

## **CMTA**

### Regulations on recognition of experts

29 April 2023



The Capital Markets and Technology Association ("**CMTA**") has published standards for the issuance of equity securities in the form of ledger-based securities within the meaning of Articles 973d of the Swiss Code of Obligations (the "**Share Tokenization Standard**") and the safe-keeping of digital assets by professional custodians (the "**Digital Assets Custody Standard**" or "**DACS**").

CMTA has established certification frameworks, which make it possible for users that comply with the requirements and recommendations of the standards outlined above to obtain the right to use a "certification mark" registered with the Swiss Federal Institute of Intellectual Property to evidence such compliance ("**CMTA.Tokenized Shares V2.0**" for compliance with the Share Tokenization Standard, and "**CMTA.DACS V2.0**", "**CMTA.DACS (Operations) V2.0**" or "**CMTA.DACS (Infrastructure) V2.0**" for compliance with some or all of the DACS' requirements and recommendations.

The grant of the right to use one of the certification marks is subject, among other things, to the delivery of opinions, confirmations or reports from independent experts recognized by the CMTA.

These regulations set forth the conditions on which CMTA recognizes the independent experts authorized to deliver the opinions, confirmations and reports contemplated in the regulations governing the use of the CMTA.Tokenized Shares V2.0 certification mark (the "**Tokenized Shares Certification Mark Regulations**") and of the CMTA.DACS V2.0, CMTA.DACS (Operations) V2.0 and CMTA.DACS (Infrastructure) V2.0 (the "**DACS Certification Mark Regulations**").

## **1. LEGAL EXPERTS RECOGNITION**

### **1.1 Nature of the recognition**

In order for a legal expert to be recognized to opine under the Tokenized Shares Certification Mark Regulations, both (i) the legal expert him or herself and (ii) his or her firm must be recognized by the CMTA.

To be admissible for the purpose of the Tokenized Shares Certification Mark Regulations, an opinion must be (i) issued by a recognized firm and (ii) signed by a recognized legal expert of such firm.

### **1.2 Professional qualification and experience**

#### **1.2.1 Conditions for the recognition of a law firm or notary office**

To be recognized to opine under the Tokenized Shares Certification Mark Regulations, a firm must:

- (a) be a Swiss law firm or notary office;
- (b) have at least one legal expert recognized by the CMTA among its partners or employees; and
- (c) confirm that it is in a position to deliver legal opinions in the format contemplated in the annex to the Tokenized Shares Certification Mark Regulations, or in a similar format approved by the CMTA.

### 1.2.2 Conditions for the recognition of a legal expert

To be recognized to opine under the Tokenized Shares Certification Mark Regulations, a legal expert must:

- (a) be an attorney-at-law registered with a cantonal register maintained in accordance with Article 5 of the Swiss Federal Act on the Freedom of Circulation of Lawyers of 2000, as amended, or a civil law notary authorized to practice under the relevant cantonal legislation; and
- (b) possess demonstrable knowledge and experience in matters relating to corporate law and technology (e.g. as a result of participation in prior tokenization transactions).

## 1.3 Procedure

To obtain CMTA's recognition as a legal expert, the applicant must submit a request to that effect to CMTA's Secretariat by email sent to [admin@cmta.ch](mailto:admin@cmta.ch).

In the application, the applicant must (i) confirm that he or she as well as his or her firm agree to be bound by these regulations (including with respect to fees for processing the application) and the Tokenized Shares Certification Mark Regulations and (ii) provide evidence that he or she as well as his or her firm meet the criteria set forth in Section 1.2. CMTA may at its discretion ask for further evidence.

## 1.4 Fees

The recognition as a legal expert is free of charge for firms that are members of the CMTA as well as their partners or employees. It is also free of charge for the members of CMTA's Advisory Board.

For firms that are not members of the CMTA, the processing of an application for recognition is subject to the payment of a fee of CHF 1'000 per recognized expert. CMTA may charge an additional fee of up to CHF 4'000, depending on the time spent, for the review of specimen legal opinions that diverge from the specimen outlined in the annex to the Tokenized Shares Certification Mark Regulations.

## **2. TECHNOLOGY SERVICE PROVIDERS RECOGNITION**

### **2.1 Professional qualification and experience**

To be recognized as a technology service provider authorized to issue confirmations for the purpose of the Tokenized Shares Certification Mark Regulations, a technology service provider must:

- (a) be a sole proprietorship, partnership or legal entity, established in Switzerland or abroad; Swiss applicants must be registered in the commercial registry in Switzerland; CMTA may refuse to recognize applicants based abroad if they cannot demonstrate appropriate connection with Switzerland; and
- (b) possess demonstrable knowledge and experience in the distributed ledger technology, smart contracts and cryptography.

### **2.2 Procedure**

To be recognized as a technology service provider authorized to issue confirmations for the purpose of the Tokenized Shares Certification Mark Regulations, a technology service provider must submit a request to that effect to CMTA's Secretariat by email sent to [admin@cmta.ch](mailto:admin@cmta.ch).

The applicant must confirm, in the application, that it agrees to be bound by these regulations (including with respect to fees for processing the application) and the Tokenized Shares Certification Mark Regulations and provide evidence that it meets the criteria set forth in Section 2.1. CMTA may at its discretion ask for further evidence.

### **2.3 Fees**

The recognition as a technology service provider is free of charge for companies that are members of the CMTA.

For companies that are not members of the CMTA, the processing of an application for recognition is subject to the payment of a fee of CHF 1'000.

## **3. AUDIT FIRMS RECOGNITION (DACS)**

### **3.1 Professional qualification and experience**

To be recognized as an audit firm, which may issue reports and confirmations under the DACS Certification Mark Regulations, the audit firm must either:

- (a) be a Swiss audit firm placed under the supervision of the Swiss Federal Audit Oversight Authority and authorized to conduct regulatory audits on banks and securities firms; or

- (b) be a non-Swiss audit firm placed under state supervision in its home jurisdiction and be authorized in such jurisdiction to conduct regulatory audits on banks, securities firms, or similarly regulated entities.

### 3.2 Procedure

To obtain CMTA's recognition as an audit firm authorized to provide reports and confirmations under the DACS Certification Mark Regulations, the applicant must submit a request to CMTA's Executive Committee by email sent to [admin@cmta.ch](mailto:admin@cmta.ch).

The applicant must confirm, in the application, that it agrees to be bound by these regulations (including with respect to fees for processing the application) and provide evidence that it meets the criteria set forth in Section 3.1. Non-Swiss audit firms must, in addition, provide a legal opinion from a law firm of international standing from their home jurisdiction, issued at the address of the CMTA, and confirming that the criteria set forth in Section 3.1(b) are satisfied, CMTA may ask for further evidence.

Although the recognition is granted to a firm, the applicant must undertake, in its application, to ensure that any report or confirmation is executed by employees who have sufficient knowledge in the distributed ledger technology.

### 3.3 Fees

The recognition as an audit firm is free of charge for companies that are members of the CMTA.

For companies that are not members of the CMTA, the processing of an application for the recognition of a Swiss audit firm is subject to the payment of a fee of CHF 2'000 and the processing of an application for the recognition of a non-Swiss audit firm is subject to the payment of a fee of CHF 5'000. If the treatment of the application of a non-Swiss audit firm requires further inquiries, the CMTA may increase the handling fee charged to a non-Swiss audit firm to reflect the time spent on the matter.

## 4. COMMON PROVISIONS

### 4.1 Duration of recognition

Subject to the following paragraphs of this Section 4.1, (i) the recognition granted to legal experts under Section 1 and to a service provider under Section 2 shall be valid for a period of five years, and the recognition granted to an audit firm under Section 3 shall be valid for a period of two years, in each case from the end of the calendar year during which the recognition was issued.

Notwithstanding the above:

- the recognition of a law firm or notary office pursuant to Section 1.2.1 lapses automatically and with immediate effect if the relevant law firm or notary office ceases to have at least one legal expert recognized by CMTA among its partners or employees;
- the recognition of a legal expert pursuant to Section 1.2.2 lapses automatically and with immediate effect if the relevant legal expert ceases to work for a recognized law firm or notary office; and
- the recognition of an audit firm pursuant to Section 3.1 lapses automatically if the relevant audit firm (i) ceases to be supervised by the Swiss Federal Audit Oversight Authority or corresponding foreign supervisory authority, or (ii) ceases to be authorized to conduct regulatory audits on banks, securities firms or similarly regulated entities.

In addition, CMTA may at any time withdraw a recognition granted under these regulations if it determines at its discretion that:

- the conditions for granting the relevant recognition are no longer met; or
- the person or entity to which recognition was granted misrepresents its relationship with CMTA, breaches CMTA's rules and regulations or delivers inaccurate opinions or confirmations.

CMTA is entitled to request at any time from any recognized person that such person confirms in writing that the conditions for the granting of the recognition continue to be satisfied. It may request information from any recognized person to determine whether there are reasons for it to withdraw a recognition.

### **4.2 Register of recognized experts**

CMTA keeps a register of recognized experts, which can be consulted on its website or in other manners that the CMTA considers appropriate.

### **4.3 Amendments**

CMTA may amend these regulations at any time at its discretion. Amendments will take effect when published on CMTA's website. Unless if required to ensure compliance with the law or CMTA's standards, recognitions granted prior to such amendment will remain valid even if the conditions for granting the relevant recognition would no longer be met under the amended regulations.

### **4.4 Applicable law and jurisdiction**

These regulations are governed by substantive Swiss law.

The courts of Geneva, canton of Geneva, will have exclusive jurisdiction over any dispute arising from or in connection with the application of these regulations.

### **4.5 Languages**

These regulations may be issued in several languages. In case of inconsistencies between the versions, the English version will prevail.

### **4.6 Adoption and effectiveness**

These regulations were adopted by CMTA's Executive Committee on 24 November 2021 and amended on 29 April 2023. They become effective immediately.

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