.

9. A CSD operating a DLT settlement system may also operate a DLT MTF where it complies with Article 73 of Regulation (EU) No 909/2014, provided it is permitted to do so in accordance with Article 7.
10. ESMA shall prepare guidelines on the additional compensatory measures, referred to in paragraph 1, that the competent authority may require in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity and/or financial stability.

## **Article 6**

### *Additional requirements on DLT market infrastructures*

1. The operators of DLT market infrastructures shall establish a clear and detailed business plan describing how they intend to carry out their services and activities, including a description of critical staff, technical aspects, the use of the DLT and the information required in paragraph 3.

They shall also have up-to-date, clear and detailed publicly available written documentation, which may be made available by electronic means, defining the rules under which the DLT market infrastructure shall operate, including the agreed upon associated legal terms defining the rights, obligations, responsibilities and liabilities of the operator of the DLT market infrastructure, as well as that of the members, participants, issuers and/or clients using the DLT market infrastructure concerned. Such legal arrangements shall specify the governing law, the pre-litigation dispute settlement mechanism, any insolvency protection under Directive 98/26/EC, where applicable, and the jurisdiction for bringing legal action.

2. A CSD operating a DLT settlement system and an investment firm or a market operator operating a DLT MTF requesting an exemption from Article 3(2) of Regulation (EU) No 909/2014, shall establish rules on the functioning of the DLT they use, including the rules for accessing the distributed ledger technology, the participation of the validating nodes, addressing potential conflicts of interest, and risk management including any mitigation measures;
3. The operators of DLT market infrastructures shall provide their members, participants, issuers and clients with clear and unambiguous information on their website on how they carry out their functions, services and activities and how this performance of functions, services and activities deviates from a MTF or a securities settlement system which is not based on DLT. This information shall include the type of DLT used.
4. The operators of DLT market infrastructures shall ensure that the overall IT and cyber arrangements related to the use of their DLT are proportionate to the nature, scale and complexity of their business. These arrangements shall ensure the continued transparency, availability, reliability and security of their services and activities, including the reliability of smart contracts used on the DLT. These arrangements shall also ensure the integrity, security and confidentiality of any data stored, and the availability and accessibility of such data.

The operators of DLT market infrastructures shall have a specific operational risk procedure for the risks posed by the use of a DLT and crypto-assets and on how these risks would be addressed if they materialised.

To assess the reliability of the overall IT and cyber arrangements of a DLT market infrastructure, the competent authority may require an audit. The competent authority shall appoint an independent auditor to carry out the audit. The DLT market infrastructure shall bear the costs of such an audit.

5. Where the operator of a DLT market infrastructure ensures the safekeeping of participants', members', participants', issuers' or clients' funds, collateral and DLT financial instruments, as well as the means of access to such DLT financial instruments, including in the form of cryptographic keys, the operators of such DLT market infrastructures shall have adequate arrangements in place to prevent the use of the said funds, collateral or DLT financial instruments on their own account other than with the express consent, evidenced in writing, which may be made through electronic means, of the participant, member, issuer, or client concerned.

The operator of a DLT market infrastructure shall maintain safe, accurate, reliable and retrievable records of the funds, collateral and DLT financial instruments held by its DLT market infrastructure for members, participants, issuers or clients as well as of the means of access to such assets.

The operator of a DLT market infrastructure shall segregate the funds, collateral and DLT financial instruments as well as the means of access to such assets, of the members, participants, issuers or clients using its DLT market infrastructure from its own assets as well as from the same assets of other members, participants, issuers or clients.

The overall IT and cyber arrangements, referred to in paragraph 4, shall ensure that the said funds, collateral and DLT financial instruments, as well as the means of access to such assets, are protected from the risks of unauthorised access, hacking, degradation, loss, cyber-attack or theft.

6. The operator of a DLT market infrastructure shall establish a clear, detailed and publicly available strategy for reducing the activity, transitioning out of or winding down a particular DLT market infrastructure (referred to herein as the ‘transition strategy’), ready to be deployed in a timely manner, in the event:
- (a) that the threshold referred to in Article 3(5) is exceeded, in the case of CSD or investment firm or the market operator operating a DLT MTF with DLT financial instruments that are not recorded in a CSD, or
  - (b) that the permission or some of the exemptions granted in accordance with Article 4 or Article 5 have to be withdrawn or otherwise discontinued, or
  - (c) of any voluntary or involuntary cessation of the business of the DLT MTF or DLT settlement system.

The transition strategy shall set out how members, participants, issuers and clients shall be treated, in the event of such withdrawal, discontinuation or cessation. The transition strategy shall set out how clients, in particular retail clients, will be protected from undue impacts. The transition strategy shall be updated on an ongoing basis subject to the prior consent of the competent authority which granted the permission to operate and related exemptions under Article 4 and Article 5.

The transition strategy shall specify how the exceedance of the threshold referred to in Article 3(5) is addressed.

7. If the investment firm or the market operator is only authorised to operate a DLT MTF under Article 7(1a), and it does not indicate in its transition strategy the intention to obtain an authorisation to operate a MTF under Directive 2014/65/EU, it shall make arrangements with investment firms or market operators operating a MTF under Directive 2014/65/EU to take over its operations and specify them in its transitions strategy referred to in paragraph 6.

8. If the investment firm or the market operator operating a DLT MTF was permitted to admit to trading DLT financial instruments that are not recorded in a CSD but instead recorded on the DLT MTF's distributed ledger in accordance to article 4, paragraph 2, it shall make arrangements with CSDs operating securities settlement system under Regulation (EU) No 909/2014 to take over its operations and specify them in its transitions strategy referred to in paragraph 6.
9. If the CSD operating DLT settlement system is only authorised to operate a DLT settlement system under Article 8(1a) , and it does not mention in its transition strategy the intention to obtain an authorisation to operate securities settlement system under Regulation (EU) No 909/2014, it shall make arrangements with CSDs operating securities settlement system under Regulation (EU) No 909/2014 to take over its operations and specify them in its transitions strategy referred to in paragraph 6.
- 10.
11. The arrangements referred to in paragraphs 7 to 10 shall be in place no later than after five years after the permission or at an earlier date if required by the competent authority to address any risk of early termination of the permission.

#### **Article 7**

##### *Specific permission to operate a DLT multilateral trading facility*

1. Any legal person authorised either as an investment firm or to operate a regulated market, under Directive 2014/65/EU, or a CSD operating a DLT settlement system, may apply for a specific permission to operate a DLT MTF under this Regulation.

- 1a. Where a legal person applies for authorisation for an investment firm under Directive 2014/65/EU and, at the same time, applies for a specific permission under this Article, with the sole purpose of operating a DLT MTF, the competent authority shall not assess compliance with those requirements of Directive 2014/65/EU for which the applicant has requested and has been ultimately granted exemptions pursuant to Article 4 of this Regulation.
- 1b. Where a legal person simultaneously applies for the authorisation and permission as referred to in paragraph 1a, it shall submit in its application all the information required in Chapter I of Title II of Directive 2014/65/EU, except those for which the applicant has requested exemptions pursuant to Article 4 of this Regulation.
2. Applications for a specific permission to operate a DLT MTF under this Regulation shall be accompanied by the following information:
  - (a)
  - (b) the business plan, rules of the DLT MTF and associated legal arrangements as referred to in Article 6(1) as well the information regarding the functioning, services and activities of the DLT MTF as referred to in Article 6(3);
  - (c) where applicable, the functioning of the DLT used, as referred to in Article 6(2);
  - (d) its overall IT and cyber arrangements as referred to in Article 6(4);
  - (e) where applicable, a description of the safekeeping arrangements of clients' DLT financial instruments as referred to in Article 6(5);
  - (f) its transition strategy, as referred to in Article 6(6); and
  - (g) the exemptions it is requesting in accordance with Article 4, the justification for each exemption sought, any compensatory measures proposed as well as the means envisaged to comply with the conditions attached to such exemptions under Article 4.

- 2a. ESMA shall develop guidelines to establish standard forms, formats and templates for the purposes of paragraph 2 by [please insert date 6 months after entry into force].
- 2c. Within 30 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant has to provide additional information. The competent authority shall inform the applicant when the application is considered to be complete.
3. As soon as the application is complete, the competent authority of the home Member State shall notify and provide the application to operate a DLT MTF to
  - (a) ESMA and
  - (b) to the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014, where the applicant requests permission to record the financial instruments on the DLT MTF distributor ledger.

Within one month of receipt of the notification, the authorities referred to in the first sub paragraph shall provide the competent authority with a non-binding opinion on:

- (a) the application and shall make any recommendations on the exemptions requested by the applicant and on the adequacy of the type of DLT used in terms of compliance with this Regulation, in order to ensure investor protection, market integrity and financial stability, in the case of ESMA;
- (b) the features of the DLT MTF distributed ledger where the financial instruments are recorded, in the case of the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014.

ESMA shall also promote the consistency and proportionality of exemptions granted by competent authorities to investment firms or market operators operating DLT MTFs across the Union. In order to do so, ESMA, shall consult the competent authorities of the other Member States in a timely manner and take the utmost account of their views in its opinion.

ESMA shall develop by [*two years after the entry into application of this Regulation*], and update periodically, guidelines to promote the consistency and proportionality, while ensuring investor protection and market integrity, of:

- (a) exemptions granted by competent authorities to operators of DLT MTFs, across the Union, including in the context of evaluation of the adequacy of different types of DLT used by operators in terms of compliance with this Regulation and of
  - (b) the exercise of the option from Article 3(5c).
- 3b. The competent authorities shall, within 90 working days of the receipt of the complete application, carry out the assessment and decide to grant or not to grant the specific permission. Where the applicant applies simultaneously for the specific permission and authorisation as an investment firm under Directive 2014/65/EU, the assessment period may be extended up to the period specified in Article 7(3) of Directive 2014/65/EU.



4. Without prejudice to Article 7 and Article 44 of Directive 2014/65/EU, the competent authority shall refuse to grant the applicant a permission to operate a DLT MTF under this Regulation if there are objective grounds for believing any of the following:
- (a) significant risks to investor protection, market integrity or financial stability are not properly addressed and mitigated by the applicant; or
  - (b) the specific permission to operate a DLT MTF under this Regulation and the exemptions requested are sought to circumvent legal and/or regulatory requirements; or
  - (c) that the DLT MTF operator will not be able to comply, or will not allow its users to comply, with provisions laid down by Union Law or national law covering matters outside of the scope of Union Law.
5. The specific permission granted to an investment firm, a market operator or CSD to operate a DLT MTF shall be valid throughout the Union for up to six years from the date of the specific permission. It shall specify the exemptions that are granted, in accordance with Article 4, any compensatory measures and, if applicable, the thresholds established by competent authorities in accordance with Article 3(5c).

The home competent authority shall register or deregister a DLT MTF and, as soon as possible, notify ESMA of that registration, including the information under subparagraph 1, deregistration or refusal of permission.

ESMA shall publish on its website the list of DLT MTFs, the start and end dates of their specific permissions, the list of exemptions granted to each of them and the thresholds established by competent authorities for each of them.

6. Without prejudice to Article 8 and Article 44 of Directive 2014/65/EU, the competent authority which granted a specific permission under this Regulation shall withdraw such permission or any of the exemptions granted, after consultation with the authorities referred to in paragraph 3(b), if any of the following has occurred:
- (a) a flaw has been discovered in the functioning of the DLT or in the services and activities provided by the operator of the DLT MTF that poses a risk to investor protection, market integrity or financial stability, which outweighs the benefits of the services and activities under experimentation;
  - (b) the operator of the DLT MTF has breached the conditions attached to the exemptions granted by the competent authority;
  - (c) the operator of a DLT MTF has admitted to trading financial instruments that do not fulfil the conditions laid down in Article 3(1) and 3(2);
  - (d) the operator of a DLT MTF, that has requested an exemption from Article 3(2) of Regulation (EU) No 909/2014, has recorded DLT financial instruments that do not fulfil the conditions laid down in Article 3(1) and 3(2);
  - (e) the investment firm or the market operator, operating a DLT MTF, that has requested specific permission to be exempted from Article 3(2) of Regulation (EU) No 909/2014, has exceeded the thresholds referred to in Article 3(3); or
  - (ea) the investment firm or the market operator, operating a DLT MTF, that has requested specific permission to be exempted from Article 3(2) of Regulation (EU) No 909/2014, has exceeded the thresholds referred to in Article 3(5) and has not activated the transition strategy;

- (eb) the competent authority has withdrawn the specific permission to operate a DLT settlement system granted to the CSD pursuant to Article 8, where that CSD operates a DLT MTF;
  - (f) the competent authority becomes aware that the investment firm, the market operator or CSD that applied for a specific permission to operate a DLT MTF, obtained such permission or related exemptions on the basis of misleading information including any material omission.
7. Where in the course of its activity, an operator of a DLT MTF intends to introduce a material change to the functioning of the DLT, or to its services or activities, which requires a new permission, a new exemption, or the modification of one or more of its existing exemptions or of any conditions attached to it, it shall request such permission, exemption or modification in accordance with Article 4. Such permission, exemption or modification shall be processed by the competent authority, in accordance with paragraphs 2 to 5.

Where in the course of its activity, an operator of a DLT MTF requests a new permission or exemption, it shall do so in accordance with Article 4. Such permission or exemption shall be processed by the competent authority, in accordance with paragraphs 2 to 5.

## Article 8

### *Specific permission to operate a DLT settlement system*

1. Any legal person authorised as a CSD under Regulation (EU) No 909/2014, may apply for a specific permission to operate a DLT settlement system under this Regulation.
  - 1a. Where a legal person applies for an authorisation for a CSD under Regulation (EU) No 909/2014 and, at the same time, applies for a specific permission under this Article, with the sole purpose of operating a DLT settlement system, or a DLT settlement system and a DLT MTF under Article 4(1a), the competent authority shall not assess compliance with those requirements of Regulation (EU) No 909/2014 for which the applicant has requested and has been ultimately granted exemptions pursuant to Article 5 of this Regulation.
  - 1b. Where a legal person simultaneously applies for the authorisation and permission as referred to in paragraph 1a, it shall submit in its application all the information required in Chapter I of Title III of Regulation (EU) No 909/2014, except for those for which the applicant has requested exemptions pursuant to Article 5 of this Regulation.
2. Applications for a specific permission to operate a DLT settlement system under this Regulation shall be accompanied by the following information:
  - (a)
  - (b) the business plan, rules of the DLT settlement system and associated legal arrangements as referred to in Article 6(1) as well as information regarding the functioning, services and activities of the DLT settlement system as referred to in Article 6(3);
  - (c) the functioning of the DLT used as referred to in Article 6(2);

- (d) its overall IT and cyber arrangements as referred to in Article 6(4);
  - (e) the safekeeping arrangements as referred to in Article 6(5);
  - (f) the transition strategy as referred to in Article 6(6);
  - (g) the exemptions it is requesting, in accordance with Article 5, the justifications for each exemption sought, any compensatory measures proposed as well as the measures envisaged to comply with the conditions attached to such exemptions under Article 5.
- 2a. ESMA shall develop guidelines to establish standard forms, formats and templates for the purposes of paragraph 2.
- 2c. Within 30 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant has to provide additional information. The competent authority shall inform the applicant when the application is considered to be complete.
3. As soon as the application is complete and, the competent authority of the home Member State shall notify and provide the application to operate a DLT settlement system to:
- (a) ESMA and
  - (b) to the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014.

Within one month of receipt of the notification, the authorities referred in the first subparagraph shall provide the competent authority with a non-binding opinion:

- (a) on the application, including any recommendations on the exemptions requested by the applicant and on the adequacy of the type of DLT used in terms of compliance with this Regulation, in order to ensure investor protection, market integrity and financial stability, in the case of ESMA;
- (b) on the features of the DLT settlement system operated by the applicant, in the case of the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014.

ESMA shall promote the consistency and proportionality of exemptions granted by competent authorities to CSDs operating DLT settlement systems across the Union. In order to do so, ESMA, shall consult the competent authorities of the other Member States in a timely manner and take the utmost account of their views in its opinion.

ESMA shall develop by [*two years after the entry into application of this Regulation*], and update periodically, guidelines to promote the consistency and proportionality, while ensuring investor protection and market integrity, of:

- (a) exemptions granted by competent authorities to CSDs operating DLT settlement systems, across the Union, including in the context of evaluation of the adequacy of different types of DLT used by operators in terms of compliance with this Regulation;
  - (b) the exercise of the option from Article 3(5c).
- 3b. The competent authorities shall, within 90 working days of the receipt of the complete application, carry out the assessment and decide to grant or not to grant the specific permission. Where the applicant applies simultaneously for the specific permission and authorisation for a CSD under Regulation 909/2014, the assessment period may be extended up to the period specified in Article 17(8) of Regulation 909/2014.

4. Without prejudice to Article 17 of Regulation (EU) No 909/2014a competent authority shall refuse to grant a specific permission under this Regulation, if there are grounds for believing any of the following:
- (a) significant risks to investor protection, market integrity or financial stability are not properly addressed and mitigated by the applicant; or
  - (b) the specific permission to operate a DLT settlement system and the exemptions requested are sought to circumvent legal and/or regulatory requirements; or
  - (c) that the CSD will not be able to comply, or will not allow its users to comply, with provisions laid down by Union Law or national law covering matters outside of the scope of Union Law.
5. The specific permission granted to operate a DLT settlement system shall be valid throughout the Union for up to six years from the date of the specific permission. It shall specify the exemptions that are granted, in accordance with Article 5, any compensatory measures and, if applicable, the threshold established by the competent authority in accordance with Article 3(5c).

The home competent authority registers or deregisters a DLT settlement system and, as soon as possible, notify the authorities referred in paragraph 3 of that registration, including the information under subparagraph 1, deregistration or refusal of permission.

ESMA shall publish on its website the list of DLT settlement systems, the start and end dates of their specific permissions and the list of exemptions granted to each of them and the thresholds established by competent authorities for each of them.

6. Without prejudice to the application of Article 20 of Regulation (EU) No 909/2014, the competent authority which granted the specific permission, under this Regulation shall withdraw such permission or any of the exemptions granted, after consultation with the relevant authorities referred in paragraph 3(b), in accordance with paragraph 3, if any of the following has occurred:
- (a) a flaw has been discovered in the functioning of the DLT or in the services and activities provided by the CSD operating a DLT settlement system that poses a risk to market integrity, investor protection or financial stability, which outweighs the benefits of the services and activities under experimentation; or
  - (b) the CSD operating the DLT settlement system has breached the conditions attached to the exemptions granted by the competent authority; or
  - (c) the CSD operating the DLT settlement system has recorded financial instruments that do not fulfil the conditions laid down Article 3(1) and (2); or
  - (d) the CSD operating the DLT securities settlements system has exceeded the thresholds referred to in Article 3(3);
  - (da) the CSD operating the DLT securities settlements system has exceeded the thresholds referred to in Article 3(5) and has not activated the transition strategy;
  - (e) the competent authority becomes aware that the CSD operating the DLT settlement system that applied for a specific permission to operate a DLT settlement system, obtained such permission or related exemptions on the basis of misleading information including any material omission.



7. Where in the course of its activity, a CSD operating a DLT settlement system intends to introduce a material change to the functioning of the DLT, or to its services or activities, which require a new permission, a new exemption or the modification of one or more of its existing exemptions or of any attached conditions, it shall request such permission, exemption or modification, in accordance with Article 5. Such permission, exemption or modification, shall be processed by the competent authority, in accordance with paragraphs 2 to 5.

Where in the course of its activity, a CSD operating a DLT settlement system requests a new permission or exemption, it shall request such permission or exemption, in accordance with Article 5. Such permission or exemption or modification shall be processed by the competent authority, in accordance with paragraphs 2 to 5.

### **Article 9**

*Cooperation between operators of DLT market infrastructures, competent authorities and ESMA*

1. Without prejudice to the application of any relevant provisions of Directive 2014/65/EU and Regulation (EU) No 909/2014, the operators of DLT market infrastructures shall cooperate with the competent authorities which are entrusted with granting specific permissions under this Regulation.

In particular, immediately upon becoming aware of any of the matters listed below, the operators of DLT market infrastructures shall notify, their competent authorities. Such matters include, without limitation:

- (a) any proposed material change to their business plan including critical staff, the rules of the DLT market infrastructure and associated legal arrangements at least four months before the change is planned, notwithstanding whether the proposed material change requires a change in the specific permission or related exemptions or conditions attached thereto, in accordance with Article 7 or Article 8;

- (b) any evidence of unauthorised access, material malfunctioning, loss, cyber-attacks or other cyber-threats, fraud, theft or other serious malpractice suffered by the DLT market infrastructure;
- (c) any material change in the information provided to the competent authority which granted the specific permission;
- (d) any technical or operational difficulty in delivering the activities or services subject to the specific permission, including difficulties related to the development or use of the DLT and DLT financial instruments; or
- (e) any risks to investor protection, market integrity or financial stability that have arisen and were not anticipated in the application requesting the specific permission or at the time of granting the specific permission.

Where notified of such information, the competent authority may require the DLT market infrastructure concerned to make an application under Article 7(7) or Article 8(7) and/or may take any corrective measures required as referred to in paragraph 3.

2. The operators of DLT market infrastructures shall provide the competent authority which granted the specific permission with any relevant information they may require.

3. The competent authority which granted the specific permission may require any corrective measures to the business plan, the rules of the DLT market infrastructure and associated legal arrangements to ensure investor protection, market integrity or financial stability.
4. Every six months from the date of the specific permission, the operator of a DLT market infrastructure shall submit a report to the competent authority. Such report shall include, without limitation:
  - (a) a summary of any information listed in the second sub-paragraph of paragraph 1;
  - (b) the number and value of DLT financial instruments admitted to trading on the DLT MTF, the number and value of DLT transferable securities recorded by a CSD or operating DLT settlement systems, and where applicable, the number and value of financial instruments recorded by an investment firm or a market operator operating on a DLT MTF;
  - (c) the number and value of transactions traded on a DLT MTF and settled either by a CSD or operating a DLT settlement system, or where applicable, by an investment firm or a market operator operating a DLT MTF;
  - (d) a reasoned assessment of any difficulties in applying Union financial services legislation or national law; and
  - (e) the measures taken to implement any compensatory or corrective measures required by the competent authority or conditions imposed by the competent authority.

5. ESMA shall fulfil a coordination role between competent authorities, with a view to building a common understanding of distributed ledger technology and DLT market infrastructure as well as a common supervisory culture and convergent supervisory practices, ensuring consistent approaches and convergence in supervisory outcomes.

Competent authorities shall inform the authorities referred in Article 7(3) and 8(3) on a regular basis of:

- (a) the reports submitted in accordance with paragraph 4;
  - (b) the specific permissions and exemptions granted in accordance with Article 7 and Article 8 as well as the conditions attached thereto;
  - (c) any refusal by a competent authority to grant a specific permission or any exemption in accordance with Article 7 and Article 8, any withdrawal of such a specific permission or exemptions and any cessations of business by a DLT market infrastructure.
6. ESMA shall monitor the application of the specific permissions, related exemptions and conditions attached thereto, granted in accordance with Article 7 and Article 8, as well as any compensatory or corrective measures required and shall submit an annual report to the Commission on how they are applied in practice.

## **Article 9a**

### *Amendment to Regulation (EU) No 600/2014*

In Article 54(2), the first subparagraph is replaced by the following:

‘If the Commission assesses that there is no need to exclude exchange-traded derivatives from the scope of Articles 35 and 36 in accordance with Article 52(12), a CCP or a trading venue may, before [enter date of entry into force of the amending act], apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority, taking into account the risks resulting from the application of the access rights under Article 35 or 36 as regards exchange-traded derivatives to the orderly functioning of the relevant CCP or trading venue, may decide that Article 35 or 36 would not apply to the relevant CCP or trading venue, respectively, in respect of exchange-traded derivatives, for a transitional period until 3 July 2023. Where such a transitional period is approved, the CCP or trading venue shall not benefit from the access rights under Article 35 or 36, as regards exchange-traded derivatives for the duration of that period. The competent authority shall notify ESMA and, in the case of a CCP, the college of competent authorities for that CCP, when a transitional period is approved.’

## **Article 10**

### *Report and review*

1. Within five years from the entry into application of this Regulation, at the latest, ESMA shall present a report to the Commission on:
  - (a) the functioning of DLT market infrastructures across the Union;

- (b) the number of DLT MTFs and CSDs operating a DLT settlement system which have been granted a specific permission under this Regulation;
- (c) the type of exemptions requested by DLT market infrastructures and the type of exemptions granted by competent authorities;
- (d) the number and value of DLT financial instruments admitted to trading or recorded on DLT market infrastructures;
- (e) the number and value of transactions traded or settled on DLT market infrastructures;
- (f) the type of DLT used and technical issues related to the use of DLT, including the matters referred to in point (b) of the second sub-paragraph of Article 9(1) and on the impact of DLTs used on climate policies objectives;
- (g) the procedures put in place by DLT MTFs in accordance with Article 4(3)(g);
- (h) any risks emerged from the use of a DLT;
- (i) any interoperability issues between DLT market infrastructures and other infrastructures using legacy systems;
- (j) the benefits resulting from the use of a DLT, in terms of any efficiency improvements and risk reductions across the entire trading and post-trading chain, including without limitation, with regard to the recording and safekeeping of DLT financial instruments, the traceability of transactions, corporate actions, reporting and supervision functions at the level of the DLT market infrastructure;

- (k) any refusals by a competent authority to grant specific permissions or exemptions in accordance with Article 7 and Article 8, modifications or withdrawals of such specific permissions or exemptions as well as of any compensatory or corrective measures; and
  - (l) any cessations of business by a DLT market infrastructure and the reasons for such cessation.
- 1a. Within two years from the entry into application of this Regulation, at the latest, ESMA shall present a report to the Commission on the implementation of this Regulation, including on the appropriateness of the individual and global thresholds set out in Article 3.
2. Based on the report referred to in paragraph 1, the Commission shall present a report to the European Parliament and Council including a cost-benefit analysis on whether the regime for DLT market infrastructures under this Regulation should be:
- (a) extended for another period;
  - (b) extended to other types of financial instruments that can be issued, recorded, transferred or stored on a DLT;
  - (c) amended;
  - (d) made permanent with or without amendment; or
  - (e) terminated.

Based on the report referred to in paragraph 1a, the Commission shall present a report to the European Parliament and Council including a cost-benefit analysis on whether the regime for DLT market infrastructures under this Regulation should be adjusted, in particular as regards the individual and global thresholds set out in Article 3.

In its reports, the Commission may propose any appropriate modifications to the Union framework on financial services legislation or harmonisation of national laws that would facilitate the use of distributed ledger technology in the financial sector as well as any measures needed to bridge the transition of DLT market infrastructures out of the pilot regime.

## **Article 11**

### *Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... *[please insert date 9 months after the date of entry into force of this Regulation]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament For the Council

The President    The President

  

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