Questionnaire on security tokens

Summary of results

May 2019

Summary

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Insight confirmed by figures and projects

This initiative, based on a questionnaire sent to a wide variety of players, aimed to measure the interest in, but not yet quantified, security tokens, a new form of financial securities. The many responses received from incumbent players and new entrants alike, be they French or foreign, confirmed a trend that could emerge in the coming months through concrete projects both on a national and international level.

In regards to quantity, the numerous responses submitted (148 responses received) enable a noteworthy statistical analysis to be drawn up.

In regards to quantity, the diversity of players responding, whether specialised in blockchain or hailing from other sectors, including the traditional banking and financial sector, showcases a movement that could, eventually, industrialise the new form of financial securities.

For example, a first consensus seems to be reached on the very definition of this new form of financial assets, with the vast majority of respondents considering that “security tokens” should be defined as digital assets, recorded on a blockchain, and qualified as financial instruments (i.e. equity, debt, units or shares in investment fund) since they have the same characteristics.

Interest in this type of instrument is also clear. More than 75% of respondents to the questionnaire confirmed this, even beyond the financial sector.

There is strong interest in actors developing various activities involving security tokens, including securities issuance, service provision and investment activities.

Their motivations, which are also diverse, are rooted in the specific advantages that security tokens are likely to offer market participants, as compared with financial securities registered in securities accounts. They include in particular (i) the automation of regulatory requirements or contractual constraints through smart contracts, (ii) the reduction of operational and operating costs, and (iii) the automation of the “Corporate actions” (“opérations sur titres” ou “OST” in french) affecting the life of securities through smart contracts.

The choice of technology also seems to be clearer, with a vast majority opting for a public blockchain for at least part of their operations. The applicable regulatory obligations, which seem to guide respondents’ preferences in this field, could no doubt lead to legal adjustments. The custody of security tokens presents multiple challenges, be they technological, regulatory or legal. The regulatory framework applicable to the relevant arrangements, as well as the contractual documents that govern them, must be able to manage them as a whole.

In view of the responses received, developing the use of security tokens is subject to various technical, operational, accounting and tax issues, but these seem to be well understood overall. However, the responses received still call for clarification on the applicable regulatory and legal requirements and their implementation.

More specifically, the texts that are most likely to govern the activities of respondents include the Prospectus regulation, the AIFM directive and the MiFID 2 regime. A case-by-case analysis is nonetheless still required to identify precisely the applicable framework, its opportunities and limitations.

Adaptations to the existing regulatory framework therefore seem useful, even necessary, to encourage the use of security tokens and make full use of the advantages that this new form of securities dematerialisation, and its underlying technology, present.

The respondents thus confirm the insight behind this initiative, and the need to continue the work recently initiated on a European level.

Presentation and objective of the initiative

A questionnaire on the reality of security tokens

More than ten years after the creation of the first blockchain (Bitcoin), the use of this type of technology protocol continues to give rise to new applications.

Both in the use of this technology and in the use of the digital assets it enables users to issue and exchange (i.e. crypto-assets), the "blockchain"[1] ecosystem has changed considerably and has developed in a number of different industry sectors.

The banking and financial sector is no exception, quite the contrary. While some actors in this sector may have initially expressed concerns about using this technology in their business, this situation may be changing. On the initiative of both existing and new entrants, blockchain protocols and their different applications seem to be entering the financial industry.

Among the possible applications, the use of crypto-assets with the same characteristics as financial instruments (known in practice as "financial tokens similar to financial instruments" or "security tokens") is increasingly mentioned.

Prudential regulators and financial markets are taking a close interest in this issue. The European Union and some of its member states even seem to be willing to position themselves in this promising field and building the legal bases that are essential to foster its development. Regulatory reforms, in force or under discussion, demonstrate the will of the public authorities and institutions to support this technological development, in particular within the banking and financial sector:

- France[2] changed its legislative framework in 2016 to recognise the possibility of registering certain financial securities using using distributed ledger technology ("DLT", also known as "dispositif d'enregistrement électronique partagé" or "DEEP" in French"), instead of their registration in a securities account, to establish the ownership of their holders and transfers.
- Luxembourg[3], through a legislative reform dated March 2019, now stipulates that account holders subject to the regulation of this jurisdiction may keep the securities accounts and may make the

1 Blockchain is a technology allowing storage and transmission of informations in a transparent and secure way without the need for a trusted third party.

2 On the possibility of registering securities using distributed ledger technology: see ordinance No. 2016-520 of 28 April 2016 on short-term notes, ordinance No. 2017-1674 of 8 December 2017 on the use of a shared electronic recording system for the representation and transmission of financial instruments and their implementing decree No. 2018-1226 of 24 December 2018 on the use of distributed ledger technology for the representation and transmission of financial securities and the issuance and transfer of short-term notes.

3 Law of the Grand Duchy of Luxembourg of 1 March 2019 amending the amended law of 1 August 2001 on the movement of securities.

registrations of financial securities in the securities accounts within or using electronic recording systems, including distributed ledger technology such as blockchain.

- Germany[4] has, in turn, recently initiated a public consultation on possible adaptations of its national law, in particular to take into account the use of security tokens and their methods of operation.
- European institutions have also worked on the subject. On 9 January 2019, the European Securities and Markets Authority (ESMA)[5] provided the European Commission with an opinion in particular on security tokens, which included their potential as well as potential adaptations to the European regulatory framework.

In this context of regulatory work conducted by French and European authorities on the subject of security tokens, it seems essential to better understand the reality of the market in regards to this new form of financial instrument.

Since regulatory adjustments may be considered to accompany and regulate the use of security tokens, it seems imperative that the practical and operational issues they raise be taken into account.

To actively participate in this analysis and identify the needs expressed by the market, the French Digital Asset Association (FD2A), in association with the French Association of Financial Markets ("AMAFI") and the French Asset Management Association ("AFG") (**Appendix 1**) submitted a questionnaire on this subject to their members (**Appendix 2**).

Drawn up and sent out in partnership with the French Association for real estate investment companies ("ASPIM") (**Appendix 1**), this questionnaire was open for responses between 13 February 2019 and 4 March 2019.

The questionnaire asked market stakeholders about security tokens, the opportunities they offer, as well as the limitations which the actors who use them (or want to use them) face.

Its end purpose was to better measure the market's appetite for this type of digital asset. The questionnaire also aimed to assess participants' expectations, with the aim of actively contributing to regulators' current reflections on this subject, and to provide them with concrete insights into market trends.

This report provides a synthesis of the various contributions and lessons drawn from the questionnaire's results.

The FD2A, the AMAFI, the AFG and the ASPIM, in partnership Gide 255, PwC, ConsenSys and Woorton, have prepared this analysis to give insight and explanations to the various institutions interested in the subject.

It could, for instance, provide a basis for further regulatory studies on this topic and to facilitate dialogue between institutions and the market actors, to support effective regulation tailored to the specifics of crypto-assets.

4 See in particular "Eckpunkte für die regulatorische Behandlung von elektronischen Wertpapieren und Krypto-Token - Digitale Innovationen ermöglichen - Anlegerschutz gewährleisten", Bundesministerium des Finanzen & Bundesministerium des Justiz und für Verbraucherschutz, 7 March 2019.

5 See on this topic the opinion of the European Securities and Markets Authority (ESMA) of 9 January 2019 on crypto-assets and the report of the European Banking Authority (EBA) of 9 January 2019.

Questionnaire respondents

Many and varied respondents

The distribution of the questionnaire on security tokens generated strong interest from market actors, who are clearly sensitive to the development of this market and related regulatory discussions.

The questionnaire collected 148 responses, 127 of which can be fully used[6].

The number of respondents forms the statistical basis for this questionnaire. The breakdown of the responses examined in this report is, in some cases, given as an indication (i.e. in relation to a 100% basis).

The answers obtained represent a wide variety of industries.
Actors specialised in blockchain actively took part in the initiative, representing nearly 30% of responses collected.

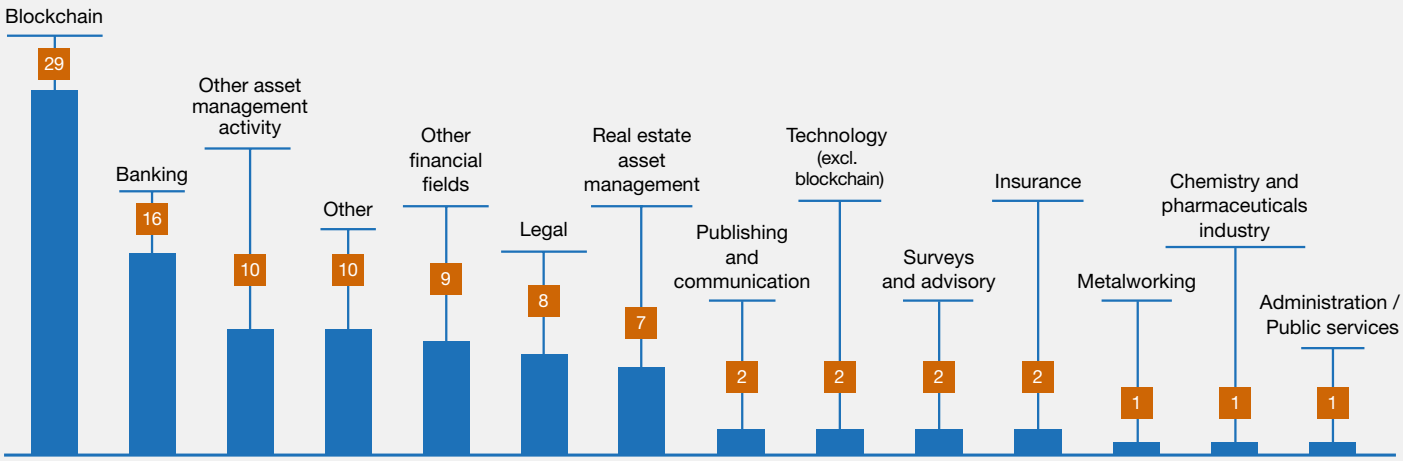
Within this 30%, however, respondents represent various businesses, including actors involved in crypto-asset purchase intermediation, the provision of custody solutions for them, or consulting and supporting customers in the technological and operational development of blockchain projects.

The banking industry represented over 16% of responses obtained, including several major and established actors in the sector.

More broadly, the **financial sector (excluding banking and insurance) also showed strong interest in this initiative**, accounting in total for over 25% of respondents, including over 17% for asset management. Within this latter industry, almost a third is identified in the real estate fund management sector.

6 21 responses could not be taken into account due to lack of and/or exploitable content.

Activity of those who responded to the questionnaire (%)

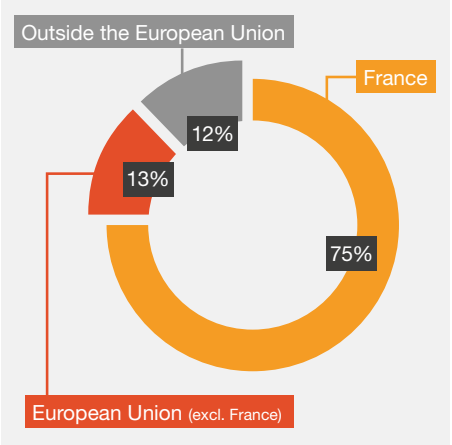


The questionnaire was also an opportunity to collect the opinions of representatives from a variety of sectors, such as the legal professions, technological companies (excluding blockchain) and others from the pharmaceuticals and chemicals industries.

From a geographical point of view, those respondents who filled in their geographical location[7] are primarily French institutions (75%).

Foreign respondents interested in this initiative are divided almost equally among Europe (12%) and further afield (13%).

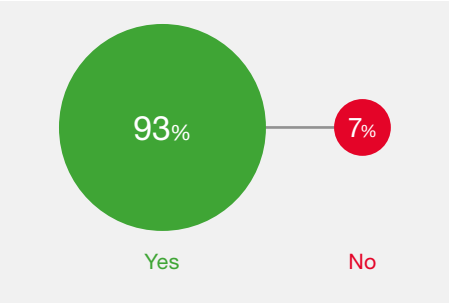
Location of the respondents



European[8] respondents were mainly entities located in the United Kingdom and Luxembourg. The others were based in the Netherlands, Spain or Slovenia. Outside the European Union, interest was shown by several actors, including Australian and Swiss players.

Considering this diversity of respondents, both in terms of business sector and geographical location, **over 93% of respondents[9] showed a positive interest in security tokens**.

Interest in security tokens



The responses collected show strong interest from many members of various industries on the subject of security tokens and their potential.

7 i.e.86% of all responses received.

8 i.e. the European Union.

9 Representing 81% of respondents to the question on potential interest in security tokens.

Definition of security tokens

What topics should be addressed?

Security tokens would mean, according to this proposal, digital assets that are registered on a blockchain and that are deemed as financial instruments (in the same way as equities, bonds or shares or units in investment fund) because they share the same characteristics.

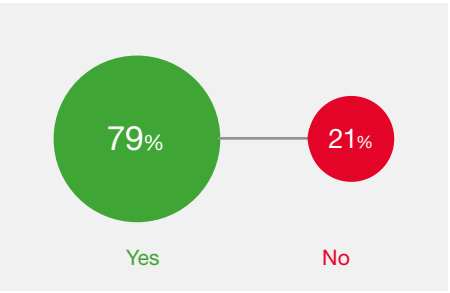
Although the subject of security tokens is often mentioned, its very definition is varied and not harmonised. One of the objectives of the questionnaire were to better understand the reality of security tokens behind this protean concept.

The questionnaire asked participants about a possible definition.

This is a proposed global definition that aims to cover all situations and processes by which assets equivalent to financial instruments could be recorded on a blockchain.

More than 77% of overall answers expressed their opinion on the relevance of such definition. Of these, 79% support this definition.

Agreement with the proposed definition



Among those who do not support this definition, some argue in particular for the extension of the concept to cover all types of tokens that offer an exposure to an underlying asset or that promise financial returns. The stake would be, for example, the application of all financial regulation to these crypto-assets, and in particular the provisions aimed at the protection of investors.

Native security tokens refer to digital assets that are deemed as financial instruments and registered on a blockchain without a prior issuance of conventional securities (e.g. bonds or equities registered on a blockchain as soon as they are issued).

Non-native security tokens are digital assets that "tokenise" financial instruments that were the subject of a traditional prior issuance (e.g. investment fund units classically issued and then recorded on a blockchain by subscribers). Some compare these tokens to deposit receipts as instruments to represent underlying securities issued by a third party issue.

Other respondents mentioned difficulties in implementing the proposed definition and the criteria it contains, particularly for hybrid crypto-assets with multiple characteristics that are not restricted to those of financial instruments.

The questionnaire suggested a definition of security tokens that distinguished between native security tokens and non-native security tokens.

The challenge of this sub-division is to take into account the distinct characteristics of the crypto-assets that these two categories cover and the different risks that each of them may entail, particularly in terms of liquidity / maturity transformation. For some, this distinction could render necessary different regulatory responses to address the specific risks of each category.

For example, non-native security tokens could be characterised when (i) private equity fund units are issued outside of a blockchain and subject to a lock-up period and a minimum investment amount, and then (ii) those units are "tokenised," via the registration on a blockchain of crypto-assets that reflect its characteristics but which are no longer subject to a lockup period or a minimum investment. This hypothesis may generate liquidity transformation risks, which would have been different if the private equity funds had been immediately registered on a blockchain - and thereby qualifying as native security tokens under to the proposed approach.

77% of respondents commented on the relevance of the distinction between native security tokens and non-native security tokens. Of these, 70% of respondents support said distinction.

Among these respondents, some regret the lack of clarity as to the conditions for the implementation of these distinction criteria. Others point out the lack of effective difference in the risks generated by these two categories of tokens. It is therefore irrelevant, in their view, to distinguish the legal framework applicable to each of them. Some, finally, consider that this distinction might not justify a particular regulation, but rather a more precise consolidation of information flows.

Overall, the responses seem to confirm the relevance of a broad approach to the concept of security tokens, that includes all types of digital assets recorded on a blockchain and qualifying as financial instruments because they have the same characteristics.

The majority of respondents also seems to support the introduction of separate categories within this definition, depending on the nature of the risks that these assets may generate, in order to provide distinct regulatory responses.

Business and operational considerations regarding security tokens

A real appetite for multiple applications

To better understand the appetite of market actors for security tokens, the questionnaire raised the issue of the various business issues that this type of asset may raise[10].

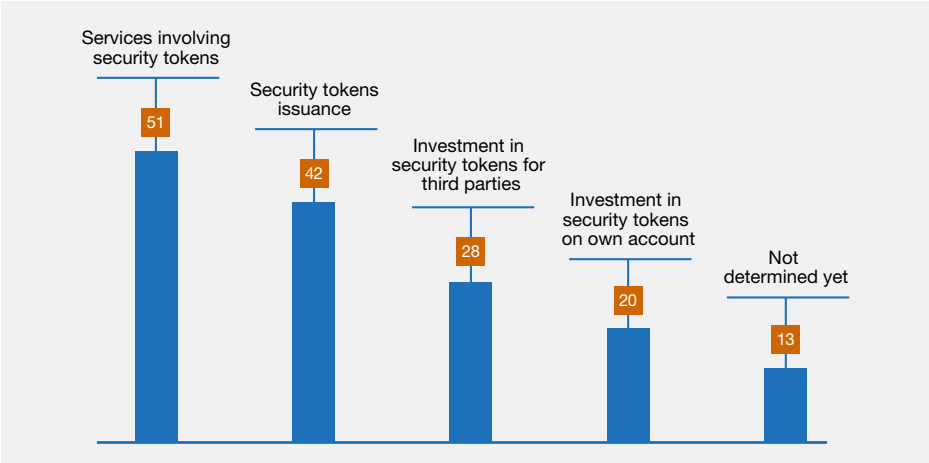
As regards the activities considered

More than 56% participants agreed to respond on the nature of the new activities they are developing, or would like to develop, in connection with security tokens.

Among them:

- 51% of respondents intend to provide services involving security tokens[11],
- 48% of respondents intend to develop investment activities using security tokens – of those, 41% intend to develop own-account investment activities and 52% intend to develop investment activities on behalf of third parties; and
- 42% of respondents intend to issue security tokens.

Activities conducted on security tokens (%)



10 Respondents were questioned on the settlement-delivery process for security tokens that they have implemented, or plan to. Only 5% answered this question, which does not allow any valid conclusions to be drawn.

11 These activities may include: custody of tokens for third parties, trading, auditing, advisory services, etc.

It is worth bearing in mind here that a same player can develop several activities related to *security tokens*.

For the most part, these activities would involve both native security tokens and non-native *security tokens*[12].

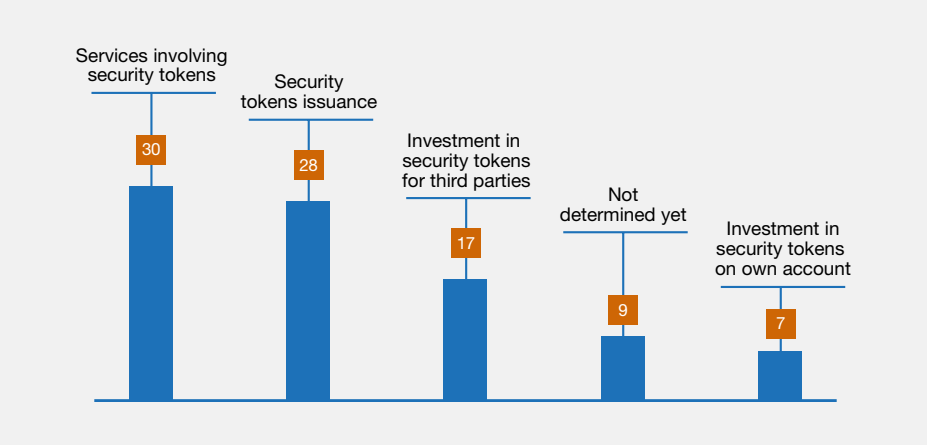
It is interesting to note that the trend identified above as regards the nature of the activities being considered is identical to that which arises when the analysis focuses on the 54 players that indicated being active in banking, asset management (real estate or other) and other financial services.

These respondents also indicate that they prefer security token services over issuing or investment activities, even though a certain number of them (9%) prefer not to comment on the topic.

Regarding the investment activities in security tokens for third parties, 13%, i.e. 17 players, wanted to specify the nature of the activities they are developing or intend to develop (other respondents skipped this question):

- 9 indicate developing these activities on behalf of persons located in France: 6 indicate that they are natural persons, and 8 indicate doing so on behalf of legal entities;
- 17 indicate that they wish to do so on behalf of persons domiciled in other EU Member States, whether they are natural persons (for 6 of them) or legal entities (for 12 of them); and
- 10 intend to invest on behalf of persons domiciled outside the European Union, with 4 actors acting for natural persons and 8 for legal entities.

Activities developed on security tokens by banking, asset management & other financial service players (%)



20 players wished to give further information on the nature of the vehicle used:

- 7 indicate that they are considering a French vehicle;
- 9 indicate that they are considering a vehicle located elsewhere in the European Union;
- 10 indicate that they are considering a vehicle located outside of the European Union.

Again, it should be noted that a same player may develop activities involving several types of vehicles, which can be located in France, elsewhere in the European Union, and / or outside of the European Union.

Lastly, 18 players specified the type of investment made by these vehicles:

- 8 indicate that the vehicle would be fully invested in security tokens; and
- 10 indicate that the vehicle would only be partially invested in *security tokens*.

The activities that respondents develop, or intend to develop, are varied and are mainly distributed between issuance, service provision and investment activities.

12 For more than 78% of respondents to this question (representing 55% of the total number of responses received).

In regards to the advantages of using security tokens in relation to financial securities registered in securities accounts

The questionnaire suggested possible advantages to the use of security tokens in comparison with financial securities registered in securities accounts, namely:

- reduction of operational and operating costs;
- automation, via smart contracts, of compliance with regulatory requirements;
- automation, via smart contracts, of the management of events affecting the life of securities;
- better market depth and liquidity;
- optimisation of the settlement-delivery;
- ability to reach new categories of potential investors;
- splitting of ownership of assets; and / or
- diversification of investments.

Based on the overall responses to this question (representing 78% of the total number of responses received to the questionnaire), the advantages considered to be the most important are (i) the automation, via smart contracts[13], of regulatory requirements or contractual constraints, (ii) the reduction of operational and operating costs and (iii) the automation, via smart contracts, of the management of events impacting securities life.

It is interesting to note that the ranking of these benefits is not significantly affected by the type of activities that respondents develop or plan to develop. This ranking is in line with the priority advantages retained by the players, may they wish to issue security tokens, to provide services in connection with these, or to invest in security tokens (on their own behalf or that of third parties).

Overall, however, the ranking suggested by respondents emphasizes that the other benefits identified in the questionnaire, although they are not identified as the most significant, do remain relevant. These advantages offer interesting prospects, such as the impact of security tokens on the depth of the market and the liquidity of the instrument, or the splitting of asset ownership they allow.

Several participants stressed the importance of benefits other than those identified in the questionnaire. These include the disintermediation of financing operations and their securing. Blockchain's ability to identify token holders and to update their register instantly was also highlighted. Respondents repeatedly pointed to the availability of some hitherto less visible assets and the possibility of carrying out transactions often and in an uninterrupted manner. The increased speed of transactions is also mentioned.

Respondents confirm the diversity of benefits that security tokens can offer market participants in comparison with financial securities registered in securities accounts. Among the potential benefits identified, a consensus seems to emerge on (i) the automation, via smart contracts, of regulatory requirements or contractual constraints, (ii) the reduction of operational and operating costs, and (iii) the automation, via smart contracts, of the management of events affecting the life of securities.

13 Smart contracts are IT protocols that facilitate, verify or enforce the negotiation or execution of a contract, or render contractual clauses unnecessary.

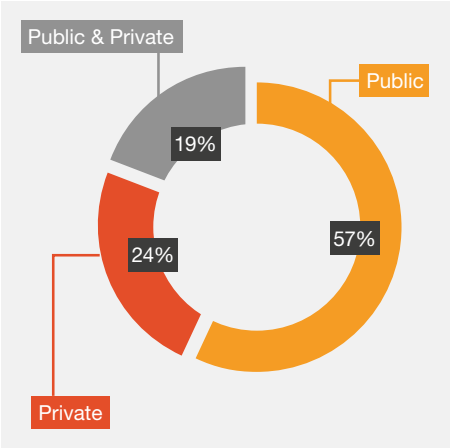
In regards to the choice of technology

50% of respondents agreed to give information on their chosen technology and the type of protocol.

Over three quarters of respondents to this question say they want to use, at least in part, a public blockchain.

57% of them indicate they want to only use a public blockchain.

Types of Blockchain



This technological preference for public blockchains can be explained in particular by the interoperability that their "on-chain" development(s) must have with those of other players. The responses also highlight the need for registry independence, in particular as regards the security token issuer.

Several respondents point out the relevance of defining a hybrid solution that combines both a public and a private blockchain. A number of elements can explain such an approach, including the consideration of certain regulatory constraints, such as the requirements related to the protection of personal data, as recently recalled by the French data protection authority ("CNIL")[14].

More broadly, it is interesting to analyse these preferences in light of the constraints applicable to the use of blockchain in the financial field. For example, the French reform cited in the introduction now allows the registration of financial securities using distributed ledger technology instead of in a securities account[15].

This reform generates constraints for the technological solution underlying securities registration, including (i) the ability of this solution to enable the security issuer to identify security holders, and (ii) the establishment of a continuity plan. Those players wishing to develop activities related to security tokens will have to take these constraints into account, where applicable, when choosing the characteristics of the blockchain they will use and its compliance with the regulatory constraints in force.

Respondents wish to use a variety of technological solutions for their security token activities. For the most part, they include use of a public blockchain.

The technological choices made derive from multiple considerations, including applicable regulatory constraints. In this regard, it is essential that players consider the regime they are subject to when choosing the technology and protocols for their security token activities.

14 See in particular the CNIL's Initial Assessment on Blockchain and GDPR published in September 2018 (« Premiers éléments d'analyse de la CNIL sur la blockchain »).

15 Ordinance No. 2016-520 of 28 April 2016 on short term bonds and Ordinance No. 2017-1674 of 8 December 2017 on the use of distributed ledger technology for the representation and transmission of financial securities.

In regards to the distribution of security tokens

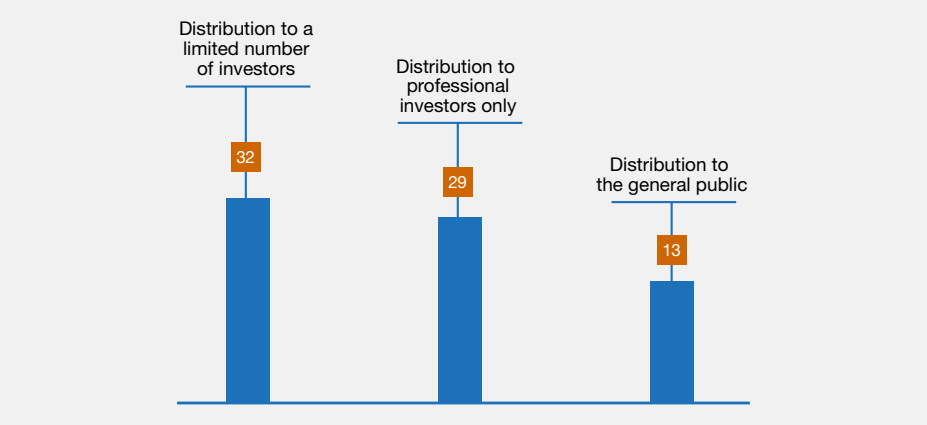
44% of respondents have provided information on the means of distribution of security tokens they have used, or plan to use, in their activities. This response rate is probably due to the diverse nature of the activities that the respondents wish to develop, and which do not all imply the distribution of security tokens.

Of the responses received, only 13% are considering distributing security tokens to the general public. 32% are considering distributing them to a limited number of investors only, and 29% intend to restrict distribution to professional investors only.

These results must be analysed in light of current regulations and the requirements applicable for offers of securities to the public, applicable even when such securities take the form of tokens (in the absence of any amendment of the existing regulatory framework which would be specific to security tokens). This may change in the future in the event of a modification to the framework applicable to this form of transactions involving security tokens.

> Respondents who intend to develop security token distribution activities seem to prefer channels other than offers to the general public, and prefer to appeal to restricted and / or well-informed investor categories.

Distribution modes of security tokens (%)



In regards to custody solutions

43 respondents answered this question. Some players preferred not to respond, primarily for reasons of confidentiality.

Responses to this question make it possible to distinguish between different types of stakes related to the custody of security tokens, which echo the functions traditionally associated with the custody of financial securities.

Firstly, responses show that the token access solution to use the security tokens must be sufficiently secure to ensure that their owners are protected, in particular when the underlying blockchain is public. In this respect, the use of a third-party access provider, as opposed to the token holders keeping the access means themselves (self-custody), is often preferred.

Secondly, such security requires an appropriate technological solution. In this regard, several respondents indicate that they prefer solutions that, at least in part, involve tools that are not permanently connected to computer systems (often referred to as “cold storage”) and that are subject to multi-signature governance (i.e. requiring joint authorisation of persons duly mandated for this purpose), with a possibility of regenerating private keys in case of loss or theft.

Lastly, some respondents point to the blockchain’s role as a global registry in the issuance of securities and their record keeping, as well as the impact that these protocols could have on the current tasks of central securities depositories.

> The custody of security tokens presents multiple challenges that are mainly technological, regulatory and legal. It is essential that the framework applicable to this solution, and the contractual documents that govern it, be able to manage them as a whole.

In regards to the use of external data

Less than half of participants answered on the use or not of external data as part of the structuring of security tokens. Of these, almost 40% indicated that they did not use external data. For the 60% using external data, such data would most often be obtained from specialised third parties, even though the wide variety of responses makes it difficult to identify a preferred method.

Security token development challenges

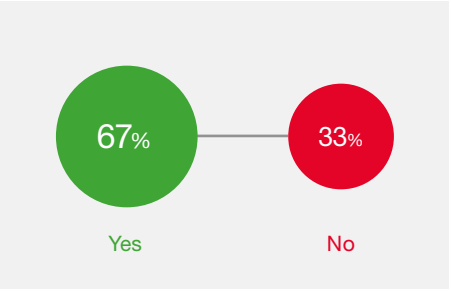
Different challenges that are only partially tackled

When asked about the existence of elements that limit the possibility of resorting to security tokens, two-thirds of respondents[16] considered that such elements already existed.

The questionnaire identified four categories of limitations: legal, operational, technical and of a different nature (to be specified where applicable).

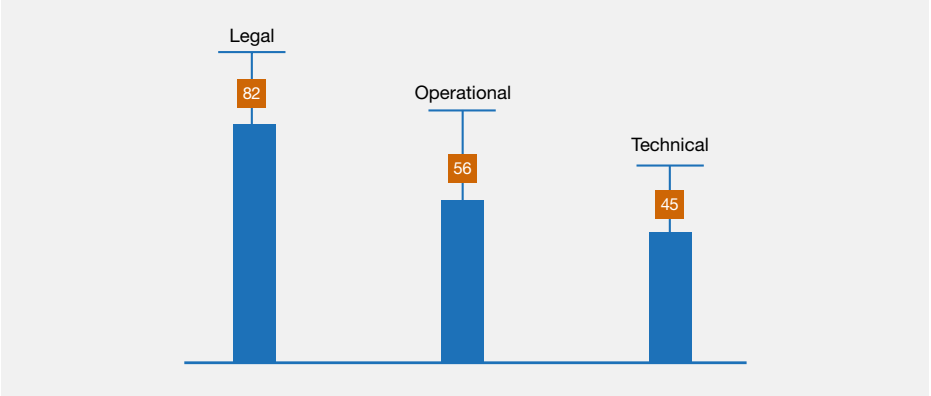
43% of respondents answered this question. For 82% of respondents, limitations to the development of security tokens are primarily of a legal nature. Operational (56%) and technical (45%) limitations are then mentioned, it being specified that these different categories are not exclusive for a same respondent.

Elements that could hinder the use of security tokens



Among the comments made, some respondents indicate that the use of security tokens faces accounting constraints. Business issues are also mentioned, including the persistent reluctance of some investors to invest in these types of securities and their sometimes-limited liquidity. From a legal point of view, some lament that

Type of elements that would limit the use of security tokens (in %)



16 66.6% out of an overall response rate of 68.5%.

French law does not recognize the blockchain registration value as equivalent to that of a securities account registration for certain categories of securities, and that it excludes in particular the majority of securities admitted to negotiations on a platform. Money laundering and terrorist financing risks are also cited as hindering the development of security tokens.

In this regard, European regulation has provided various answers in a reform adopted in May 2018. The European directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing[17] subjects to obligations certain crypto-asset investment intermediaries subjects to obligations certain cryptoassets investment intermediaries such as providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet provider. Each Member State must transpose this regime by 10 January 2020 at the latest. In France, this transposition must be made via the PACTE bill[18], expected to be adopted before the end of the first half of 2019. This quick transposition by France shows how important it considers these issues to be, and should provide stakeholders with credible regulatory responses to this risk, which seems to further hamper the development of the crypto-asset ecosystem.

Among the 34 respondents who wished to express their views on the existence of possible issues related to the tax and accounting treatment of security tokens as compared with that of financial instruments, 16 consider there to be no issue.

No doubt is it useful here to highlight the recent contribution of the French accounting standards body ("ANC"), which clarified the accounting treatment applicable in France to assets recorded on a blockchain[19]. For the ANC, this regime depends in particular on the qualification of the tokens. If they have the characteristics of financial securities or financial contracts (and if they, as such, qualify as security tokens as defined in the questionnaire), they are considered as such according to the provisions of the general chart of accounts[20]. The answers to this question also highlight that the clarification of the accounting treatment applicable to security tokens constitutes a considerable advance for the French framework in the development of this new ecosystem.

According to some respondents, however, the applicable accounting and tax regime may still raise certain issues. Questions remain, for example, on the impact of storage conditions of security tokens on their accounting. Others highlight the accounting difficulties arising from the uncertain legal qualification of certain tokens, considering their characteristics. Issues pertaining to the valuation of security tokens and inclusion in their accounting are also mentioned.

> While technical, operational, accounting and tax issues seem to be well understood, the development of security tokens could still benefit from regulatory and legal clarifications.

17 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 may 2018 amending directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

18 Action Plan for Business Growth and Transformation.

19 Regulation No. 2018-07 of 10 December 2018 amending the ANC Regulation No. 2014-03 of 5 June 2014 on the modified general accounting plan, approved by decree of 26 December 2018 published in the Official Journal of 30 December 2018.

20 Article 619-3 of the ANC Regulation No. 2014-03 of 5 June 2014 on the modified general accounting plan.

Security token legal status

The need for a better suited regulatory framework

There are multiple regulatory issues that still seem to hinder the development of security tokens.

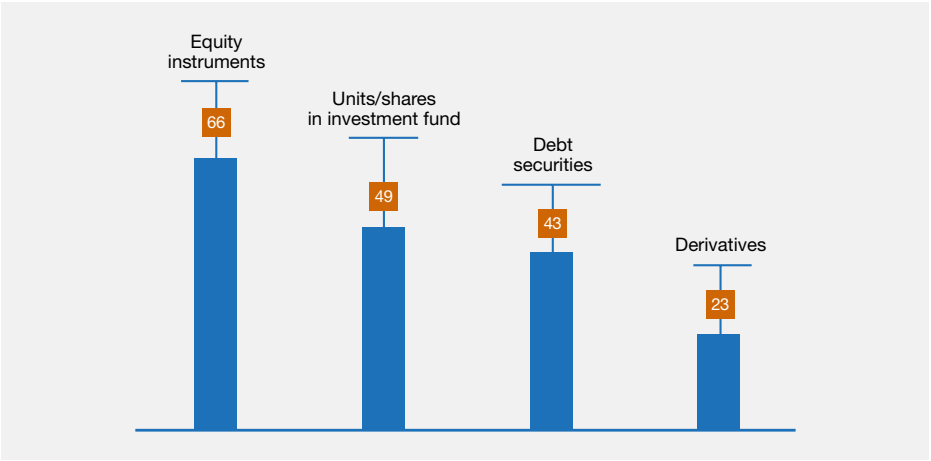
In regards to the qualification of security tokens

41% of respondents feel they are able to determine the legal qualification of the security tokens they use to develop their activity.

Among them:

- 66% are considering using security tokens that legally qualify as equity securities;
- 49% are considering using security tokens that legally qualify as units or shares in investment funds;
- 43% are considering using security tokens that legally qualify as a debt securities; and
- 23% are considering using security tokens that legally qualify as derivative instruments.

Legal qualification (%)



It is worth noting that, in the course of their activities, respondents may use different types of security tokens.

Several responses indicate, once again, the difficulty in determining in practice the exact category of financial instruments to which the security tokens are attached, in view of their characteristics.

The legal qualification of the instruments is, however, essential in practice, in particular as regards financial and operational implications. For example, the legal nature of an asset may impact its valuation, which is central to structuring and marketing projects.

It appears that security tokens may be equivalent to all the existing legal categories of financial instruments, even though the legal qualification of certain assets is sometimes difficult given their characteristics.

In regards to the regime applicable to activities developed in connection with security tokens

Only 46% of respondents who answered this question (about one-third of total respondents) indicated that they had identified the legal regime applicable to the activities they are developing or intend to develop using security tokens. A broad majority of players who answered the questionnaire could thus encounter difficulties in analysing the legal qualification of the instruments they wish to issue.

Those players who indicated that they were issuing or looking to issue security tokens[21] indicated that such issuance could be governed by the following texts:

- 76% indicate that the issuance could be subject to the European Prospectus Regulation in the event of an offer to the public of securities or of the admission of securities to trading on a regulated market[22].

  Of these, 50% indicate that a security tokens issue should be supported by a prospectus, compared with 50% who consider that they should be exempted from this obligation.

  It is interesting here to highlight France's recent choice In regards to the European negotiation of this Prospectus Regulation, i.e. to raise the national threshold below which an offer of securities may not be the subject of a prospectus, as governed by that Regulation. This threshold now stands at 8 million Euros. These measures[23], in effect since 21 July 2018, mean France has an attractive and flexible regime that some security token issuers may wish to enjoy.

- 52% indicate that an issue should also be subject to the European Directive on Alternative Investment Fund Managers[24].

Some respondents stated that these various regulations apply cumulatively to their activities, depending on their content. Others indicated that they are subject to national regimes, such as the law in France for crowdfunding platforms. Lastly, several respondents stressed that they are subject to regulations applicable outside of the European Union.

Among those players who indicated looking to offer security token services[25] :

- 95% indicated that their activities would fall within the scope of the Markets in Financial Instruments Directive (MiFID 2)[26],
- 10% indicated that their activities would fall within the scope of the Payment Services Directive (PSD 2)[27],

21 Nearly 20% of the total number of responses received.

22 EU Regulation No. 2017/1129 of 14 June 2017.

23 Article 211-2 of the AMF General Regulation.

24 EU Directive No. 2011/61/EU of 8 June 2011

25 Representing 17% of the total number of responses received.

26 EU Directive No. 2014/65/EU of 15 May 2014.

27 EU Directive No. 2015/2366 of 25 November 2015.

- 33% indicated that their activities would fall within the scope of a national regime applicable to the supply, in a given jurisdiction, of investment services (for example, the French framework applicable to financial investment advisers); and
- several respondents indicates that their activities were subject to regulations applicable outside of the European Union.

Without being exhaustive, it appears from these responses that the texts that are most likely to govern respondents' activities include the Prospectus regulation, the AIFM directive and the MiFID 2 regime. Given the diversity of responses, a case-by-case analysis is needed to precisely identify the applicable framework, its opportunities and limitations.

In regards to the implementation of existing texts

The questionnaire asked about the possible legal or regulatory issues raised by the current regulatory framework on security tokens. 77% of respondents to this question[28] confirmed that the implementation of regulatory texts can seriously hinder the development of security tokens.

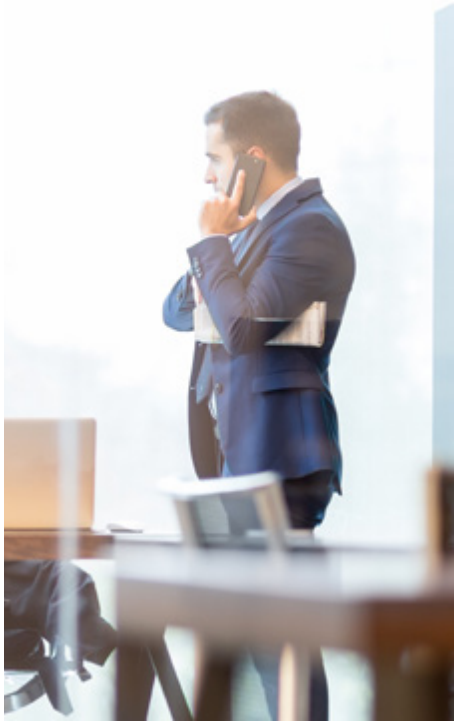
For some, compliance with a number of regulatory constraints applicable in the financial field is a delicate matter for security tokens. In line with the issues mentioned by the ESMA in its recently published opinion, the implementation for security tokens of certain provisions drawn from the MiFID 2 regime, the European regulation on improving securities settlement in the EU and on its central securities depositories ("CSDR")[29], the directive on settlement finality in payment and securities settlement systems (the "Finality Directive")[30], and the Prospectus Regulation is considered by many to be a delicate operation.

The legal framework applicable to security token custody (with the related possible obligation of restitution when this task is performed by a depositary) could also justify some actors' reluctance to resort to said tokens.

Similarly, the possibility and the regime applicable to the platforms on which they would be exchanged are also identified as essential concerns for those players interested in security tokens.

The prudential constraints applicable to players developing security token activities could also slow down the emergence of new intermediaries specialised in this type of asset.

Lastly, the still-unaligned regulatory approaches between countries and the lack of a uniform applicable framework, particularly within the European Union, is also a challenge to be met to support the development of security tokens.



For a majority of players, the regulatory framework applicable in the financial field must be adapted to facilitate the use of security tokens and enable players to fully benefit from the advantages of this new type of dematerialisation and its underlying technology. Respondents therefore confirm the relevance of the work recently initiated within the European Union.

28 Representing 31% of the total number of responses received.

29 EU Regulation No. 909/2014 of 23 July 2014.

30 EU Directive No. 2009/44/EC of 6 May 2009.

ANNEX 1

Partners in the development and dissemination of the questionnaire

The FRENCH DIGITAL ASSET ASSOCIATION (FD2A), previously named Association française pour la gestion des cyber-monnaies (AFGC), is a trade organization aiming to promote the structured, sustainable and growth-enhancing development of the digital assets business sector and of business areas using advanced technologies (such as distributed ledger technologies).

The association brings together all the key players and professionals in the sector, in order to foster synergies of expertise and opportunities for business partnerships. It supports the structuring of the sector and ensures the clarity of its positions.

The FD2A contributes to legislative and regulatory debates in France, Europe and internationally, so as to promote the implementation of a set of rules adapted to the identified risks, which could be a vector of confidence and conducive to the development of innovation.

The FD2A promotes the attractiveness of French and European industry and supports the sustainability of innovative business models, in particular the “tokenization” of the economy.

It ambitions to foster knowledge and experience sharing and to participate in the acculturation of the country’s economic and political decision-makers.

The FD2A counts among its founding members Paymium, CACEIS, Woorton, Eiffel Investment Group, PwC and the lawfirm Gide.

FD2A - 9, rue Newton - 75008 Paris - France
www.fd2a.com

L'Association Française des Marchés Financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI - 13, Rue Auber, 75009 Paris - France
www.amafi.fr - info@amafi.fr

The French Asset Management Association (Association Française de la Gestion financière, AFG) is the professional organisation representing the French asset management industry. Asset management is about helping retail and professional investors to provide for their future and achieve other long-term goals. Individuals and organisations entrust their savings to asset managers, who seek to increase their value by investing in the real economy via companies'shares or bonds, government bonds, and infrastructures' assets.

The French asset management sector is the largest in continental Europe: 630 asset management companies employ directly and indirectly 85,000 people and invest on behalf of their clients up to 4,000 billion euros in bonds, shares and other assets. About 50 % of French asset managers commercialise their funds on a cross-border basis, and more than 30% of the assets managed by our members are issued by corporates or states of the Euro zone (excluding France), which makes our industry a key source of funding for the European economy.

AFG is an active member of EFAMA and PensionsEurope and is complying with the transparency register of the Commission and the European Parliament: ID n°: 5975679180-97.

AFG - 41, rue de la Bienfaisance, 75008 Paris - France
+33 (0)1 44 94 94 00 - www.afg.asso.fr - afg@afg.asso.fr

ASPIM

ASSOCIATION FRANÇAISE
DES SOCIÉTÉS
DE PLACEMENT IMMOBILIER

The Association Française des Sociétés de Placement Immobilier (ASPIM) the French association for real estate investment companies - promotes, represents and defends the interests of its members, 81 managers of real estate investment funds in France, managing € 140 bn of asset value, out of € 163 bn for the French market. Created in 1975, ASPIM is a non-profit association which brings together the actors of unlisted real estate fund management.

Its members are Portfolio Management Companies of French Alternative Investment Funds invested in real estate assets as “Société Civile en Placement Immobilier” (SCPI), closed-ended real estate AIFs ; “Organisme de Placement Collectif Immobilier” (OPCI), retail and professionnal open-ended real estate AIFs ; and other AIFs invested in real estate, all accredited by the French regulator - the Autorité des marchés financiers (AMF) - whether they are affiliations of bank, insurance, foreign or entrepreneurial real estate management groups.

ASPIM - 10, rue La Boétie, 75008 Paris - France
+33 (0)1 44 90 60 00 - www.aspim.fr - c.kacy@aspim.fr

GIDE 255
FROM DIGITS TO OPPORTUNITIES

Gide 255 is a team created in 2018 within the law firm Gide and dedicated to innovation. As such, Gide 255 has developed particular expertise in the fields of blockchain, crypto-assets, security tokens and related activities, and artificial intelligence.

Gide 255 offers a comprehensive service in all sectors where innovation and digital technology are a key challenge which may include, at the clients’ choice:

- the provision of **strategic recommendations**, to advise them in their decision-making, the identification of opportunities and the analysis of risks related to their initiatives in the field of innovation;
- their **legal structuring**, with an analysis of the applicable regulatory framework and its implementation, taking into account the operational and commercial issues that it may involve; and
- the definition of their **advocacy strategy**, to contribute to the relevance of the regulatory framework applicable to the clients’ initiatives and to establish a constructive dialogue as part of the project carried out with the various competent authorities in France, Europe and internationally.

The Gide 255 team is composed of multidisciplinary profiles, with extensive experience in the financial sector. Gide 255 works for its clients in close relation with the other teams within Gide, whose expertise is established in business law. This recognized know-how combined with the advanced expertise of specialists experienced in all the issues related to digital transformation, allows the firm to offer its clients a unique decision-making tool in a context shaken by the advent of advanced technologies.

Gide is an international law firm with 550 lawyers working in 12 offices worldwide and 13 practice areas, with more than 80 specialties.

Gide 255 - Gide Loyrette Nouel AARPI, 15 rue de Laborde, 75008 Paris - France
+33.(0)1.40.75.60.00 - www.gide255.com - matthieu.lucchesi@gide.com

WOORTON is a leading European crypto market-maker redefining the way digital assets are traded by using groundbreaking proprietary technology.

Woorton's OTC API and trading desk offers a smooth execution process, upfront all-in price, no order book, no pre-funding required and access to the lowest prices and deepest liquidity in the market on crypto-fiat pairs for professional investors.

As a market-maker Woorton manages token liquidity for numerous clients by deploying algorithmic strategies on more than 15 exchanges. Woorton is the only institutional-grade player making markets on centralized and decentralized exchanges thanks to their agnostic trading infrastructure.

WOORTON - 18, rue Sainte Foy, 75002 Paris - France
www.woorton.com

ConsenSys was founded by Joseph Lubin (co-founder of the Ethereum) in 2014 and brings together nearly 1,000 people in 30 countries. ConsenSys is a technology company at the forefront of global blockchain innovation and a decentralized organization. This hybrid structure contributes to building a virtuous ecosystem around the use of Blockchain technologies.

ConsenSys is both a StartUp Studio that incubates around fifty projects around the world, as well as a support structure for companies and administrations in their transition to decentralization. ConsenSys is a client and partner of many governments and corporations such as Dubai, Zug (Switzerland), the European Union, the central banks of Singapore and South Africa, JP Morgan, Santander, BHP Billiton, GSK and the WWF.

ConsenSys is also involved in the emergence of security tokens thanks to the development of the ConsenSys Digital Assets solution allowing the issue and management of financial instruments on the blockchain. For issuers, this solution simplifies these processes and reduces operational costs, opening the market to new investors for whom the acquisition and exchange of these assets is more fluid and less expensive. By capitalizing on the use of open source technologies and standards, ConsenSys Digital Assets ensures the creation of financial instruments compatible with a large number of exchange platforms and blockchain networks. Its token standard and its KYC module guarantee a perfect compliance of the issue and exchanges of "Tokenized" financial instruments with all the regulatory requirements in force.

The subsidiary ConsenSys France was created in 2017 and is currently working on a dozen ambitious projects.

ConsenSys France - 10 rue Vauvilliers, 75001 Paris - France
www.consensys.net - paris@consensys.net

The PwC France and francophone Africa Blockchain Lab is made up of blockchain technology specialists, and federates a multidisciplinary team of business experts, lawyers, tax specialists, auditors, consultants, but also experts in cybersecurity, risks and data science.

PwC's approach in France is part of an innovation process supported by its entire network on a global scale, namely more than 400 specialists in more than 15 countries.

Blockchain teams accompany PwC's clients from the development of a blockchain strategy to a fully operational insertion phase.

PwC develops innovative blockchain solutions for its customers around three main areas: digital financing (STO, ICO, trading platforms), audit, and blockchain usages to disrupt industry processes and their business models.

PwC - 62, rue de Villiers, 92200 Neuilly-sur-Seine - France
www.pwc.fr

ANNEX 2

Questionnaire on security tokens

Security Tokens - English version

Introduction

This survey is conducted by the *Association française de gestion des cryptomonnaies* (AFGC, or French association for the management of crypto currencies), in conjunction with the *Association française des marchés financiers* (AMAFI, i.e. the representative body for professionals working in the securities industry and financial markets in France) and the *Association française de gestion financière (*AFG, or the French asset management association).

The purpose of this survey is to question the market for security tokens, the opportunities it represents as well as its limitations, for current and potential future players alike.

Security tokens could be defined as digital assets that are registered on a blockchain and that are deemed as financial instruments (in the same way as equities, bonds or fund units or shares) because they share the same characteristics. They are therefore complementary to, yet separate from, the other categories of crypto-assets structured as exchange value (often termed "crypto-currencies", despite the lack of legal tender) or priority access to a service ("utility tokens").

The individual responses will be kept strictly confidential. They will be collated by law firm Gide Loyrette Nouel on behalf of AFGC/AFG/AMAFI. Gide commits to not divulge the information received and is sworn to professional secrecy as regards the information it has access to.

Such responses will be used to prepare an anonymous synthesis of the security tokens market, the results of which may be shared with French and European authorities. The latter are indeed working on this topic, the regulatory regime applicable thereto and its potential reform. The European Securities and Markets Authority (ESMA), in particular, published an analysis on crypto-assets on 9 January 2019. ESMA for example explores the opportunity to amend the current european financial regulation to cover activities related to crypto-assets qualified as financial instruments*.

It, therefore, appears essential to provide input to these discussions and actively contribute to them, in particular by offering insight into current market trends, which our questionnaire aims to highlight.

This questionnaire requires less than 10 minutes of your time. Responses must be submitted before 4 March 2019.
The questionnaire may be submitted even if you do not wish to answer all the questions (except questions 1 & 6).

*Please also refer to the analysis published by the European Banking Authority (EBA) on 9 January 2019

Security Tokens - English version

* 1. Entity

2. City

3. Postcode

4. Country

5. Should you wish to be contacted by AFGC, AFG or AMAFI as part of their work on security tokens, in particular to receive the summary of responses to this questionnaire, please enter your email address below:

* 6. Business field

- [ ] Agri-food
- [ ] Chemistry and pharmaceuticals industry
- [ ] Administration / Public services
- [ ] Publishing and communication
- [ ] Surveys and advisory
- [ ] Metalworking
- [ ] Legal
- [ ] Transport
- [ ] Retail and distribution
- [ ] Luxury and clothing
- [ ] Technology (excl. blockchain)
- [ ] Blockchain
- [ ] Banking
- [ ] Insurance
- [ ] Real estate asset management
- [ ] Other asset management activity
- [ ] Other financial fields
- [ ] Other (please specify)

Gide Loyrette Nouel (association of lawyers with individual professional liability, located 15 rue de Laborde, 75008 Paris, France) will process your personal data on behalf of AFGC/AFG/AMAFI.
Your personal data is collected with your consent and for the purpose of sending you the anonymised results of the study. Your personal data will be kept on file for a period of three months from the date the questionnaire expires. Such personal data is not communicated to third parties and is not the object of any data transfer outside the EU. You may access, amend and delete your personal data, ask to restrict its processing, or withdraw your consent at any time.
You may exercise these rights by writing to privacy@gide.com, and may contact the French data agency (CNIL) should you wish to file a complaint.

Security Tokens - English version

Use of security tokens

As mentioned previously, security tokens could be defined as digital assets, registered on a blockchain and deemed as financial instruments (in the same way as equities, bonds or fund units or shares) because they share the same characteristics.

Security tokens include both "native security tokens" and "non-native security tokens":

- Native security tokens refer to digital assets that are deemed as financial instruments and registered on a blockchain without a prior issuance of conventional securities (e.g. bonds or equities registered on a blockchain as soon as they are issued);
- Non-native security tokens are digital assets that "tokenise" financial instruments that were the subject of a traditional prior issuance (e.g. investment fund units classically issued and then recorded on a blockchain by subscribers). Some compare these tokens to deposit receipts as instruments to represent underlying securities issued by a third party issuer.

Although native security tokens and non-native security tokens all remain security tokens, they have different characteristics. They may present specific risks, particularly in terms of liquidity or maturity transformation. Each of these categories could require different regulatory responses.

7. Are you interested in security tokens?

- ◯ Yes
- ◯ No

8. Do you agree with the above definition of security tokens?

- ◯ Yes
- ◯ No

If not, what do you think would be the most appropriate definition?
Please give examples of crypto-assets whose qualification would be difficult using this definition (for instance because they do not represent a financial instrument in the legal sense, but are nonetheless an investment tool).

9. Do you agree with the idea of distinguishing between native security tokens and non-native security tokens?

- ◯ Yes
- ◯ No

Comment (please specify)

10. What advantages do you associate with the use of security tokens when compared with traditional financial instruments? In the list below, please rank the advantages you agree with (1 being the biggest advantage in your opinion).

- Cost reduction
- Automation of regulatory requirements or contractual contraints through smart contracts
- Automation of managing events impacting equity life through smart contracts
- Better market depth and liquidity
- Optimisation of the delivery framework
- Ability to attract new categories of potential investors
- Fractioning asset property
- Investment diversification

11. Can you think of any other advantages?

12. Are you developing, or are you looking to develop, activities related to security tokens?

- Yes
- No
- Not determined yet

Security Tokens - English version

13. If so, what type of blockchain are you thinking of using?

- [ ] Public blockchain
- [ ] Private blockchain
- [ ] Comment (please specify)

14. If so, what type of activities are you developing or looking to develop?

- [ ] Security tokens issuance (via for instance an issuing company or an investment fund)
- [ ] Service(s) involving security tokens (e.g. advice on security tokens, negotiation platform management etc.)
- [ ] Personal investment in security tokens
- [ ] Investment in security tokens for third parties (individually or collectively via investment funds)
- [ ] Not determined yet
- [ ] Other (please specify)

15. If so, are you developing or looking to develop these activities for your own account or for a third party?

- [ ] Own account
- [ ] Third party
- [ ] Other (please specify)

16. What approach are you thinking of putting in place for the custody of the security tokens?

17. Do your activities involve native security tokens or non-native security tokens (refer to above definition)?

- ( ) Only native security tokens
- ( ) Only non-native security tokens
- ( ) A mix of native and non-native security tokens

18. Please describe how the security tokens in question are/will be structured (asset-backed security tokens, securitisation, other):

19. If so, what legal qualification would apply to the security tokens you are/will be using?

- [ ] Equity instruments
- [ ] Debt securities
- [ ] Units/shares in investment fund
- [ ] Derivatives
- [ ] Other (please specify)

20. Does the structuring of the security tokens require access to external data?

- ( ) Yes
- ( ) No

21. If the structuring of the security tokens requires access to external data, how do you ensure the reliability of the data received?

22. How are you thinking of distributing the security tokens?

- [ ] Distribution to the general public
- [ ] Distribution to a limited number of investors
- [ ] Distribution to professional investors only
- [ ] Other (please specify)

Security Tokens - English version

Legal regime applicable to the use of security tokens

Qualification as a security token usually leads to the application of financial regulations (in the European Union, the MIFID directive, the Prospectus regulation, etc.).

23. Have you identified a legal regime that would apply to your security token activities?

- ( ) Yes
- ( ) No

Security Tokens - English version

24. If you act or are looking to act as an issuer of security tokens (via an issuing company or an investment fund), what applicable legal regime have you identified?

- [ ] Prospectus European regulation (no. 2017/1129) on the public offer/private placement
- [ ] European directive (no. 2011/61/EU) on Alternative Investment Fund Managers (AIFM)
- [ ] European directive (no. 2009/65/EC) on undertakings for collective investment in transferable securities (UCITS)
- [ ] Other (please specify)

25. If the issuance of security tokens is subject to the Prospectus regulation, do you intend to publish a prospectus or are you looking to benefit from an exemption, in particular for private placements?

- ◯ Yes, the issuance will lead to the publication of a prospectus
- ◯ No, the issuance will not lead to the publication of a prospectus

Comment

26. If you are acting or looking to act as a service provider on security tokens, what applicable legal regime have you identified?

- ☐ MIFID European directive (no. 2014/65/EU) on financial instruments markets
- ☐ DDA European directive (no. 2016/97) on insurance distribution
- ☐ DSP2 European directive (no. 2015/2366) on payment services
- ☐ National regime on the provision of investment services
- ☐ Other (please specify)

27. What are you looking to put in place as regards the payment / delivery of security tokens?

28. If you are investing or looking to invest in security tokens for third parties, what is the nature of the investors for which you act?

- ☐ Natural persons domiciled in France
- ☐ Natural persons domiciled in the European Union (outside France)
- ☐ Natural persons domiciled outside the European Union
- ☐ Legal persons registered in France
- ☐ Legal persons registered in the European Union (outside France)
- ☐ Legal persons registered outside the European Union

29. If you are investing or looking to invest in security tokens for third parties or collectively, what is the nature of the investment vehicle you use?

- ☐ French vehicle
- ☐ Vehicle registered in the European Union (outside France)
- ☐ Vehicle registered outside European Union

30. If you are investing or looking to invest in security tokens for third parties or collectively, what is the share of the investment vehicle that is invested in security tokens?

- ◯ Invested only in security tokens
- ◯ Partially invested in security tokens

Security Tokens - English version

Limitations and opportunities for improving the regime applicable to security tokens

The development of activities featuring security tokens can be fraught with technical, operational and legal obstacles. Identifying such limitations is essential to help along the ongoing regulatory discussions as regards defining an appropriate framework for security tokens.

31. Can you think of any elements that would limit the use of security tokens?

- ◯ Yes
- ◯ No

Security Tokens - English version

32. If so, of what kind?

- ☐ Legal
- ☐ Operational
- ☐ Technical
- ☐ Other (please specify)

33. Can you think of any specific accounting or tax issues pertaining to security tokens, as compared with accounting and tax regime applicable to financial instruments?

34. Do you identify legal issues in relation to the application to security tokens of the current regulation?