

**Consultation Paper
Anguilla Utility Token Exchange Act**

Date rec'd	Revised Guidelines Sections	Industry's Comments	DLT Advisory Committee' Responses
27/2/2019	Formatting	<p>The subsection character (b) in section 10 needs to be indented.</p> <p>Section 13 refers to "trading days". "Trading day" is not defined in section 1. Should it be?</p> <p>Section 16 – close the gap (or remove the line break) between "shall" and "submit".</p> <p>Section 18(2) - align the second line to the left margin instead of indenting it.</p> <p>Section 19(3) – indent the number and text in the first line.</p>	<p>Agreed</p> <p>Agreed to amend to define trading day; definition to include time using Atlantic Standard Time.</p> <p>Agreed</p> <p>Space then indent</p> <p>Agreed</p>
28/2/2019	General	<p>With respect to Article 5. I do not believe a 48 hour suspension of the license is feasible as it would basically break down the business. I believe a fine is more suitable.</p> <p>16. (1) A holder of a utility token exchange licensee shall submit to the Commission, within 90 days after the end of each financial year beginning the year in which it commences to carry on business, audited accounts prepared in accordance with international accounting standards, and which contain such additional information as may be prescribed.</p> <p>With respect to the 90 day term for delivery of audited accounts I believe this is very short. I would maintain six months to stay in line with Company Managers obligatias.</p> <p>Art 41 the levy to be charged. Is there already a rate that can be used? This would make Anguilla as a jurisdiction easier to sell in this case.</p>	<p>The 48 hour does not refer to the suspension by the FSC – but the basis on which the FSC may suspend the licence</p> <p>It was considered that the 90 day timeframe for an audit would remain, with an added provision that an extension may be sought. It was also Agreed that the extension would trigger a fee.</p> <p>Position to change to "within 6 months after the end of each financial year..." was abandoned.</p> <p>Rate recommended in draft Regs as 0.25% net revenue of exchange – payable each quarter</p>

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7/3/2019	General	<ul style="list-style-type: none"> • Part 2 <ul style="list-style-type: none"> ○ 13. (1) <ul style="list-style-type: none"> ▪ Are users going to receive a notice? If so, how much in advance? <ul style="list-style-type: none"> • This is important as they may want to withdraw funds prior to an exchange pausing trading. ▪ What is the definition of emergency? • Part 4 <ul style="list-style-type: none"> ○ 19. (2)(b) <ul style="list-style-type: none"> ▪ This fine is small compared to the profit one may gain for the infraction. ○ 19. (3) <ul style="list-style-type: none"> ▪ Need further definition for the word 'sufficient'. ○ 21. (1)(a) <ul style="list-style-type: none"> ▪ Tokens may be inflationary, so this language needs to accommodate this scenario. ○ 21. (2) <ul style="list-style-type: none"> ▪ What if there are less than 7 sources? ▪ There should be a mechanism for the commission to give expressed approval for a utility token that has less than 7 sources under the appropriate circumstances. • Questions: <ul style="list-style-type: none"> ○ Are Initial Exchange Offerings (IEO) allowed? <ul style="list-style-type: none"> ▪ Should be governed by the Utility Token Offering Act and the Commission can give guidelines for 	<p>It was deemed useful to leave the provision as is to give adequate flexibility.</p> <p>Definition of emergency could be expanded upon in guidance.</p> <p>Contraventions of provisions of the legislation can result in suspensions or revocations as per s. 5. The fine in section 19(2)(b) is through a summary conviction. However, it was noted that administrative penalties can also be applied for contraventions of the legislation.</p> <p>Flexibility needed to allow the FSC to deal with new situations</p> <p>21(1)(a) – It was Agreed to change to “Maximum and total supply and any applicable inflationary rate of the listed token”.</p> <p>It was Agreed to amend the legislation – words to be added at end of the sentence “or such other source or sources that may be approved by the Commission.”</p> <p>IEOs not dealt with in Exchange Act – to be considered under the AUTO Act</p>

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		IEOs to approved exchanges operating under the Exchange Act.	
8/3/2019	General	<p>The Licensing Requirements (Part 2) are solid particularly with respect to ensuring the applicants must ensure adequate security, monitoring, market surveillance and overall competence. In terms of anti-money laundering requirements, would it be useful for applicants to understand what global standards the regulator will demand adherence to?</p> <p>Part 5 – I applaud the efforts to tackle false trading and market manipulation, and to ensure proper custody measures. All these matters require regulatory leadership. It is good to see.</p>	<p>AML/CFT obligations are contained in Draft Regulations.</p> <p>Agreed</p>
14/3/2019	Market Surveillance and Custody	<ul style="list-style-type: none"> • Custody is a big issue. Audited proof of solvency and custody best practices by a proper third party. Custody best practices should be defined and not left up to the exchange. • One of the signs we see as a poorly run exchange is the absence of AML and KYC controls. Lack of proper AML/KYC may preclude the exchange from expanding into STO's/ Digital assets in the future should that opportunity arise. • Although not directly related to an exchange, a deeper definition of Promotional Activities so that a utility token isn't promoted like a security. A guideline addendum ahead of time may prove useful. • Market surveillance was touched on, but addendum guideline may be useful in stemming potential issues. 	<p>Each applicant will be required to demonstrate 'proof of concept' as a part of the application process, wherein issues of custody and market surveillance mechanisms will be outlined and assessed.</p> <p>The appropriate AML/CFT processes must be embedded into the operations of an exchange. A well-run Utility Token Exchange (UTE) will be able to organically expand possibly encompass STOs and other digital asset driven trading, a requirement of which would be to continue to satisfy the Fit and Proper test.</p> <p>For future consideration as market evolves</p> <p>Market Conduct provisions can be addressed in Guidance to ensure that the operations of UTEs are clear and fair. These provisions can be introduced shortly after the introduction of the Act.</p>

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17/3/2019	Interpretation	<p>5. The Draft Act</p> <ul style="list-style-type: none"> • (a) the definition of "pair" is something I don't really understand, i.e. how does this differ from a "trade"? • (b) "stable token" - I am not clear on why this needs to be defined as a utility token. Is it necessary that it be traded on the Exchange or will it act simply as a measure of value or be used only for custodial purposes? • (c) Section 5(2) - should say "suspend or revoke". 	<p>"pair" also includes trades between different tokens and not just fiat or single fiat equivalent token. Industry sensitization may be useful in expanding knowledge on this topic</p> <p>Defined separately for greater certainty and in recognition of the rising importance of stable tokens. Separate definition also allows for future Regs specific to Stable Tokens if same becomes necessary (as a specific class of utility tokens)</p> <p>Agreed</p>
18/4/2019	General	<p>1. The definition of "trading day" may need to be amended</p> <p>2. I suggest moving the definition of "accountant" into section 15(2) as follows:</p> <p><i>No person may be appointed as an auditor under subsection (1) unless he meets [and continues to meet?] the criteria in the Commission's "Guidelines on Acceptability of an Auditor".</i></p> <ul style="list-style-type: none"> • Can acceptance be withdrawn on grounds other than failure to comply with the Guidelines? • What happens if the Guidelines are amended? Are appointed auditors who do not meet a new criterion grandfathered? 	<p>Agreed to amend to define trading day; definition to include time using Atlantic Standard Time.</p> <p>Agreed to amend definition of accountant to include suggested wording.</p> <p>This will be considered on a case by case basis.</p> <p>Grandfathering auditors into new Guidelines will be considered.</p>

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		<ul style="list-style-type: none"> • Finding qualified auditors for this sector may be tough. <p>3. Is the definition of "blockchain" in synch with other jurisdictions that matter?</p> <ul style="list-style-type: none"> • As the UK FCA has noted, blockchain is just one type of DLT that has a specific set of features, organising its data in a chain of blocks. "Each block contains data that are verified, validated and then 'chained' to the next block. ..." <p>(Para 2.10 - https://www.fca.org.uk/publication/consultation/cp19-03.pdf)</p> <ul style="list-style-type: none"> • Today, all cryptoassets use various forms of DLT (be it blockchain or otherwise). Tomorrow, that may no longer be the case. Should exchanges (and tokens) be limited in the Act to blockchain supported tokens? (I am less concerned about a limitation to DLT since different platforms can be prescribed (although the power to prescribe should be moved from the definition of "platform" into the body of the Act since definitions should not contain powers). <p>4. Need to be very clear about the definition of money - "Legal tender", "fiat currency", "means of exchange", "cryptocurrency"?</p> <ul style="list-style-type: none"> • To be designated as legal tender by a jurisdiction suggests fiat currency. Fiat currency does not need to be defined but should the definition be wider to e.g. "any item or verifiable record that is generally accepted as payment for goods or services or repayment of debt"? This could include some widely used cryptocurrencies (or a basket of cryptocurrencies), and commodities like gold. 	<p>Auditors around the world are currently being trained on performing audits for companies involved in fintech business.</p> <p>It was considered that the definition of "blockchain" would remain.</p> <p>It was decided that this definition would be considered by the legal drafters.</p>

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		<ul style="list-style-type: none"> • What is a "reserve asset" in the definition of "stable token" [the deeming provision here is not needed]? <p>5. "utility token exchange" - derivatives are securities.</p> <p>6. Does the Commission really want to require their prior approval of all changes to an exchange's rules? Or should prior approval be limited to material changes (not housekeeping), or eliminated altogether? Of course, all changes should be filed with the Commission at the time they are made. The risks here will be low and the Commission's time is valuable.</p> <p>7. 90 days is a long time to wait for audited accounts in a fast moving sector. I assume that the Commission has a power elsewhere to direct a quicker audit (and quicker provision of unaudited financials, whether interim or annual, or the management accounts). An amendment may be needed to require such.</p> <ul style="list-style-type: none"> • Take a look at the audit requirements of the Singapore Payment Services Act 2019 -https://sso.agc.gov.sg/Acts-Supp/2-2019/Published/20190220?DocDate=20190220 • Section 18 - I suggest also requiring the holder to provide full access to all records to the auditor, unless they are legally privileged, and to ensure that any nominee does the same. <p>8. Are fixed fines (e.g., \$25,000) acceptable in Anguilla?</p> <p>9. For the levy, what if an adjustment is needed based on the annual audited accounts?</p>	<p>It was considered that the definition of "utility token exchange" would remain.</p> <p>Agreed to amended. Section 8(1) will be revised to include any <u>material</u> amendment.</p> <p>It was considered that the 90 day timeframe for an audit would remain. The Regulator would use its discretion to request any additional information deemed necessary under section 21 of the Financial Services Commission Act, R.S.A. c. F28.</p> <p>It was decided that this definition would be considered by the legal drafters.</p> <p>This will be considered.</p>

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