
Digital assets – Swiss regulatory aspects (overview)

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Topics

- › Introduction
- › Digital assets
 - Definition | Regulatory classification
 - Financial services legislation
- › Market infrastructure for digital assets
 - Issuance
 - Custody
 - Trading and settlement
- › Outlook for 2019 and beyond

Introduction

- › Switzerland is currently one of the leading locations in the area of distributed ledger technologies ("**DLT**")
- › In the financial sector, a growing *fintech* and DLT ecosystem has developed and continues its growth
- › Financial application of DLT may trigger regulatory requirements:
 - banking & dealing in securities
 - financial market infrastructure
 - collective investment schemes
 - anti-money laundering
 - FinSA | FinIA (upon entry in force on 1 January 2020)

Introduction

- › No tailor-made laws in Switzerland for DLT and digital assets
 - Technology-neutral approach – existing laws applied to new technological developments
 - Principles-based financial regulation
 - Transparency and legal clarity & security
- › Broad room for interpretation, no precedents by courts, dissenting opinions among legal scholars

Digital assets

- › Various types of services & business models possible
 - Cryptocurrencies
 - Digital assets more generally
 - Tokenized financial instruments (shares, bonds, collective investment schemes, other financial instruments)
 - Issuance | Custody | Dealing (trading venue)
- › Various legal & regulatory questions to be assessed
 - Civil law (classification / ownership rights over "coins" and "tokens")
 - Tax law (VAT, income tax / capital gains)
 - Financial markets laws (transactions / financial instrument classification / intermediation)
 - Corporate and commercial law (issuance of securities on a DLT / tokenization of assets)

Digital assets

Definition & Regulatory classification

- › Digital Assets are digital representations registered as units of account in a database based on a distributed ledger technology ("**DLT**") such as a blockchain, and can "represent" virtually anything
- › FINMA *functional* classification of Digital Assets (tokens):

Classification	Description	Examples
Payment token	Give rise to <i>no claims on an issuer</i> and are <i>intended to be used</i> , now or in the future, as a <i>means of payment</i> for acquiring goods or services or as a <i>means of money or value transfer</i> .	Cryptocurrencies (BTC, ETH)
Utility token	<i>Provide access</i> digitally to an <i>application or service</i> by means of a DLT-based infrastructure <i>at the point of issue</i> .	Vouchers Mostly hybrid tokens
Investment or asset token	Represent <i>assets</i> such as a debt, equity or other <i>claims on the issuer</i> or third party (incl. asset backed tokens and all security type digital representation of dematerialized instruments).	Shares, options, bonds, etc. XCHF, MPL
Hybrid tokens	Classifications may be combined, depending on the function of the Digital Assets (cumulative regulatory requirements apply).	

Digital assets

Definition & Regulatory classification

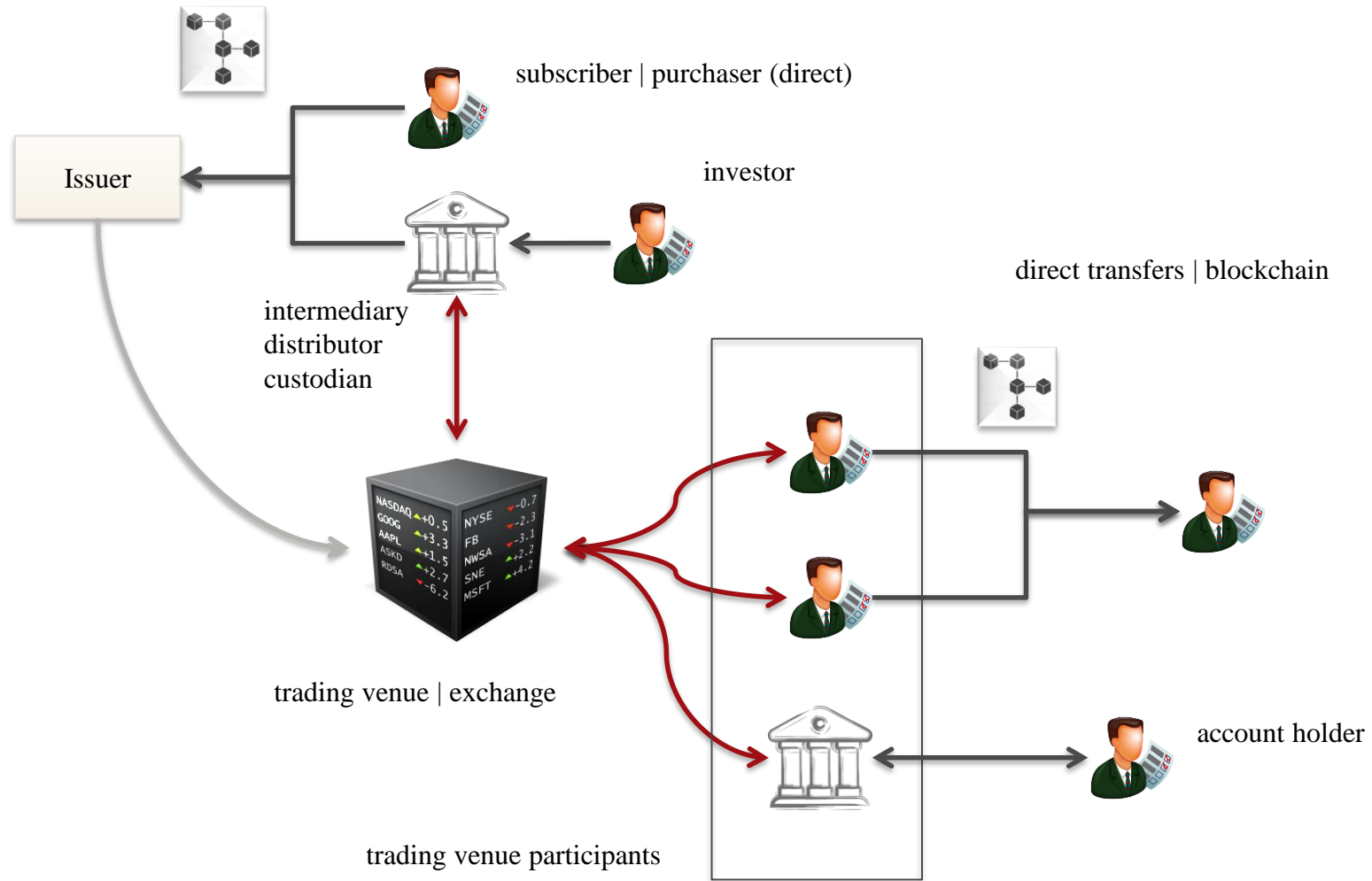
- › "Substance" over "form" | focus on "economic functionality"
 - "Intent" and "factual use"
 - ... the FINMA's Swiss "*duck test*" for Digital Assets
- › Anti-abuse approach
 - Strict (but pragmatic) AML requirements
 - Zero tolerance of criminal behaviour & anti-abuse approach

Digital assets

Financial services legislation

- › Banking Act (BA) – taking deposits from the public
 - Limited impact for issuance
 - Potential impact as regards custody of Digital Assets
- › FMIA | SESTA – issuance and dealing in securities
 - Self-issuance not regulated, but prospectus requirement (CO and LSFin in 2020)
 - Derivatives (issuance to the public is regulated also in the primary market)
 - Underwriting and dealing in securities may trigger licensing requirements (securities dealer)
- › Collective investment schemes (CISA)
- › Trading venues (FMIA) – exchange, multilateral trading facility (MTF) or organised trading facility (OTF)

Market infrastructure for digital assets



Market infrastructure for digital assets

Issuance

	Issuer	Intermediary
Licensing	Self-issuance of securities not regulated (exceptions – derivatives & CIS)	Securities dealer (if underwriter <i>or</i> dealer for client account)
AML	Not applicable (but recommended – <i>see</i> CMTA AML Standards)	Yes (if acting on a professional basis)
Prospectus	Yes (if public offering)	N/A Requirements may apply if acting as distributor
Feasibility	Yes (tokenisation possible, standards emerging) <i>See</i> CMTA Blueprint	Technology available, standards emerging

Market infrastructure for digital assets

Custody

	Requirements	Balance sheet treatment	Bankruptcy treatment
Dedicated DLAN	Dedicated DLAN for each client & ability to allocate at all time to an individual client	Off balance sheet (requirements apply)	Sergregated
Pooled DLAN	Digital Assets for multiple clients held on one or several "pooled" DLANs	Payment tokens <ul style="list-style-type: none">- On balance sheet (current FINMA practice) Investment and utility tokens <ul style="list-style-type: none">- Off balance sheet (if held on a fiduciary basis & compliance with certain requirements)	Payment tokens <ul style="list-style-type: none">- Deposit protection only (assimilated to cash) Investment and utility tokens <ul style="list-style-type: none">- Sergregated
Sub-custody with third party	Digital Assets held by financial institution with a third party on a fiduciary basis	Off balance sheet (requirements apply)	Sergregated

Market infrastructure for digital assets

Trading and settlement

	Exchange	MTF	OTF
Licensing	Yes	Yes	Yes, indirectly (bank, securities dealer or trading venue)
Trading	Multilateral		Multilateral or bilateral
Type of assets	Securities (listing)	Securities (admission to trading no listing)	Securities and other financial instruments
Rules	Non-discretionary		<i>Securities</i> - Discretionary <i>Other financial instruments</i> - Non-discretionary or discretionary
Participants	Only regulated entities (in accordance with regulations)		No restrictions

Market infrastructure for digital assets

Quo vadis?

- › Today, in Switzerland
 - Multiple crypto-brokers & exchanges (cryptocurrencies and other payment tokens only)
 - No authorized and operating trading venue for Digital Assets that are securities or financial instruments (investment tokens)
 - ... but multiple projects are on the verge of being licensed (mostly securities dealers intending to operate OTFs, but SIX has a digital exchange / MTF project)
- › Volume of tokenized securities being issued will drive demand for trading venues...
 - ... and fully operational trading venues will drive increase in Digital Assets issuance as securities and financial instruments

Outlook for 2019 and beyond

- › DLT is here to stay... in one form or another, in particular in the financial sector
- › Institutionalisation and standardisation will drive convergence and integration into mainstream financial system
- › Predictions & outlook:
 - Bitcoin & other cryptocurrencies – experiments will continue (but limited impact on financial markets & regulation)
 - *Tokenization* of traditional financial instruments (stocks, bonds, funds, etc.) – will develop exponentially, as soon as infrastructure will be in place for secondary markets & integration into existing core-banking systems
 - New DLT market infrastructure licensing category contemplated to facilitate adoption
 - *Tokenization* of collective investments – potential despite legal & regulatory challenges
 - *Tokenization* of assets, including of fiat currencies (e.g., *tokenized* eCHF & others)

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