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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 - Letter to the Chairperson of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives Committee meeting of 21 December 2021 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex to the Chair of the European Parliament Committee on Economic and Monetary Affairs.

Encl.:

Council of the European Union
General Secretariat

SGS 21 / 005578

Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels, 21. 12. 2021

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
2020/0267 (COD)

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

I. JARC
Chairman of the Permanent
Representatives Committee (Part 2)

copy to: Ms Mairead MCGUINNESS, Commissioner
Mr Johan VAN OVERTVELDT, European Parliament Rapporteur

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ANNEX:

PE-CONS No/YY – 2020/0267 (COD)

REGULATION (EU) 2021/…

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

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[1],

Having regard to the opinion of the European Central Bank of 28 April 2021[2]

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .
[2] OJ C […], […], p. […].

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 exploring, 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.

(1a) Principles of technology neutrality, proportionality, a level playing field, and 'same activity, same risks, same rules' should apply to ensure that market participants have the regulatory space to innovate and to uphold the values of transparency, fairness, stability, consumer and investor protection, accountability, market integrity, and the protection of privacy and personal data, as guaranteed by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

(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, energy consumption 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)[3]. 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)[4], Directive 2013/50/EU of the European Parliament and of the Council (the Transparency Directive)[5], Regulation

[3] 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).

[4] 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)

[5] 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

(EU) No 596/2014 of the European Parliament and of the Council (the Market Abuse Regulation)[6], Regulation (EU) No 236/2012 of the European Parliament and of the Council (the Short Selling Regulation)[7], Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation)[8] and Directive 98/26/EC of the European Parliament and of the Council (the Settlement Finality Directive)[9] may apply to its issuer and firms conducting activities related to it. The so-called tokenisation of financial instruments, that is to say their digital representation on distributed ledgers or the issuance of traditional asset classes in tokenised form to enable them to be issued, stored and transferred on a distributed ledger, is expected to open up opportunities for efficiency improvements in the trading and post-trading area. However, as the fundamental trade-offs involving credit risk and liquidity remain in a tokenised world, the success of token-based systems will depend on how well they interact with traditional account-based systems, at least in the interim.

(3) The Union financial services legislation was not designed with DLT and crypto-assets in mind[10], and there are provisions in existing Union 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. Currently, there is also a lack of authorised financial market infrastructures using DLT to provide trading or settlement services, or a combination thereof, for crypto-assets that qualify as financial instruments. The development of a secondary market for such crypto assets could bring multiple benefits in terms of enhanced efficiency, transparency and competition in relation to trading and settlement activities.

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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)

6 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)

7 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).

8 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)

9 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)

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

(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. Furthermore, as highlighted by the European Central Bank's (ECB) Advisory Groups on Market Infrastructures for Securities and Collateral and for Payments, the use of DLT would entail similar challenges to those faced by solutions relying on conventional technology, such as fragmentation and interoperability issues, and would potentially also create new ones, for instance relating to the legal validity of tokens. 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 is not 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.

(5) In order to allow for the development of crypto-assets that qualify as financial instruments and of DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection and avoiding regulatory arbitrage and loopholes, it would be useful to create a pilot regime to test 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, without weakening any existing requirements and safeguards applied to traditional market infrastructures. In addition, DLT market infrastructures and their operators should have in place adequate safeguards to ensure effective protection of investors related to the use of DLT, including clearly defined lines of liability to clients for any losses due to operational failures. The pilot regime should also enable the European Securities and Markets Authorities (ESMA) and national competent authorities to draw lessons from the regime and gain experience on the opportunities and specific risks related to crypto-assets that qualify as financial instruments, and to their underlying technology. The experience gained with the pilot regime should therefore help to identify possible practical proposals for a suitable regulatory framework in order to make targeted adjustments to existing Union law involving the issuance, safekeeping and asset servicing, trading and settlement of financial instruments based on DLT.

(5a) The creation of the pilot regime should be without prejudice to the tasks and responsibilities of the ECB and the national central banks in the European System of Central Banks (ESCB), set out in the Treaty on the Functioning of the European Union and in the statutes 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.

(5b) The assignment of supervisory responsibilities as foreseen by this regulation is justified by the specific characteristics and risks of the foreseen pilot regime. Therefore the supervisory architecture as foreseen in this regulation should not be understood as to set any precedent for any future acts of financial services legislation.

(6) To meet this objective, a new Union status of DLT market infrastructures should be created in order to ensure that the Union is able to play a leading role regarding tokenized financial instruments and to contribute to the development of a secondary market for those assets. 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), a DLT settlement system (DLT SS), or a DLT trading and settlement system (DLT TSS).

Those DLT market infrastructures should be able to cooperate with other market participants in order to test innovative solutions based on DLT, on each segment of the value chain of the financial services.

(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 of a regulated market and maybe the regulated market itself, authorised under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), that has received a specific permission under this Regulation. A DLT MTF and its operator should be subject to all the requirements applicable to a multilateral trading facility and its operator 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)[11], or any other applicable Union financial services legislation, except for requirements in respect of which exemptions have been granted by the national competent authority, in accordance with this Regulation.

(8a) The access to the pilot regime should not be limited to incumbents but should be open to new entrants. An entity which is not authorised under Directive 2014/65/EU or Regulation (EU) No 909/2014 could apply for authorisation under that Directive or that Regulation, and, at the same time, for a specific permission under this Regulation. The competent authority should in this case not assess compliance of those requirements under Directive 2014/65/EU or Regulation (EU) 909/2014 in respect of which exemptions have been granted under this Regulation. Those entities should only be able to operate DLT market infrastructures under this Regulation and their authorisation should be revoked once their permission has expired, unless they submit a complete authorisation request under Directive 2014/65/EU or Regulation (EU) 909/2014.

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[11] 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)

(9) The use of distributed ledger technology, with all transactions recorded in a distributed 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 combination of trading and post-trading within one single legal entity is not envisaged by the current rules, irrespective of the technology used, due to policy choices related to risk specialisation and unbundling for the purposes of encouraging competition. The pilot regime should not be a precedent for a fundamental overhaul of the separation of trading and post-trading functions nor of the landscape of financial market infrastructures. However, in view of the potential benefits of DLT in terms of combining trading and settlement, it would be justified to provide in this pilot regime for a dedicated DLT market infrastructure, i.e., a DLT TSS, which combines the activities normally performed by both multilateral trading facilities and security settlement systems.

(9a) A DLT TSS should be a DLT MTF that combines the services performed by both DLT MTF and DLT SS, operated by an investment firm or market operator that has received a specific permission to operate a DLT TSS under this Regulation, or a DLT SS that combines the services performed by both DLT MTF and DLT SS, operated by a CSD that has received specific permission to operate a DLT TSS under this Regulation. An investment firm or market operator operating a DLT TSS should be subject to the requirements applicable to a DLT MTF and a CSD operating a DLT TSS should be subject to the requirements applicable to a DLT SS.

Since DLT TSS would enable an investment firm or market operator to provide also settlement services and a CSD to provide trading services, it is necessary that the investment firms or market operators also comply with provisions applicable to DLT SS, and CSDs with those applicable to DLT MTF.

Considering CSDs are not subject to authorisation requirements and certain organisational requirements of MIFID when providing investment services or activities in accordance with Article 73 of CSDR, it would be appropriate to take a similar approach in this pilot regime for both investment firms or market operators and CSDs that operate DLT TSS.

Therefore, an investment firm or a market operator operating a DLT TSS should be exempted from a limited set of CSDR requirements such as authorisation and certain organisational requirements, since these entities must comply with the authorisation and organisational requirements under [MiFID]. Inversely, a CSD operating a DLT TSS should be exempted from a limited set of MiFID requirements, such as authorisation and certain organisational requirements, since these entities are authorised under CSDR and must comply with the organisational requirements under that legal framework.

Such exemptions are temporary and should not apply to a DLT market infrastructure operating outside of the pilot regime.

ESMA could assess technical standards adopted in application of CSDR in relation to the provisions on record keeping and operational risks with a view to ensure their proportionate application to investment firms or market operators operating DLT TSS.

(9b) Operators of DLT TSS should be able to request the same exemptions available to operators of DLT MTF and DLT SS provided they comply with the conditions attached to them and compensatory measures imposed by the national competent authorities. The recitals on exemptions available to DLT MTF and DLT SS and related conditions and compensatory measures are also relevant in the context of DLT TSS.

In order to provide for additional flexibility in application of certain CSDR requirements to investment firms or market operators operating a DLT TSS, while ensuring a level playing field with CSDs providing settlement services under this pilot regime, certain exemptions from CSDR should be available to CSDs operating DLT SS and DLT TSS and investment firms or market operators operating DLT TSS, concerning measures to prevent and address settlement fails, requirements for participation, transparency as well as communication procedures with participants and other market infrastructures. These exemptions are conditional upon proposing compensatory measures, or any additional measures imposed by the competent authority that meet the objectives of the provisions from which an exemption is requested, or robust procedures and arrangements with some minimum requirements, in order to safeguard investor protection, market integrity and financial stability. The operator of the DLT TSS should demonstrate that the exemption requested is proportionate and justified by the use of DLT.

(10) A DLT SS should be a settlement system operated by a CSD authorised under Regulation (EU) No 909/2014 that has received a specific permission under this Regulation. A DLT SS, and the CSD operating it, should be subject to all the relevant requirements of Regulation (EU) No 909/2014, and any other applicable Union financial services legislation, except for requirements in respect of which exemptions have been granted in accordance with this Regulation.

(11) DLT market infrastructures should only admit to trading or record DLT financial instruments on a distributed ledger. DLT financial instruments should be crypto-assets that qualify as financial instruments within the meaning of Directive 2014/65/EU, and that are issued, transferred and stored on a distributed ledger.

(11a) Operators of DLT infrastructures should be held liable in the case of loss of funds. The liability of the operator of a DLT market infrastructure should be capped at the market value of the asset lost at the time the DLT operator's liability is invoked. The operator of a DLT market infrastructure should not be liable for events not attributable to the operator of a DLT infrastructure, in particular, any event for which it could demonstrate that it occurred independently of its operations, in particular a problem that the operator of a DLT market infrastructure does not control.

(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 subject to the execution-only exemption under Article 25(4)(a) of Directive 2014/65/EU. This Regulation should set some value thresholds that can be reduced in certain situations. In particular, to avoid the creation of any risk to financial stability, the total market value of DLT financial instruments admitted to trading or recorded in a DLT market infrastructure should be limited.

(13) In order to move closer to a level playing field with financial instruments admitted to trading on a traditional trading venue within the meaning of Directive 2014/65/EU and to ensure high levels of market integrity, investor protection and financial stability, the DLT financial instruments admitted to trading on a DLT MTF or on a DLT TSS should always be subject to the provisions prohibiting market abuse in Regulation (EU) No 596/2014.

(13a) This Regulation is without prejudice to the application of Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union Law. Article 73 of Directive 2014/65/EU applies for entities authorised under Directive 2014/65/EC, and Article 65 of Regulation (EU) No 909/2014 applies for entities authorised under Regulation 909/2014.

(14) An operator of 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, as well as to safeguard investor protection, market integrity and financial stability.

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(17) Under Directive 2014/65/EU, a DLT MTF should be able to request an exemption from the obligation of intermediation. Traditional MTFs are currently allowed to admit as members or participants only investment firms, credit institutions and other persons who have sufficient level of trading ability, competence and maintain adequate organisational arrangements and resources. By contrast, many trading platforms for crypto-assets offer 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. A DLT MTF should be allowed to request a temporary derogation from 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 satisfy certain conditions.

Investors that have direct access to the DLT MTF as members or participants under this exemption from the intermediation rule should not be considered as investment firms under Directive 2014/65/EU solely by virtue of being members of or participants in a DLT MTF.

In addition, DLT MTFs should also be able to request an exemption from the transaction reporting requirements in [MiFIR] subject to certain conditions and possible additional investor protection measures.

(18) To be granted an exemption under this Regulation, the DLT MTF should demonstrate that the requested exemption is proportionate and limited to the use of DLT as described in its business plan and that the requested exemption 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.

(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, as well as to safeguard investor protection, market integrity and financial stability.

(20) A CSD operating a DLT SS should be allowed to request exemptions from certain provisions that are likely to create regulatory obstacles for the development of DLT SSs. For instance, a CSD should be able to request that some definitions of Regulation (EU) 909/2014 do not apply, 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 SS 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. However, any CSD operating a DLT SS would still need to ensure the integrity of the DLT financial instruments issue on the distributed ledger and the segregation of the DLT financial instruments belonging to various participants.

(21) A CSD operating a DLT SS should always remain subject to the provisions of Regulation (EU) No 909/2014, pursuant to which a CSD that outsources services or activities to a third party remains fully responsible for discharging all of its obligations under that Regulation and is required to ensure that any outsourcing does not result in the delegation of the CSD's responsibility. Pursuant to the CSDR, a CSD operating a DLT SS is only permitted to outsource a core service or activity after receiving an authorisation from the competent authority. The CSD operating a DLT SS should be able to request an exemption from that authorisation requirement in cases where it demonstrates that the requirement is incompatible with the use of DLT as envisaged in its business plan. The delegation of tasks pertaining to the functioning of a DLT, or the use of DLT, to perform settlement, should not be considered as outsourcing in the sense of CSDR.

(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 fulfil certain conditions. . 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 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 because Regulation (EU) No 909/2014 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 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 settlement system in this Regulation but rather DLT settlement system. Therefore, the DLT pilot regime allows CSDs to operate a DLT settlement system which is not a securities settlement system designated pursuant the [SFD], and an exemption from the provision of the CSDR on settlement finality should be available, subject to certain compensatory measures 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 encourages the settlement of transactions in central bank money. Where the settlement of cash payments in central bank money is not available and practicable, this settlement can take place through accounts opened with a credit institution or through its own accounts in accordance with Title IV of Regulation (EU) No 909/2014. 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 therefore be allowed to request a temporary exemption from the rules of Regulation (EU) No 909/2014 on cash settlement in order to develop innovative solutions under the pilot regime, through the facilitated access to commercial bank money, or the use of 'e-money tokens'. Settlement through the central bank money can be considered as not available and practicable if it is not available on distributed ledger.

Besides the requirements proven as non-practicable in a DLT environment, the requirements linked to the cash settlement foreseen under Regulation (EU) No 909/2014 are expected to remain applicable outside of the pilot regime. DLT market infrastructures should therefore foresee in their business plan the need to comply with the Title IV of Regulation (EU) No 909/2014 in case they have the intention to eventually exit the pilot regime.

(25) Regulation (EU) No 909/2014 requires that a CSD gives access to another CSD or to other market infrastructures on a non-discriminatory and transparent basis. The access to a CSD operating a DLT SS can be technically more challenging, burdensome or difficult to achieve, as the interoperability of legacy systems with DLT has not been tested yet. A DLT SS 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 SS.

(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 and their operators should also be subject to additional requirements, compared to traditional market infrastructures. These requirements are necessary to avoid risks related to the use of DLT or by the new way the DLT market infrastructure would carry out its activities. Therefore, a DLT market infrastructure and its operator should establish a clear business plan that details how the DLT would be used and the legal arrangements put in place.

(28) Operators of DLT market infrastructures should establish or document, as appropriate, the rules on the functioning of the distributed ledger they use, including the rules to access and admission on the distributed ledger, 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 it intends to perform its 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, either created by the DLT market infrastructure itself or by a third party following contractual outsourcing procedures. 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 DLT market infrastructures 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 in place a credible exit strategy, in case the regime on DLT market infrastructures should be discontinued or the specific permission or some of the exemptions granted should be withdrawn or the thresholds envisaged in this Regulation have been reached. Such transition strategy should in principle include transition or reversion of their DLT operations to traditional infrastructure. For this purpose, new entrants or operators of DLT TSS that do not operate a traditional infrastructure to which they could transfer DLT instruments, should seek to conclude arrangements with operators of traditional infrastructures. This is in particular important for recording of DLT instruments. Therefore, CSDs should be subject to certain requirements in terms of putting in place such arrangements. In addition, CSDs should conclude such arrangements in a non-discriminatory manner against a reasonable commercial fee based on actual costs.

(33) The specific permission granted to a DLT market infrastructure should broadly follow the same procedures as the authorisation under Directive 2014/65/EU or Regulation (EU) No 909/2014. 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 provide ESMA with all relevant information. Where necessary, ESMA should issue a non-binding opinion on the exemptions requested and on the adequacy of the DLT in terms of compliance with this Regulation. Such a non-binding opinion does not amount to an opinion within the meaning of the [ESMA Regulation]. ESMA should also consult the competent authorities of the other Member States. Where issuing its non-binding opinion, ESMA should aim at ensuring investor protection, market integrity and financial stability. 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 that are also covered by non-harmonized provisions of national law, such as corporate and securities law. It is therefore important that operators of DLT market infrastructure comply, and enable their users to comply, with all 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 permissions 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 and only for the duration of the operation of the DLT pilot regime. 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 exemptions should be granted on a temporary basis, for a period of up to six years from the date of the specific permission and should be valid only for the duration of the operation of the DLT pilot regime. 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 on 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 or Regulation (EU) No 909/2014, 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 permissions or 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 exceed the thresholds or do not meet other 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 should be requested from the competent authority, 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. To ensure investor protection, market integrity and financial stability, 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. The competent authority should forward the information received from the DLT market infrastructures and the information on corrective measures to ESMA.

(39) DLT market infrastructures should also make regular reports to their competent authorities. ESMA 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.

(39a) During the lifecycle of the DLT pilot regime, it is important that the framework and its functioning are subject to frequent monitoring and evaluation, in order to maximise information for operators of DLT market infrastructures. ESMA should publish annual interim reports in order to provide market participants with a better understanding of the functioning and development of the markets and to provide clarification on the application of the pilot regime. The interim reports should include an update on the progress of the pilot regime regarding the most important trends, risks, and vulnerabilities. The interim reports should be submitted to the European Parliament, the Council, the Commission, and the national competent authorities.

(40) After a three-year period from the entry into application of the Regulation, ESMA would be required to make an assessment of the DLT pilot regime. 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 other types of financial instruments or otherwise amending the regime, making this regime permanent by bringing modifications to the Union financial services legislation or terminating this regime.

(40a) It would be undesirable to have two parallel regimes for DLT-based and non-DLT-based market infrastructures. If the pilot regime provided for in this Regulation is successful, it could be made permanent by amending the relevant Union financial services legislation in such a way that establishes a single, coherent framework.

(41) Some potential gaps have been identified in the existing Union financial services rules as regards their application to crypto-assets that qualify as financial instruments[12]. In particular, some regulatory technical standards under the Regulation (EU) No 600/2014 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, in line with existing mandates in Regulation EU no 600/2014 to draw up regulatory technical standards, it would be appropriate for ESMA to carry out a comprehensive assessment of such regulatory technical standards, 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.

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12 European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

(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 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.

(43)

(44) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725(EC) of the European Parliament and of the Council[13], and delivered its opinion on 23 April 2021.

The operation of DLT market infrastructures could involve the processing of personal data. Where it is necessary for the purposes of this Regulation to process personal data, that processing 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[14] and (EU) 2018/1725.

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13 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).

14 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).

(44a) Regulation (EU) No 600/2014 provides for a transitional period during which the non-discriminatory access to a central counterparty (CCP) or trading venue under that Regulation does not apply to those CCPs or trading venues which applied to their competent authority to be able to benefit from transitional arrangements in respect of exchange-traded derivatives. The period during which a trading venue or a CCP could be exempted by its national competent authority in respect of exchange-traded derivatives from rules on non-discriminatory access expired on 3 July 2020.

The increased uncertainty and volatility of the markets in the last two years, negatively impacted the operational risks of CCPs and trading venues, therefore the application date of the open access regime for trading venues and CCPs offering trading and clearing services in respect of exchange-traded derivatives was postponed by Article 95 of Regulation (EU) 2021/23 by one year, until 3 July 2021.

The above-mentioned reasons for postponing the application date of the new open access regime persist. Furthermore, the open access regime could go against parallel policy objectives to foster trading and innovation within the EU, since it could disincentivize innovation in ETD products by allowing competitors - beneficiaries of open access - to rely on incumbents' infrastructure and investments to offer competing products with low upfront costs. Maintaining a system whereby derivatives are cleared and traded in a vertically integrated entity is also in line with long-standing international trends.

As a consequence, the date of application of the new open access regime should be postponed by two more years, until 3 July 2023.

(44b) Currently, the definition of ‘financial instrument’ in Directive 2014/65/EU does not explicitly include financial instruments issued using a class of technologies which support the distributed recording of encrypted data (distributed ledger technology, “DLT”). In order to ensure that such financial instruments can be traded on the market under the current legal framework, the definition in Directive 2014/65/EU should be amended to include them.

(44c) While this Regulation sets out the framework for DLT market infrastructures, including those providing settlement, the general framework for securities settlement systems operated by CSDs is defined in Regulation (EU) No 909/2014 of the Parliament and of the Council[15], which includes provisions on settlement discipline. The settlement discipline regime comprises rules for the reporting of settlement fails, the collection and distribution of cash penalties and mandatory buy-ins. The provisions on settlement discipline are to apply from 1 February 2022. However, stakeholders have provided evidence that mandatory buy-ins could increase liquidity pressure and increase the costs of securities at risk of being bought-in. That impact could be further exacerbated in cases of market volatility. Against that background, applying the rules on mandatory buy-ins as laid down in Article 7(3) to (8) of Regulation (EU) No 909/2014 could have a negative impact on the efficiency and competitiveness of capital and settlement markets in the Union. That impact could lead to wider bid-offer spreads, reduced market efficiency, less incentives to lend securities in the securities lending and repo markets and to settle transactions with central securities depositories established in the Union. The costs of applying the rules on mandatory buy-ins are therefore expected to outweigh the potential benefits.

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15 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).

Taking into account that potential negative impact, Regulation (EU) No 909/2014 should be amended to allow for a different date of application for each settlement discipline measure, so that the date of application of the rules on mandatory buy-ins can be further delayed. This will allow the Commission to assess, within the context of the forthcoming legislative proposal reviewing Regulation (EU) No 909/2014, how the settlement discipline framework, and in particular the rules on mandatory buy-ins, should be amended to take into account and address the issues identified. In addition, a delay in the date of application of the rules on mandatory buy-ins will ensure that market participants, including those DLT infrastructures that would be subject to the settlement discipline regime, do not incur duplicative implementation costs in case those rules are amended as a result of the review of CSDR.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

(1) This Regulation lays down requirements for DLT market infrastructures and their operators, in respect of:

(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, national competent authorities and the European Supervisory Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (the European Securities and Markets Authority−ESMA)[16].

(2)

Article 2

Definitions

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

(1) ‘distributed ledger technology’ or ‘DLT’ means a technology that enables the operation and use of distributed ledgers;

(1a) ‘distributed ledger’ means an information store that keeps records of transactions and is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism;

(1b) ‘consensus mechanism’ means the rules and procedures by which an agreement is achieved, among DLT network nodes, that a transaction is validated;

[16] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(1c) ‘DLT network node’ is a device or process that participates in a network and that holds a complete or partial replica of DLT records;

(2) ‘DLT market infrastructure’ means a ‘DLT multilateral trading facility’, a ‘DLT settlement system’ or a ‘DLT trading and settlement system’;

(3) ‘DLT multilateral trading facility’ or ‘DLT MTF’ means a ‘multilateral trading facility’, that only admits to trading DLT financial instruments;

(a)

(b)

(c)

(4) ‘DLT settlement system’ means a settlement system that settles transactions in DLT financial instruments, against payment or against delivery, irrespective of its designation and notification in accordance with Directive 98/26/EC; and allows at least the initial recording of DLT financial instruments or the provision of safekeeping services in relation to DLT financial instruments;

(4a) ‘DLT trading and settlement system’ or ‘DLT TSS’ means a DLT MTF or DLT SS that combines the services performed by both a DLT MTF and a DLT SS;

(5) ‘DLT financial instruments’ means ‘financial instruments’ within the meaning of Article 4(1)(15) of Directive 2014/65/EU that are issued, recorded, transferred and stored using a DLT;

(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;

(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)

(14)

(15)

(16)

(17)

(18) ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(19) ‘investment firm’ means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU which is authorised under that Directive, excluding credit institutions;

(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 in accordance with:

(a) Article 67 of Directive 2014/65/EU; or

(b) Article 11 of Regulation (EU) No 909/2014;

(c) otherwise designated by the Member States for the purpose of overseeing the application of this Regulation.

(22) ‘home Member State’ means:

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

(b) in the case of a market operator operating a DLT MTF or a DLT TSS, the Member State in which the market operator of the DLT MTF or the DLT TSS 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 market operator of the DLT MTF or the DLT TSS is situated;

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

(23)

Article 3

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

1. DLT financial instruments may only be admitted to trading on, and be recorded on DLT market infrastructure if, at the moment of admission to trading or recording on a distributed ledger, they are:

(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

(ba) 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.

(bb) Corporate bonds issued by issuers whose market capitalisation did not exceed EUR 200 million at the time of their issuance shall be excluded from the calculation of the threshold set out in paragraph (1)(b).

2.

3. The total market value of DLT financial instruments admitted to trading, or recorded, on a DLT market infrastructure, at the time of admitting to trading, or initial recording, of 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.

5. Where the total market value of the DLT financial instruments admitted to trading, or recorded, on a DLT market infrastructure has reached EUR 9 billion, the operator of the DLT market infrastructure shall activate the transition strategy, referred to in Article 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 operator of the DLT market infrastructure shall calculate the monthly average total market value of DLT financial instruments. The monthly average shall be calculated as 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 International Securities Identification Number (ISIN) that are recorded on the DLT market infrastructure.

The operator of the DLT market infrastructure shall use that 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 referred to in Article 6.

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.

5d. 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 or a DLT TSS.

Article 4

Requirements and exemptions regarding DLT multilateral trading facilities

1. A DLT MTF 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 1a and 1b of this Article, 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 conditions set out in paragraphs 1(a), 1(b) and 4 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 financial stability.

1a. At the request of the operator of the DLT MTF, the competent authority may grant the operator of a DLT MTF the possibility to admit as members or participants, in addition to persons specified in Article 53(3) of Directive 2014/65/EU as referred to in Article 19(2) of that directive, natural and legal persons to deal on own account, where they fulfill the following requirements, for a maximum period of six years:

(a) they are of sufficiently good repute;

(b) they have sufficient level of trading ability, competence and experience, including knowledge of the trading and the functioning of DLT;

(c) they are not market makers on this DLT market infrastructure;

(d) they do not apply a high-frequency algorithmic trading technique on this DLT market infrastructure;

(e) they do not provide direct electronic access to a trading venue on this DLT market infrastructure;

(f) they do not deal on own account when executing client orders on this DLT market infrastructure; and

(g) they have given informed consent to trade on a DLT multilateral trading facility as members or participants and have been informed by the DLT MTF about the potential risks of using its systems to trade financial instruments.

1b. At its request, an operator of a DLT MTF and its members or participants may be exempted by the NCA from the application of Article 26 of Regulation (EU) No 600/2014 (MiFIR).

Where the NCA grants the exemption referred to in the first subparagraph, it may impose additional investor protection measures for the protection of natural persons admitted as members of, or participants in, the DLT MTF. Such measures shall be proportionate to the risk profile of the members or participants.

Where the NCA grants the exemption referred to in the first subparagraph, the DLT MTF shall keep the relevant details of all transactions executed through its systems. The records shall contain all the details specified in Article 26(3) of Regulation (EU) No 600/2014 that are relevant having regard to the system used by the DLT MTF and the member or participant executing the transaction. The DLT MTF shall also ensure that the authority specified to receive the data directly from the MTF in accordance with Article 26 of Regulation 600/2014/EU has direct and immediate access to those details. In order to access the records, this authority shall be admitted to the DLT MTF as a regulatory observer participant.

The competent authorities shall without undue delay make available to ESMA any information reported in accordance with this Article.

2.

3.

4. Where an operator of a DLT MTF requests an exemption in accordance with paragraph 1a or 1b, 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 extend to any other MTF operated by the said operator.

4a. Paragraphs 1a to 4 of this Article shall apply, mutatis mutandis, to a CSD operating a DLT TSS in accordance with Article 5a(2) of this Regulation.

4b. 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 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 7 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 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 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 the particular DLT deployed;

(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 securities 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;

(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) it does not allow securities overdrafts, debit balances and undue securities creation or deletion.

2a. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Articles 6 and 7 of Regulation (EU) No 909/2014, provided it ensures, at minimum, by means of robust procedures and arrangements, that:

(a) it 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; and

(b) it either prevents, or, if not possible, addresses settlement fails.

3. At its request, a CSD operating a DLT SS may be exempted by the competent authority from the application of Article 19 of Regulation (EU) No 909/2014, in relation only to the outsourcing of a core service to a third party, provided that the application of that Article is incompatible with the use of a DLT as envisaged by the particular DLT operated by the CSD concerned.

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;

(b) have sufficient level of ability, competence, experience and knowledge of the post-trading and the functioning of DLT, and of the assessment of risks; and

(ba) have given informed consent to be included in the pilot regime and are adequately informed of its experimental nature and potential risks associated with it.

4a. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Article 33, Article 34 and Article 35 of Regulation (EU) No 909/2014 provided it proposes compensatory measures to meet the objectives of these Articles, and at a minimum ensures, that:

(a) it publicly discloses criteria for participation which allow fair and open access for all persons that intend to become participants and that such criteria are transparent, objective, and non-discriminatory, and

(b) it publishes prices and fees associated with the settlement services that it provides.

4b. At its request, a CSD operating a DLT settlement system may be exempted by the competent authority from the application of Article 39 on settlement finality provided it proposes compensatory measures to meet the objectives of this Article, and ensures at minimum, by means of robust procedures and arrangements, that:

(a) settles transactions in DLT transferable securities close to real time or intraday, and in any case, no later than on the second business day after the conclusion of the trade,

(b) it discloses the rules governing the settlement system; and

(c) it mitigates any 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.

For the purpose of operating a DLT settlement system, the definition of a CSD in Regulation (EU) 909/2014 as a legal person that operates a securities settlement system shall not result in Member States being required 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 98/26/EC do not apply.

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.

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 the accounts of the CSD in accordance with the provisions of Title IV of Regulation (EU) No 909/2014 or through commercial bank money, including in a tokenised form, provided by a credit institution, in accordance with the provisions of Title IV of Regulation (EU) No 909/2014, or through e-money tokens.

By derogation from subparagraph 2, Title IV of Regulation (EU) No 909/2014 shall not apply to the credit institution when it provides settlement of payments through commercial bank money to the DLT infrastructure that records the DLT financial instruments whose total market value, at the time of the initial recording of a new DLT instrument, does not exceed EUR 6 billion, calculated in accordance with Article 3(5a).

Where settlement occurs through commercial bank money provided by a credit institution to which Title IV of Regulation (EU) No 909/2014 does not apply, according to the previous subparagraph, 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.

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 51 on standard or customised link access, or Article 53 on 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 SS has requested an exemption in accordance with the first sub-paragraph, it shall give access to other operators of DLT SS or DLT TSS. The CSD operating a DLT SS shall inform the competent authority of its intention to establish any such access. The competent authority may prohibit such access insofar as it would be detrimental to the stability of the Union financial system, or the financial system of the Member State.

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 the particular 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.

8a. Paragraphs 2 to 7 of this Article shall apply, mutatis mutandis, to an investment firm or market operator operating a DLT TSS, in accordance with Article 5a(1) of this Regulation.

8b. ESMA shall prepare guidelines on the additional compensatory measures, as 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 financial stability.

Article 5a

Requirements and exemptions regarding DLT trading and settlement systems

1. Where an investment firm or market operator operates a DLT TSS, it shall be subject to all the requirements applicable to an MTF under Directive 2014/65/EU and Regulation (EU) No 600/2014 and mutatis mutandis to all the requirements applicable to a CSD under Regulation (EU) No 909/2014 with the exception of Articles 9, 16-18, 20, 26-28, 31, 42-44, 46 and 47, except if the investment firm or the market operator operating the DLT TSS:

(a) has requested exemptions as specified under Articles 4(1a), 4(1b) and 5(2) to 5(6), and has been granted such exemptions by the competent authority that granted the specific permission in accordance with Article 8a of this Regulation;

(b) complies with the obligations set out in Article 6;

(c) complies with the conditions set out in paragraphs 4(1a), 4(1b) and 4 of Article 4 and paragraphs 2 to 7 of Article 5, 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 financial stability.

2. Where a CSD operates a DLT TSS, it shall be subject all the requirements applicable to a CSD under Regulation (EU) No 909/2014 and mutatis mutandis to all the requirements applicable to an MTF under Directive 2014/65/EU with the exception of Articles 5 to 13, and Regulation (EU) No 600/2014, except if the investment firm or the market operator operating the DLT TSS:

(a) has requested exemptions as specified under paragraphs 2 to 6 of Article 5, and Articles 4(1a) and 4(1b), and has been granted such exemptions by the competent authority that granted the specific permission in accordance with Article 8a;

(b) complies with the obligations set out in Article 6;

(c) complies with the conditions set out in paragraphs 2 to 7 of Article 5, and paragraphs 1a, 1b and 4 of Article 4, 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 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 infrastructures and their operators 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 measures under Directive 98/26/EC and the jurisdiction for bringing legal action.

2. An operator of a DLT market infrastructure shall establish, or document as appropriate, rules on the functioning of the distributed ledger they operate, including the rules for accessing the distributed ledger, the participation of the validating nodes, addressing potential conflicts of interest, and risk management including any mitigation measures to ensure investor protection, market integrity and financial stability.

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 management 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, theft, fraud, negligence or other serious operational malfunctions.

5a. In case of a loss of funds, collateral or a DLT financial instrument, the operator of a DLT market infrastructure that lost that fund, collateral or DLT financial instrument shall be liable up to the amount not exceeding the market value of the asset lost. The operator of a DLT market infrastructure shall not be liable where it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The operator of a DLT market infrastructure shall establish transparent and adequate arrangements to ensure investor protection, and provide clients with mechanisms for handling complaints and procedures for compensation or redress in cases of investor detriment as a result of the serious malfunctions referred to in the first sub-paragraph or of the cessation of the business due to any of the circumstances referred to in Article 7(6), Article 8(6) or Article 8a(8) as appropriate.

The competent authority may decide, on a case by case basis, to require additional prudential safeguards from the operator of a DLT market infrastructure in the form of own funds or insurance policy, if it is assessed that potential liabilities resulting from damages caused to its clients due to any of the serious malfunctions referred to in the first sub-paragraph are not adequately covered by the prudential requirements provided for in Directive 2014/65/EU of the European Parliament and of the Council, Regulation (EU) 2019/2033 and Directive (EU) 2019/2034, or Regulation (EU) No 909/2014 of the European Parliament and of the Council, as applicable, in order to ensure investor protection.

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'), including the transition or reversion of their DLT operations to traditional infrastructures, ready to be deployed in a timely manner, in the event:

(a) that the threshold referred to in Article 3(5) is exceeded,

(b) that the permission or some of the exemptions granted in accordance with Article 4, Article 5 or Article 5a have to be withdrawn or otherwise discontinued, including as a consequence of the events envisaged under Article 10(2); or

(c) of any voluntary or involuntary cessation of the business of the DLT market infrastructure.

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, Article 5 or Article 5a.

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

6a. The investment firm or the operator that is only permitted to operate a DLT MTF under Article 7(1a), and that does not indicate in its transition strategy the intention to obtain an authorisation to operate a MTF under Directive 2014/65/EU, or the CSD operating a DLT TSS, shall make best efforts to conclude arrangements with investment firms or market operators operating a MTF under Directive 2014/65/EU to take over its operations and specify these arrangements, if applicable, in its transition strategy referred to in paragraph 6.

6b. The CSD operating a DLT settlement system that is only permitted to operate a DLT settlement system under Article 8(1a) , and that does not mention in its transition strategy the intention to obtain an authorisation to operate securities settlement system under Regulation (EU) No 909/2014, or an investment firm or a market operator operating a DLT TSS , shall make best efforts to conclude arrangements with CSDs operating securities settlement system under Regulation (EU) No 909/2014 to take over its operations, and specify these arrangements, if applicable, in its transitions strategy referred to in paragraph 6.

The CSD that has received a request to conclude the arrangements referred to in the previous subparagraph, shall provide a response within three months. It shall deny the request only where the arrangements would affect the smooth and orderly functioning of the financial markets, or cause systemic risk. It shall conclude the arrangements referred to in the first subparagraph in a non-discriminatory manner, against a reasonable commercial fee based on actual costs. It shall not deny a request on the grounds of loss of market share. If it denies a request, it shall inform the requester about the reasons in writing.

6c. The arrangements referred to in paragraphs 6a and 6b shall be in place no later than 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 as an investment firm or an operator of a regulated market, under Directive 2014/65/EU, 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 in respect of which the applicant has requested, and been 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 Article 7 of Directive 2014/65/EU, except the information that would demonstrate compliance with the provisions in respect of 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) information on 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);

(da) evidence that the applicant has in place sufficient prudential safeguards to meet its liabilities and compensate its clients pursuant to Article 6(5a);

(e) where applicable, a description of the safekeeping arrangements of clients' DLT financial instruments as referred to in Article 6(5);

(ea) a description of the arrangements to ensure investor protection and the mechanisms for handling complaints and consumer redress, as referred to in Article 6(5a);

(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 9 months after entry into force].

2b. 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 ESMA.

Where necessary to promote the consistency and the proportionality of exemptions granted by competent authorities, or to ensure investor protection, market integrity and financial stability, ESMA shall provide the competent authority with a non-binding opinion on the exemptions requested by the applicant, or on the adequacy of the type of DLT used in terms of compliance with this Regulation, within 30 calendar days of receipt of the notification.

3a. Before issuing an opinion, ESMA shall consult the competent authorities of the other Member States and take the utmost account of their views in its opinion.

Where ESMA adopts an opinion, the competent authority shall give it due consideration and shall, upon request, provide ESMA with a statement regarding any significant deviation from the opinion. ESMA's opinion and the competent authority's statement shall not be made public.

3b. 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, market integrity and financial stability, 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

(b) the exercise of the option from Article 3(5c).

3c. 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;

(b) the specific permission to operate a DLT MTF under this Regulation and the exemptions requested are sought to circumvent legal or regulatory requirements; or

(ba) 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 applicant 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 inform ESMA about granting, refusing, or withdrawing a specific permission under this Article, including the information under subparagraph 1, without delay.

ESMA shall publish on its website:

(a) the list of DLT MTFs, the start and end dates of their specific permissions, the list of exemptions granted to each of them, the thresholds established by competent authorities for each of them; and

(b) the total number of requests for exemptions that have been made under this Regulation, indicating the number and types of exemptions accepted or refused together with the respective justifications, on an anonymous basis.

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, 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 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 the DLT MTF has admitted to trading financial instruments that do not fulfil the conditions laid down in Article 3(1);

(d) the operator of the DLT MTF has exceeded the threshold referred to in Article 3(3);

(e)

(ea) the operator of the DLT MTF has exceeded the thresholds referred to in Article 3(5) and has not activated the transition strategy;

(f) the competent authority becomes aware that the t operator of a the 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 this Article.

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 this Article.

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, the competent authority shall not assess compliance with those requirements of Regulation (EU) No 909/2014 in respect of which the applicant has requested, and been 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 Article 17 of Regulation (EU) No 909/2014, except the information that would demonstrate compliance with the obligations in respect of 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 distributed ledger as referred to in Article 6(2);

(d) its overall IT and cyber arrangements as referred to in Article 6(4);

(da) evidence that the applicant has in place sufficient prudential safeguards to meet its liabilities and compensate its clients pursuant to Article 6(5a);

(db) a description of the arrangements to ensure investor protection and of the mechanisms for handling complaints and consumer redress, as referred to in Article 6(5a);

(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. By ... [9 months after entry into force of this Regulation], ESMA shall develop guidelines to establish standard forms, formats and templates for the purposes of paragraph 2.

2b. 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 settlement system to:

(a) ESMA and

(b) the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014.

Where necessary to promote the consistency and the proportionality of exemptions granted by competent authorities, or to ensure investor protection, market integrity and financial stability, ESMA shall provide the competent authority with a non-binding opinion on the exemptions requested by the applicant, or on the adequacy of the type of DLT used in terms of compliance with this Regulation, within 30 calendar days of receipt of the notification.

Before issuing an opinion, ESMA shall consult the competent authorities of the other Member States and take the utmost account of their views in its opinion.

Where ESMA adopts an opinion, the competent authority shall give it due consideration and shall, upon request, provide ESMA with a statement regarding any significant deviation from the opinion. ESMA's opinion and the competent authority's statement shall not be made public.

The relevant authorities specified in Article 12 of Regulation (EU) no 909/2014 shall provide the competent authority with a non-binding opinion on the features of the DLT SS operated by the applicant, within 30 calendar days of receipt of the notification.

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, market integrity and financial stability, 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).

3a. 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 909/2014, a 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;

(b) the specific permission to operate a DLT settlement system and the exemptions requested are sought to circumvent legal or regulatory requirements; or

(ba) 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 shall inform ESMA and the relevant authorities referred to in paragraph 3 about granting, refusing, or withdrawing a specific permission under this Article, including the information under subparagraph 1, without delay.

ESMA shall publish on its website:

(a) the list of DLT SS, the start and end dates of their specific permissions, the list of exemptions granted to each of them, the thresholds established by the competent authorities for each of them; and

(b) the total number of requests for exemptions that have been made under this Regulation, indicating the number and types of exemptions accepted or refused together with the respective justifications, on an anonymous basis.

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, 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 operator of 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 operator of the DLT settlement system has breached the conditions attached to the exemptions granted by the competent authority; or

(c) the operator of the DLT settlement system has recorded financial instruments that do not fulfil the conditions laid down Article 3(1);

(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 operator of 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, an operator of 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 this Article.

Where in the course of its activity, an operator of 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 this Article.

Article 8a

Specific permission to operate DLT Trading Settlement System

1. A legal person authorised either as an investment firm or to operate a regulated market, under Directive 2014/65/EU, or CSD authorised under Regulation (EU) No 909/2014 may apply for a specific permission to operate a DLT TSS, under this Regulation.

2. Where a legal person applies for authorisation as an investment firm under Directive 2014/65/EU or as 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 TSS, the competent authority shall not assess compliance with those requirements of Directive 2014/65/EU or Regulation (EU) No 909/2014, as applicable, in respect of which the applicant has requested, and been granted, exemptions pursuant to Article 5a.

3. Where a legal person simultaneously applies for the authorisation and specific permission as referred to in paragraph 2, it shall submit in its application all the information required in accordance with Article 7 of Directive 2014/65/EU or Article 17 of Regulation (EU) No 909/2014, as applicable, except information that would demonstrate compliance with the provisions in respect of which the applicant has requested exemptions pursuant to Article 5a.

4. The application for a specific permission to operate a DLT TSS under this Regulation shall be accompanied by the following information:

   (a) the business plan, rules of the DLT TSS and associated legal arrangements as referred to in Article 6(1) as well the information regarding the functioning, services and activities of the DLT TSS as referred to in Article 6(3);

(b) the functioning of the distributed ledger as referred to in Article 6(2);

(c) its overall IT and cyber arrangements as referred to in Article 6(4);

(d) evidence that the applicant has in place sufficient prudential safeguards to meet its liabilities and compensate its clients pursuant to Article 6(5a);

(e) where applicable, a description of the safekeeping arrangements of clients' DLT financial instruments as referred to in Article 6(5);

(f) a description of the arrangements to ensure investor protection and the mechanisms for handling complaints and consumer redress, as referred to in Article 6(5a);

(g) its transition strategy, as referred to in Article 6(6); and

(h) the exemptions it is requesting in accordance with Article 5a, 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 5a.

4a. An applicant that intends to operate DLT TSS as an investment firm or market operator shall in addition to the information referred to in paragraph 4 submit all the information on the arrangements to comply with the obligations of Regulation (EU) No 909/2014 as referred to in Article 5a(1) except information on compliance with the obligations in respect of which the applicant has requested exemptions pursuant to that Article.

An applicant that intends to operate a DLT TSS as a CSD shall in addition to the information referred to in paragraph 4 submit all the information on the arrangements to comply with the obligations of Directive 2014/65/EU as referred to in Article 5a(2) except information on compliance with the obligations in respect of which the applicant has requested exemptions pursuant to that Article.

4b. ESMA shall develop guidelines to establish standard forms, formats and templates for the purposes of paragraph 4 by [please insert date 9 months after entry into force].

5. 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.

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 TSS to:

(a) ESMA and

(b) the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014.

Where necessary to promote the consistency and the proportionality of exemptions granted by competent authorities, or to ensure investor protection, market integrity and financial stability, ESMA shall provide the competent authority with a non-binding opinion on the exemptions requested by the applicant, or on the adequacy of the type of DLT used in terms of compliance with this Regulation, within 30 calendar days of receipt of the notification.

Before issuing an opinion, ESMA shall consult the competent authorities of the other Member States and take the utmost account of their views in its opinion.

Where ESMA adopts an opinion, the competent authority shall give it due consideration and shall, upon request, provide ESMA with a statement regarding any significant deviation from the opinion. ESMA's opinion and the competent authority's statement shall not be made public.

The relevant authorities specified in Articles 12 of Regulation (EU) no 909/2014 shall provide the competent authority with a non-binding opinion on the features of the DLT TSS operated by the applicant, within 30 calendar days of receipt of the notification.

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 under this Article, and for authorisation under Directive 2014/65 EU or under Regulation 909/2014, the assessment period may be extended up to the period specified in Article 7(3) of Directive 2014/65, or Article 17(8) of Regulation 909/2014, as applicable.

6. Without prejudice to Article 7 and Article 44 of Directive 2014/65/EU or Article 17 of Regulation (EU) No 909/2014, as applicable, the 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;

(b) the specific permission to operate a DLT TSS and the exemptions requested are sought to circumvent legal or regulatory requirements; or

(c) that the operator of DLT TSS 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.

7. The specific permission granted to operate a DLT TSS 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 5a, any compensatory measures and, if applicable, the threshold established by the competent authority in accordance with Article 3(5c).

The home competent authority shall inform ESMA and the relevant authorities referred to in paragraph 3 about granting, refusing, or withdrawing a specific permission under this Article, including the information under subparagraph 1, without delay.

ESMA shall publish on its website:

(a) the list of DLT TSS, the start and end dates of their specific permissions, the list of exemptions granted to each of them, the thresholds established by competent authorities for each of them; and

(b) the total number of requests for exemptions that have been made under this Regulation, indicating the number and types of exemptions accepted or refused together with the respective justifications, on an anonymous basis.

8. Without prejudice to Article 8 and Article 44 of Directive 2014/65/EU or to the application of Article 20 of Regulation (EU) No 909/2014, as applicable, the competent authority which granted the specific permission under this Regulation shall withdraw such permission or any of the exemptions granted, in accordance with paragraph 5, 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 a DLT trading and 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;

(b) the operator of the DLT trading and settlement system has breached the conditions attached to the exemptions granted by the competent authority;

(c) the operator of the DLT trading and settlement system has recorded financial instruments that do not fulfil the conditions laid down in Article 3(1);

(d) the operator of the DLT trading and settlement system has exceeded the threshold referred to in Article 3(3);

(da) the operator of the DLT trading and settlement system has exceeded the threshold referred to in Article 3(5), and has not activated the transitional strategy; or

(e) the competent authority becomes aware that the operator of the DLT trading and 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.

8a. Where in the course of its activity, an operator of a DLT TSS 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 5a. Such permission, exemption or modification, shall be processed by the competent authority, in accordance with this Article.

Where in the course of its activity, an operator of a DLT TSS requests a new permission or exemption, it shall request such permission or exemption, in accordance with Article 5a. Such permission or exemption or modification shall be processed by the competent authority, in accordance with this Article.

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, Article 8 or Article 8a;

   (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) Article 8(7), or Article 8a(8a) 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. The DLT market infrastructure shall report on the measures taken to implement any corrective measures required by the competent authority, in its reports referred to in paragraph 4.

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 or DLT TSS and the number and value of DLT transferable securities recorded by an operator of a DLT SS or a DLT TSS;

(c) the number and value of transactions traded on a DLT MTF or a DLT TSS and settled by an operator of a DLT SS or a DLT TSS;

(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 in a timely manner forward the information or reports received from market operators under paragraphs 1, 2 and 4 to ESMA, and inform ESMA of any measures taken under paragraph 3.

ESMA shall inform all competent authorities 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, Article 8 and Article 8a 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, Article 8 and Article 8a, 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, Article 8 and Article 8a, 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

Amendments 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 the entry into application of this Regulation, 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 three 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 market infrastructures;

(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 operators of DLT SS and DLT TSS in accordance with Article 5(2a)(b).

(h) any risks, vulnerabilities and inefficiencies presented by the use of a DLT to investor protection, market integrity and financial stability, including novel types of legal, systemic and operational risks, which are not sufficiently addressed and any unintended effects on liquidity, volatility, financial stability, investor protection, and market integrity;

(ha) risks of regulatory arbitrage or level playing field issues between DLT market infrastructures within the DLT pilot regime and between DLT market infrastructures and other market infrastructures using legacy systems;

(i) any interoperability issues between DLT market infrastructures and other infrastructures using legacy systems;

(j) any benefits and costs resulting from the use of a DLT, in terms of additional liquidity and financing to start-ups and SMEs, safety and efficiency improvements, energy consumption and risk mitigation 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 and enhanced compliance with know your customer and anti-money laundering processes, corporate actions and direct exercise of investor rights via smart contracts, 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, Article 8 and Article 8a, modifications or withdrawals of such specific permissions or exemptions as well as of any compensatory or corrective measures;

(l) any cessations of business by a DLT market infrastructure and the reasons for such cessation;

(la) the appropriateness of the thresholds set out in Article 3 and Article 5(5), including the potential implications resulting from an increase of those thresholds, taking into account in particular systemic considerations and different types of DLT;

(lb) an overall assessment of the costs and benefits of the pilot regime and a recommendation whether or not and under which conditions to proceed with the pilot regime.

2. Based on the report referred to in paragraph 1, the Commission shall, within three months of receipt of each report 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 of up to three years;

(b) extended to other types of financial instruments that can be issued, recorded, transferred or stored on a DLT;

(c) amended;

(d) made permanent by appropriate modifications to relevant Union financial services legislation; or

(e) terminated, with all permissions granted in accordance with this Regulation withdrawn.

In its report, 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.

In the case of an extension under point (a) of this paragraph, the Commission shall ask ESMA to submit, no later than three months before the end of the extension period provided for in point (a), a report in accordance with paragraph 1. Upon receipt of that report from ESMA, the Commission shall submit to the European Parliament and the Council a report in accordance with this paragraph.

Article 10a

Interim reports

ESMA shall publish annual interim reports in order to provide market participants with information on the functioning of the markets, to address incorrect behaviour of operators, to provide clarifications on the application of this Regulation and to update previous indications based on the evolution of DLT. Those reports shall also provide an overall description of the pilot regime focusing on trends and emerging risks and shall be submitted to the European Parliament, the Council and the Commission. The first such report shall be published... [12 months after the date of entry into application of this Regulation].

Article 10b

Amendment to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

1. in Article 4(1), point 15 is replaced by the following:

‘financial instrument’ means those instruments specified in Section C of Annex I, including such instruments issued by means of distributed ledger technology;’

2. In Article 93, the following paragraph (4) is inserted after paragraph (3):

‘By [9 months after adoption of DLT Regulation], Member States shall adopt and publish the provisions necessary to comply with point (15) of paragraph (1) of Article 4 and shall communicate them to the Commission. They shall apply those provisions from [same date as application of DLT Regulation].

By way of derogation from the previous sentence, Member States that cannot adopt provisions necessary to comply with point (15) of paragraph (1) of Article 4 in 9 months, because their national legislative procedures take more than 9 months, shall be able to benefit from an extension of a maximum of six months of the implementation period provided for in previous sentence. Member States shall notify to the Commission the need to make use of this option to extend the implementation period by from [9 months after adoption].’

Article 10c

Amendment to Regulation (EU) No 909/2014

In Article 76(5) of Regulation (EU) No 909/2014, the first subparagraph is replaced by the following:

‘Each of the settlement discipline measures referred to in Article 7(1) to (13) shall apply from the date of application specified for each settlement discipline measure in the delegated act adopted by the Commission pursuant to Article 7(15). The amendment laid down in Article 72 shall apply from the date of application of the settlement discipline measure referred to in Article 7(3) to (8).’

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].

The Member States shall notify their competent authorities within the meaning of Article 2(21)(c), if any, to ESMA and the Commission. ESMA shall publish a list of such competent authorities on its website.

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