



Blockchain Trading for Nonlisted Securities: The New French Regime Is Achieved

IN SHORT

The Situation: In 2017, French authorities amended laws to permit the use of blockchain, or distributed ledger technology ("DLT"), for trading nonlisted securities.

The Result: The regulation governing the use of DLTs and its impact on securities laws was enacted in December 2018.

Looking Ahead: While the new rules only apply to nonlisted securities (not using current securities settlement systems), it may be expanded to listed securities should this initiative be fruitful.

In December 2018, a decree, n°2018-1226 ("Decree"), was issued providing the legal regulations concerning the use of DLTs for trading nonlisted securities in France.

Since 1984, all French securities have been represented in book entry form (through credits to securities accounts held electronically by issuers). This dematerialization process applies to listed or nonlisted securities, being held in bearer or registered form.

Ordinance n°2017-1674 ("Ordinance"), dated December 8, 2017, established new rules to allow the trading of nonlisted securities using DLT, amending the current procedures previously in place for securities credited to securities account. These rules came with additional provisions, described below, effective immediately.

Integrity of DLT

The Ordinance required the integrity and safety of DLTs, where securities would be registered, to be detailed. A new article D. 211-9-7 of France's financial monetary code ("Code") states that DLTs are built and managed in order to: (i) ensure the registration and integrity of the data relating to the securities; and (ii) identify, directly or indirectly, the owners of the securities and the nature and amount of those securities. As for securities credited in book entry form, no modification or alteration to the data shall be made possible without being traced or audited. DLT operators are free to implement the technology in order to achieve those objectives, public or private, according to the Ordinance.

The Ordinance also called for registrations to be recorded with an external database for continuity and security purposes.



Ordinance n°2017-1674 established new rules to allow the trading of nonlisted securities using DLT, amending the current procedures previously in place for securities credited to securities account.



Pledges over Securities Held in DLTs

The Ordinance referred to the Decree to take any measure to adapt the current pledging of securities account to securities held in DLTs. Under the current regime, a pledge may be

constituted over a securities account (all the securities credited to this account are covered by the pledge) or over certain and identified securities within the securities account (earmarking).

In addition to minor adjustments (to make reference not only to securities account, but also to DLTs), three main provisions have been added:

- Where a notification has to be made to, or an action is expected from, the securities account keeper, there was a need to designate a legal person responsible for the registration and management of the pledge over securities registered into a DLT. As article L. 211-20 II refers to the earmarking of securities with an electronic process, it has been derived from this sentence that the person responsible for such earmarking within a DLT would be the one to be responsible for the registration and management of the pledge on behalf of pledger and pledgee (new article R. 211-13 of the Code).
- If the issuer or its agent in charge of managing a DLT is not credit institution, proceeds and revenues generated by the pledged securities (dividends, interests, etc.) shall be credited in a specific pledged account deemed to be part of the pledge over the securities registered into the DLT (new article R. 211-14-1 I).
- The certificate of the pledge, listing inter alia the pledged securities, is issued upon request of the pledger to the person in charge of the management of the DLT where the pledged securities are registered (new article R. 211-14-1 III).

A consortium of 12 banks has announced few days ago the setting up of a project called "Registraccess" to offer a blockchain solution for non-listed companies based on this new regulation and aimed at improving post-market settlement.

THREE KEY TAKEAWAYS

1. French regulators are eager to make French legislation as attractive as possible for the application of new technologies to financial activities.
2. Now, nonlisted French securities may be registered, transferred, and pledged using DLTs.
3. Should it prove to be widely used, DLT may be extended to listed securities, once settlement processes have been adjusted for accommodating such technology with payment systems.



Philippe Goutay
Paris



Alban Caillemer du Ferrage
Paris



Florent Bouyer
Paris

YOU MIGHT BE INTERESTED IN: [Go To All Recommendations >>](#)



[Blockchain for Business](#)



[Of Blockchains and Supply Chains](#)



[Game Changer for Cryptocurrency in Germany? Court Holds No License Required to Trade Bitcoins](#)

Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm WorldwideSM

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113