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The token is not the share: ESMA expresses its views on legal title gap in tokenised equities

QuickTake

ESMA has moved a question often treated as one of technology or product classification into the fields of property, company and insolvency law. In its second Trends, Risks and Vulnerabilities (**TRV**) report of 2026, published on 10 September, ESMA reports that available public data indicate that the outstanding value of tokenised equities increased from approximately €0.3 billion at the end of 2024 to approximately €1.9 billion at the end of June 2026—an increase of around 6.5 times. The market remains concentrated in tokenised representations of large US-listed technology companies.[1]

The more important finding concerns what investors actually acquire. ESMA observes that the market remains dominated by 'wrapped' structures in which a token represents a claim on, or economic exposure to, shares held by a trusted party. Native issuance, in which the company issues its own shares directly on distributed ledger technology (**DLT**), remains rare.

[1] European Securities and Markets Authority, 'TRV Risk Monitor No 2 2026' (10 September 2026) 47–48 available here.

ESMA then states the central legal problem. Where ownership remains recorded off-chain, transferring the token does not transfer legal title to the underlying share. The token changes hands. The share does not.

That distinction affects more than product terminology. It determines who is recognised as shareholder, whether voting and dividend rights are direct or contractual, which assets are protected if a platform or custodian fails, whether the token can be effectively pledged, which law governs competing claims and whether on-chain settlement delivers the security that the investor thought it was acquiring.

A token can therefore be a regulated financial instrument without being the referenced share. One-to-one backing is not necessarily one-to-one title. Self-custody of the token is not necessarily direct ownership of the underlying security. Technological atomicity is not, without an appropriate legal framework, legal finality.

ESMA's analysis is risk monitoring rather than binding guidance. It does not conclude that wrapped structures are unlawful or that every tokenised equity has the same legal character. Its significance lies in the clarity of the supervisory diagnosis: technological transfer and legal transfer can diverge.

For banks, securities dealers, central securities depositories (**CSDs**), custodians, trading venues, asset managers, issuers and tokenisation platforms, the immediate task is to identify the legally authoritative record and trace the entitlement chain from the corporate issuer to the investor's wallet.

The broader policy question matters as much. In our view, the Market Integration and Supervision Package (**MISP**), the development of the DLT Pilot Regime and the proposed Settlement Finality Regulation (**SFR**) do not, by themselves, deliver fully integrated tokenised markets unless trading and settlement reforms are connected to the national laws that determine ownership, corporate status, priority and insolvency effectiveness.

ESMA moves legal ownership to the centre of tokenisation

Tokenised equities cover a range of structures and business models. For analytical purposes, tokenised-equity arrangements can be divided into three broad models. The expression may describe a share issued directly through a legally recognised electronic register, an existing share represented or mirrored on a DLT platform, or a separate instrument whose value refers to a share held by somebody else.

Those structures may provide similar economic exposure in ordinary market conditions. They do not necessarily produce the same legal result. ESMA distinguishes between native and wrapped structures. In native issuance, the corporate issuer issues its own shares directly on DLT. Whether the DLT entry creates or transfers the share depends on the applicable company, securities and property law.

In a wrapped structure, an intermediary issues a separate token linked to shares held by it, a custodian or another trusted party. The token holder typically acquires the token and the contractual rights attached to it. The person recorded in the corporate or securities register remains the shareholder.

Wrapped structures are easier to implement because they may not require fundamental changes to issuance practices, shareholder registers or national company law. That ease comes with a legal cost. The DLT ledger may provide an authoritative record of who holds the token without being the authoritative record of who owns the underlying share.

One prominent example is xStocks. Backed Assets (JE) Limited describes each xStock as a bearer debt instrument classified as a tracker certificate and issued by a Jersey special-purpose vehicle. It provides economic exposure to a referenced equity but is not direct ownership of that equity. The issuer states that each xStock is fully collateralised by the corresponding underlying asset held with regulated custodians or brokers.

Kraken's current disclosure similarly states that holders do not own the underlying shares and have no voting, distribution or liquidation rights against the underlying issuer. The holder owns the xStock instrument itself, for which the blockchain provides the relevant record; the token is the tracker certificate, not the referenced share.

This is not a criticism of reference instruments as such. Depositary receipts, certificates, structured notes and derivatives have long separated economic exposure from direct share ownership. The legal problem arises when the expression 'tokenised share' encourages the market to treat economic equivalence as legal identity.

A wrapper may hold one underlying share for every token in circulation. That supports economic tracking and may reduce market risk. It does not necessarily give the token holder a proprietary interest in the share. The answer depends on the legal structure: whether assets are held on trust or under an equivalent segregation regime; whether the holder is an identified beneficiary; whether the arrangement is enforceable against third parties; and how shortfalls, forks, reconciliation breaks and corporate actions are allocated.

Why one-to-one backing is not one-to-one title

The practical holding chain may be longer than the marketing label suggests:

> *token holder → contractual claim against issuer or platform → custodian or trustee → underlying share → corporate issuer*

Each arrow is a legal dependency. Each can be governed by a different law. Each can fail independently.

The questions firms should now answer

- **Legal object:** What exactly is acquired: the share, a co-ownership or beneficial interest, a debt security, a derivative, or another contractual claim?
- **Authoritative record:** Which ledger, securities account or shareholder register determines entitlement, and which record prevails if systems diverge?
- **Corporate rights:** Who receives dividends, votes, subscription rights, disclosures and communications? Are rights direct or passed through contractually?
- **Custody and segregation:** Who holds the underlying shares, for whose account, and are they excluded from each intermediary's insolvency estate?
- **Transfer and finality:** Does an on-chain transfer convey the relevant legal asset? When is the transfer irrevocable and protected against insolvency?
- **Collateral:** Does a pledge or title transfer over the token reach only the token or also the underlying share? How are perfection, priority and control established?
- **Conflicts and enforcement:** Which law governs the token, the account, the underlying share, proprietary effects and attachment by creditors?
- **Operational integrity:** How are minting, burning, reconciliation, bridge events, key compromise, smart-contract error and ledger forks handled?

Tokenised equity is not a single legal category

A token can be a financial instrument without being the referenced share. MiFID classification answers a regulatory perimeter question; it does not, without more, determine ownership of the underlying equity under company, securities and property law.

Three structures that should not share one label

The distinction matters. It identifies the asset in an insolvency, the person entitled to corporate rights and the thing that can be transferred, attached or pledged.

Structure	What happens	Legal consequence
Native digital share	The issuer creates the share through a legally recognised electronic or DLT register.	A valid ledger entry can constitute or transfer the share if the governing law gives it that effect.
Digital twin or immobilised share	An existing share remains within conventional issuance or custody architecture while a DLT record mirrors or controls dealings in it.	The legal result depends on how the two records are linked and which prevails on inconsistency.
Wrapped or reference token	A platform or vehicle issues a separate token linked to shares held by it or a custodian.	The investor normally owns the token and its contractual rights, not the underlying share.

In further detail: Native digital shares

The issuer creates the share through a legally recognised electronic or DLT register. Where the applicable law gives the register constitutive effect, the ledger entry forms part of the legal mechanism through which the share exists and is transferred.

A valid transfer on the register may therefore transfer the share itself, subject to the applicable requirements concerning instructions, registration, agreement, good-faith acquisition and restrictions on transfer.

In further detail: DLT recorded or immobilised shares

An existing share remains within a conventional issuance, CSD, registrar or custody structure while a DLT record mirrors positions or controls transactions involving it.

The DLT entry may operate as an instruction, a sub-register, evidence of entitlement or an intermediated claim. The legal result depends on how the DLT record is connected to the conventional register and which record prevails when they diverge.

In further detail: Wrapped or reference tokens

A platform, special-purpose vehicle or other intermediary issues a distinct token linked to shares held by it or a custodian. The token may itself be a transferable security, debt instrument, derivative or other financial instrument. That regulatory classification does not make the holder a shareholder in the referenced company.

Product documentation should reflect those differences. ‘Native digital share’, ‘DLT-recorded intermediated entitlement’, ‘tokenised depositary instrument’, ‘collateralised debt token’ and ‘derivative tracker’ describe materially different legal architectures. Calling all of them ‘tokenised shares’ obscures the asset that is owned, the rights that can be enforced and the risks that arise if an intermediary fails.

For EU purposes, ‘legal title’ should be understood as shorthand for legally effective ownership or an equivalent proprietary entitlement under the relevant national law. The precise proprietary concept will differ between Member States and between direct, intermediated and custodial holding systems. That difference reinforces rather than removes the need for an entitlement analysis.

The authoritative record is the key design variable

Conventional securities markets already depend upon multiple records. The issuer or registrar maintains the record relevant to corporate membership. A CSD maintains issue and participant accounts. Custodians and other intermediaries maintain client accounts. Trading venues record orders and transactions. Payment systems record the cash leg.

The system functions because legislation, account terms and operating rules allocate legal significance among those records.

Tokenisation does not remove that need. It can make the allocation more visible, but it can also create an additional record whose legal status is uncertain.

An authoritative record performs three functions:

1. It identifies the legally relevant entitlement.
2. It determines the event that changes that entitlement.
3. It supplies a priority rule when different records or items of evidence conflict.

A ledger may be technically immutable but legally subordinate. A shareholder register may be legally authoritative but operationally delayed. A platform database may determine contractual balances while a public blockchain determines control of the token. Describing any one of those records as the ‘single source of truth’ is incomplete unless the applicable law recognises it for the legal purpose in question.

Germany’s Electronic Securities Act (*Gesetz über elektronische Wertpapiere*, or **eWpG**) provides a more direct legal-recognition model. In its current form, the eWpG applies to registered shares and to bearer shares where they are entered in a central register. Sections 2 and 3 address electronic issuance, equivalent legal effect and the status of the registered holder, while sections 24 to 27 connect dispositions, transfer and statutory presumptions to the relevant register entry. For registered shares, section 25(2) preserves section 67(2), first sentence, of the German Stock Corporation Act, and section 30a addresses the relationship with the company’s share register.[2]

[2] Gesetz über elektronische Wertpapiere of 3 June 2021, as amended, in particular ss 1–4 and 24–27.

The United States reaches the authoritative-record question through a different institutional architecture. Transfer agents record changes of ownership and maintain issuer security-holder records. The SEC describes their accurate and efficient operation as critical to the completion of securities transactions. This is an institutional comparison, not a conclusion that a transfer agent's record alone determines legal title in every US holding structure.[3]

Europe does not need to reproduce the US transfer-agent model or adopt one Member State's private law across the Union. It does, however, need every tokenised-security structure to identify:

- which record is constitutive of the relevant asset;
- which records are evidential or operational;
- who is responsible for maintaining each record;
- how inconsistencies are reconciled;
- which record prevails if reconciliation fails; and
- what corrective powers exist following fraud, error, a fork, compromise of a private key or a court order.

Six legal questions that should not be collapsed into one

1 What is the regulated instrument

MiFID II determines whether the instrument falls within a category of financial instrument. The DLT Pilot legislation confirms that financial instruments may be issued, recorded, transferred and stored using DLT.[4]

That establishes technology neutrality at the regulatory perimeter. It does not decide whether an instrument that references an equity is the referenced share. A tokenised debt security may be a financial instrument because it is a transferable security or debt instrument, not because its holder owns the underlying equity.

2 What does the investor own

Property and securities law determine the asset, the method by which it is transferred, the protection of good-faith acquirers and the priority of competing interests.

The investor might own the share, an intermediated securities entitlement, a co-ownership or beneficial interest in a pool, a debt instrument, a derivative, another contractual claim or only the token as a distinct digital asset.

The analysis should not stop at whether the token is 'backed'. It should establish whether the investor has rights in the reserve assets that are effective against the issuer, the custodian and third-party creditors.

[3] US Securities and Exchange Commission, 'Transfer Agents' accessed 12 September 2026; see also 17 CFR §§240.17Ad-9–17Ad-10.
[4] Directive 2014/65/EU on markets in financial instruments [2014] OJ L173/349, art 4(1)(15) and Annex I section C, as amended by Regulation (EU) 2022/858, art 18.

3 Who is the shareholder

Company law determines whom the corporate issuer recognises as shareholder and who may exercise voting, dividend, subscription, information and challenge rights. The Shareholder Rights Directive facilitates shareholder identification and the transmission of information and rights through intermediary chains. It does not, by itself, transform the holder of a separate wrapper into a shareholder of the referenced company.[5]

A platform may contractually reproduce dividend economics or invite token holders to submit voting preferences. Those arrangements are not the same as direct membership rights against the issuer. Product terms should identify whether corporate rights are direct, beneficial, passed through contractually or not provided at all.

4 What survives an intermediary's insolvency

The answer must be tested at each level of the structure. If the wrapper issuer fails, are the underlying shares excluded from its insolvency estate or merely assets supporting unsecured obligations? If the custodian fails, does the wrapper have a proprietary entitlement to identified securities, a protected account entitlement or an unsecured shortfall claim? If the trading or wallet platform fails, can holders continue to transfer or redeem independently, or does practical access depend upon the failed operator? If the token is held through a smart contract or bridge, which person bears the loss if the code, oracle or administrative key fails?

Self-custody may reduce dependence on a wallet provider. It does not remove dependence on the wrapper issuer, reserve assets, custodian, corporate register or redemption mechanism.

5 What settles finally

The Settlement Finality Directive[6] protects transfer orders and netting in designated systems against specified insolvency-related risks. The DLT Pilot Regime[7] permits specified DLT trading and settlement infrastructures to operate under targeted exemptions from parts of the conventional framework.

Neither framework can make the token into the share if property and company law treat them as different assets. A technically irreversible token transfer may finally settle a contractual claim while leaving ownership of the underlying share unchanged. Legal finality therefore requires identification of both the event that becomes final and the legal asset to which that finality attaches.

ESMA also notes that many tokenised equities use hybrid settlement models. The token moves on-chain while cash continues to settle through conventional payment systems. Reconciliation between the two infrastructures limits the extent to which settlement risk is removed.

Technological atomicity must be distinguished from legal atomicity. Both legs must transfer the promised legal assets, become effective under the relevant law and receive appropriate insolvency protection.

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[5] Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies [2007] OJ L184/17, as amended by Directive (EU) 2017/828 [2017] OJ L132/1, arts 3a–3e.

[6] Directive 98/26/EC on settlement finality in payment and securities settlement systems [1998] OJ L166/45, in particular arts 3–5 and 8–9.

[7] Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology [2022] OJ L151/1.

6 What does a pledge of the token reach

A security interest over the token does not automatically extend to shares held several layers below it. The collateral taker must identify the asset over which it obtains title or security, how the interest is perfected, whether it has priority, whether close-out netting is protected and what can be realised following default.

The Financial Collateral Directive reduces formalities and provides important protections for qualifying collateral arrangements. Its concepts were built around identifiable financial instruments and forms of delivery, transfer, registration, designation, possession or control associated with conventional accounts.[8]

The proposed SFR would update this framework by amending the Financial Collateral Directive to address cash, financial instruments and credit claims issued or recorded using DLT and to introduce digital-recording concepts. That would improve technology neutrality, but it would not, by itself, harmonise the proprietary effects of control, priority, good-faith acquisition or insolvency segregation.

Private-key control, multi-signature arrangements and smart-contract locks can perform similar economic functions. Applicable law must nevertheless determine whether they produce third-party effectiveness and priority. A token may be liquid on-chain while being poor collateral in law.

Why the existing EU architecture does not fully close the gap

EU financial-services law is deliberately technology-neutral at the regulatory perimeter. MiFID II can classify an instrument issued through DLT as a financial instrument. The DLT Pilot Regime can permit specified trading and settlement infrastructures to obtain targeted exemptions. CSDR regulates book-entry representation, CSD functions, segregation and reconciliation. The Settlement Finality framework protects transfer orders and netting. The Shareholder Rights Directive addresses identification and transmission through intermediary chains.

Those frameworks answer important questions but do not yet provide a complete, uniform EU law governing ownership of DLT financial instruments.

National law continues to determine whether a token is capable of being owned, whether ledger control substitutes for possession, whether registration is constitutive or evidential, whether an acquirer can take free of defects in the transferor's title and which proprietary interests are excluded from an intermediary's insolvency estate.

Conflict-of-laws rules add another layer. Different laws may govern the corporate issuer, shareholder register, securities account, custodian, wrapper instrument, platform terms and token. A ledger replicated across multiple nodes does not provide a self-evident geographic location for proprietary purposes.

The UNIDROIT Principles on Digital Assets and Private Law offer a technology-neutral framework based on concepts including control, innocent acquisition, custody, secured transactions and insolvency. They

[8] Directive 2002/47/EC on financial collateral arrangements [2002] OJ L168/43, in particular arts 1–5 and 9.

demonstrate how law can recognise ledger-based transactions without pretending that contractual choice alone resolves proprietary effects against third parties. They are principles, not directly applicable EU law.[9]

MISP and the proposed SFR provide an opportunity to address parts of this architecture. In our view, the policy objective should be precision about the legal object, the authoritative record and the insolvency consequences of the infrastructure through which that object is held and transferred—not a declaration that every token is the referenced asset.

The Markets Integration and Supervision Package and the continuing development of the DLT Pilot are intended to remove barriers to pan-European trading and post-trading. The title question should be treated as part of that infrastructure agenda, not left as a residual matter for product counsel after a platform has been built.

Why this matters for MISP and settlement finality

Four propositions should guide the negotiations:

1. Finality must attach to the legal asset, not merely to a technical state change. An irrevocable token transfer is of limited value if title to the relevant security remains unchanged elsewhere.
2. The authoritative record must be identified ex ante. A DLT system should specify whether its ledger is constitutive, whether it mirrors another register, and how discrepancies are resolved.
3. Conflict-of-laws rules must work for distributed systems. A ledger replicated across nodes does not provide a self-evident situs for proprietary questions.
4. Interoperability must include legal interoperability. Messaging standards and atomic workflows do not solve inconsistent rules on ownership, segregation, attachment and good-faith acquisition.

The developing framework should address at least:

- a controlled vocabulary for native shares, intermediated entitlements, depositary instruments, debt tokens and derivatives;
- an entitlement map for instruments admitted to DLT market infrastructures;
- identification of the authoritative record for each legal purpose;
- reconciliation and priority rules where on-chain and off-chain records diverge;
- a technology-neutral connecting factor for proprietary issues;
- finality rules that identify the legal asset settled;
- rules for perfection, control and priority when tokens are used as collateral; and
- supervisory visibility into issuance controls, reserve assets, custody chains, bridges and smart-contract dependencies.

What this means for market participants

Banks, dealers, CSDs, custodians, trading venues, asset managers and tokenisation platforms should commission a legal-title review before approving, distributing, financing or accepting a tokenised security as

[9] UNIDROIT, Principles on Digital Assets and Private Law (2023) available here

collateral. The review should trace the chain from the corporate issuer and underlying share through every register, custodian, wrapper and platform to the investor's wallet.

For each layer, the review should record the legal asset, holder, governing law, method of transfer, insolvency treatment, corporate-rights mechanism, settlement-finality analysis and collateral consequences. It should then apply a single-source-of-truth test: is the DLT record itself legally constitutive of ownership, is it an authorised mirror of another record, or is it merely evidence of a contractual entitlement?

Stakeholder	**Key points**
If you are a bank or broker-dealer	Do not treat a MiFID classification memorandum as a complete legal analysis. Identify the instrument actually acquired, the entity against which rights are enforceable and the assets available following an insolvency. If tokenised equities are accepted for financing, margin or treasury purposes, determine whether the collateral reaches the share or only the wrapper claim. Booking models should reflect the legal holder, custody chain, governing law, settlement asset and capital treatment.
If you are a CSD or a custodian	Map the relationship between the DLT record, securities accounts and issuer or shareholder register. Determine which record prevails if balances diverge. Review segregation, reconciliation, shortfall allocation, corporate-action processing and access following the failure of a platform or sub-custodian. A new DLT interface may add an intermediary dependency even where the client controls its own wallet.
If you operate a DLT market infrastructure, exchange or trading venue	Start with the legal asset rather than the token contract. The rulebook should identify whether the ledger is constitutive, an authorised sub-register, a mirror or evidence of a separate entitlement. Define entry, irrevocability and final settlement, as well as the treatment of erroneous transactions, forks, administrative keys and court orders. The infrastructure should be able to demonstrate that its transfer mechanics change the intended legal position.
If you are an asset manager or fund	Product names and dashboard descriptions are insufficient for investment due diligence. Determine whether the fund acquires a share, transferable security, debt claim, derivative or other entitlement. Test custody eligibility, asset segregation, valuation, liquidity, redemption, corporate-rights transmission and concentration on the wrapper or custodian. Investment limits and collateral policies should be applied to the legal asset, not merely the economic reference.
If you are an issuer or tokenisation platform	Use precise legal descriptions. State prominently whether token holders appear on a legally relevant shareholder or securities register and whether voting, dividends and other corporate rights are direct or contractual. Disclose the reserve structure, redemption mechanics, custody arrangements, insolvency waterfall, governing laws and priority of records. One-to-one backing should not be presented as equivalent to direct ownership unless the legal structure supports that conclusion.
If you finance or accept tokenised securities as collateral	Conduct a title and enforceability review before approving eligibility. Identify the collateral asset, perfection method, priority, permitted reuse, close-out mechanics and realisation route. Stress-test the wrapper, custodian, ledger and bridge separately. Haircuts based only on price volatility and liquidity will not capture the risk that enforcement reaches a contractual claim rather than the underlying share.

Firms with material exposure to tokenised securities should consider conducting a "Tokenised Securities Legal Title Review".

The review should trace the complete chain:

> *corporate issuer → underlying share → shareholder or securities register → registered holder → CSD or custodian → wrapper vehicle or platform → token contract → investor*

For each layer, firms should record:

- the legal asset and holder;
- the governing and applicable proprietary law;
- the method by which the relevant interest is created and transferred;
- the record that is legally authoritative;
- the corporate rights available at that level;
- custody and segregation arrangements;
- insolvency treatment and shortfall allocation;
- settlement entry, irrevocability and finality;

- collateral perfection, priority and enforcement;
- reconciliation dependencies; and
- operational dependencies on platforms, smart contracts, oracles, bridges and administrative keys.

The output should be an entitlement and failure map capable of use by legal, risk, compliance, treasury, product, operations and technology teams. It should identify the ordinary transaction path and what happens if any intermediary fails, the records diverge or the DLT state must be corrected.

Product-approval committees should treat four propositions with caution:

1. **Self-custody of the token means direct ownership of the share.** It may provide control of the token while leaving title to the share elsewhere.

2. **One-to-one backing means the holder owns the reserve.** It may describe asset coverage without creating a proprietary entitlement.

3. **Atomic execution creates legal finality.** It does so only if the relevant legal assets are transferred effectively and receive the necessary insolvency protection.

4. **Financial-instrument classification identifies the underlying asset.** It determines the regulatory character of the token, not necessarily ownership of the asset to which its value refers.

If a product does not provide direct title, that conclusion should be stated with the same prominence as claims concerning economic exposure, backing, self-custody, continuous trading or instant settlement.

How we can help

A Tokenised Securities Legal Title Review can support product approval, buy-side diligence, collateral eligibility, custody design, DLT Pilot applications and policy advocacy. The work combines financial-regulatory, company-law, property-law, insolvency, collateral and market-infrastructure analysis across the relevant jurisdictions and converts that analysis into a traceable entitlement map and remediation plan.

What to watch next

- First, ESMA's risk analysis may begin to influence supervisory expectations concerning product governance, investor disclosure, custody and the admission of instruments to DLT market infrastructures. The report is not binding guidance, but the questions it raises are capable of becoming supervisory diligence questions.
- Second, the MISP negotiations will determine whether reform of the DLT Pilot focuses primarily on thresholds and regulatory permissions or also requires infrastructures to explain the legal effect of their ledgers.
- Third, the proposed SFR already distinguishes entry, irrevocability and settlement finality. The negotiations and subsequent technical standards should ensure that DLT consensus events are mapped clearly to those legal moments and to the applicable law governing the transfer of ownership and other rights.
- Fourth, national reforms of electronic-securities and company law will determine whether native issuance becomes a viable alternative to wrapped products. The market will remain dependent on reference structures if issuers cannot create and transfer shares through legally recognised electronic registers across the relevant jurisdictions.
- Fifth, market practice will show whether issuer-led and regulated-infrastructure models can scale. ESMA notes that multiple representations of the same underlying share may coexist across platforms and that,

where those representations are not fully fungible, liquidity may fragment across venues and legal frameworks, affecting price discovery, market depth and execution quality.

Tokenisation does not eliminate intermediaries merely because the investor holds a private key. A wrapped structure may replace a familiar custody chain with a less visible chain of issuer, platform, custodian, oracle, smart contract and bridge dependencies. The product may still serve a purpose. It should be described, priced, risk-managed and collateralised for what it legally is. Europe’s next task is to ensure that technical state and legal state move together.

Outlook

ESMA’s analysis identifies a fault line in the development of tokenised capital markets. The market can grow. The technology can operate as designed. The token can fall within the financial-regulatory perimeter. The investor may nevertheless not own the asset suggested by the product label. Wrapped structures are not thereby unlawful, but economic equivalence should not be mistaken for legal identity.

The next phase of European tokenisation policy must connect technical state to legal state. MISP, the DLT Pilot and settlement-finality reform can create more scalable infrastructure, but, without further legal alignment, the economic value of that infrastructure depends upon rules determining ownership, corporate status, priority, custody and insolvency effect.

Europe will not obtain the full benefit of DLT merely by allowing tokens to trade. If company and property law say that ownership is recorded somewhere else, the market has digitised the representation of the asset rather than necessarily digitising the asset itself.

The decisive question is no longer whether a share can be represented on DLT. It is whether the law makes the DLT record constitutive of the share, integrates it with another authoritative record or treats it as evidence of a separate claim. Until firms can answer that question clearly, ‘tokenised share’ remains a technology label—not a legal conclusion.

About us

PwC Legal is assisting financial services firms and market participants in forward planning for relevant developments. We have assembled a multi-disciplinary and multijurisdictional team of sector experts to support clients in addressing challenges and opportunities and to engage with their market stakeholders and regulators.

Moreover, we have developed a number of RegTech and SupTech tools for supervised firms, including PwC Legal's Rule Scanner tool, backed by a trusted set of managed solutions from PwC Legal Business Solutions, allowing for horizon scanning and risk mapping of all legislative and regulatory developments as well as sanctions and fines from multiple thousands of legislative and regulatory policymakers and other industry voices in over 170 jurisdictions impacting financial services firms and their business.

Equally, in leveraging our Rule Scanner technology, we offer a further solution for clients to digitise financial services firms' relevant internal policies and procedures, create a comprehensive documentation inventory with an established documentation hierarchy and embedded glossary that has version control over a defined backward plus forward looking timeline to be able to ensure changes in one policy are carried through over to other policy and procedure documents, critical path dependencies are mapped and legislative and regulatory developments are flagged where these may require actions to be taken in such policies and procedures.

The PwC Legal Team behind Rule Scanner are proud recipients of ALM Law.com's coveted "2024 Disruptive Technology of the Year Award" and the "2025 Regulatory, Governance and Compliance Technology Award in 2025".

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our website.

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