

ESMA CONSULTATION PAPER ON GUIDELINES ON STANDARD FORMS, FORMATS AND TEMPLATES TO APPLY FOR PERMISSION TO OPERATE A DLT MARKET INFRASTRUCTURE

AMAFI's answer

INTRODUCTION

Association Française des Marchés Financiers (AMAFI) is the legal trade organisation representing financial market participants in France. AMAFI members are investment firms and credit institutions (French, European and global firms), operating in and/or from France (corporate and investment banks (CIBs), brokers-dealers, market-infrastructures, exchanges and private banks).

AMAFI is very much involved in the implementation of the pilot regime for market infrastructures based on distributed ledger technology ('DLTR') in relation with other stakeholders such as law firms and entities which are involved in providing DLT arrangements in France.

Therefore, AMAFI welcomes the opportunity to respond to this consultation paper on a pilot regime for market infrastructures based on the distributed ledger technology ('DLTR').

RESPONSES TO ESMA QUESTIONS

Q1: Do you have any comments or suggestions regarding the proposed guidelines? If so, please provide arguments supporting your comments and suggestions.

AMAFI considers that the proposed guidelines are appropriate at this stage.

Q2: Is any clarification needed in respect of the content of certain items listed in the tables below? If so, please indicate.

- ESMA may clarify the definition of the types of DLT mentioned in Annex to the Guidelines, Table 2, (a) "the business plan of the applicant". For example, what would be the difference between a unpermitted DLT and a public DLT.
- The Annex to the Guidelines, Table 2, (a) "the business plan" requires a "description of how their performance of functions, services and activities [provided to clients] deviates from those performed by a multilateral trading facility or securities settlement system that is not based on distributed ledger technology" and "if applicable, modality chosen to identify and differentiate the DLT functions, services and activities from those performed by a multilateral trading facility or a securities settlement system that is not based on distributed ledger technology". This information will be provided in relation with the various exemptions requested. Therefore, these two items in the general description would be redundant with the rest of the application and could hence be removed.

- ESMA could use the Guidelines to harmonise the content of the “Transition strategy” mentioned in the Annex to the Guidelines, Table 2, (g). It could expressly mention that the purpose of the Transition strategy is to define the main principles that the DLT market infrastructure intends to implement if the situations listed in art. 7 § 7 of PRR occur. National authorities should refrain from imposing to DLT market infrastructures to define this strategy in a too detailed manner, as this strategy may need to evolve through time.
- ESMA could use the Table 3 of the Annex of the Guidelines to clarify how to assess whether natural persons admitted directly to a DLT MTF are “of sufficient good repute” and whether they have a sufficient “knowledge of the functioning of distributed ledger technology”. Here again, it is important to ensure that national authorities do not impose too many requirements which would make the direct admission of natural persons to a DLT MTF unrealistic. For example, ESMA could clarify, regarding the knowledge of the functioning of distributed ledger technology, that the confirmation that participants understand the notion of “DLT financial instruments” and their difference with other types of financial instruments is sufficient.

Q3: Do you consider more specific forms or templates should be developed for certain items? If so, please specify.

See our answers to Q1 and Q2

