Crypto Valley

Crypto Valley Association (CVA)
c/o eMBe Finanz GmbH
Bahnhofstrasse 20
6300 Zug

Zug, 28 June 2019

Federal Department of Finance
State Secretariat of International Finance SIF
Bundesgasse 3
3003 Bern

Sent by Email:
vernehmlassungen@sif.admin.ch

Federal Council public consultations on improving framework conditions for Blockchain/DLT

Ladies and Gentlemen,

On March 22, 2019, the Federal Council initiated the consultation on the adaptation of federal law to developments in distributed ledger technology (DLT) and presented a preliminary legislative proposal for a new Federal Act on the Amendment of Federal Laws in light of the Developments regarding DLT[1] (the "**Consultation Draft**"), along with an explanatory report.

In particular, the Federal Council mandated the Federal Department of Finance to further carry out the public consultation and to invite all cantonal governments, political parties, as well as national umbrella organisations of legal entities under public law, business confederations and other interested parties to provide positions until June 28, 2019.

Within this consultation process, the Crypto Valley Association (CVA), as an independent, professional organization located in the Swiss canton of Zug (the "**Association**", or the "**CVA**"), has been asked to provide a statement on its positions on the proposed legislative changes.

The CVA greatly appreciates this opportunity, as our focus is in developing and supporting an optimal ecosystem - both with a Swiss and global perspective – for all actors engaged in cryptographic and related technologies, including blockchain and other distributed ledger technologies.

In this context, the CVA wishes to highlight the ongoing coordination and fruitful collaboration on regulatory and policy matters with our partner organization, the Swiss Blockchain Federation (SBF).

Regarding the consultation process at hand, our Association would like to make the following comments on the proposed legislative amendments.

---

[1] Bundesgesetz zur Anpassung des Bundesrechts an Entwicklungen der Technik verteilter elektronischer Register / Loi fédérale sur l'adaptation du droit fédéral aux développements de la technologie des registres électroniques distribués, at https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-74420.html.

Key positions | Summary

I General legislative approach

The CVA shares the view with the Federal Council that the evolution of technology has the potential to foster further innovation and considerably increase the efficiency of the financial sector and other sectors of the economy. We welcome and support the legislative process and initiatives that aim to optimize Switzerland's legal framework, ensuring that the country can maintain its position as a leading location in the area of DLT, blockchain and other digital technologies.

Furthermore, we underline that the legislative approach should follow the principle of technological neutrality and that market and society preferences should determine which technologies will prevail. We note that the proposed amendments include exceptions to this principle. As mentioned by the Federal Council in its report, exceptions should indeed remain exceptions, unless technology-specific amendments are deemed essential.

With respect to the proposed amendments to the Federal Act on Financial Market Infrastructures (FMIA),[2] our Association welcomes the creation of a new authorization category for infrastructure providers. Thus, we are of the opinion that the specific license for DLT-based trading facilities (according to article 73a et seq FMIA) sends a good signal to the ecosystem and market participants.

Our Association wishes to underline that the legislator should further ensure that these amendments (which are not technologically neutral), are implemented in a non-discriminatory and competitive-neutral manner, leaving room for startups to enter the market with new technologies and innovative concepts.

Given the great margin of discretion for developing specifics through Federal Council ordinance(s) left in the current draft law, the CVA would emphasize that this should be done in close consultation with the industry.

To foster further innovation within the ecosystem, our Association would invite the Federal Council to consider the introduction of a specific "sandbox" for DLT financial market infrastructures under development.

We would also see great potential and promising developments in the area of collective investments. To this end, our Association has identified a need for action to amend the collective investment schemes law to maintain Switzerland's standing as an attractive location that fosters innovation. Thus, the proposed introduction of a DLT "sandbox" could also be integrated within the forthcoming consultation on amending the Collective Investment Schemes Act.

Considering the remarkable transaction volumes, growth rates and considerable figures regarding assets under management, DLT-based trading facilities would not – at least in the foreseeable future – exhibit properties that could represent a risk for the for the stability of the (Swiss) financial system. Consequently, the proposed amendments to the Federal Act on the Swiss National Bank[3] seem premature. The CVA is of the position that these amendments of federal law should be postponed and might be taken up at a later stage.

---

[2] Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA), 19 June 2015, S.R/RS 958.1

[3] Federal Act on the Swiss National Bank (National Bank Act, NBA), 3 October 2003, SR/RS 951.11.

II Amendments to the Swiss Code of Obligations[4]

1 The proposed amendments in general

Overall, our Association welcomes and supports the steps taken by the legislator and we welcome the provision of a clear legal framework for DLT-based securities, which provides for a target-oriented classification of tokens as a securities-like instrument. This approach seems to gain increasing acceptance in other jurisdictions as well, notably France, Germany, Luxembourg and Liechtenstein.

From a Swiss perspective, it enables the recourse to a well-established body of civil law and doctrine from which most of the questions that have been identified in the DLT-Report[5] – arising in connection with the disposal of tokens and the assertion of rights that market participants may associate with tokens – can be sufficiently solved. In addition, the reference to familiar and proven legal concepts contributes valuable legal certainty.

However, regarding the reference to familiar and proven legal concepts of securities law, our Association wishes to underline that even without the proposed amendments, the issuance of uncertificated securities associated with tokens is already possible within the current legal framework. The proposed amendments are only relevant for providing security with respect to the transfer of uncertificated securities by means of a digital ledger or DLT, but not for their issuance. This distinction should be integrated within in the message of law for clarification purposes.

2 Technological neutrality and the concept of DLT

We note that the explicit introduction of a technological concept (such as DLT) defines the scope of application of articles 973d et seq. of the Swiss Code of Obligations. Thus, the proposed amendment is a clear exception to the principle of technological neutrality, and potentially entails a risk with respect to legal certainty.

In particular, it appears difficult to identify a uniform definition of the constitutive elements of DLT. Our Association notes that there seems no prevailing consensus on this topic among experts in the field and technical developments are by no means finished. Furthermore, DLT is just one of the conceivable technologies for the issuance and management of digitized securities. In the foreseeable future, completely new concepts could be developed, so that negotiable securities could be digitally issued and made transferable in a secured way with technologies that may not have the features that are now proposed as necessary requirements according to article 973d para 2 CO.

Our Association therefore is of the opinion that, at least in the context of private law, the legislator should follow a more functional regulatory approach and only clarify that the notion of negotiable security can be issued digitally and can be made digitally transferable in a secured way, without prescribing in the Swiss Code of Obligations the technology with which this result will be achieved. Therefore, the CO should prescribe only the minimum functional requirements a register must have in order to qualify as a register according to article 973d para. 1 CO (“qualified digital ledger”, QDL).

The register should and must meet qualified requirements, but these should only specify what is necessary to enable the function of the ledger as a digital medium providing information about the uncertificated securities and ensuring secured dispositions over such rights. In this regard, the fact that the ledger is distributed is only of minor relevance.

---

4 Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations, CO), SR/RS 220.

5 Federal Council report, 14 December 2018, Legal framework for distributed ledger technology and blockchain in Switzerland, p. 64.

According to proposed amendments, DLT securities shall have the same effects as negotiable securities, notably regarding the proof of entitlement, execution of a transfer and protection of transactions. Thus, DLT securities may be defined as “uncertificated securities of public faith”, “uncertificated securities with qualified protection of transactions” or – as a more general, generic term – “digital securities.” Emphasis should be placed on the element that the system is secured and that the ledger’s entries are verifiable and incorruptible (secured digital transferability), rather than solely distributed. Further requirements might be formulated as obligations of the issuer, the violation of which leads to liability according to Art. 973h CO.

3 Article 973c para 4 CO – Written declaration of assignment

We note that the requirement, according to article 973c para 4 CO, which asserts that the transfer of uncertificated securities requires a written declaration of assignment, is one of the central provisions that should also be amended in the current legislative process. We therefore suggest adding to this paragraph that the requirement for the written form is deemed to be met if the transfer takes the form of a digital secured transaction, where the transaction register meets the requirements of a qualified digital ledger as stated in article 973d CO.

Since the transaction must take place in a secured way, which would involve some form of public or permissioned access to the transaction data, our Association is of the opinion that both the parties to a transaction (notably the creditors) and the course of business are effectively protected. Furthermore, the information that a transfer has taken place is in many cases publicly accessible, without necessarily revealing the identity of the parties, which can be monitored by interested parties. Thus, the suggested amendment also accounts for the protection of creditors (of the assignors and acquirers), since it is – or can be made – transparent by design when a claim is newly assigned or transferred. Moreover, the suggested amendment would also provide security to the investors and support the development of the secondary market (e.g. crypto trading platforms).

In this context, we would like to underline that a book on uncertificated securities, according to article 973c CO para 2, can be held using DLTs that allow for some form of public access without revealing the details of the creditors. Such forms of technical implementations should be fostered by a clear legal framework. Our Association therefore suggests deleting the second sentence of article 973c para 2, that “the book is not open for public inspection.” This still allows for entries in the borrower’s uncertificated securities register to not be public or that uncertificated securities may arise from the borrower’s accounting. Our Association takes the position that the involved parties should be allowed to decide at their own discretion the concrete access specifics of these registers by private autonomous agreements. The actual regulation could unnecessarily deter useful technological developments. This would adversely affect the application of the technologies and Switzerland’s competitiveness as a location.

4 Article 973d and Article 973e – Creation and effects of the uncertificated security of public faith (“Digital Securities”)

At the outset, the distinction should be clearly made that the form an instrument takes has no impact on the qualification of the instrument as a security. DLT securities (“uncertificated security of public faith”) can fulfil their market functions only if the qualified digital ledger cannot be manipulated, remains immutable and guarantees transparency.

The extensive list of requirements in 973d CO leads to the fact that the proposed amendments regarding the transfer and treatment of “DLT securities” are only applicable if all specifications are fulfilled for the entire period in question. This could result in undesirable side-effects. If a court were to decide that a DLT register did not fulfil even one of the specifications or does not fulfil at a given point in time the very latest state-of-the-art, the database in question would not qualify as a ledger within the meaning of Art. 973d para. 1. Consequently, all digitally registered transfer records would

not trigger the intended legal effects. Most likely, the registered disposals of DLT book-entry rights would be qualified in line with the classical assignment law rules and assignment law effects according to which most transfers would be null and void. This would lead to considerable legal uncertainty and should, therefore, be avoided.

4.1 Necessary elements of an uncertificated security of public faith

Considering that the measures are an exception to the principle of technological neutrality, the extensive list of requirements for a qualified digital ledger as proposed in 973d CO seem unnecessarily restrictive.

The uncertificated security of public faith can fulfil its functions only if (a) the creation or transfer record in the qualified digital ledger is a prerequisite for the assignment of the securitized right,[6] (b) the register entry serves as proof of entitlement to assert the securitised right[7] and (c) the ownership records and actual power of disposal serve as a basis for the protection of *bona fide* acquirers.[8] Since the legal effects according to article 973e CO can only materialize on the basis of these functions, the described elements are constitutive for the qualification as uncertificated security of public faith and should be codified in article 973d CO. In line with a more functional regulatory approach, the civil law should only define the minimum requirements of the register. Therefore, our Association would suggest a new structure and amendment to article 973d CO, which can be found in the Annex.

4.2 Article 973d para 3 CO - Delegation norm in favor of the Federal Council

As discussed above, we propose to only prescribe the minimum requirements of the register. These minimum requirements, however, are fundamental principles that should be codified in federal legislation. Consequently, our Association proposes to delete para 3 of article 973d CO, which contains a delegation norm in favour of the Federal Council. We hold the view that this approach provides for the necessary flexibility for the further development of innovative and sustainable businesses. At the same time, our Association is of the opinion that the risks associated with the spread of new technologies can be appropriately addressed by the implementation of the law and these fundamental principles in practice.

4.3 Article 973e – Effects of the uncertificated security of public faith

Generally, the proposed article fully and comprehensively describes the effects of an uncertificated security of public faith. According to para 1 of article 973e CO, the rights attached to the uncertificated security of public faith may not be exercised or transferred without a corresponding adjustment of the register. This basically corresponds to a bilateral presentation clause (or simple securities clause), where the performance owed may or must be validly provided only upon presentation of the instrument.

In the context of uncertificated securities of public faith, the party presenting the instrument is also deemed to have legal competence (qualified securities clause). These aspects could be formulated more clearly. Furthermore, our Association holds the view that it should be possible that the performance owed can be validly provided without corresponding adjustments to the qualified ledger itself, but also by adjustments to other systems that are defined by and directly linked to the ledger. Thus, the law should specify that the corresponding adjustments are made “according to the requirements as set out in the qualified register.”

---

6 This would correspond to article 967 CO, regarding the required transfer of possession of the instrument (“Transportfunktion”).
7 Cf. article 966 CO (“Legitimationsfunktion”).
8 Cf. Article 1006 para. 2 CO; article 935 CC (“Verkehrsschutz”).

Regarding paragraph 3, our Association would underline that the protection of transactions and of bona fide acquirers of uncertificated securities of public faith is of great importance. Bona fide acquirers must be protected in their acquisition, even if the seller was not authorized or had no legal right of disposal.[9] However, our Association holds the view that the protection of bona fide acquirers of uncertificated securities of public faith should only apply to commercial transactions, i.e. cases of acquisition or disposal for a value. Accordingly, we suggest adding the condition of a transfer against payment.

Furthermore, we hold the view that the law should specify in more general terms if a contractual obligation is required for the valid transfer of uncertificated securities of public faith. Having in mind priority conflicts, we first note that it is theoretically possible that a right "enshrined" as uncertificated security of public faith is also represented by physical securities that enter into legal transactions. Furthermore, constellations are possible where a right of ownership or possession of movable property is represented by an entry in the qualified digital register and by physical instruments. Conflicts could also arise with claims (title or limited right in rem), if such claims are wrapped as an entry in the qualified digital register and at the same time, transferred by assignment in writing according to article 165 CO.

A potential solution would be the contractual exclusion of the possibility of transfers by assignment, at least if the applicable law allows for a *pactum de non cedendo* with effect *erga omnes*. In order to provide a clear legal framework, our Association holds the view that the transfer by means of assignment should be generally excluded for titles or rights in rem that are wrapped as an entry in the qualified digital ledger.

Consequently, *bona fide* acquirers of uncertificated securities of public faith should be protected in their acquisition, even if the transferor had no power or right to transfer the securities. For cases with acquirers acting in bad faith, the unravelling of the transactions should be processed in accordance with the CO provisions governing unjust enrichment.

With respect to the point in time where entries in a qualified digital register can be legally deemed final, our Association would like to bring to attention that, at least in the case where transactions are incrementally verified by the ledger, the irrevocability of a transaction cannot be defined in absolute terms (article 973e para 5 CO).

Referring to physical property (chattels), it should also be clarified in the ranking system (article 973e para 6) that a bona fide acquirer of such property takes precedence over the bona fide acquirer of a competing uncertificated security of public faith.

5 Article 973h para 3 CO – Information and liability

In many cases, the obligor of uncertificated securities of public faith seems in the best position to ensure that the qualified digital securities ledger meets the minimum requirements according to article 973d para 2 CO. Also, the obligor typically has an interest to collect information about the general operation, functional reliability and data integrity of the register. Therefore, it seems meaningful to hold the obligor responsible for the provision of such information to the acquirer.

However, we hold the view that the obligor's liability for loss or damage resulting from failure to comply with the minimum requirements of the register (according to article 973d para 2 CO) should include a pure fallback rule for cases without agreements, including specific rules for contingent liabilities. The obligor might delegate the performance of obligations or engage services of various third parties to discharge certain tasks. Depending on what interests might be at stake, it is also possible that even the creditors or bailee would assume liability. Therefore, our Association is of the

[9] This would also include cases of illicit appropriation.

position that the assignment of liability risks within the issuance of uncertificated securities should be governed by the principle of contractual autonomy and we propose to modify the clause in order to allow for agreements aiming at excluding or limiting the liability in accordance with article 100 CO. Also, the liability for associates according article 101 CO can be limited or excluded by prior agreement.

III Debt Enforcement and Bankruptcy Act (DEBA)[10] | Banking Act (BA)[11]

Our Association supports the view of the Federal Council that there is a real practical need to conclusively clarify the treatment of crypto-based assets entrusted to a custodian in case of compulsory liquidation proceedings and bankruptcy of the latter.

1 Article 242a DEBA – Third party claims and claims of the bankrupt estate

Whether digital assets entrusted to a third-party fall into the bankruptcy estate is primarily determined by who has exclusive custody of the asset. For physical property, the custodian is presumed by law as the beneficial owner of all assets in his possession, so that any third-party claims regarding an object must be pursued by segregation proceedings. This corresponds to established doctrine and case law of the Federal Supreme Court, so that a segregation is only admitted if the bankruptcy estate has “exclusive actual power of disposal.”[12]

Our Association holds the view that the criterion of exclusive actual power of disposal should be used to decide whether a specific crypto-based asset is included into the estate, so that crypto-based assets can be treated in the same way as movable property according to 242 para. 3 DEBA. As soon as the case involves some form of co-custody, the asset in question is not included into the estate, and the bankruptcy administration may initiate inclusion proceedings to add the asset to the estate.

Segregation – Individual allocation of the crypto-based asset

Referring to article 242 para 2 DEBA, we would like to emphasize that a constant, individual allocation of a crypto-based asset in the respective blockchain or DLT system on which the tokens are located would cause considerable implementation difficulties for the custodians. Currently, the prevailing cryptocurrency systems store the entire transaction history and process each individual transaction, which leads to limited capacity or poor scalability. On-chain transactions require validation by the blockchain nodes, which is a time-consuming and incremental process. If the law would require custodians to map every asset shift "in the register" (on-chain transaction) and the technology continues to unfold its growth potential worldwide, it could become impossible to provide bankruptcy-proof, collective safe custody services for crypto-based assets in Switzerland.

The scaling problem is typically addressed by splitting data volume and operations into groups (sharding, e.g. the Plasma protocol for the Ethereum blockchain) or by reducing the load on the network by aggregating transactions over a period of possibly up to several months and ultimately only write the net transaction "into the register" (off-chain protocols). The solutions currently in place – notably the lightning network for Bitcoin, the Liquid Network, state channels for Ethereum or the liquidity network – would be in direct contradiction with the proposed article that every asset movement shall be reflected "in the register." Furthermore, many use cases would become impossible. One example are certificates with cryptocurrency underlying, which provide holders with an owner-like position in actually stored crypto-based assets. In that case, the provider would have to reproduce every exchange transaction of the certificate on the blockchain (e.g. BTC), which could

[10] Federal Act on Debt Enforcement and Bankruptcy (DEBA), 11 April 1889, SR/RS 281.1.
[11] Federal Act on Banks and Savings Banks (Banking Act, BA), 8 November 1934, SR/RS 952.0.
[12] BGE 110 III 87, 90.

make the services prohibitively expensive or impossible to implement, due to technical limitations and associated risks.

We would therefore suggest that custody providers and exchanges have an obligation to segregate their own customer portfolios, while at the same time allowing the entry of customer portfolios into omnibus accounts, where the individual allocation is possible by means of a parallel register or internal accounting of the custodian. This solution corresponds to the internationally predominant form of crypto storage and it allows the custodian to store the assets in the optimal form in consultation with the client.

Classes of crypto-based assets – scope of application of segregation proceedings

The CVA notes that the proposed amendment limits the application of the segregation proceedings to certain classes of crypto-based assets (payment tokens or "crypto-based means of payment" and Swiss "DLT securities"), which does complicate handling in the event of bankruptcy and is not in the interest of the parties involved (creditors, debtors and bankruptcy administration).

We would like to draw attention to the fact that it is not always possible to clearly qualify a token as a payment token. Furthermore, the qualification may change over time, even after the declaration of bankruptcy. Not only cryptocurrencies, but also other tokens may be designed and used as means of payment. Especially in the case of "hybrid" tokens which can obtain a payment function, it seems expedient that also utility and asset tokens can be segregated from the estate based on article 242a DEBA. In sum, CVA holds the view that all tokens held by a custodian should be treated equally in the event of bankruptcy of the latter, and we propose to simply refer to “crypto-based assets not in exclusive custody of the debtor”.

Finally, we would like to raise our concerns that costs related to the restitution of the property is to be borne by the creditor as foreseen under art. 242a par. 4. As stated by the Federal council, these costs are likely to be significant, as the bankruptcy administration regularly orders to immediately shut down the IT systems, a decision that would not be made by the creditor itself.[13] In the case of retail clients, it could be difficult that creditors can bear these costs, even if expenses would not be prohibitively high but manageable from the view of the total bankruptcy estate. Our Association proposes an amendment that provides the applicants with preliminary information about the expected costs and allows for more discretionary powers of the bankruptcy administration. In justified cases, notably in the case of many retail creditors, the administration may decide on a cost ceiling, including a partial allocation of costs to the bankruptcy estate.

2 Art. 242b DEBA – Access to data

Our Association expressly welcomes the proposed amendment. Since data does not qualify as property that could be claimed within segregation proceedings and does not fall into the category of rights, the access to data in the event of bankruptcy needs to be clarified.

With the proposed amendment, we note that the determination of what constitutes the object of segregation according to article 242a para 1 DEBA (the crypto-based asset itself or only the access key) can be left to the application in practice. A special entitlement and continuous access to data could also become relevant in the case of bankruptcy of a custodian’s service provider (e.g. cloud providers), so the new clause also provides customers and investors with additional security.

3 Article 16 para 1bis BA – Exclusion of crypto-based deposits from custodian’s estate

In line with the proposed amendment to the DEBA, crypto-based assets shall be considered as deposits according to article 37d BA. Hence, crypto-based assets credited to client’s accounts would

[13] Explanatory report, p. 39.

– in the event of compulsory liquidation of the custodian or sub-custodian, be excluded from the custodian's estate. The CVA generally supports this treatment of crypto-based assets, as it ensures coherence with the amendments to the DEBA.

As per the explanatory report, the exclusion or segregation rights regarding crypto-based assets shall not go further than the rights based on tangible property. Consequently, the proposed amendment would only qualify crypto-based assets as deposits, where the entitlement of the individual client can be traced anytime on register (on-chain), so that it is always clear from the register which token belongs to which customer.[14]

In addition to the considerable technical implementation difficulties raised above, our Association holds the view that this approach seems contradictory. We note that the crypto-based assets belonging to the depositor shall be treated the same way as tangible assets and securities.[15] However, requiring an individual on-chain allocation would not apply the established practices applicable for deposits according to article 16 para 1, but would tighten the law for crypto-based assets. As is well known, the physical transfer of securities to the acquirer has become the exception, and the client's relationship to the securities he owns is only an indirect one. While the individual title to securities is shown in the books of the custodian bank, the securities form part of the collective custody of sub-custodians or of a central depository. Thus, the legal framework in traditional securities business allows for ownership transfers in the form of book entries, without recourse to the classical property law transfer rules.

As an example, a bank could transfer DLT securities from both proprietary and client accounts to one proprietary hot wallet for trading purposes and transfer the DLT securities back to the client accounts on completion of the transactions. In case of a bankruptcy during the trading activity, tokens can be assigned to the individual client only based on the bank's internal accounting, but not based on the entries in the register itself. Considering the settlement systems of centralized crypto-asset trading platforms, we see similar issues as the "trade settlement usually takes place in the books of the platforms, i.e. off-chain"[16] and only net amounts according to the internal books are transferred on chain within certain settlement periods.

Thus, especially in the field of financial market law, our Association holds the view that the law should provide for exclusion of omnibus-client accounts and of crypto-based assets in collective safe custody in case of compulsory liquidation. This is also in line with the proposed amendment to the FISA,[17] which explicitly provides for omnibus client segregation. While the custodian is required to maintain accounting segregation of own and third-party assets, which is already the common bookkeeping practice today, the (client's) assets are held in collective accounts.[18]

Furthermore, our Association would like to draw attention to the proposed articles 16 and 37d of the Banking Act, which would cause crypto-based assets not held in individual addresses (including securities held for the account of clients) to be treated as balance sheet items of the bank that holds them, and might trigger further capital adequacy requirements. Consequently, the costs of offering services in the area of digital assets for banks could dramatically increase, a scenario which should be addressed in the legislative amendments or implementation regulations.

[14] Federal Council, Explanatory report, p. 39, 46.
[15] Federal Council, Explanatory report, p. 39.
[16] European Securities and Markets Authority (ESMA), Advice, Initial Coin Offerings and Crypto-Assets, 9 January 2019, p. 42.
[17] Federal Act on Intermediated Securities (Federal Intermediated Securities Act, FISA), 3 October 2008, SR/RS 957.1.
[18] Cf. proposed amendments article 11a FISA; Federal Department of Finance, explanatory report to the amendments of the Banking Act (BA), 8 March 2019, p. 51.

Finally, business entities located in Switzerland would be disadvantaged if collective safe custody services are not possible under Swiss law. Customers of Swiss-based providers could switch to foreign custodians, which would create legal uncertainty and make the deposited assets less tangible for Swiss authorities in a legal case.

IV Amendments to the Financial Market Infrastructure Act (FMIA)[19]

1 General position

As a preliminary, we would like to underline that payment or utility tokens do not fall under the scope of application of FMIA, whereas some services of cryptocurrency trading and exchange may qualify as money transmitting and are subject to AMLA, so that the due diligence obligations imposed by AMLA apply.

We further note that the proposal of the Federal Council deviates from the principle of technological neutrality. In the case at hand - while the legislator should leave as much entrepreneurial freedom as possible – we concur with the Federal Council that a technology-specific regulation is necessary in order to provide for an effective legal framework with respect to exchange platforms for crypto-based assets and the token economy.

In general, the current legal framework on trading institutions[20] does not sufficiently address the trading of crypto-based assets. Notably, asset tokens and potentially hybrid tokens qualify as securities, and the issuance as well as the trading of such tokens are generally subject to financial market licence requirements. However, under current law, retail customers have no access to an exchange or multilateral trading facilities (MTF). While organised trading facilities (OTFs) are not restricted in terms of access, the obligations of the trading facilities as well as the specific duties of participants in trading facilities do not fit into processes and services of crypto exchange platforms, notably against the background of discretionary rules and possible conflicts of interest.

Consequently, our Association in principal supports the legislative amendments. With the proposed amendments to the Financial Market Infrastructure Act (FMIA), a new specialized licence for exchange platforms trading with tokens will be introduced (DLT trading system). While we see advantages in this approach, we also note that an adaption or clarification of the conditions for obtaining a financial market infrastructure license could be a practicable way to achieve the same result.

For our Association, the access of private persons or companies to trading venues and the possibility to operate such facilities is of fundamental importance. If no specialized licence should be introduced, we would submit to modify the list according to article 34 para 2 FMIA to include participants providing crypto-based securities trading. This approach would need further elaboration with respect to the legal framework – notably the developments within the European Union – as well as regarding technical and operational conditions these parties would fulfil (e.g. that the participant holds the ledger in a secured and distributed way). In the context of a liberal regulatory environment and provided that the trading venue operates according to non-discretionary rules, parties should be able to choose either the licence as multilateral trading system (MTF), or the form of an organised trading facility (OTF).

2 Authorization of foreign participants, record keeping and reporting duties

We note that the DLT trading system does not qualify as a trading venue according to article 26(a) FMIA, which ensures international equivalence with traditional financial market infrastructure

[19] Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA), 19 June 2015, SR/RS 958.1

[20] Stock exchanges, multilateral trading facilities (MTF) and organised trading facilities (OTF).

categories. According to the proposed amendment, DLT trading systems fulfil many requirements of an MTF. The CVA would like to highlight that foreign entities and individuals may also participate in DLT trading systems, which could be clarified in the message of law.

Concerning the record keeping and reporting duties (38-39 FMIA), our Association sees justified grounds, notably the enlarged participants base, to exempt DLT trading facilities from these obligations and we support the proposed regulation.

However, in the case of increased trading volumes, our Association is aware that trade monitoring, the detection of misconduct and corresponding enforcement procedures are important to address potential reputational risks for Switzerland as a financial and business location. As a matter of fact, supervisory authorities should have reasonable access to OTC reporting and beneficial owner records. Against this background, our Association would like to emphasize that appropriate standards, ensuring trade monitoring and automated quality control systems are already under development by the industry.[21] In the case of increased trading volumes with a large gamut of traditional financial instruments taking the form of DLT securities, our Association would consider introducing record keeping and reporting obligations for DLT trading system licensees, introducing record keeping and reporting obligations for DLT trading system licensees, to the extent that the performance of such duties can be outsourced to external service providers.

3 DLT trading systems and MTFs or stock exchanges (ancillary services)

Operating a DLT trading system may also be of interest for market participants that already hold an authorization under SESTA, FMIA or BA. In view of legal certainty, a grandfather provision should address those market participants that are already licensed and now wish to obtain a DLT trading system authorization.

Furthermore, our Association proposes to allow MTFs or stock exchanges to provide ancillary services in connection with DLT securities.[22] Notably, this would allow the tokenization of shares in the form of DLT securities also for listed companies. Potential risks can be adequately controlled, as FINMA may require the implementation of additional measures based on article 10 para 3 FMIA.

4 Facilitations for smaller market participants: Exemption from license, sandbox approach

Regarding the new license (DLT trading system), we note the introduction of eight requirements according to article 73b FMIA and eight additional obligations (article 73e).

Our Association takes the view that the requirements as set out in article 73b seem extensive and can probably only be met by large, existing trading venues. Especially the conditions regarding the appeals authority, trade surveillance obligations and cooperation between trade surveillance instances appear very difficult to fulfil by substantially smaller market players.

Our Members welcome proposed article 73f, based on which the Federal Council may provide by ordinance facilitations for smaller DLT trading systems. However, the article only allows for relatively moderate facilitations. Our Association is of the opinion that this delegation norm should provide for further facilitations, notably the possibility of a full exemption from licence requirements. For example, our Association would posit to exempt the operation of a trading system from licensing requirements, if the system is operated by the issuer of all shares that are traded or if the system operates in a not-for profit context, without commercial nature.

---

[21] E.g. Xwiss AG, developing DART® (Digital Asset with Regulated Transfer), a standardized token that could make insider trading to a large extent impossible.

[22] Like DLT trading systems, which can trade and provide ancillary services regarding further instruments, such as payment or utility tokens, cf. explanatory report, p. 50; amendment of article 10 FMIA.

Furthermore, our Association would invite the Federal Council not only to provide for a framework that is available for substantially smaller market players, but also to consider a "sandbox approach" for smaller OTFs. In our view, this could be implemented within the current legal framework and based on discretionary decisions by FINMA, setting e.g. temporary conditions, phased approval processes and de minimis limits. This would strongly strengthen innovation in this field and send a good signal to the fintech sector.

5 Admission of crypto-based assets, pre- and post-trade transparency, centralized repository

Our Association takes note of a broad delegation of power in favor of the Federal Council (art. 73d FMIA), notably regarding the admission of DLT securities and other crypto-based assets to DLT trading systems. In general, such delegation should not override the right for business to organize themselves adequately to the markets' needs, especially for startups to develop successfully.

According to the explanatory report, the Federal Council will issue an ordinance to exclude privacy coins that qualify as payment tokens or DLT-based derivatives from the DLT trading systems. Our Association holds the view that this approach would seem inappropriate and would create legal uncertainty about the qualification of a payment token as "privacy coin". Given legitimate interests of the users' privacy and data protection rights, as well as the technical solutions of transaction tracing available to law enforcement agencies, our Association holds the view that all payment tokens should be admissible to a DLT trading system.

Regarding the required pre- and post-trade transparency (article 73b and 29 FMIA), our Association would like to call attention to the case of public (permissionless) blockchains. Depending on size and diversification of the network, a public blockchain represents an infrastructure available for use by the general public and without central operator. Thus, the necessary information might already irreversibly be recorded in the register and accessible to the participants without special publication or operator function of the trading venue. In this scenario, we understand that pre-trade information would also be available in the register. These aspects should be adequately reflected in the FMIO.[23]

With respect to article 73a para. 1 lit. b and article 73e para 2 FMIA, we note that the amendments only cover centralized forms of repositories and require some form of segregation. Although in line with current practice for some facilities, our Association takes the view that the law could also provide for decentralized structural and organizational setups and clarify details in the FMIO. Obviously, our Members are aware that this approach would also include adjustments with respect to (future) international developments, notably at the level of the European Union. By way of example, a DLT trading system could operate on a distributed ledger that is largely decentralized (Blockchain, Ethereum) or is operated by a third party (e.g. Hyperledger, Corda). This should be clarified in the FMIO and explained in the message

As a final remark, we would like to raise awareness that Article 41 b lit 3 FinIA assimilates the DLT-based trading facility to a securities dealer licence, which could cause confusion in terms of the authorizations to operate.

V Federal Act on the Swiss National Bank[24]

According to the proposed article 19 NBA, DLT trading facilities may qualify as systemically important financial market infrastructures under the oversight of the Swiss National Bank (SNB). In

[23] Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading, (Financial Market Infrastructure Ordinance, FMIO), 25 November 2015, SR/RS 958.11.

[24] Federal Act on the Swiss National Bank (National Bank Act, NBA), 3 October 2003, SR/RS 951.11.

view of the criteria as set out in article 20 of the National Bank Ordinance (NBO),[25] it seems very unlikely that DLT-trading facilities will, in the foreseeable future, exhibit properties that could represent a risk for the for the stability of the Swiss financial system.

We notably consider the transaction volumes of major exchange platforms, the number and overall valuation of cryptographic assets currently held by major custody providers and current growth projections.[26] As a consequence, the proposed amendments to the Federal Act on the Swiss National Bank seem premature. Our Association is of the position that these amendments of federal law should be postponed and should be taken up at a later stage.

* * * * *

We have reflected above comments in the attached overview and remain at your disposal to elaborate further on any of the matters raised in our response.

Sincerely yours,

On behalf of the Crypto Valley Association:

Daniel Haudenschild
President of the Board
Daniel.haudenschild@cryptovalley.swiss

Dr. Mattia Rattaggi
Member of the Board
mattia.rattaggi@cryptovalley.swiss

Thomas Stoltz / Tobias Kallenbach
Co-Chairs Regulatory Working Group
thomas.stoltz@cryptovalley.swiss /
tobias.kallenbach@cryptovalley.swiss

Encl.

[25] Ordinance to the Federal Act on the Swiss National Bank (National Bank Ordinance, NBO), 18 March 2004, SR/RS 951.131.

[26] E.g. Coinbase or Fidelity Digital Assets in the USA, which are of comparable size. According to Brian Armstrong, CEO, Coinbase Custody "crossed USD 1bn AuM" (Assets under Management) and has "70 institutions adding USD 150m AuM a month", https://www.coindesk.com/coinbase-custody-now-has-1-billion-of-crypto-under-management-ceo-says (accessed 15 May 2019); Coinbase, Inc.'s custody amounts to about USD 20bn in "crypto assets for its retail customers" (https://custody.coinbase.com/faq, accessed 2 May 2019).

Crypto Valley

Article	Suggested Changes	Comments
OR / CO	**Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations, CO), SR/RS 220**	
Art. 622 Abs. 1	[1] Die Aktien lauten auf den Namen oder auf den Inhaber. Sie können als Wertpapiere ~~ausgegeben werden. Die Statuten können bestimmen, dass sie als~~ Wertrechte nach Artikel 973*c* oder 973*d* oder als Bucheffekten im Sinne des Bucheffektengesetzes vom 3. Oktober 20083 (BEG) ausgegeben werden.	A general requirement of a basis in the articles of incorporation would in our view lead to an unnecessary tightening of the existing law. We would underline that a corporate entity can of course prescribe the form of its shares by way of optional statutory provisions. Furthermore, a conversion of existing shares without the shareholders' consent does still require an explicit basis in the articles of association (cf. article 973c). Moreover, the distinction should be clearly made that the form a security takes has no impact regarding the qualification of the security (type).
Art. 973c III. Wertrechte ohne Wertpapiercharakter	1 Der Schuldner kann Wertrechte ohne Wertpapiercharakter ausgeben oder vertretbare Wertpapiere oder Globalurkunden, die einem einzigen Aufbewahrer anvertraut sind, durch Wertrechte ohne Wertpapiercharakter ersetzen, sofern die Ausgabebedingungen oder die Gesellschaftsstatuten dies vorsehen oder die Hinterleger dazu ihre Zustimmung erteilt haben. (…) 2 Der Schuldner führt über die von ihm ausgegebenen Wertrechte ein Buch, in das die Anzahl und Stückelung der ausgegebenen Wertrechte sowie die Gläubiger einzutragen sind. ~~Das Buch ist nicht öffentlich~~. (…) 4 Zur Übertragung von Wertrechten bedarf es einer schriftlichen Abtretungserklärung. *Der schriftlichen Abtretungserklärung gleichgestellt ist der gesicherte Eintrag der Übertragung in einem digitalen Transaktionsregister, welches die Anforderungen nach Artikel 973d Absatz 2 erfüllt.* Ihre Verpfändung richtet sich nach den Vorschriften über das Pfandrecht an Forderungen.	A book on uncertificated securities according to article 973c CO para 2 can be held using DLT, which can allow for some form of public or permissioned access. As this can be implemented without publicly revealing the details of the creditors, such forms of technical implementations should be fostered by a clear legal framework. With the suggested amendment, it is still possible that entries in the borrower's uncertificated securities register are not public or that uncertificated securities may arise from the borrower's accounting.

Art. 973d Wertrechte mit Wertpapiercharakter *(Wertrecht mit öffentlichem Glauben)* ~~(DLT-Wertrechte)~~ I. Errichtung	[1] Wertrechte haben Wertpapiercharakter *(Wertrechte mit öffentlichem Glauben)*, wenn sie, gestützt auf eine Vereinbarung der Parteien~~: 1.~~ in einem *qualifizierten digitalen Register (QDR)* ~~verteilten elektronischen Register (Distributed Ledger Technology, DLT)~~ eingetragen sind.~~; und 2.~~ *Wertrechte mit öffentlichem Glauben können* nur *nach Massgabe dieser Eintragung* ~~über dieses Register~~ geltend gemacht und auf andere übertragen werden ~~können~~. [2] Das *qualifizierte digitale* Register muss *mindestens* die folgenden *Anforderungen* ~~Voraussetzungen~~ erfüllen: 1. *Es erlaubt der Person, die durch das Register als berechtigt ausgewiesen ist (Inhaber des Wertrechts öffentlichen Glaubens), zuverlässig den Nachweis der und die Verfügung über ihre Rechtsposition*; 2. *Es ist resilient gegen unbefugte Veränderungen von Einträgen durch die aus dem Wertrecht verpflichtete Person (Schuldner), eine andere Partei oder einen Betreiber des zugrundeliegenden Systems (Integrität);* 3. *Jede Partei kann ohne Mitwirkung der anderen Parteien die Integrität des Registers überprüfen, und* 4. *Die Registereinträge, aus denen sich die Berechtigung an Wertrechten ergeben, sind für die betroffenen Parteien sowie mögliche Erwerber des Wertrechts einsehbar*. ~~[3] Der Bundesrat kann Mindestanforderungen an das verteilte elektronische Register vorsehen.~~ *[3] das qualifizierte digitale Register ist seinem Zweck entsprechend zu organisieren; insbesondere ist sicherzustellen, dass* 1. *die Funktionssicherheit gemäss Registrierungsvereinbarung des Registers jederzeit gewährleistet ist;* 2. *Informationen über den Inhalt des Wertrechts für die Parteien* im Register oder in damit verknüpften Begleitdaten *verfügbar sind, und*	The CVA also supports the amendments as proposed by the Swiss Blockchain Federation.

	3. *Informationen über die Organisation und Funktionsweise des Registers öffentlich verfügbar sind*. 1. ~~der Inhalt des DLT-Wertrechts, die Funktionsweise des Registers und die Registrierungsvereinbarung sind im Register oder in damit verknüpften Begleitdaten festgehalten;~~ 2. ~~es stellt sowohl die Funktionssicherheit gemäss Registrierungsvereinbarung als auch die Integrität der im Register enthaltenen Daten nach dem neuesten Stand der Technik sicher; und~~ 3. ~~die Parteien können die sie betreffenden Registereinträge und die Informationen nach Ziffer 1 jederzeit einsehen.~~	
Art. 973e II. Wirkungen	[1] Der Schuldner aus einem *Wertrecht mit öffentlichem Glauben* ~~DLT-Wertrecht~~ ist nur gegen entsprechende Anpassung *gemäss der Organisation und Funktionsweise* des Registers zu leisten berechtigt und verpflichtet. [2] Er wird durch eine bei Verfall erfolgte Leistung an den jeweiligen vom Register bezeichneten Gläubiger eines DLT-Wertrechts befreit, wenn ihm nicht Arglist oder grobe Fahrlässigkeit zur Last fällt. [3] Dem vom Register bezeichneten *Berechtigten* ~~Gläubiger~~ eines *Wertrechts mit öffentlichem Glauben* ~~DLT-Wertrechts, welches dem ursprünglichen Berechtigten abhandengekommen ist~~, kann dieses Wertrecht nicht abgefordert werden, *wenn er dieses Wertrecht entgeltlich erworben hat*, ausser ihm fällt beim Erwerb böser Glaube oder eine grobe Fahrlässigkeit zur Last. [4] Der Schuldner kann der Forderung aus einem *Wertrecht mit öffentlichem Glauben* ~~DLT-Wertrecht~~ nur solche Einreden entgegensetzen, die entweder gegen die Gültigkeit der Registrierung gerichtet sind oder aus dem Register oder dessen Begleitdaten selbst hervorgehen, sowie solche, die ihm persönlich gegen den jeweiligen *Berechtigten* ~~Gläubiger~~ des Wertrechts zustehen. Einreden, die sich auf die unmittelbaren Beziehungen des Schuldners zu einem früheren *Berechtigten* ~~Gläubiger~~ des Wertrechts gründen, sind zulässig, wenn der aktuelle *Berechtigte* ~~Gläubiger~~ bei dem Erwerb des DLT-Wertrechts bewusst zum Nachteil des Schuldners gehandelt hat.	Given various options of technological implementation – e.g. if the application forms part of a public, permissionless blockchain and allows for the registration of transaction data in an unchangeable way – it should be made clear that the performance owed can be validly provided without direct, corresponding adjustments to the “register” itself. The proposed wording would clarify that such operational designs are possible. The protection of transactions and of bona fide acquirers of uncertificated securities of public faith is of great importance. However, this rule should only apply cases of acquisition or disposal for a value. Accordingly, our Association suggests adding the condition of a transfer against payment.

	[5] Wird über den *Berechtigten* ~~Gläubiger~~ eines *Wertrechts mit öffentlichem Glauben* ~~DLT-Wertrecht~~ der Konkurs eröffnet, die Pfändung vollzogen oder die Nachlassstundung bewilligt, sind seine Verfügungen, soweit sie tatsächlich ausgeführt werden, rechtlich verbindlich und Dritten gegenüber wirksam, wenn sie vorgängig eingebracht und nach den Regeln des *qualifizierten digitalen* Registers oder eines anderen Handelssystems unwiderruflich wurden. [6] Steht in Bezug auf dasselbe Recht dem gutgläubigen Empfänger eines Wertpapiers ein gutgläubiger Empfänger des *Wertrechts mit öffentlichem Glauben* ~~DLT-Wertrechts~~ gegenüber, so geht der Erste dem Letzteren vor.	
Art. 973h V. Information und Haftung	[1] Der Schuldner aus einem *Wertrecht öffentlichen Glaubens* ~~DLT-Wertrecht~~ hat jedem Erwerber die Angaben zum Inhalt des Wertrechts~~, zur Funktionsweise und Funktionssicherheit des~~ Registers sowie zur Integrität der ~~im Register enthaltenen~~ Daten nach Artikel 973d Absatz 2 bekannt zu geben. [2] Er haftet für den Schaden, welcher dem Erwerber durch die Nichteinhaltung der Voraussetzungen nach Artikel 973d Absatz 2 entsteht, sofern er nicht nachweist, dass er die erforderliche Sorgfalt angewendet hat. [3] ~~Vereinbarungen, welche diese Haftung beschränken oder wegbedingen, sind nichtig.~~ *Vereinbarungen über Aufhebung, Beschränkung oder Übernahme dieser Haftung sind gültig. Vorbehalten bleiben Art. 100 und 101 des Obligationenrechts.*	The assignment of liability risks within the issuance of uncertificated securities should be governed by the principle of contractual autonomy. Our Association proposes to modify the clause in order to allow for agreements aiming at excluding or limiting the liability.

Article	Suggested Changes	Comments
SchKG / DEBA	**Federal Act on Debt Enforcement and Bankruptcy (DEBA), 11 April 1889, SR/RS 281.1**	
Art. 242a 3a. Herausgabe kryptobasierter Zahlungsmittel und von DLT-Wertrechten	[1] Die Konkursverwaltung trifft eine Verfügung über die Herausgabe kryptobasierter *Vemögenswerte* ~~Zahlungsmittel und von DLT-Wertrechten gemäss Artikel 973d OR~~, welche von einem Dritten beansprucht werden. [2] Der Anspruch ist begründet, wenn *sich die kryptobasierten Vermögenswerte nicht im alleinigen Gewahrsam des Gemeinschuldners befinden oder* ~~der Gemeinschuldner die Verfügungsmacht über die kryptobasierten Zahlungsmittel und die DLT-Wertrechte für den Dritten innehat und diese~~ dem Dritten ~~jederzeit im~~ *in einem* Register ~~individuell~~ zugeordnet ~~sind~~ *werden können.* (…) [4] Die ~~Kosten~~ für die Herausgabe *notwendigen Kosten* sind von demjenigen zu übernehmen, der diese verlangt. Die Konkursverwaltung kann einen entsprechenden Vorschuss verlangen. *Die Konkursverwaltung informiert den Gesuchsteller vorab über die zu erwartenden Kosten und kann in begründeten Fällen ein Kostendach vorsehen.*	It is not always possible to clearly qualify a token as a payment token. Especially in a scenario of "hybrid" tokens obtaining a payment function, it seems expedient that also utility and asset tokens can be segregated from the estate. All tokens held by a custodian should be treated equally in the event of bankruptcy of the latter. The criterion of exclusive actual power of disposal should be used to decide whether a specific crypto-based asset forms part of the estate, so that crypto-based assets can be treated in the same way as movable property according to 242 para. 3 DEBA. Further, we would like to emphasise that a constant, individual allocation of a crypto-based asset in the in the respective blockchain or DLT system on which the tokens are located might not be possible or could cause considerable implementation difficulties for the custodians. In particular against the background of internationally predominant forms of crypto storage, the legal framework should allow for individual asset allocation by means of a parallel register or internal accounting of the custodian. The amendment provides the applicants with preliminary information about the expected costs. In justified cases, notably in the case of many retail creditors, the bankruptcy administration should have the discretionary power to decide on a cost ceiling, including a partial allocation of costs to the bankruptcy estate.

Article	Suggested Changes	Comments
NBG / NBA	**Federal Act on the Swiss National Bank (National Bank Act, NBA), 3 October 2003, SR/RS 951.11**	
	Our association would not see a need for action in this area or that the proposed amendments should be implemented rapidly. We therefore suggest retaining the actual version of article 19 and article 20 NBA and to postpone legislative amendments to a later stage.	

Article	Suggested Changes	Comments
BankG / BA	**Federal Act on Banks and Savings Banks (Banking Act, BA), 8 November 1934, SR/RS 952.0**	
Art. 16 Ziff. 1bis	Als Depotwerte im Sinne von Artikel 37d des Gesetzes gelten: 1.bis kryptobasierte Vermögenswerte über die die Bank die Verfügungsmacht für die Depotkunden innehat und die den Depotkunden ~~jederzeit im~~ *in einem* Register ~~individuell~~ zugeordnet werden können;	Cf. comment to article Art. 242a DEBA.

Article	Suggested Changes	Comments
FINIG / FinIA	**Federal Act on Financial Institutions (Financial Institutions Act, FinIA), 15 June 2018, SR/RS 958.1.**	
Art. 41 Bst. b, Ziff. 3	Als Wertpapierhaus gilt, wer gewerbsmässig: b. für eigene Rechnung kurzfristig mit Effekten handelt, hauptsächlich auf dem Finanzmarkt tätig ist und: 3. ein organisiertes Handelssystem nach Artikel 42 des Finanzmarktinfrastrukturgesetzes vom 19. Juni 201513 betreibt; oder	Article 41 b lit 3 FinIA assimilates the DLT-based trading facility to a securities dealer licence, which could cause confusion in terms of the authorizations to operate. This could be addressed and clarified in the message of law.

Article	Suggested Changes	Comments
FinfraG / FMIA	**Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading, (Financial Market Infrastructure Act, FMIA), 19. June 2015, SR / RS 958.1**	
Art. 73a Begriffe	1 Als DLT-Handelssystem gilt eine Einrichtung zum multilateralen Handel von DLT Effekten, die den gleichzeitigen Austausch von Angeboten unter mehreren Teilnehmern sowie den Vertragsabschluss nach nichtdiskretionären Regeln bezweckt und mindestens eine der folgenden Voraussetzungen erfüllt: a. Sie lässt Teilnehmer nach Artikel 73c Absatz 2 Buchstabe e zu.	Our Association takes the view that the legal framework should also provide for decentralized structural and organizational setups, as the amendments only seem to cover centralized forms of repositories. Although in line with current practice for some facilities, a DLT-trading system could also operate on a distributed ledger that is largely decentralized (Blockchain, Ethereum) or is operated by a third party (e.g.

	b. Sie verwahrt DLT-Effekten gestützt auf einheitliche Regeln und Verfahren ~~zentral~~. c. Sie rechnet und wickelt Geschäfte mit DLT-Effekten gestützt auf einheitliche Regeln und Verfahren ab. [2] Als DLT-Effekten gelten jene Effekten, die in einem verteilten elektronischen Register (Distributed Ledger Technology, DLT) eingetragen sind und mittels dieses Registers übertragen werden können.	Hyperledger, Corda). These aspects should be clarified in the FMIO and explained in the message of law. Further, our Association is aware the clarifications in the regulation (FMIO), could also include adjustments with respect to (future) international developments, notably at the level of the European Union.
Art. 73e Weitere Pflichten	[1] Der Bundesrat legt für DLT-Handelssysteme, die Teilnehmern nach Artikel 73c Absatz 2 Buchstabe e offenstehen, zusätzliche Pflichten zum Schutz dieser Teilnehmer fest. [2] Er legt für DLT-Handelssysteme, die Dienstleistungen im Bereich der zentralen Verwahrung, Abrechnung oder Abwicklung anbieten, neben den Pflichten nach den Artikeln 73a–73d weitere Pflichten fest, namentlich zu: a. der ~~zentralen~~ Verwahrung, der Abrechnung und Abwicklung von DLT-Effekten; b. Sicherheiten; c. Eigenmitteln; d. Risikoverteilung; e. Nebendienstleistungen; f. Liquidität; g. Verfahren bei Ausfall einer Teilnehmerin oder eines Teilnehmers; h. der Segregierung. [3] Er orientiert sich bei der Festlegung der Pflichten nach Absatz 2 an den Anforderungen an Zentralverwahrer (Art. 61–73).	See above comment.