



DeFi For Good Conference

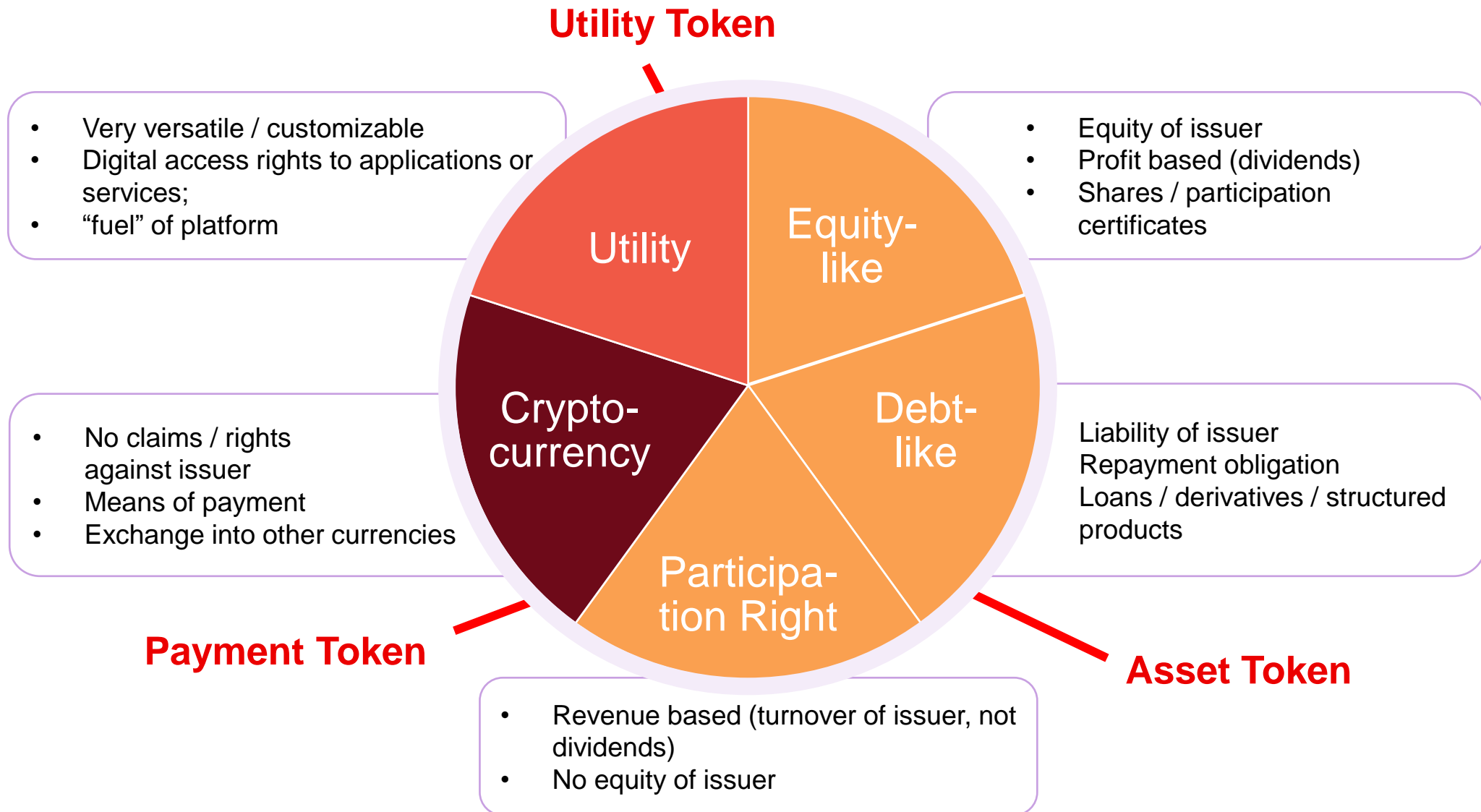
AML/KYC and DeFi in Switzerland
Dr. Reto Luthiger

1 June 2022

MLL MEYERLUSTENBERGER LACHENAL FRORIEP



FINMA ICO Guidelines: Token Categories



Special Token Types?

- Native utility tokens?

Protocol Tokens?

Non-Fungible Tokens?





- Individualized
- Not standardized
- Not mass-tradable
- No unit of account
- ➔ No token category fits

Stable Coins?






- Qualification depends on the underlying asset(s)

AML-Regulations, Crypto and CeFi

- **AML-regulations applicable regarding issuance of tokens?**

- Payment tokens 
- Asset tokens 
- Utility tokens 
- NFTs 

- **AML-regulations applicable regarding other activities:**

- Money exchange (Fiat-Fiat/Fiat-crypto/crypto-crypto) 
- Money transmitting/remitting (fiat/crypto) 
- Operation of payment systems (fiat/crypto) 
- Escrow agent (fiat/crypto/securities/etc.) 
- Granting loans 

AML-Regulations, Crypto and DeFi

- 1. Trading on Decentralized Exchanges (DEXs)
 - Informal FINMA-practice:
 - All participants, i.e. buyers, sellers and liquidity providers, qualify as money exchange provider under AML-regulations if acting in a professional capacity
 - → Implementation of Travel Rule is not possible if no compliance layer!

AML-Regulations, Crypto and DeFi

- **2. New Article 4 (1)(d) Anti-Money Laundering Ordinance (since 1 August 2021):**
- *A payment transaction service [subject to the Anti-Money Laundering Act] exists in particular if the financial intermediary **facilitates the transfer of virtual currencies** to a third party, provided that it maintains a **permanent business relationship** with the contracting party and it does not provide the service exclusively to financial intermediaries.*
- **In scope:** Combination of permanent business relationship (e.g. user accounts or profiles under terms of service) and...
 - anyone providing tools to trade, exchange or execute payment orders on non-regulated DeFi infrastructures or peer2peer
 - anyone having the power to confirm, release or block orders or otherwise have control over the smart contract.
 - anyone providing non-custody wallets
- **Not in scope:**
 - pure software providers
 - all users qualify as financial intermediaries
- Shift from basic AML-principle of “power of disposal over assets” to “facilitating transfers”
→ **(Almost) no Swiss DeFi-platform without AML-compliance!**

AML-Regulations: Technology Neutral Approach

- **Duties of care** according to Swiss AML-regulations:



- Personal meeting
- Legalized (and apostilled) passport/ ID copy and utility bill
- Video identification
- Other requirements with legal entities/trusts/etc.

- Individuals: form A
- Other: forms A, K, S and T

- Nature and purpose of business relationship
- Source of funds
- PEP and sanctions checks

- Clarification of economic background and purpose of transaction/business relationship in certain cases

One technology-related exception for crypto regarding wallets:



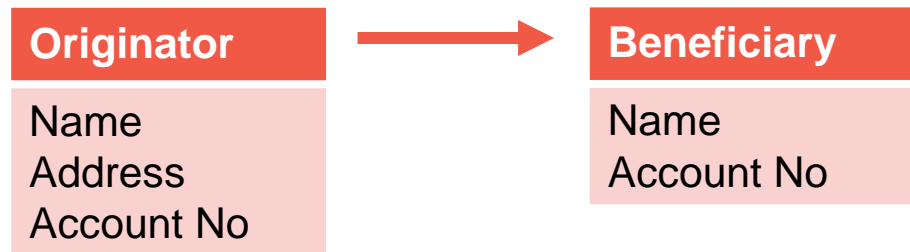
The “Travel Rule” according to FATF

- **Virtual assets (VA):**
 - digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.
- **Virtual asset service provider (VASP):**
 - any natural or legal person who as a business conducts for or on behalf of another natural or legal person:
 - i. Exchange between virtual assets and fiat currencies;
 - ii. Exchange between one or more forms of virtual assets;
 - iii. Transfer of virtual assets; and
 - iv. Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets;
 - v. Participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset



The “Travel Rule” according to FATF

- Any **virtual assets (VA)** transfers (min USD/EUR 1000) between a **virtual asset service provider (VASP)** and other obliged entities require to share:

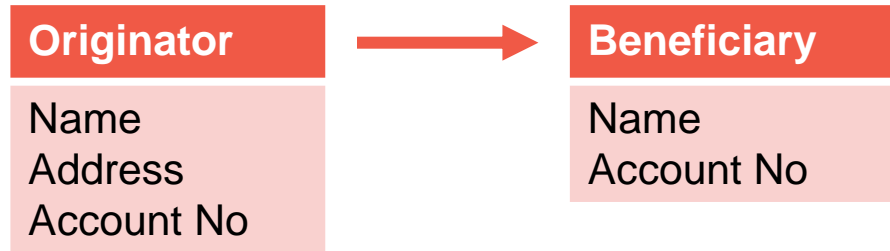


- To ensure to obtain these information:
 - obligation for VASPs to be **registered or licensed** in FATF members’ states
 - 5 years record retention, and
 - ability to fully cooperate with FATF for Enforcement purposes
- Exception:**
 - for transfers from and to unregulated wallet providers



FINMA's Interpretation of the "Travel Rule"

- **Article 10 AMLO-FINMA** regarding payment orders:



- FINMA Guidance 02/2019:
 - Applies also to services based on blockchain technology
- **Swiss-Finish:**
 - Applies also to transfers **from and to unregulated wallet providers**
- Remember: **no SWIFT equivalent yet in crypto world!**



Thank you for your
time and interest

Questions?



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Reto Luthiger is a counsel and lawyer with MLL. He is a co-head of the practice group regulatory, fintech & DLT as well as of the industry groups blockchain, insurance companies, internal investigations & compliance.

He advises and represents domestic and international clients in financial markets regulatory and civil law matters as well as proceedings before FINMA, self-regulatory organisations (SROs), supervisory organisations (SOs) other authorities and courts. He has wide-ranging experience in banking, anti-money laundering, financial services, financial markets infrastructure and collective investment schemes law.

Reto Luthiger acts as CEO of the Self-Regulatory Organization of Swiss Association of Investment Companies (SRO SAIC) and served as member of the board of SR Saphirstein AG, a company with a fintech license. He has sound knowledge particularly in banking, AML, FinTech, DLT/blockchain, FATCA and AEOI and made his PhD in the area of AML. Further, he is a co-author of two commentaries about Swiss financial market infrastructure and book-entry securities regulations as well as financial services and financial institutions regulations. He closely follows the newest developments in these fields. He is fluent in German and English.

«Reto Luthiger is a capable, excellent and creative advisor with broad interests and knowledge and this also in DLT and other new fintech and regtech matters.»

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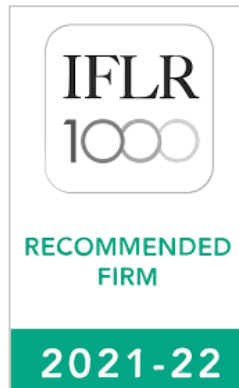
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