



Per E-Mail to: Konsultation-17-18@bafin.de

Bundesanstalt für Finanzdienstleistungsaufsicht
Graurheindorfer Straße 108
53117 Bonn

Deutsche Börse AG

Government Relations

Mergenthalerallee 61
65760 Eschborn

Postanschrift
60485 Frankfurt am Main

Telefon
+49-(0) 69-2 11-12629

Fax
+49-(0) 69-2 11--

Internet
deutsche-boerse.com

E-Mail
laurence.trillig@
deutsche-boerse.com

19. November 2018

Opinion in the consultation 17/2018

Business sign GW 1-GW 2000-2018/0002

Dear Sir or Madam,

Deutsche Börse Group would like to cordially thank you for the opportunity to comment on the draft consultation paper „Sorgfaltspflichten im Zusammenhang mit virtuellen Währungen - Hinweise für ein angemessenes risikoorientiertes Vorgehen“ (the “*consultation paper*”) published on 18 October 2018.

We as Deutsche Börse Group see that several market offerings based on DLT/Blockchain technology cut already across our value chain, challenging the traditional market infrastructure. For example derivative products on virtual currencies, equity funding innovations through Initial Coin Offerings (ICOs), or blockchain based custody solutions just to name a few. Deutsche Börse has been active with the technology in a first phase of ideation and exploration. We invested in various initiatives to create a sound understanding of the trends, the technology and its potential within the traditional segments of our value chain.

In order to use the full potential of the technology for our businesses, to generate efficiencies and create revenues, a centrally steered approach was applied to make a greater impact. All initiatives in the field of DLT/Blockchain are now operated by a centralized team of 20 people, in a joint group-wide approach. This team works in close cooperation with the business segments and IT and in close alignment with colleagues from Group Legal and Group Regulatory Strategy.

We note that the consultation paper states that it is within the individual responsibility of each institution to identify relevant risks and to implement appropriate measures. It is also stated that it is within the responsibility of each obliged entity to define whether enhanced due diligence requirements (*verstärkte Sorgfaltspflichten*) must be applied.

We conclude that the use of a public ledger (or *virtual currencies*) is not regarded as

Vorsitzender des
Aufsichtsrats
Dr. Joachim Faber

Vorstand
Dr. Theodor Weimer
(Vorsitzender)
Dr. Christoph Böhm
Dr. Thomas Book
Dr. Stephan Leithner
Gregor Pottmeyer
Hauke Stars

Aktiengesellschaft
mit Sitz in
Frankfurt am Main
HRB Nr. 32232
USt-IdNr. DE114151950
Amtsgericht
Frankfurt am Main

per se problematic or even forbidden for regulated entities and furthermore that the use of a public ledger should not per se trigger enhanced due diligence requirements. Instead, such enhanced due diligence requirements should only be triggered due to specific circumstances of an individual transaction.

Deutsche Börse Group generally welcomes that BaFin upholds its general principle of proportionality and self-responsibility in relation to transactions using a public ledger.

In addition to the above standing general conclusion, Deutsche Börse Group would like to take the opportunity and provide concrete comments and suggestions to certain aspects.

1. No specific distributed ledger risk factor

When considering the risks outlined in the consultation paper, it seems that no blockchain specific risks have been explicitly addressed, but rather general circumstances which already represent an increased risk factor as set forth in Annex 2 to the German Money Laundering Act, such as anonymity (sec. 2b) or new technologies (sec. 2e) together with risk factors that might be associated with the public blockchain such as means of payment, means of purchase or questions around the origin of funds or virtual currencies, but which also arise in connection with other scenarios.

We support the approach to assess risk factors associated with the use of a public blockchain and their relevance for AML purposes just like any other business model and technology and believe this to be in line with BaFin's core principle of a technology neutral supervision.

In this context, it should generally be possible to address the issues explicitly mentioned through the following measures:

- On-boarding of customers through sufficient processes (incl. KYC) at the time the business relationship (*Geschäftsbeziehung*) is entered into
- Verification of sending / receiving addresses of virtual currency transfers against the business relationship to the customer

As long as payments are done via bank transfers (rather than by anonymous means of payment), anonymity should not be an issue, neither with respect to counterparties of a virtual currencies transfer or means of payment.

2. Relevance of preceding transactions

Another question in the context of AML requirements with respect to the use of a public blockchain is how many of the transactions preceding a specific transfer of virtual currencies would have to be monitored/checked.

In our view, it should be generally sufficient from an AML perspective to consider the transaction, which led to the position with the receiving entity, following the requirements resulting from normal payments transactions.

According to the wording of sec. 10 para. 1 no. 5 GwG, the monitoring obligation of an obliged entity B is restricted to its business relationship with a counterparty (entity A) and the transactions undertaken in this business relationship. Thus, preceding transactions entered into entity A do not represent a business relationship of entity B.

It can thus be argued that in relation to a normal business relationship, obtaining any further information in relation to a transaction, such as the source of funds or the identity of the seller of an asset, is typically only required in some circumstances, i.e. in business relationships with politically exposed persons or if concrete indications such as mistrust (*Mißtrauen*) are leading to enhanced due diligence requirements.

We support the position taken in the consultation paper that even in case of a payment that is clearly the result of an exchange of virtual currencies, the source of the funds used to purchase that virtual currency shall only be verified in such specific circumstances.

3. Specific new technology risk

Even though not specifically addressed in the consultation paper, obliged persons (acc. to GwG) have to take into account the risk factors listed in Annex 2 of the GwG in order to determine whether there is an enhanced risk leading to enhanced due diligence requirements pursuant to Sect. 15 para. 2 of the GWG.

Whereas several of these factors have been addressed by BaFin, the “new technology risk” of Annex 2 no. 2e) of the GwG has not been explicitly mentioned in the consultation paper. Accordingly, the risk in connection with “*new products and new business models, including new distribution mechanisms and the use of new or emerging technologies for new or existing products*” must be considered when assessing whether there are enhanced due diligence requirements.

We thus understand that BaFin considers the public blockchain not to represent a specific new technology risk and that no additional measures must be applied in that regard.

4. Additional aspects

Deutsche Börse Group would welcome clarifying statements regarding the payment of transaction fees and mining fees for virtual currency transactions.

These should in our view not trigger further AML/KYC requirements pursuant to the GWG as the receiver of such monies is not identifiable.

In our view, *transaction fees* and *mining fees* for the purpose of mining should generally not be subject to customer due diligence measures: Pursuant to Sect. 10 para. 1 no. 3 GwG customer due diligence measures comprise identifying the customer and verifying the customer's identity inter alia when (i) establishing a *business relationship*, or (ii) when carrying out an *occasional transaction* that (a) amounts to EUR 15,000 or more or that (b) constitutes a transfer of funds exceeding EUR 1,000.

- The payment of the *mining fees* generally cannot be considered to start a *business relationship* nor to be an *occasional transaction* since the *mining fee* is not paid by an entity (consequently also not paid by an entity A transferring a virtual currency to another entity B).
- The payment of the *transaction fee* cannot be considered to start a *business relationship*, which is assumed to be of a certain duration. The payee of the *transaction fee* cannot choose the miner who receives the relevant fees (and does not want to do so). In addition, the payee cannot determine whether he will ever pay the miner again as reception of the fee depends on several, systematic circumstances not related to an individual relationship and out of the control of both sides.
- The payment of *transaction fees* should not be considered as an *occasional transaction* since transaction fees generally range below the given thresholds.

We remain at your disposal for any further queries.

Sincerely yours,

Jens Hachmeister

Managing Director
DLT, Crypto Assets and New Market Structures
Deutsche Börse AG

Thomas Koivu

Director
Strategy & Initiatives
Eurex Frankfurt AG