GUIDELINES ON SECURITIES TOKEN OFFERINGS

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1. SUMMARY

1.1 Introduction

1. Recently, significant and growing attention from investors, markets, governments and regulators has been drawn to businesses and individuals using crypto-assets offerings, such as Initial Coin Offerings (hereinafter – ICOs[1]) or Securities Token Offerings (hereinafter – STOs[2]) to raise capital.

2. In October 2017, the Bank of Lithuania (hereinafter – the BoL) published Position of the Bank of Lithuania on Virtual Assets and Initial Coin Offering (amended on 21 January 2019) that set out the regulatory approach of the BoL to virtual assets and ICOs.

3. In view of the recent increase in digital tokens (hereinafter – tokens) where tokens have the features of transferrable securities or other financial instruments, in these Guidelines, the BoL shares with STOs organisers, developers, investors and other market participants its views regarding STOs legal qualification and interpretation in the light of the existing regulatory framework. In particular, it focuses on where tokens would be considered transferable securities or any other financial instruments under Lithuanian transposition of 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 (hereinafter – MiFID II). It also provides regulatory clarity with regards to other regulatory aspects of associated STO activity.

4. Currently there is no STO-specific regulatory framework in Lithuanian or European Union (hereinafter – EU) law[3]. This fact leads to numerous questions whether, and if so, what kind of regulation should be applied in relation to STOs, bearing in mind that the existing rules were not designed with these instruments in mind. Noteworthy, some of EU Member States (ie Malta, France) have introduced ICOs-specific national regulation, while other Member States consider that certain ICOs might fall within the scope of existing financial markets legislation.

5. Despite the lack of specific regulation that applies to STOs, depending on the nature of tokens, compliance with existing regulatory requirements may apply. The BoL is a technology neutral regulator, therefore the use of new technology alone does not change its regulatory and supervisory framework. Criteria based on economic functions of tokens should be decisive. Whereas tokens issued through STOs are considered to fall within the term of transferable securities or other financial instruments, a full set of EU and national financial rules, including but not limited to the 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 (hereinafter – Prospectus Regulation), the Republic of Lithuania Law on Securities (hereinafter – Law on Securities), the Republic of Lithuania Law on Markets in Financial Instruments (hereinafter – Law on Markets in Financial Instruments), the Republic of Lithuania Law on Crowdfunding (hereinafter – Law on Crowdfunding), the 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

1 Legislative references, abbreviations and glossary has been introdused in Section 6 of these Guidelines.
2 For the purpose of these Guidelines, "ICOs" meaning shall include also STOs.
3 Some EU Member States (ie Malta) have national regulatory regime which caters to STO and ICO issuing activity.

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 (hereinafter – MAR), 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 (hereinafter – Central Securities Depositories Regulation), the Republic of Lithuania Law on Settlement Finality in Payment and Securities Settlement Systems, are likely to apply to their issuer, crowdfunding or other trading platforms and/or firms providing investment services/activities to those instruments[4].

6. **Potential market participants are advised to give careful consideration as to whether tokens constitute a regulated instrument in terms of applicable rules and are responsible for making sure they are appropriately authorised for all the regulated activities that they are carrying on. The BoL encourages market participants to seek expert advice if they are unsure whether the units they offer fall within the regulatory framework. Case-by-case determination may berequired to determine the nature of STOs and their legal classification within Lithuanian and EU law in some specific cases.**

7. Noteworthy, the Guidelines do not create a regulatory regime specific to STOs, but provide regulatory certainty that they are subject to certain financial markets regulations and certain supervisory requirements depending on their characteristics. The statements expressed in these Guidelines are based on current financial rules within Lithuanian and EU law, abovementioned Position of the Bank of Lithuania on Virtual Assets and Initial Coin Offering and Advice "Initial Coin Offerings and Crypto-Assets" (hereinafter – ESMA Advice) No ESMA50-157-1391, issued by European Securities and Markets Authority (hereinafter – ESMA) on 10 December 2018[5].

1.2 The objectives of the Guidelines

8. As STOs can provide new opportunities for businesses and for investors provided the appropriate safeguards are in place, the BoL is of opinion that legal clarity and certainty on the legal status of tokens and the responsibilities of the issuing entity under the current financial markets legislation is highly preferred. Therefore the BoL aims that the Guidelines would help market participants to better understand whether tokens they employ fall within the regulatory and supervisory financial markets framework and clarify the BoL expectations for market participants carrying on activities related to tokens qualified as transferable securities or other financial instruments within the Republic of Lithuania.

9. Meanwhile, there could be benefits in tokens issued through STOs, the risks that they may pose to the objectives of investor protection, financial stability and market integrity should be carefully addressed. These Guidelines also aim to support investors to better understand the tokens issued through STOs market and potential risks they could face.

4 Legislation applicable to tokens qualified as transferable securities and/or other financial instruments is indicated in Section 5 of these Guidelines.

5 https://www.esma.europa.eu/press-news/esma-news/crypto-assets-need-common-eu-wide-approach-ensure-investor-protection

2. SCOPE OF APPLICATION

2.1. Who?

11. These Guidelines are relevant to:

- entities issuing or creating tokens (issuers)
- entities and persons buying or selling tokens on primary or secondary market (investors)
- entities advertising tokens and advising on tokens
- operators of crowdfunding and other trading platforms
- investment firms providing investment services/activities related to STOs
- entities providing offering and accounting services related to STOs.

2.2. What?

12. In these Guidelines the BoL wishes to consider 'investment-type' tokens and hybrids of 'investment-type' and/or 'utility-type' and/or 'payment-type' tokens that are likely to be covered by existing financial markets regulation and thus supervisory framework. Tokens of pure 'payment-type' and 'utility-type' nature do not fall within the scope of the Guidelines[6].

13. In view of the above, in these Guidelines the BoL identifies comparable characteristics of 'investment-type' tokens and hybrids of 'investment-type' and/or 'utility-type' and/or 'payment-type' tokens issued through STOs which imply applicability of relevant financial markets legislation (the Prospectus Regulation, the Law on Securities, the national legislation for public offerings up to the threshold indicated in the Law on Securities, the MAR, and other).

14. The Guidelines cover certain activities related to 'investment-type' tokens and hybrids, in particular, the issuance of such tokens, certain aspects of distribution and trading.

15. Guidelines do not focus neither on provision of investment services or on regulation of collective investment undertakings nor on Anti-Money-Laundering or Counter Terrorist Financing issues. However, the BoL believes that all tokens and related activities should be subject to Anti-Money-Laundering and Counter Terrorist Financing (hereinafter – AML/CTF) regulation. Market participants are advised to consult Financial Action Task Force (FATF) recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated October 2018)[7].

16. It should be also mentioned that activities related to tokens that do not fall within the scope of the Guidelines (i.e. other than tokens that are qualified as financial instruments) should be subject to relevant legal regulation if there is any (for example, payment services, civil legal regulation).

2.3. When?

17. These Guidelines apply from 21 July 2019.

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6 Classification of tokens is suggested in Section 3.4 of these Guidelines.

7 https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf

3. THE WIDER CONTEXT

3.1. Key features of Securities Token Offerings

18. STOs is a new method to raise capital. This new method differs from existing traditional raising capital mechanisms.

19. First, the entity seeking to raise capital through STOs does not issue shares, bonds or any other traditional financial instrument. Instead, it issues cryptographic claims recorded on public/private ledger, commonly referred to as tokens, which entitle the bearer to a variety of rights equal or having features of the rights given to shareholders or owners of bonds.

20. Second, the issuance of tokens is not conducted using traditional channel in which the regulator and third parties, such as intermediaries, need to take part. Instead, it is conducted through a new Distributed Ledger Technology (hereinafter – DLT).

21. Depending on different possible approaches and interpretations, other key features of STOs could also be distinguished.

3.2. Crypto-assets, Tokenization and Tokens

22. There is no single agreed definition of crypto-assets, but generally, crypto-assets are a cryptographically secured digital representation of value or contractual rights that use some type of DLT and can be transferred, stored or traded electronically[8].

23. These Guidelines refer to crypto-assets as a broad term, and the term "tokens" is used to denote different forms of crypto-assets.

24. Tokenization is a method that converts rights to assets into digital tokens.

25. Tokens are digital assets that are recorded /distributed / acted upon or trigger other associated activity on a distributed ledger (*via* smart contracts)without an intermediary.

3.3. Blockchain: the technology behind Securities Token Offerings

26. Blockchain is the technology that enables successful tokenization of real-world assets. Using blockchain real-world securities are transferred into digital tokens and usually are called as tokenized securities.

27. In order to tokenize securities an issuer will need a smart contract to handle token logic and also for storage. The issuer must have some way of accounting for how many tokens a particular user has; normally, this is accomplished by creating a smart contract that handles the accounting for the token. Due to smart contract tokens become active. Such tokens have a pre-programmed formula of some behavior and can independently carry out certain transactions.

3.4. Types of tokens and their life cycle

28. It should be noted that tokens can have many different features and different life cycle.

8 https://www.fca.org.uk/firms/cryptoassets

29. There is no recognized unique classification of tokens and it is not clear if a very detail one is needed For the sake of clarity and convenience the following non-exhaustive types of tokens depending on their nature, economic function and the rights they entitle to could be distinguished (see Figure 1):

- "Payment-type" tokens
- "Utility-type" tokens
- "Investment-type" tokens
- Hybrids of "investment-type" and/or "utility-type" and/or "payment-type" tokens.

30. "Payment-type" tokens may serve as a means of exchange or payment to pay for goods or services (transfer value). These tokens are not subject of these Guidelines, therefore „payment-type" tokens have not been further discussed in more details. Example: Bitcoin.

31. "Utility-type" tokens provide some "utility" or consumption rights, e.g., the ability to use them to access or buy some of the services/products. These tokens have been also excluded from the scope of these Guidelines. Example: Lympo (LYM utility tokens).

32. "Investment-type" tokens are tokens with specific characteristics that mean they meet the definition of transferable securities or other financial instruments like a share or a debt instrument (described in more detail in Section 4.3 of these Guidelines) as set out in the Law on Markets in Financial Instruments which transposes MiFID II, and are within the financial regulatory and supervisory framework. "Investment-type" tokens may have some profit rights attached, like equities, equity-like instruments or non-equity instruments. Example: Bitbond.

33. Hybrids of "investment-type" and/or "utility-type" and/or "payment-type" tokens confer the mixture of the above-mentioned rights typical to "investment-type" and/or "utility-type" and/or "payment-type" tokens.

34. There is also a number of activities potentially related to tokens during their life cycle as:

- issuance
- distribution
- accepting, transferring and executing order to buy/sell
- trading
- accounting
- safekeeping
- other.

35. Indicative list of market participants, their activities as regards tokens and indicative list of authorisations and permissions is suggested in Figure 2.

4. LEGAL QUALIFICATION OF TOKENS

4.1 Diversity in legal qualification

36. STOs are not standardized, and their legal and regulatory status is likely to depend on the circumstances of individual STOs. In order to assess whether a token qualifies as transferable securities or other types of MiFID II financial instruments all features depending on their design and scope of issue should be considered.

37. Considering the cross-border nature of tokens issued through STOs, it should be noted that the legal status of tokens could differ from Member State to Member State depending on specific national implementation of EU law. The outcome of a survey to

Member State National Competent Authorities (hereinafter – NCA, NCAs) in the summer of 2018 with the aim to collect detailed feedback on the possible legal qualification of crypto-assets as financial instruments which was undertaken by ESMA and presented in ESMA Advice Annex 1 'Annex - Legal qualification of crypto-assets – survey to NCAs' (hereinafter – Survey) highlighted NCAs majority view that some tokens, e.g. those with profit rights attached, may qualify as transferable securities or other types of MiFID II financial instruments. The actual classification of tokens as financial instruments is the responsibility of an individual NCA and depends on the specific national implementation of EU law and the information and evidence provided to that NCA. However, the results of the Survey made clear that the NCAs in the course of transposing MiFID II into their national laws, have in turn defined the term "financial instrument" differently. While some employ a restrictive list of examples to define transferable securities, others use broader interpretations. This creates challenges to both the regulation and to the supervision of tokens issued through STOs[9].

4.2 Key concepts for effective qualification of tokens

38. The BoL is of opinion that those tokens that meet the relevant conditions should be treated as equivalent to financial instruments and regulated as such, as **regulation should be technology neutral**. The provision that regulation is technology neutral means that the application of financial markets legislation does not depend on the fact whether any technology is used or what kind of technology is used. Where tokens are qualified as equivalent to financial instruments these tokens should be treated as financial instrument in the light of the existing relevant financial markets legislation despite technology that is applied to such tokens (for instance, DLT). Equivalence to financial instruments leads that tokens should comply with the legal financial EU and national regulation. In an effort to determine the legal status of tokens and determine possible applicability of EU and Lithuanian financial markets regulation, the careful evaluation on a case-by-case basis will be conducted. The BoL treats tokenized securities and traditional securities on equal terms and does not prioritize any of them. Besides efficiency arguments appropriate consideration of investor protection, financial stability and market integrity should be given in both aforementioned cases.

39. The BoL supports a **"substance over form"** approach when it comes to qualifying tokens, including to prevent regulatory arbitrage.

40. The BoL presumes that certain part of tokens may legally qualify as financial instruments, therefore a **detailed analysis whether and how legal and supervisory framework should be applied may be needed as the current rules were not designed with crypto-assets in mind and some adaptations to the rules and new interpretation of existing rules may be needed**.

4.3 Legal qualification under the transposition of MiFID II within Lithuanian law

41. The question whether a token qualifies as transferable security or other financial instrument under national transposition of MiFID II is of high importance as once it is

9 https://www.esma.europa.eu/press-news/esma-news/crypto-assets-need-common-eu-wide-approach-ensure-investor-protection

considered as transferable security or other financial instrument relevant financial markets regulation shall apply.

42. "Financial instruments" are defined in Article 4 (1) (15) of MiFID II. These are *inter alia* "transferable securities", "money market instruments", "units in collective investment undertakings" and various derivative instruments. Article 4 (1) (44) of MiFID II also defines the term of "transferable securities'.

43. Aforementioned provisions defining "financial instruments" and "transferable securities" have been transposed to the Law on Markets in Financial Instruments (see Articles 3 (15) and 3 (52).

44. "Financial instruments" are defined in Article 3 (15) of the Law on Markets in Financial Instruments. are defined as any of the following instruments:

1) transferable securities;

2) money market instruments;

3) securities of collective investment undertakings;

4) options, futures, swaps, forward rate agreements and other derivative instruments relating to transferable securities, currencies, interest rates or yields, also allowances issue and other derivative instruments relating to allowances issue, financial indices and other instruments that may be settled in cash or physically;

5) options, futures, swaps, forward rate agreements and other derivative instruments relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of insolvency and termination events) as well as other financial instruments indicated.

45. In order to qualify as a transferable security within Article 3 (52) of the Law on Markets in Financial Instruments, the token should qualify as:

(a) circulating in the capital market shares in companies and other securities equivalent to shares in companies, partnerships, and other entities, as well as depository receipts representing shares;

(b) circulating in the capital market bonds and other forms of non-equity securities, including depositary receipts in respect of non-equity securities;

(c) circulating in the capital market other securities conferring the right to acquire or transfer the transferable securities or underlying the cash-settlements determined having regard to the transferable securities, currencies or exchange rates, interest rates, yield of securities, stock exchange commodities, or other indices or instruments.

46. Article 3 (52) of the Law on Markets in Financial Instruments, as well as Article 4 (1) (44) of MiFID II, already includes a wide list of different types of transferable securities , which provides for a broad definition of the term, and that "substance over form" should prevail. In addition to traditional and well-known instruments, such as the shares in companies, depositary receipts representing shares, bonds, depositary receipts in respect of non-equity securities that are directly named in the list, other instruments could also be qualified as transferable securities.
Such instruments shall correspond one of the following characteristics: a) be equivalent to shares in companies, partnerships and other entities, b) be other forms of non-equity securities, c) be other securities conferring the right to acquire or transfer the transferable securities or underlying the cash-settlements determined having regard to the transferable securities, currencies or exchange rates, interest rates, yield of securities, stock exchange commodities, or other indices or instruments.

4.3.1 Negotiable share and other securities equivalent to shares

47. The term of a share is defined in Article 1.102 (1) of the Civil Code of the Republic of Lithuania. A share is a security certifying the right of its holder (shareholder) to participate in the management of a stock company and, where the laws do not provide for otherwise, to receive a part of the stock company profits in the form of dividend and a part of the remaining property of the stock company in case of its liquidation, as well as certifying other rights established by laws. Analogous definition has been submitted in the Law on Companies of the Republic of Lithuania (hereinafter – Law on Companies).

48. Article 3 (52) of the Law on Markets in Financial Instruments refers not to shares only, but as well to other securities equivalent to shares in companies, partnerships and other entities. Whereas the legislator has not stated what securities should be treated as equivalent to shares and fall within the definition of transferable security, careful evaluation on a case-by-case basis analysing the nature of securities and the rights they entitle to should be conducted.

How this applies to tokens?

49. Tokens that give their holders similar or equivalent rights to shares, like participation in the management of company rights, access to a part of company profits, the distribution of capital upon liquidation, provided that these tokens are negotiable, are likely to be qualified as transferable securities that have features specific to shares.

50. The BoL believes that there is not a "one size fits all" solution when it comes to legal qualification of tokens. Circumstances must be considered holistically in each individual case.

4.3.2 Negotiable bonds and other forms of non-equity securities

51. Under Article 1.103 of the Civil Code a bond is a security certifying its holder's right to receive from the person who issues the bond the nominal value of the bond, annual interest or any other equivalent, or other property rights within the time-limits prescribed in it.

52. All forms of debt securities that are negotiable on the capital markets fall within the definition of transferable securities.

How this applies to tokens?

53. If tokens create and represent debt owed by the issuer to the tokens holder such tokens may be considered a debenture and fall within the term of transferable securities (provided that tokens are negotiable on the capital markets).

4.3.3 Negotiable other securities

54. Examples of other transferable securities defined in Section 45(c) of these Guidelines may include options and warrants, structured bonds where the interest is linked to any derivative (e.g. chosen stock index, interest rate, other derivate or a combination of derivatives), etc.

How this applies to tokens?

55. Accordingly, tokens giving their holders rights that are similar to those given by other securities shall be considered tokens that have features of securities.

4.3.4 Negotiability

56. To qualify as a transferable security the token must be negotiable. **Currently there is no legal definition of negotiability within Lithuanian law.** The BoL is of opinion that the token should be considered as negotiable generally because it is capable of being transferred or traded on the capital markets. The abstract possibility of being transferred or traded on the capital market is considered sufficient, even if there is not yet a specific market for the product or even if there is a temporary lock-up. Meanwhile, it could be argued that if a specific token is designed in a way that it does not allow for any transfer in capital markets, these tokens lack transferability and therefore do not qualify as transferable securities. It is also possible to restrict the negotiability of tokens on a contractual basis. This raises the question whether such tokens are still negotiable. ESMA has provided guidance on the contractual restriction of transferability of securities10. ESMA considers that those securities remain transferable securities that should fall into the scope of the Prospectus Regulation. Nevertheless, ESMA is aware that some restrictions may be so broad that they result in transforming transferable securities into non-transferable securities, falling no longer into the scope of the Prospectus Regulation. Therefore analysis whether tokens that are subject to a contractual restriction are still transferable or not should be conducted on a case-by-case basis.

57. Noteworthy, negotiability is to be assessed when certain tokens are considered to be a security, meaning that negotiability is not to be assessed on a stand-alone basis.

4.4 Sample set of six ICOs crypto-assets

58. For better understanding, a sample set of six ICOs crypto-assets mentioned in the ESMA Advice Annex 1[11] is discussed further below. The sample crypto-assets reflects differing characteristics that range from "investment type" to "utility-type" and hybrids of "investment-type", "utility-type" and "payment-type" crypto-assets.

59. As it has been already mentioned, legal qualification of tokens may differ from Member State to Member State. Current Guidelines provide for the opinion of the BoL on how these six ICOs crypto-assets samples should be legally qualified in the Republic of Lithuania, whereas interpretations of other NCAs may be different. When the issuance of tokens should cover non-Lithuanian financial market, the issuer is advised to consider the nature of tokens in the light of both – Lithuanian and the other Member State's – regulatory and supervisory framework.

10 https://www.esma.europa.eu/sites/default/files/library/esma31-62-780_qa_on_prospectus_related_topics.pdf; 67. Transferable securities, Q1.

11 https://www.esma.europa.eu/press-news/esma-news/crypto-assets-need-common-eu-wide-approach-ensure-investor-protection

ICOs crypto-assets samples[12]:

Case No	Fabula	Assessment of the BoL	Factors determining the qualification as transferable securities	General assessment of other NCAs (the Survey results are discussed in greater detail in the ESMA Advice Annex 1 'Annex - Legal qualification of crypto-assets – survey to NCAs'[13].)	Indicative list of applicable financial markets framework as regards tokens issuance and trading
Case 1	FINOM (FIN) uses Blockchain technology to provide fully integrated financial services. The FINOM ecosystem aims at allowing access to crypto-assets to a wide range of users. Other expected benefits include full transparency and traceability of transactions. The issued crypto-assets (FIN) have the following attached rights: 1) right to receive a portion of company profit in the form of dividends, 2) right to participate in community management, and 3) right to a portion of company assets. USD 41m were raised through the crypto-asset sale, which ended on 31	*Issued crypto-assets* ***should be qualified as transferable securities*** *under Article 3 (52) of the Law on Markets in Financial Instruments.* *The arguments to support this view are that these crypto-assets have similar features to shares, providing similar rights to shareholders, e.g., dividend rights, the right to participate in the*	- right to receive a portion of company profit in the form of dividends - right to participate in community management - right to a portion of company assets	The Survey highlighted that most NCAs assessed that crypto-asset case 1 could be deemed as transferable securities and/or other types of financial instruments as defined under MiFID II.	Prospectus Regulation/ Law on Securities and their implementing acts Law on Crowdfunding where applicable Resolution No 03-45 of the Bank of Lithuania of 28

12 As regards Case 1 – Case 4, elements in relation to the negotiability in capital markets were also considered.
13 https://www.esma.europa.eu/press-news/esma-news/crypto-assets-need-common-eu-wide-approach-ensure-investor-protection

	December 2017. The funds raised will be used to develop the services that the firm aims to provide. Crypto-assets have been placed in accordance with Regulation D (Rule 506(c) of Regulation D) of the U.S. Securities Act of 1933, meaning that FINOM crypto-assets could only be acquired by accredited investors from the United States. The crypto-assets are seemingly not traded on crypto exchanges at this point.	*management of the community. Crypto-assets case 1 should be considered as potencial 'investment-type' crypto-assets.*			February 2013 on the approval of requirements for the preparation of the information document mandatory in the cases of public trading in medium-sized issues of securities and exemptions from its preparation (hereinafter – Resolution No 03-45) MAR (where tokens are within the scope of the MAR) Law on Settlement Finality in Payment and Securities Settlement Systems Central Securities Depositories Regulation

Case 2	Polybius Bank (PLBT) is a project by Polybius Foundation that aims to offer all the services of a 'traditional' bank, without any branches or physical front-offices and leveraging on digital technologies. The ICO, which ran in June 2017, raised around USD 30m. The funds raised will serve to develop the infrastructure of the bank and its services. The white paper includes a roadmap for the development of the bank. The Polybius crypto-asset (PLBT) comes with the right to receive 20% of the distributable profit of a financial year. Crypto-assets do not provide any decision making power to their holders. As of 7th November 2018, the PLBT crypto-asset was trading at USD 1.64 (Market Cap: USD 6,522,615), to be compared with USD 5.36 (Market Cap: USD 20,468,400) as of 1 January 2018.	*Crypto-asset case 2* ***should be deemed as transferable securities****, thus be subject to the existing financial markets legislation. The existence of attached profit rights, without having necessarily ownership or governance rights attached, is considered sufficient to qualify crypto-assets as transferable securities (where such crypto-assets also meet the other conditions to qualify as transferable securities), whether as shares or another type of transferable securities.*	- the right to receive 20% of the distributable profit of a financial year	Most NCAs expressed their opinion that crypto-asset case 2 could be qualified as transferable securities and/or other types of financial instruments as defined under MiFID II.	Prospectus Regulation/ Law on Securities and their implementing acts Law on Crowdfunding where applicable Resolution No 03-45 MAR (where tokens are within the scope of the MAR) Law on Settlement Finality in Payment and Securities Settlement Systems Central Securities Depositories Regulation
Case 3	Crypterium (CRPT) aims to build up a "cryptobank" with vertically integrated services. It claims to be faster and less	*In opinion of the BoL crypto-asset case 3 potentially suppose hybrid*	- the right to receive a monthly share of the	For crypto-asset case 3, views among NCAs were almost equally	Prospectus Regulation/ Law on Securities

	costly than existing banking solutions and stresses its international scaling opportunities. The crypto-asset sale ended in January and raised USD 51m from 68,125 crypto-asset purchasers. The crypto-assets may be used to pay for transaction fees when using the services of the cryptobank. In addition, they grant the right to receive a monthly share of the revenues derived from the transactions. In addition, services not known yet might be available to crypto-asset holders at a cheaper price or for free in the future. Crypto-asset holders are also granted 'priority treatment' (although the white paper does not specify what this priority treatment would entail).	*of 'investment-type' and 'utility-type' crypto-assets. Although these crypto-assets give sole right to receive a portion of the distributable profit (revenues),* ***it is sufficient to qualify the crypto-assets as transferable securities****.*	revenues derived from the transactions	split. Seven NCAs were of the opinion that the crypto-asset did not meet their national criteria, while six NCAs said it did and therefore would qualify as transferable security.	and their implementing acts Law on Crowdfunding where applicable Resolution No 03-45 MAR (where tokens are within the scope of the MAR) Law on Settlement Finality in Payment and Securities Settlement Systems Central Securities Depositories Regulation
Case 4	PAquarium (PQT) aims to build the world's largest aquarium. PAquarium promises to pay 20% of the aquariums operational profit to crypto-asset holders on an annual basis. The whitepaper also mentions the possibility to sell and	*Due to promised profit and voting rights crypto-assets case 4* ***should be qualified as transferable securities*** *under Article 3 (52) of the*	- The right for 20% of the aquariums operational profit to crypto-asset holders on an annual basis	The responses of NCAs for crypto-asset case 4 suggested that the financial instrument features may prevail	Prospectus Regulation/ Law on Securities and their implementing acts

	exchange PQTs. The crypto-assets come with voting rights on the location of the Aquarium and additional voting provisions may be available in the future. In addition, they may be used as a means of payment for goods at the aquarium. Purchasing a certain amount of crypto-assets gives a lifetime free entry to the aquarium. PAquarium put on sale 1.2 Billion PQT crypto-assets for a total value of USD 120 Million. The funds raised will be used as follows: construction and development (65%), marketing and promotion (20%), operations and legal (15%). It appears that PQTs are not traded on any crypto exchange at the moment. The project is still at a very early stage, e.g., a vote on the location of the aquarium is still underway.	*Law on Markets in Financial Instruments. It shouls be deemed as potential "investment-type", "utility-type" and "payment-type" hybrid crypto-assets.*	- voting rights	for hybrid types of crypto-assets, although views could vary depending on the exact circumstances.	Law on Crowdfunding where applicable Resolution No 03-45 MAR (where tokens are within the scope of the MAR) Law on Settlement Finality in Payment and Securities Settlement Systems Central Securities Depositories Regulation
Case 5	Filecoin (FIL) is a decentralized storage network that turns cloud storage into an algorithmic market. Filecoins can be spent to get access to unused storage capacity on computers worldwide. Providers of the unused storage capacity in turn earn filecoins, which then can be sold for cryptocurrencies or fiat money.	*The BoL **does not qualify crypto-asset case 5 as a transferable security**, due to its utility nature. This fact suggests that pure "utility-type" crypto-assets may fall outside of the existing financial regulations (at the same time it does not alter the*	-	For crypto-asset case 5, which is a "utility-type" crypto-asset, there were differing opinions among NCAs about the statement that the crypto-asset does not encompass any component that	-

		application of existing civil law or other relevant legislation).		would lead to a classification as a security.	
Case 6	AlchemyBite (ALL) aims to provide a crypto-asset that is backed by different crypto-assets. The value of the crypto-asset can be determined by the value of the crypto-assets it is backed with. Between 70% and 75% of the crypto-asset are backed by crypto-assets, whereas the rest is backed by crypto-related assets such as shares in crypto-asset developing companies.	*The BoL* ***qualifies crypto-asset case 6 as*** other financial instruments under the Law on Markets in Financial Instruments – ***units in collective investment undertakings****.*	-	For crypto-asset case 6, the majority of NCAs did not support the qualification as securities, with some NCAs highlighting that it qualified as units in a collective investment undertaking.	For closed-end type collective investment undertakings: Prospectus Regulation/ Law on Securities and their implementing acts Resolution No 03-45 MAR (where tokens are within the scope of the MAR) Law on Settlement Finality in Payment and Securities Settlement Systems Central Securities Depositories Regulation

60. Summing up the aforementioned crypto-assets cases it should be highlighted that the BoL assesses crypto-assets cases 1, 2, 3, 4 and 6 as **transferable securities** (cases 1, 2, 3 and 4) or **other types of financial instruments** (case 6) as defined under Article 3 (15) and 3 (52) of the Law on Markets in Financial Instruments. These crypto-assets should therefore comply with the existing EU financial markets regulation. Generally, there was broad agreement among NCAs that the crypto-assets that meet the necessary conditions to qualify as a financial instruments should be regulated as such.

61. Meanwhile, the difference between the issuance of a financial instrument and the issuance of a non-financial instrument should be clearly made. The BoL notes that ICOs that do not fall within characteristics typical to financial instruments shall be not treated as STOs and shall fall outside the scope of these Guidelines and legislative framework that is mentioned in these Guidelines. When tokens issued through ICOs do not qualify as financial instruments the risks that are left unaddressed should be properly evaluated by investors. At the same time the BoL agrees that such tokens depending on their nature and the nature of the activities related to them should be subject to some form of relevant regulation (for instance, AML/CTF regulation, civil law regulation).

5. REGULATORY IMPLICATIONS WHEN TOKENS QUALIFY AS A FINANCIAL INSTRUMENT

62. There is a range of approaches to tokens related activities, and the model chosen will have an impact on which legislation is applicable, and in which way. This section of the Guidelines summarises a range of legal provisions potentially applicable to tokens issued through STOs (when tokens do qualify as financial instruments). It has not been formulated for any other purpose and should not be relied on to provide a complete statement of the requirements arising under the legislation discussed.

63. Where tokens qualify as transferable securities or other types of MiFID II (and also the Law on Markets in Financial Instruments) financial instruments, a full set of relevant EU and national financial rules, including but not limited to the Prospectus Regulation, the Law on Securities, the Law on Markets in Financial Instruments, the Law on Crowdfunding, the MAR, Central Securities Depositories Regulation, Law on Settlement Finality in Payment and Securities Settlement Systems, are likely to apply to their issuer, crowdfunding or other trading platforms and/or firms providing investment services/activities to those instruments.

64. Where tokens qualify as financial instruments, a number of tokens related activities are likely to qualify as the type of MiFID II (and also the Law on Markets in Financial Instruments) investment services/activities and the applicable requirements may vary depending on these services/activities and sometimes also depending on the type of MiFID financial instrument involved: a) a firm that provides investment services/activities in relation to financial instruments as defined by MiFID II and the Law on Markets in Financial Instruments needs to be authorised as an investment firm and comply with MiFID II requirements and relevant requirements of the Law on Markets in Financial Instruments. b) platforms trading securities tokens with a central order book and/or matching orders under other trading models are likely to qualify as Multilateral Systems and should therefore either operate under Title III of MiFID II and relevant requirements of the Law on Markets in Financial Instruments as Regulated Markets (hereinafter – RMs) or under Title II of MiFID II and relevant instruments of the Law on Markets in Financial

Instruments as Multilateral Trading Facilities (hereinafter – MTFs) or Organised Trading Facilities (hereinafter – OTFs). Regulated markets are operated or managed by a market operator, MTFs and OTFs are operated by a market operator or an investment firm; c) platforms dealing on own account and executing client orders against their proprietary capital, would not qualify as multilateral trading venues but rather as broker/dealers providing the MiFID II services of dealing on own account and/or the execution of client orders and should therefore comply with the requirements set out in Title II of MiFID II and relevant requirements of the Law on Markets in Financial Instruments. The aforementioned provisions on investment services/activities in relation to tokens that could be qualified as financial instruments under the Law on Markets in Financial Instruments are not discussed further in these Guidelines.

5.1. Definition of public offering

65. Securities token offering shall be considered public offering as defined in Prospectus Regulation. It is *a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities*. This means that any appeal to persons (communication published on a website of the issuer, or crowdfunding or other trading platform operator, or intermediary or other undertaking, direct appeal to persons on a social network, communication through mass media channels, direct presentations, etc.) performed under such conditions shall qualify as public offering.

66. According to the provisions of the Law on Companies, bonds of private limited liability companies may be offered to the public only when their set of annual financial statements for the last year before the year when the decision to issue such bonds was taken has been audited, and only when they have concluded agreements with financial instrument account managers on handling their personal accounts of securities (bonds) that are offered to the public as it is requested in laws and regulations on securities market. Also, such offerings are subject to the provisions applicable in relation to the publication of prospectuses or information documents. Accordingly, such provisions shall apply to issuers of tokens that have features of securities.

67. However, notably, that same the Law on Companies states that shares of private limited liability companies may not be offered and may not be traded in public, unless laws provide otherwise. So, taking into account this, private limited liability companies should not offer to the public such tokens that have features of shares or are equivalent to shares.

68. The Law on Companies[14] sets out conditions under which the offer of shares in private limited liability company shall not be considered as public offering of securities—*if shares offered by or in any private limited liability company meet at least one requirement set out in the Republic of Lithuania Law on Securities and/or the Prospectus Regulation where the*

14 Considering that these Guidelines are being adopted during a transition period when Prospectus Regulation will start to be implemented on 21 July 2019 and therefore national regulations are being amended, all references made in these Guidelines are considered being made to such provisions of the Law on Securities and the Law on Companies which are offered in draft proposals for the amendment of such laws (see *https://e-seimas.lrs.lt*). The application of these Guidelines shall be governed by applicable references.

obligation to publish a prospectus shall not apply when securities are offered to the public or admitted to trading on a regulated market, shares offered to shareholders, employees, or creditors of such private limited liability companies, or professional investors who meet criteria set out in the Republic of Lithuania Law on Markets in Financial Instruments, or informed investors who meet criteria of the Republic of Lithuania Law on Collective Investment Undertakings Intended for Informed Investors shall not be considered public offering.

5.2. Obligation to publish a prospectus

69. If a token is a transferable security and the tokens will either be offered to the public or admitted to trading on a regulated market, an issuer will need to publish a prospectus unless an exemption applies. The Prospectus Regulation requires publication of a prospectus before the offer of securities to the public or the admission to trading of such securities on a regulated market situated or operating within a Member State. Also it specifies that the prospectus shall contain the necessary information which is material to an investor for making an informed assessment of the financial condition of the issuer and of any guarantor, the rights attaching to the securities and the reasons for the issuance and its impact on the issuer. The information shall be written and presented in an easily analysable and comprehensible form. If a prospectus is required, the specific disclosure requirements will depend on the type of securities (shares, bonds, other), type of issuer's activity (company, bank, collective investment undertaking), size (small and medium-sized, large), etc.

70. When both transferable securities and tokens that have features of transferable securities are offered to the public or admitted to trading on a regulated market, provisions stipulated in Prospectus Regulation, delegated regulations, applicable guidelines of European Securities and Markets Authority (ESMA), and the Republic of Lithuania Law on Securities, its by-laws, and recommendations apply. In addition, they may be offered to the public and admitted to trading on a regulated market only when the issuer has published the prospectus.

71. Noteworthy, mere admission of securities, and so tokens that have features of securities, to trading on a multilateral or organised trading facility, without any feature of public offering (none primary trading in securities is being carried out, none package of tokens subject to the obligation of publishing a prospectus is being traded, etc.), or any publication of bid and offer prices on a website of the issuer, or an intermediary, or a trading system operator is not to be regarded in itself as an offer of securities to the public and is therefore not subject to the obligation to draw up a prospectus.

72. The Republic of Lithuania Law on Securities establishes the exemption of the obligation to draw up and publish a prospectus — the obligation to publish a prospectus in the Republic of Lithuania shall not apply in cases where 1) offers of securities to the public are not subject to notification in accordance with Article 25 of the Prospectus Regulation, and 2) total consideration of each offer made by the issuer in Member States is less than a monetary amount calculated over a period of 12 months which shall not exceed the amount stated in the Republic of Lithuania Law on Securities.

73. The obligation to draw up and publish a prospectus shall not apply also to issues where total consideration of each offer is above the amount stated in the Republic of Lithuania Law on Securities, if at least one exemption set out in Article 1 of Prospectus Regulation

where the obligation to publish a prospectus shall not apply when securities are offered to the public or admitted to trading on a regulated market is met.

74. For issues where total consideration of each offer is above a monetary amount calculated over a period of 12 months which shall not exceed € 1 000 000, the issuer shall have the right to offer tokens that have features of securities to the public in Member States only having published the prospectus.

75. Prospectus Regulation does not directly specify who should draw up the prospectus but requires that the party responsible for the information (being at least the issuer / offeror / party seeking admission to trading / guarantor) is specified in the prospectus. The prospectus cannot be published until it has been approved by the BoL or competent authority of other Member State. The prospectus requirements apply only where instruments are transferable securities.

76. Requirements to the content of the prospectus are set in Commission Delegated Regulation supplementing Prospectus Regulation (hereinafter – Delegated Regulation). The prospectus of tokens that have features of transferable securities should be drawn up on the basis of contents and additional information 'building blocks' presented in Delegated Regulation, taking into account applicable guidelines of ESMA and disclosure regime recommendations laid down in Section 5.3 of these Guidelines.

77. Obligation of drawing up, approving, and publishing a prospectus shall also apply to the admission to trading on a regulated market of already issued tokens that have features of securities, except for the cases where, based on Prospectus Regulation, at least one of the exemptions laid down in Article 1 of Prospectus Regulation apply.

5.3. Disclosure of information on the issue of tokens that have features of securities

78. When it applies, the Law on Securities and Prospectus Regulation provides that the prospectus should contain the necessary information which is material to an investor for making an informed assessment of the financial condition of the issuer, the rights attached to the securities and the reasons for the issuance and its impact on the issuer. In the case of tokens, this should include detailed information on the issuer's venture, the features and rights attached to tokens being issued, the terms and conditions and expected timetable of the offer, the use of the proceeds of the offer and the specific risks related to the underlying technology.

79. There are no specific schedules in Delegated Regulation for STOs. However, issuers should use the existing schedules and building blocks and where necessary should disclose adapted information depending on the specific circumstances of the issuer and the characteristics of tokens that qualify as securities. For example, if an STOs takes place and the transaction were to be considered similar in substance to a conventional initial public offering, the issuer should draft information about itself as though it were an issuer of equity securities.

80. Articles 17–18 of Prospectus Regulation lay down cases where the prospectus may not include the information on the final offer price and the amount of securities, also the supervisory authority is entitled to allow the issuer to omit any other information, which is subject to the inclusion in the prospectus, when conditions laid down in the law are met. Noteworthy, the application for omission of particular information should be submitted to LB together with the application for approval of the prospectus. The application should include the listing of what information cannot be disclosed and in which information clauses of the prospectus it is requested. The application should be reasoned. If

information requested to be disclosed is not characteristic to the activities of the issuer of tokens that have features of securities or to the financial instruments issued by the issuer of tokens that have features of securities, first of all, all efforts should be made to submit any equivalent information or data, and only when they are absent the application for omission of the information should be submitted.

81. If tokens are considered akin to equity securities, then a similar logic of using information requirements set out in the equity securities note would apply. The concept of seeking „adapted" information provides reasonable scope for flexibility in terms of framing a transaction in a way which best reflects an existing construct that is known to the market.

82. Often securities token offerings are being made by startup companies. In general, companies with less than three financial years of operation in particular economic activities fall under this category. Such companies disclose the information on their actual operation period in their prospectuses. Detailed requirements for prospectuses of startup companies are set in Delegated Regulation and relevant applicable guidelines of ESMA. The obligations, such as those relating to the provision of historical financial information, are not different for tokens issuer to an issuer of traditional securities.

83. Among other information, the persons responsible for the prospectus of such issuer should present issuer's business plan with a discussion of the issuer's strategic objectives together with the key assumptions upon which such plan is based, in particular with respect to the development of new sales and the introduction of new products and/or services during the next two financial years, a summary of the strengths, weaknesses, opportunities and threats which are relevant for achieving the desired outcome and a sensitivity analysis of the business plan to variations in the major assumptions. The persons responsible for the prospectus are not obliged to include a business plan with figures. However, they should always describe the main milestones (including a target date) and the amount needed to achieve the milestones.

84. The responsibility for the comprehensiveness and correctness of information given in a prospectus attaches to the issuer and persons who have signed the prospectus (Article 11 of Prospectus Regulation), therefore, when disclosing the information, persons responsible for the prospectus, considering the specifics of rights, issuance, trading, accounting, and other aspects of tokens that have features of securities, should carefully evaluate whether the information given in the prospectus is straight and clear, whether the investors are made aware of all basic risks, whether publicly available information has been assessed, and whether the investors will be able to take their informed investment decision based on the information provided and will not be misled.

85. Considering that most of securities token offerings will be the first time in public for their issuers (often startup companies) and that often they will constitute a new and a distinctive product, the issuers disclosing the information in a prospectus should

- evaluate to what group of investors the issue is intended for. Prospectuses for retail investors should contain more explanations, avoid excessive technical or specific concepts, formulas, etc., while prospectuses for professional investors may contain more technical information, although, it should be precise, straightforward, and detail;
- clearly indicate the purpose of issue, what raised funds will be used for, what are the costs of the issue, and other information which is required to be disclosed;
- avoid disclosing too optimistic prognosis and benefits that are not based on particular calculations and assumptions. Expected benefits should not be described in more detail than risks;

- comply with other disclosure requirements applicable where traditional securities are being issued.

86. Noteworthy, based on the provisions of Article 23 of Prospectus Regulation, every significant new factor, material mistake, or material inaccuracy which arises in the time of offering or the admission to trading on a secondary market and which has not been disclosed in the prospectus (e.g. in presence of necessity to change certain conditions of issue, having noticed that significant information on the issuer of tokens or financial instruments themselves has not been publicly disclosed, or significant new risk factors arose after the disclosure) shall be mentioned in a supplement to the prospectus which should be drawn up, submitted for approval, and published without due delay. Following the publication of the supplement to the prospectus, investors who have already agreed to purchase or subscribe for the tokens that have features of securities before the supplement was published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances and recover the amounts paid.

87. When submitting an application for approval of the issue of tokens that have features of securities and are being issued as an STO, along with the draft prospectus and other documents listed in Delegated Regulation, the issuers are recommended to submit copies of contracts concluded with operators of platforms which will carry out the distribution of tokens that have features of securities in case of their issuance, contract concluded between holders of tokens that have features of bonds and their trustee, if any, and other agreements with persons participating in the issue or making any conclusions thereof (e.g. smart contract auditing) in advance.

5.4. Obligation to draw up an information document

88. Prospectus Regulation shall not apply to public offering of securities where total consideration of each offer in the EU is less than a monetary amount calculated over a period of 12 months which shall not exceed € 1 000 000. The Republic of Lithuania laws do not provide for any specific requirements on the disclosure of information where a legal entity intends to offer securities to the public when their total consideration is less than the indicated amount. That same provisions apply to offers of tokens that have features of securities. However, considering the complexity of the product (token), specifics of any offering, and the fact that often they are being issued by startup companies, the issuers are recommended to always draw up and make available to investors a description of main terms and conditions applicable to the issue in question, rights attached to tokens in question, and potential risks (like STO Terms and Conditions or similar) which should *inter alia* reveal material risks associated with the acquisition of such tokens.

89. As it has been mentioned, based on provisions of Article 3(2) of Prospectus Regulation, a Member State may decide to exempt offers of securities to the public from the obligation to publish a prospectus, where the supervisory authority, whose issuer intends to make public offering, is not obliged to inform other Member States about the intended issuance in accordance with procedures laid dawn in Prospectus Regulation and where total consideration of each such offer in the EU is less than a monetary amount calculated over a period of 12 months which shall not exceed € 8 000 000. This provision of Prospectus Regulation is being implemented via the provisions of the Republic of Lithuania Law on Securities that must be followed when offering tokens that have features of securities.

90. Issues of securities with a total consideration between €1 000 000 and the amount set in the Republic of Lithuania Law on Securities shall be considered medium-sized issues. Equivalent provisions of medium-sized issues apply to tokens that have features of securities. Where a public limited liability company issues tokens that have features of transferable securities (shares, bonds, or else) or a private limited liability company issues tokens that have features of bonds or other securities, except for shares, and such public offering do not fall under the scope of legal acts regulating securities market, and total consideration of instruments equivalent to securities is equal or above a monetary amount calculated over a period of 12 months which shall not exceed € 1 000 000, a document containing the information on the company and tokens that have features of securities (hereinafter – the information document) should be drawn up and made available to persons intending to acquire such instruments.

91. The content of the information document was explicitly detailed in the description of the requirements for the preparation of the information document that is required to be drawn up for public offerings of medium-sized issues and exemptions from its preparation approved by Resolution No 03-45 of the Bank of Lithuania of 28 February 2013 on the approval of requirements for the preparation of the information document mandatory in the cases of public trading in medium-sized issues of securities and exemptions from its preparation (hereinafter – the description). The information document should be published and made available to potential investors before the beginning of any public offering.

92. Legal acts do not provide for any duty to the Bank of Lithuania to approve information documents for medium-sized issues or documents on terms and conditions of issues drawn up at discretion of issuers. „Whitepaper" or other issue terms documents (in case of STOs for offers below 1 000 000 euro) are not standardised and often feature information considered to be exaggerated or misleading. Given the lack of clear information, consumers may not understand that many of these projects are high-risk and at an early stage, and therefore may not suit their risk tolerance, financial sophistication or financial resources.

93. The information document or other similar document drawn up in regard to terms and conditions of the issue in question should contain accurate, straightforward, true, and non-misleading information, so that the investors could duly evaluate the issuers of tokens that have features of securities and their operation perspectives and take informed investment decisions. In addition, in order to protect investors from unreasonable expectations, clear mentioning in the preamble of such document that it is not a prospectus, as it is understood under the Prospectus Regulation and the Republic of Lithuania Law on Securities, and has not been approved by the Bank of Lithuania is recommended.

5.5. Recommendation on the disclosing of specific risk factors in relation to the issuance of tokens and the issuer

94. In order to enable investors to take informed investment decisions when acquiring tokens that have features of securities from any particular issuer, the appropriate disclosure of information on all material and most likely risks attached to specific issuers and tokens that have features of securities issued by them is important. Such information should be disclosed in the prospectus as it is required by Article 16 of Prospectus Regulation and related legal acts.

95. In addition, adherence to equivalent risk disclosing principles and the consideration of below-listed specific risks in relation to tokens that have features of securities is recommended when disclosing risk factors in the information document.

96. The description of risk factors featured in the document on terms and conditions of issue should, *inter alia*,

96.1. Identify clear and straightforward relation between risks and issuers or tokens issued by them, avoid generic phrases of a declarative nature;

96.2. Present only material risks that might affect investors' decision and are most likely to occur or might have the most negative impact without overloading the document with general information;

96.3. Present risks grouped by categories (e.g. risks associated with issuers (project owners) and their financial state, risks associated with public offerings of tokens, token records, rights attached to them, etc.) and significance (low, medium, high) according to requirements of Prospectus Regulation;

96.4. Include clear and straightforward information avoiding to artificially diminish or elevate any risk.

97. Beyond traditional risks associated with the offerings of securities, it is recommended to evaluate whether the issuers of tokens that have features of securities do not face risks characteristic to this specific product and its offering, and if such risks are faced, disclose them to the investors in the document on terms and conditions of issue.

98. Considering that the issuance of tokens involves the use of DLT, any specific risk associated with the nature of tokens that have features of securities, issuing undertakings, trading platforms, or other relevant risks should be evaluated and made available to potential investors (taking into account that technologies are not static, they are always subject to change and so is the content and scope of risk), e.g.:

98.1. Most businesses raising capital through STOs are at the initial stages of development, often not even operating businesses but just ideas, even if it is starting to see some larger companies issuing tokens as well. The likelihood that they fail is therefore high and investors have a significant risk to lose their capital.

98.2. Although many tokens may be available for trading on specialised trading platforms after issuance, their liquidity is typically shallow and investors may have a limited possibility of liquidating an investment. The information about the project and the issuer may also be limited considering that they are usually at a very early stage of development.

98.3. Many issues pertaining to platforms trading tokens are not in essence different from existing ones applicable to trading venues for traditional securities, even if they may arise in a different way. These include: whether the platform has the necessary resources to effectively conduct its activities and address the risks that may arise from them; whether it has established and maintains adequate arrangements and procedures to ensure fair and orderly trading; whether it has adequate measures to prevent potential conflicts of interest and whether it provides access to its services in an undiscriminating way.

98.4. Price discovery mechanisms and market integrity – whether pre- and post-trade information made available by the platform is sufficient to support market efficiency, fair and orderly trading and whether the platform has adequate rules. High price volatility and often low liquidity. Investors typically access tokens trading platforms directly, without an authorised intermediary being involved, which raises the issue of

whether the platforms are in the position to and effectively do conduct checks on those clients.

98.5. There are business continuity issues of the trading platforms, which although not unique may be exacerbated in the case of tokens platforms because they are still relatively new and with limited resources. As an example, investors could face difficulties recovering their funds in times of financial distress.

98.6. Centralised crypto trading platforms typically take control of client tokens (e.g., they hold clients' private keys on their behalf or keep clients' tokens in a single DLT account under the platform's own private key) and may also hold fiat money on their behalf; the issue is therefore whether the platform has the necessary measures in place to segregate and safeguard these assets (crypto and fiat).

98.7. On centralised crypto trading platforms, transaction settlement happens in the books of the platform and is not necessarily recorded on DLT. In those cases (off-chain settlement), confirmation that the transfer of ownership is complete lies with the platform only (no trusted third party involved); investors have therefore a material counterparty risk *vis-à-vis* the platform, e.g., in case it is malevolent or does not function properly.

98.8. With decentralised crypto trading platforms, investors remain in control of their tokens and transaction settlement happens on DLT (on-chain), using smart contracts or other tools. While this set-up helps mitigate counterparty risks *vis-à-vis* the platform, it also has some drawbacks. Decentralised platforms also have the same vulnerabilities/issues as the DLT on which they are built, e.g., there may be delays in the processing of the transactions or governance issues

98.9. Investors may choose to hold their tokens themselves, i.e., they remain in full control of their private keys, using hardware or software wallets. Despite the main advantage of this approach – the investor remains the sole owner of its private keys at all times, which reduces the risk of a hack, not all investors may have the necessary expertise and equipment to safe keep their private key properly. Also this model may be ill-suited to certain types of investors, e.g., institutional investors, where several individuals and not just one need to have control of tokens.

98.10. Other investors entrust the custody of their tokens to custodial wallet providers, which hold tokens (e.g., the private keys) as an agent on behalf of the investor and has at least some control over these tokens. The issue is therefore whether the custodial wallet providers have the necessary measures in place to segregate and safeguard these tokens.

98.11. May be flaws in relation to the technology itself, e.g., in the protocols or the smart contracts that come on top. While DLT supporters generally see DLT as more secure than many existing systems, it may still be possible to tamper with the records or the technology may not always function properly, e.g., during peaks of activity. Also, the smart contracts may not work as intended, e.g., in case of coding errors.

98.12. Risks associated with new, or recently formed, network. Where widely used and well-known DLT networks (often permissionless) enjoy the reputation of reliable technologies, which they prove and strengthen over time, the manifestation of new, or recently formed, permissioned (or permissionless) network might request additional assessment of its safety.

98.13. Tokens may raise specific technology and cyber security risks, because of their very nature and also the fact that DLT is still a nascent technology and largely untested in financial markets. Also, the fact that few people have the necessary skillset to

understand the intricacies of the technology may exacerbate operational risks and the risk of fraud. Technology is a dynamic phenomenon, it constantly changes and therefore might be subject to new DLT safety risks, e.g. after the development of quantum computing. Consequently it is important to remember that any system, network, or functionality that are (or reasonably look) safe today, might become more vulnerable to technological risks over time.

98.14. Other risks steaming from the underlying technology – for example, the distributed nature of DLT, including the use of consensus to validate transactions and the use of self-executing pieces of codes, implies that establishing clear responsibilities and liabilities, e.g., in case of errors or malevolent activities, may be a challenge in the absence of clear rules established at the outset. Another related issue that is particularly relevant to permissionless DLTs has to do with the role of miners, as they provide the necessary „fuel" to verify and make transactions final. Unless they receive the proper incentive to continuously mine transactions, they may suspend their activities, in which case transactions would be left pending. Meanwhile, the concentration of mining activities in a few hands may raise pricing and competition issues.

98.15. Ensuring DLT safety, an important role is played by network community. Therefore safety of any public or private network directly depends on what persons are permissioned to join it, how many members and of what community are present in the network, and do they have any agreements. In addition, public networks are maintained by their communities and if the community does not meet a consensus on any matter, the network might go into a hard fork which will result in risk that one branch becomes less popular and loses its maintenance; then tokens circulating in this branch would become rather vulnerable.

98.16. The distributed nature of DLT also implies some form of publicity, namely that all participants share the same records, which if not handled carefully, could raise privacy issues, e.g., in relation to client data. There is also the risks that some participants misuse the information that may be available to them, e.g., to front run transactions of others, unless proper safeguards are in place.

98.17. Also in the absence of adequate controls, because of the anonymity attached to private/public keys, tokens may be prone to the risk of fraud or other illicit activities, including money laundering.

98.18. Applicable legal acts do not provide for any specific safety measures that would guarantee any coverage of loss suffered in result of virtual currency transactions in case of malfunction or termination of operation in virtual currency exchange that performs virtual currency exchange operations or holds virtual currencies (as, for example, deposit insurance system). Virtual currency exchange might be subject to hacking and taking over funds from private virtual wallets having stolen public and/or private keys.

98.19. Payments for goods and services made in virtual currencies, including the acquisition of tokens that have features of securities, are not protected by any legal compensations provided for in the legal acts of the EU that might be applied, for example, when making a transfer from traditional bank or other payment account. The recovery of illegal or false collection of funds from virtual wallets most often is impossible.

98.20. Noteworthy, no legal practice has been formed yet in regard to the assessment of tokens that have features of securities, their trading and recording in DLT environment, smart contracts, and other specific aspects of such relationship, as well as legal power towards them, therefore it might result in some legal uncertainty.

98.21. Other.

5.6. Smart contracts

99. When issuing tokens that have features of securities, all characteristics of rights given to the holders of tokens, obligations of the issuer of tokens, and other terms and conditions of issue should be described in a document drawn up on the issue in question (prospectus, information document, white paper, or else). In a DLT environment, the issuance of tokens shall be implemented using smart contracts. Considering the fact that any smart contract concluded when issuing tokens shall be irrevocable and immutable and that any execution of rights given by the acquired tokens basically depends on the content of the smart contract, particular attention should be paid by both undertakings issuing tokens and undertakings investing in tokens to the analysis and the assurance of reliability in the processes of development and execution of smart contracts.

100. Smart contract is a piece of encoded computer software operating in a DLT environment and containing a set of rules which have been agreed between the parties to the contract. Smart contracts automatically apply terms and conditions coded in them. They function autonomously, without any interference of the third parties or intermediaries. When two (or more) parties conclude a smart contract and one party fulfils its obligations coded within the contract, obligations of the counterparty shall be fulfilled automatically based on the formula contained in the smart contract.

101. Usually, smart contracts are developed by the third persons, not by the parties to the contract. Therefore, aiming to ensure the reliability of smart contracts, on one hand the issuers of tokens (smart contract initiators) should take care that smart contracts were developed by competent persons with good reputation, while on the other hand investors should be careful and pay adequate attention to ascertain themselves of quality and reliability of the smart contract that is being offered.

102. By their content, smart contracts should accurately and explicitly represent the information contained in the published document on the issue of tokens. However, in practice the probability of making any internal logic mistake, intentionally or due to negligence, exists when developing a program code (e.g. after some time tokens may be returned to a certain wallet or made inactive). In order to avoid such circumstances, the following recommendations are noteworthy.

102.1. Any smart contract will be really 'smart' only when it is developed by persons whose competence and experience enable them to assess all significant information when coding the contract. The issuers of tokens (smart contract initiators) are recommended to employ smart contract development service providers with particular care, taking into account their reputation, competence and experience in the development of smart contracts, as well as the history of smart contract projects developed by them when such information is available.

102.2. In order to make the information coded within any smart contract available to all potential investors, not only to those with specific education (e.g. computation or technical), terms and conditions coded in any smart contract should be translated into traditional language and delivered in a paper-less format, or a smart contract scheme should be added. In cases when the translation into traditional language or the smart contract scheme is absent, investors without specific knowledge, which would enable them to identify what is significant for taking their informed decision based on coded information only, are recommended to seek for professional advice.

102.3. The longer the execution of any smart contract, the less 'smart' the contract, since its execution might be aggravated or made completely impossible due to the change of circumstances, e.g. the amendment of laws, adoption of court decisions, etc. The likelihood of such circumstances is recommended to be assessed when developing any smart contract.

102.4. Article 23(2) of Prospectus Regulation provides for that where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the significant new factor, material mistake or material inaccuracy arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first. Such right of investors to withdraw their acceptances would be equally exercisable where drawing up the prospectus related to the offer of tokens that have features of securities. Within this context noteworthy is the fact that any smart contract concluded until the closing of the offer period or the delivery of securities, whichever occurs first, should include the clause which would allow the investors to exercise their right to withdraw their acceptances. If such condition was not included, considering the immutable and the irrevocable nature of smart contracts, investors would have faced difficulties aiming to exercise such their right. Also, smart contracts should include the possibility to restrict transfer, exchange or similar actions of persons in regard to tokens, if needed.

102.5. Having developed any smart contract, it is recommended to invite the third persons for its assessment (in these Guidelines referred to as smart contract auditing). The purpose of such smart contract auditing should be to check up whether the smart contract is free from internal logic or technical coding mistakes, whether the conditions coded in it are in line with terms and conditions laid down in the document on the issue, and whether it ensures the exercise of token holders' rights as described in the document on the issue, and provide a report on such aspects as how does the smart contract operate and what are its functions and risks. Persons who perform smart contract auditing are recommended to avoid the engagement in any relationship with the issuers of tokens in question and should declare their independence from the issuers of tokens.

102.6. For increased transparency and reliability, persons who perform smart contract auditing are recommended to disclose the content and the scope of smart contract auditing and reveal what was audited and what conclusions were made. Such general wordings as 'the smart contract has been developed properly' or 'the smart contract is in line with the document on issue by all significant aspects' may provide no material information to potential investors, therefore precise identification of what aspects were assessed and what were the findings is recommended.

102.7. Conclusions, following the smart contract auditing, should be drawn up for each smart contract separately and included into the prospectus (or other document on issue) as the opinion of experts and delivered to the supervisory authority attached to the application for approval of the prospectus.

103. Noteworthy, smart contracts can turn legal obligations into automated processes; guarantee a greater degree of security provided its creation process is secured and reliable; reduce reliance on trusted intermediaries; lower transaction costs. However, they are also likely to contain internal logic or technical coding mistakes that might be made in the development process; automated execution of smart contracts may be interrupted in

result of flaws in a platform where the contract runs on, cyber-attacks, or external factors when the execution of a smart contract must be confirmed by the third parties, e.g. public register, notary, or other institution. Therefore the reliability of any smart contract is always noteworthy.

5.7. Primary trading in tokens that have features of securities

104. Provisions of the Republic of Lithuania Law on Securities shall apply in regard to primary trading in tokens that have features of securities, it means that any primary trading in tokens that have features of securities may be conducted in several ways: where the issuers offer tokens themselves (e.g. where they are the issuers themselves) or under the agreement with intermediaries, including primary trading through crowdfunding platforms when they operate as intermediaries. Tokens can also be offered by means of organizational-technical measures of any operator of the regulated market, multilateral or organised trading facility, and/or the settlement system in accordance with rules approved by them, if such are in place. Tokens can also be sold (purchased) on relevant DLT platforms.

105. As already mentioned in these Guidelines, following the provisions of the Republic of Lithuania Law on Securities, where public offering of tokens that have features of securities is intended to be in the Republic of Lithuania only, the obligation to publish the prospectus shall apply in cases where total consideration of each offer of tokens made by the issuer in Member States is above a monetary amount calculated over a period of 12 months which shall not exceed the amount stated in the Republic of Lithuania Law on Securities. However, where tokens that have features of securities when total consideration of each offer is equal to or above a monetary amount calculated over the period of 12 months which shall not exceed EUR 1,000,000 are intended for cross-border trading and exemptions laid down in Article 1 of Prospectus Regulation are not the case, the prospectus should be published before starting the primary trading.

106. If public offerings of tokens that have features of securities are intended under their terms and conditions not only for the Republic of Lithuania, but also for other Member States, the prospectuses submitted to the Bank of Lithuania for approval should be supplemented with the request to transfer the approved prospectus to competent authorities of Member States where the public offering of (trading in) tokens is to take place (host Member States) (Regulation 2016/301). Having approved the prospectus, the Bank of Lithuania shall, in accordance with applicable procedures, inform competent authorities of host Member States and ESMA about such approval and shall transfer the approved prospectus.

107. The approval of prospectus by the Bank of Lithuania or the supervisory authority of the other Member State shall enable the issuers to offer tokens that have features of securities to the public in Member States listed in the prospectus.

108. When publishing the prospectus, any intermediary, issuer, operator of platform where the public offering of tokens that have features of securities is taking place, or other distributor must explicitly and unambiguously name where (in which states) particularly the offering is taking place and that the prospectus is not intended for residents of other Member States. However, residents of other Member States are not prevented from subscribing for the tokens on their own initiative if they are not prevented under the terms and conditions of particular offering.

109. Where terms and conditions on issue of tokens that have features of securities provide for that the public offering will take place in certain Member States only, the issuers are recommended to have particular arguments (evidence) that the offer was not intended for other Member States than those listed in the prospectus and their residents (e.g. the prospectus and the information on its approval or on the offering was not published in other languages than those of Member States which the offering was intended for (or the English language which is universally recognised in financial markets), no agreement (contract) on the distribution of advertisements in other Member States or the third countries was concluded, contracts on the distribution of advertisement explicitly state that advertisements should be distributed in listed states, etc.

110. The Republic of Lithuania Law on Securities provide for the opportunity to have different terms and conditions of public offering for different groups of investors (e.g. subscription price, subscription priority) in the course of primary trading in securities where all persons belonging to the same group of investors shall be ensured equal terms and conditions. Considering this, public offerings of tokens that have features of securities may also be intended for different groups of investors, however the issuers should define explicit, straightforward, and measurable criteria for the allocation of investors to particular group and disclose them in the document on terms and conditions of issue (information document, prospectus, etc.) as well as encode in the smart contract.

111. All investors, either grouped or ungrouped, should be ensured equal rights to acquire the information. All material information related to the public offering of tokens or the issuer should be disclosed in the document on terms and conditions of issue published and made available by the issuer to all investors free of charge (prospectus or information document), and the information in the advertisements should be in line with that contained in the document on terms and conditions of issue. Even where the prospectus or the information document is not required, the information should be made available to all potential investors under the same conditions.

112. Noteworthy, based on the Bank of Lithuania position on virtual assets and initial coin offering, financial market participants providing financial services should not be engaged in activities or provide services associated with virtual assets, including buying, holding, or selling of virtual assets. Considering this, where defining target groups of investors it should be taken into account that persons providing financial services likely may not be able to acquire tokens that have features of securities when they are to be paid up in virtual currency.

113. Also noteworthy is the fact that the procedures of primary (and secondary) trading in tokens that have features of securities must ensure restrictions to acquire tokens for persons listed in Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and other persons under respective sanctions or prohibitions.

5.8. Secondary trading in tokens that have features of securities

114. Broadly, all issues discussed above follow the principles that there is no STOs-specific legal regime, and that once a token is classified as a particular type of financial instrument, the regulatory implications would follow in ordinary course. For tokens that are classified as financial instruments and are admitted to trading and traded on a

regulated market, multilateral trading facilities, or other market defined by laws, respective provisions applicable to securities should apply.

115. Where tokens qualify as financial instruments, platforms trading tokens with a central order book and/or matching orders under other trading models are likely to qualify as Multilateral Systems and should therefore either operate under Title III of MiFID II and relevant requirements of the Law on Markets in Financial Instruments as RMs or under Title II of MiFID II as MTFs or OTFs. RMs are operated or managed by a market operator. MTFs and OTFs are operated by a market operator or an investment firm.

116. Where the operators of those platforms are dealing on own account and executing client orders against their proprietary capital, they would not qualify as multilateral trading venues but rather as broker/dealers providing the MiFID II services of dealing on own account and/or the execution of client orders and should therefore comply with the requirements set out in Title II of MiFID II.

117. Trading platforms that are used to advertise buying and selling interests and where there is no genuine trade execution or arranging taking place may be considered as bulletin boards and fall outside of MiFID II scope, as per recital 8 of MiFIR.

118. Detailed provisions in regard to legal requirements applicable to the marketplaces in the EU are submitted in ESMA Advice document.

5.9. Accounting of tokens that have features of securities

119. Where tokens that have features of securities are being issued, accounting principles of traditional financial instruments and requirements applicable to the opening, management, and closing of traditional financial instrument accounts shall apply depending on the legal form of the issuer, characteristics of tokens that have features of securities, distribution methods, and other conditions. Tokens that have features of securities, equally as traditional financial instruments, shall be recorded by entries in financial instrument accounts managed in accordance with procedures laid down in the Law on Markets in Financial Instruments.

120. For tokens that have features of securities (no matter what kind of securities) which are offered to the public (or traded privately) by companies, accounting principles applicable to shares, bonds, and other financial instruments of the issuers and requirements applicable to the opening, management, and closing of the accounts of shares, bonds, and other financial instruments of the issuers shall apply, it means that such financial instruments shall be recorded by entries in financial instrument accounts managed in accordance with procedures laid down in Chapter VI of the Law on Markets in Financial Instruments. The same requirements apply to tokens that have features of bonds or derivatives of private limited liability companies.

121. Tokens that have features of securities shall be recorded by entries in financial instrument accounts managed in accordance with procedures laid down in the Law on Markets in Financial Instruments. Such tokens that have features of securities shall be accounted within the accounting system of financial instruments consisting of inter-related higher and lower level financial instrument accounts, legal acts regulating their management, and accounting principles of financial instruments. The issuers and other undertakings whose issue of tokens that have features of securities or other financial instruments had been registered within central securities depository must inform the depository about major events on financial instruments in terms and procedures set by the

depository and provide related documents and information necessary for the execution of such events.

122. Considering the specifics of tokens that have features of securities, managers of such accounts should be capable of handing the accounting of tokens in a DLT network when this enables to ensure adherence to the accounting principles of financial instruments (including but not limited to separate accounting, separability of funds, transparency) and accounting requirements, and traceability of transactions.

123. Accounting entries of tokens that have features of securities in a DLT network may be considered as entries in financial instrument accounts only in such cases when entries in a DLT network are made in accordance with the requirements of the Law on Markets in Financial Instruments ensuring the integrity of the accounting system of financial instruments in higher and lower levels and the fulfilment of terms and conditions of issue respectively. Central securities depositories and managers of such accounts should apply certain reconciliation measures in order to ensure the integrity of the issue of tokens that have features of securities as required by laws. Where other undertakings participate in the reconciliation of certain issue of tokens that have features of securities, the central securities depository and each of such undertakings should agree on respective mutual cooperation and information exchange measures in order to ensure the integrity of the issue.

124. The DLT which qualifies as the securities settlement system can be managed only by central securities depository which is in line with the requirements of Central Securities Depositories Regulation.

125. The accounting of tokens that have features of transferable securities which have been issued by private limited liability company and are traded privately may be managed in accordance with provisions of Article 41(3) of the Law on Companies.

5.10. Advertising activity relating to tokens qualified as transferable securities

126. Under Article 22 (1) of the Prospectus Regulation any advertisement relating either to an offer of securities to the public or to an admission to trading on a regulated market shall comply with the principles stipulated in the Prospectus Regulation. Where tokens are qualified as transferable securities the provisions on advertising activity similar to provisions that are likely to be applied to advertisement related to securities shall apply.

127. "Advertisement" under Article 2 (k) of the Prospectus Regulation means a communication with both of the following characteristics:

127.1. relating to a specific offer of securities to the public or to an admission to trading on a regulated market;

127.2. aiming to specifically promote the potential subscription or acquisition of securities.

128. In the event that material information is disclosed by an issuer or an offeror and addressed to one or more selected investors in oral or written form, such information shall, as applicable, either:

128.1. be disclosed to all other investors to whom the offer is addressed, in the event that a prospectus is not required to be published; or

128.2. be included in the prospectus or in a supplement to the prospectus, in the event that a prospectus is required to be published.

129. Where the issuer, the offeror or the person asking for admission to trading on a regulated market is subject to the obligation to draw up a prospectus, advertisements shall be clearly recognisable as such. The information contained in an advertisement shall

not be inaccurate or misleading and shall be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published. Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it. All information disclosed in an oral or written form concerning the offer of securities to the public or the admission to trading on a regulated market, even where not for advertising purposes, shall be consistent with the information contained in the prospectus.

130. As the provisions concerning advertisements laid down in the Prospectus Regulation are without prejudice to other applicable provisions of EU law (Article 22 (11) of the Prospectus Regulation), those other relevant provisions shall be also taken into account, for instance, see Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising and the Law on Advertising of the Republic of Lithuania that transposes the abovementioned Directive 2006/114/EC).

131. Noteworthy, the provisions of the Prospectus Regulation related to advertising activity are to be further specified in regulatory technical standarts adopted by the European Commission.

5.11. Application of provisions on the disclosure of periodic information and the takeover of the issuer's control

132. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC 15 December 2004 (hereinafter – Transparency Directive) aims to provide the disclosure of accurate, comprehensive and timely information about issuers whose securities are admitted to trading on a regulated market situated or operating within a Member State. In particular, it requires disclosure of periodic and ongoing information about these issuers, e.g., annual financial reports, half-yearly reports, quarterly reports (if applicable), acquisition or disposal of major holdings and any changes in the rights of holders of securities. The Transperancy Directive applies only were instruments are transferable securities, as defined in point (44) of article 4 (1) of MiFID II.

133. Where tokens are transferable securities admitted to trading on a regulated market situated or operating within a Member State, issuers will therefore need to comply with the periodic and ongoing disclosure requirements set in the Transparency Directive. Provisions of this directive have been transposed into the Law on Securities, therefore issuers whose tokens are listed on regulated market must comply with the provisions of this Law.

134. Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover (hereinafter - Takeover Directive) provides for requirements applicable to official offerings and squeeze-out and sell-out procedures. Respective provisions of Takeover Directive applicable to securities of issuers incorporated in the Republic of Lithuania are provided for under Section IV of the Republic of Lithuania Law on Securities. Provisions of this section shall apply to the holders of tokens that have features of securities where tokens that have features of securities are considered equivalent to shares or having features of equity securities and enable to take over the issuer's control.

5.12. The Market Abuse Regulation

135. The Market Abuse Regulation (hereinafter – MAR) prohibits insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) in relation to the following instruments: (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; (b) financial instruments traded on MTFs, admitted to trading on MTFs or for which a request for admission to trading on MTFs has been made; (c) financial instruments traded on OTFs; and (d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points' (Article 2 of the MAR). The above prohibitions apply to any person (Article 14 of the MAR).

136. Where tokens qualify as financial instruments, and provided they are traded or admitted to trading on a trading venue (or, where they are not traded on a trading venue, their price or value depends or has an effect on the price or value of a financial instrument traded on a trading venue), the MAR would become applicable. In addition, the trading platforms would need to have in place effective arrangements, systems and procedures aimed at preventing, detecting and reporting market abuse (Article 16 of the MAR). Issuers would need to disclose inside information as soon as possible (Article 17 of the MAR) and to maintain an insider list (Article 18 of the MAR). Managers at issuers would need to notify the competent authority of every transaction conducted on their own account (Article 19 of the MAR). Persons who produce or disseminate investment recommendations would also need to ensure that such information is objectively presented (Article 20 of the MAR), which may be particularly pertinent for tokens markets where limited trading volumes and / or concentrated ownership of certain tokens may raise greater risks of conflicts of interest.

137. Also, the novel nature of tokens market could mean that some new abusive behaviours may arise which are not directly captured by the MAR or current market monitoring arrangements. For example, new actors may hold new forms of inside information, such as miners and wallet providers, which could potentially be used to manipulate the trading and settlement of tokens.

138. The application of the MAR might also raise specific issues in the case of decentralised trading platforms, as there may be a lack of clarity as to the identity of the market operator.

139. It should be noted that where tokens do not qualify as financial instruments, trading activity in them would in principle be out of the scope of the MAR.

6. LEGISLATIVE REFERENCES, ABBREVIATIONS AND GLOSSARY

6.1. Legislative references and abbreviations

CSDR – 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

ESMA Advice – Advice 'Initial Coin Offerings and Crypto-Assets' No ESMA50-157-1391, issued by European Securities and Markets Authority (hereinafter – ESMA) on 10 December 2018
Law on Companies – Republic of Lithuania Law on Companies
Law on Crowdfunding – Republic of Lithuania Law on Crowdfunding
Law on Markets in Financial Instruments – Republic of Lithuania Law on Markets in Financial Instruments
Law on Securities – Republic of Lithuania Law on Securities
MAR – 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
MiFID II – 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
Prospectus Regulation – 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
Delegated Regulation – Commission Delegated Regulation supplementing Prospectus regulation
Resolution No 03-45 – Resolution No 03-45 of the Bank of Lithuania of 28 February 2013 on the approval of requirements for the preparation of the information document mandatory in the cases of public trading in medium-sized issues of securities and exemptions from its preparation
Takeover Directive – Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
Transparency Directive – Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC
AML/CTF – Anti-Money Laundering/Counter Terrorist Financing
DTL – Distributed Ledger Technology
ESMA – European Securities and Markets Authority
EU – European Union
ICOs – Initial Coin Offerings
BoL – Bank of Lithuania
MTFs – Multilateral Trading Facilities
NCA – National Competent Authority
OTFs – Organised Trading Facilities
RMs – Regulated Markets
STOs – Securities Token Offerings
Survey – survey of Member State National Competent Authorities undertaken by ESMA in the summer of 2018 with the aim to collect detailed feedback on possible legal qualification of crypto-assets as financial instruments

6.2. Glossary of concepts and terms

Crypto-assets – a cryptographically secured digital representation of value or contractual rights that use some type of DLT and can be transferred, stored or traded electronically.

Tokens – digital assets that are recorded on a distributed ledger and can be transferred without an intermediaries.

7. DISCLAIMER

These Guidelines do not act as new law but rather a guide to interpretation of existing legal and supervisory framework.

These Guidelines cannot be regarded as an official interpretation of the legislation. The BoL makes decisions taking into account the entirety of actual circumstances which may differ case-by-case. These Guidelines cannot be regarded as the decision in a specific case. These Guidelines describe only part of the aspects examined by the BoL, in case of discrepancy between Guidelines and positions of the BoL, the latter shall prevail.

Please note that the instruments mentioned in the Guidelines are still in the process of evolution. Therefore their legal qualification and interpretation may change. Due to novelty of this sector the relevant legal framework can also change following the supranational (EU) and (or) national legislative initiatives. The BoL reserves the right to amend these Guidelines or any part of it at any time.

Figure 1. **Classification of tokens.**

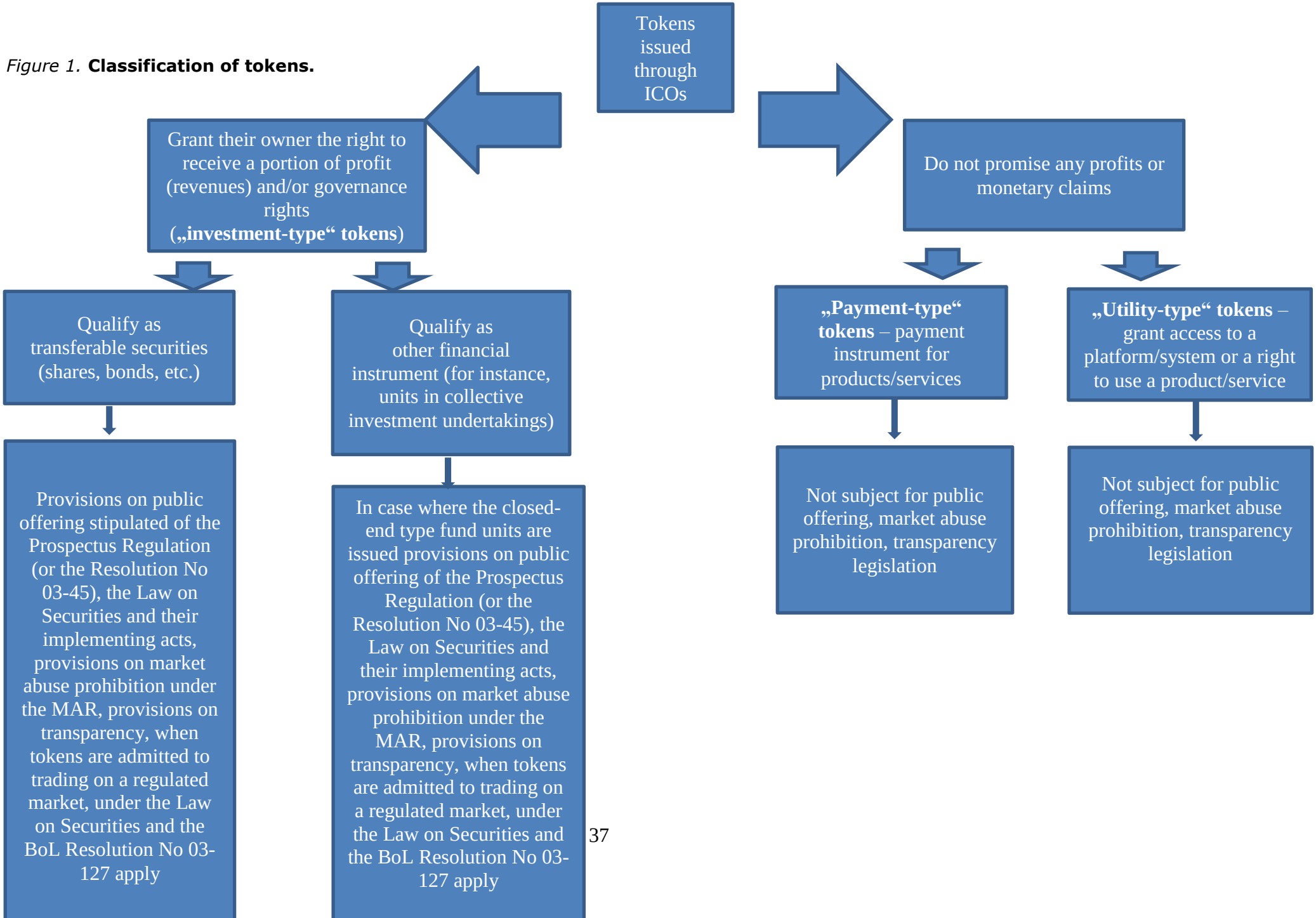

Figure 2. **Tokens market participants.**

Market Participants	Potential Activities	Authorisation Requirements
Issuers of tokens	Issuance of tokens.	The entity does not need any authorisation or permissions provided that it acts as the issuer of its own tokens. Nevertheless, the issuance of tokens and trading shall comply with the financial markets regulation, such as, the Prospectus Regulation, the MAR, the Law on Securities and other relevant legislation.
Financial Intermediaries (Advisers and Brokers)	Provide investment services related to the purchasing of tokens, investment recommendations, admission to regulated market, accounting services and other investment services set out in the Law on Markets in Financial Instruments.	Permissions stipulated in the Law on Markets in Financial Instruments are needed.
Exchanges and trading platforms	Facilitate transactions between market participants.	Permissions stipulated in the Law on Markets in Financial Instruments and the Law on Crowdfunding, where applicable, are needed.
Wallet providers and custody service providers (Financial Intermediaries and Central Securities Depository)	Provide the secure storage of tokens.	Permissions stipulated in the Law on Markets in Financial Instruments and 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 are needed.
Payment providers	Enable investors to pay using a crypto-asset or transfer fiat currency *via* a crypto-asset.	Permissions stipulated in the Law on Electronic Money and Electronic Money Institutions of the Republic of Lithuania or the Law on Payment Institutions of the Republic of Lithuania where payment providers enable transferring fiat currency *via* a crypto-asset are needed.

Investors	Natural persons and entities that make investments in tokens.	-