



20 October 2023

Joint circular on intermediaries' virtual asset-related activities

1. The Securities and Futures Commission (**SFC**) and the Hong Kong Monetary Authority (**HKMA**) have received an increasing number of enquiries from intermediaries about distributing virtual asset¹-related products² (**VA-related products**) to investors. Intermediaries are also interested in providing virtual asset dealing services to their clients.
2. When the SFC formulated its regulatory approach for virtual assets in 2018, it imposed an overarching “professional investors³ only” restriction on various types of activity, including the distribution of virtual asset funds (**VA funds**). Since then, the virtual asset landscape has evolved rapidly and begun to expand into mainstream finance. A broader range and larger number of investment products are now available which provide investors, whether retail or professional, with exposure to virtual assets. In particular, the SFC has allowed SFC-licensed virtual asset trading platforms (**VA trading platforms**) to serve retail investors and has authorized virtual asset futures exchange traded funds for public offering in Hong Kong.
3. The SFC and the HKMA have reviewed their existing policy provided for intermediaries which wish to engage in virtual asset-related activities (**VA-related activities**). The policy is updated in light of the latest market developments and enquiries from the industry seeking to further expand retail access through intermediaries and to allow investors to directly deposit and withdraw virtual assets to/from intermediaries with appropriate safeguards⁴. For the avoidance of doubt, this updated circular will supersede the 28 January 2022 joint circular on intermediaries' virtual asset-related activities.

A. Distribution of VA-related products

4. Although virtual assets are becoming more popular in some parts of the world, the global regulatory landscape remains uneven. The risks associated with investing in virtual assets identified by the SFC back in 2018 continue to apply. For instance, service providers for VA-related products, including custodians, fund administrators, VA trading platforms and index providers, may be unregulated, regulated only for anti-money

¹ “Virtual asset” refers to any “virtual asset” as defined in section 53ZRA of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**).

² For the purpose of this circular, “VA-related products” refers to investment products which: (a) have a principal investment objective or strategy to invest in virtual assets; (b) derive their value principally from the value and characteristics of virtual assets; or (c) track or replicate the investment results or returns which closely match or correspond to virtual assets.

³ As defined in section 1 of Part 1 of Schedule 1 to the SFO.

⁴ Amongst other things, intermediaries are allowed to (a) provide virtual asset-related services to retail investors through the implementation of a number of robust measures to protect these investors, including ensuring suitability in the onboarding process and (b) effect deposit and withdrawal of client virtual assets through the segregated account(s) established and maintained with SFC-licensed VA trading platforms or authorized financial institutions (or subsidiaries of locally incorporated authorized financial institutions) (see paragraph 19 for details).

laundering and counter-financing of terrorism (**AML/CFT**) purposes or subject to light-touch regulation (eg, for payment purposes). Thus, they may not be subject to the same robust regulation as service providers or products in traditional financial markets, posing additional counterparty risks for VA-related products. Furthermore, as there is no unified approach to their regulation, spot markets for virtual assets (ie, the underlying assets of VA-related products) are more likely to present investor protection issues, ranging from a lack of pricing transparency to potential market manipulation.

5. As these risks are not reasonably likely to be understood by a retail investor, VA-related products are very likely to be considered complex products. Intermediaries distributing VA-related products considered to be complex products (except for VA-related products considered to be complex exchange-traded derivatives as discussed in paragraph 8 below) should comply with the SFC's requirements which govern the sale of complex products⁵, including ensuring the suitability⁶ of VA-related products, irrespective of whether or not there has been a solicitation or recommendation.
6. However, given the uneven global virtual asset regulatory landscape, the SFC and the HKMA consider that investor protection measures, in addition to the requirements under the complex product regime, should be imposed to cover specific risks associated with these products. For instance, a number of overseas virtual asset-related non-derivative products, such as virtual asset exchange-traded funds (**VA ETFs**) and exchange-traded products (**VA ETPs**), invest directly in virtual assets and may be subject to the aforementioned risks.
7. As such, the SFC and the HKMA are of the view that it would be necessary to impose the following additional investor protection measures on the distribution of VA-related products:
 - 7.1. **Selling restrictions** – Except for a limited suite of products discussed in paragraph 8 below, VA-related products which are considered complex products should only be offered to professional investors. For example, an overseas VA non-derivative ETF would very likely be considered a complex product and it should only be offered to professional investors.
 - 7.2. **Virtual asset-knowledge test** – Except for institutional professional investors and qualified corporate professional investors⁷, intermediaries should assess whether clients have knowledge of investing in virtual assets or VA-related products prior to effecting a transaction in VA-related products on their behalf⁸. If a client does not possess such knowledge, the intermediary may only proceed if it has provided adequate training to the client on the nature and risks of virtual assets. Intermediaries should also ensure that their clients have sufficient net worth to be

⁵ This refers to the requirements in paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**) and Chapter 6 of the Guidelines on Online Distribution and Advisory Platforms.

⁶ This would include ensuring that the aggregate amount to be invested by the client in VA-related products is reasonable, as determined by intermediaries, considering the client's financial situation (including net worth) and personal circumstances.

⁷ "Institutional professional investors" is defined under paragraph 15.2 of the Code of Conduct as persons falling under paragraphs (a) to (i) of the definition of "professional investor" in section 1 of Part 1 of Schedule 1 to the SFO. "Qualified corporate professional investors" refers to corporate professional investors which have passed the assessment requirements under paragraph 15.3A and gone through the procedures under paragraph 15.3B of the Code of Conduct.

⁸ A one-off knowledge assessment conducted by an intermediary prior to entering into a transaction in a VA-related product is acceptable.

able to assume the risks and bear the potential losses of trading VA-related products. Appendix 1 to this circular sets out non-exhaustive criteria for assessing whether a client can be regarded as having knowledge of virtual assets.

8. However, a limited suite of VA-related derivative products are traded on regulated exchanges specified by the SFC⁹ and, in the case of exchange-traded VA derivative funds, they are authorized or approved for offering to retail investors by the respective regulator in a designated jurisdiction¹⁰. For example, in the case of virtual asset futures contracts traded on a specified exchange which is a regulated futures market, trading is governed by conventional rules. Pricing transparency and potential market manipulation may be less of a concern. The same could be said of a public futures-based VA ETF authorized by the SFC and traded on the Stock Exchange of Hong Kong Limited or authorized or approved in a designated jurisdiction for offering to retail investors by the respective regulator and traded on a specified exchange. Accordingly, the “professional investors only” restriction is not imposed for the distribution of these products. Nonetheless, as such products are considered complex exchange-traded derivatives, under the existing complex product regime, where there has been no solicitation or recommendation, intermediaries may distribute them without the need to comply with the suitability requirement or the minimum information and warning statements requirement referred to in paragraph 14.1 below, but must comply with the existing requirements for derivative products (see paragraphs 11.2 and 12 below). Intermediaries must also conduct a virtual asset-knowledge test as an additional safeguard (see paragraph 7.2 above).
9. For the avoidance of doubt, other exchange-traded VA-related derivative products, irrespective of whether or not they are traded on a specified exchange, would be considered complex products where they are not of the same type as a complex exchange-traded derivative as set out in the non-exhaustive list of examples of non-complex and complex products published on the SFC’s website¹¹. The distribution of these exchange-traded VA-related derivative products would thus be subject to the full scope of complex product requirements and additional investor protection measures set out in paragraph 7 above. Appendix 3 provides a flowchart illustrating the factors for determining whether or not a VA-related product is a complex product.
10. In addition to the complex product requirements, the SFC and the HKMA would like to remind intermediaries to observe the selling restrictions in Hong Kong and other jurisdictions which may be applicable to a particular VA-related product. In particular, intermediaries should observe the provisions in Part IV of the Securities and Futures Ordinance (**SFO**) which prohibit the offering to the Hong Kong public of investments which have not been authorized by the SFC. Furthermore, depending on the selling restrictions specific to a particular jurisdiction¹², exchange¹³ or product, a VA-related product may or may not be offered to retail investors. Intermediaries should ensure strict

⁹ This refers to the list of specified exchanges set out in Schedule 3 to the Securities and Futures (Financial Resources) Rules (Cap. 571N).

¹⁰ The list of designated jurisdictions is set out in Appendix 2 to this circular.

¹¹ The non-exhaustive list of examples of non-complex and complex products can be accessed at <https://www.sfc.hk/en/Rules-and-standards/Suitability-requirement/Non-complex-and-complex-products>. For example, VA derivative ETPs are not of the same type as the examples of complex exchange-traded derivatives on the list.

¹² In some jurisdictions such as mainland China, the sale of VA-related products to Mainland investors may be prohibited.

¹³ For example, the rules of an established futures exchange governing virtual asset futures contracts traded on the exchange may prohibit the offering of such futures contracts to retail investors.

adherence to all such selling restrictions. Where the VA-related products are distributed on an online platform, it must be properly designed and have appropriate access rights and controls to ensure compliance with such selling restrictions.

11. Intermediaries should also observe the suitability obligations (where applicable) as supplemented by the Suitability FAQs¹⁴, including:
 - 11.1. ensuring that any recommendations or solicitations made are suitable for clients in all circumstances. Intermediaries should diligently assess whether the nature and features of the VA-related product (including the effects of gearing and the risks of the underlying virtual assets) are suitable for the client and are in the best interests of the client, taking into account the client's risk tolerance, financial situation, etc;
 - 11.2. where the VA-related product is a derivative product, ensuring compliance with paragraphs 5.1A and 5.3 of the Code of Conduct; and
 - 11.3. conducting proper due diligence on the products, which would include, amongst others, understanding their risks and features (in particular the inherent high-risk nature of the underlying virtual assets), the targeted investors (including any applicable selling restrictions) and the products' regulatory status. Additional due diligence requirements for non-SFC authorized VA funds are set out in Appendix 4 to this circular.
12. As part of its obligation under paragraph 5.3 of the Code of Conduct, an intermediary assessing whether to provide a client with services for VA-related derivative products should assure itself that the client understands the nature and risks of these products. For example, in providing trading services in virtual asset futures contracts traded on a specified exchange, an intermediary should ensure its client understands that leveraged trading increases the client's exposure to the volatility of the underlying virtual assets. This is because relatively small market movements may have a proportionately larger impact on the margin deposited and the client may lose more than the amount of the initial margin deposited. Intermediaries should also provide clients with risk disclosure statements (which can be a one-off disclosure) specific to virtual asset futures contracts, examples of which are set out in Appendix 5 to this circular.
13. Given the high-risk nature of virtual assets, intermediaries should be cautious in providing any financial accommodation for investing in VA-related products to clients. Where an intermediary provides financial accommodation to a client, it should assure itself the client has the financial capacity to meet the obligations arising from leveraged or margin trading in VA-related products, including in a worst-case scenario. In the absence of such assurance, the intermediary should not accept instructions from the client.
14. Except for institutional professional investors and qualified corporate professional investors, intermediaries distributing VA-related products should:
 - 14.1 provide information and warning statements to clients in relation to VA-related products and information on the underlying virtual asset investments in a clear and easily comprehensible manner; and

¹⁴ The Frequently Asked Questions on Compliance with Suitability Obligations by Licensed or Registered Persons and the Frequently Asked Questions on Triggering of Suitability Obligations (**Suitability FAQs**).

- 14.2 provide to clients risk disclosure statements (which can be a one-off disclosure) specific to virtual assets, examples of which are set out in Appendix 5 to this circular.

B. Provision of virtual asset dealing services (VA dealing services)

15. The SFC and the HKMA are concerned that many overseas VA trading platforms may not be subject to regulatory standards comparable to those under the SFC's regulatory framework for VA trading platforms¹⁵, and the protections for investors trading on these platforms may be manifestly insufficient. For instance, these platforms are not subject to any client asset protection regulations, eg, the requirements governing hot and cold wallets¹⁶, private key management and insurance. In the event of hacking or fraud, investors may suffer substantial losses without recourse. They may also have practical difficulties recovering their assets from or pursuing claims against platforms located overseas.
16. To provide adequate investor protection, the SFC and the HKMA consider it appropriate and necessary to require intermediaries to partner only with SFC-licensed VA trading platforms¹⁷ (**SFC-licensed platforms**) for the provision of VA dealing services, whether by way of introducing clients to the platforms for direct trading or establishing an omnibus account with the platforms.
17. Although the provision of VA dealing services does not amount to "dealing in securities", such services may have an impact on an intermediary's fitness and properness to conduct regulated activities¹⁸. Trading activities involving virtual assets also form part of the dealing services provided by intermediaries¹⁹. Accordingly, intermediaries are expected to comply with all the regulatory requirements imposed by the SFC and the HKMA when providing VA dealing services. Furthermore, such services should only be provided to the intermediaries' clients to which they provide services in Type 1 regulated activity²⁰.
18. The expected conduct requirements for intermediaries' provision of VA dealing services under an omnibus account arrangement will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions. These are set out in Appendix 6 to this circular²¹. One licensing or registration condition will require

¹⁵ Hong Kong is one of the few major jurisdictions which has introduced a comprehensive framework for VA trading platforms from an investor protection perspective. The framework imposes requirements on key areas such as custody of client assets, know-your-client, AML/CFT, prevention of market manipulation, admission of virtual assets for trading, cybersecurity and risk management. For details, please refer to the SFC's Guidelines for Virtual Asset Trading Platform Operators.

¹⁶ A "hot wallet" or "hot storage" describes the practice where the private keys to virtual assets are kept in an online environment. As "hot wallet" or "hot storage" is connected to the internet, it is more susceptible to cyber attacks. In contrast, a "cold wallet" or "cold storage" describes the practice where the private keys to virtual assets are kept in an offline environment.

¹⁷ VA trading platforms which are licensed pursuant to section 116 of the SFO and/or section 53ZRK of the AMLO. For the avoidance of doubt, SFC-licensed platforms would not include those which are deemed to be licensed pursuant to Schedule 3G of the AMLO.

¹⁸ The SFC may, under section 129 of the SFO, take into account the state of affairs of any other business of the corporation.

¹⁹ Currently, the SFC and the HKMA are only prepared to allow intermediaries licensed or registered for Type 1 (dealing in securities) regulated activity to provide VA dealing services.

²⁰ See footnote 19 above.

²¹ The marked-up text of the revisions to the Terms and conditions (as compared with the Terms and conditions published on 28 January 2022) are set out in Appendix 6a.

intermediaries to comply with the prescribed terms and conditions (**Terms and conditions**). The standards set out therein align with the requirements under the SFC's regulatory framework for VA trading platforms²² to the extent that they relate to the performance of the dealing function carried out by intermediaries.

19. The SFC and the HKMA wish to highlight that under the Terms and conditions:

- (a) intermediaries, before providing VA dealing services to retail clients²³, should:
 - (i) assess each retail client's knowledge of virtual assets and risk tolerance level;
 - (ii) set a limit for each retail client to ensure that the client's exposure to virtual assets is reasonable, with reference to the client's financial situation (including net worth) and personal circumstances;
 - (iii) ensure that the VA dealing activities are conducted through an omnibus account established and maintained with an SFC-licensed platform which is not subject to the licensing condition that it can only serve professional investors; and
 - (iv) implement adequate controls to ensure that their retail clients can only trade in those virtual assets that are made available by the SFC-licensed platform for trading by retail investors; and
- (b) intermediaries, which allow clients to deposit or withdraw virtual assets from their accounts, should only receive or withdraw such client virtual assets through the segregated account(s) established and maintained with:
 - (i) their partnered SFC-licensed platforms; or
 - (ii) authorized financial institutions²⁴ (or subsidiaries of locally incorporated authorized financial institutions) which meet the expected standards of virtual asset custody issued by the HKMA from time to time.

Intermediaries should also comply with the requirements under Chapter 12 of the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) when handling these virtual asset deposits and withdrawals.

20. Where Type 1 intermediaries provide VA dealing services as an introducing agent²⁵, they should not relay any orders on behalf of their clients to SFC-licensed platforms or hold any client assets, including fiat currencies and client virtual assets, for the

²² For example, all client orders should be pre-funded (ie, intermediaries should only execute a trade for a client if there are sufficient fiat currencies or virtual assets in the client's account to cover that trade) and intermediaries should not provide any financial accommodation for their clients to acquire virtual assets.

²³ "Retail client" means any person other than a professional investor.

²⁴ "Authorized financial institution" means an authorized institution as defined in section 2(1) of the Banking Ordinance.

²⁵ Under the introducing agent model, clients of intermediaries will be onboarded by SFC-licensed platforms and trade directly through the platform. Trading accounts with the platform will be designated in the names of the respective clients. Intermediaries should ensure that a written agreement is entered into with the SFC-licensed platform so as to set out the respective responsibilities of the intermediary and the SFC-licensed platform under the introducing arrangement.

introducing services. These requirements will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions²⁶.

21. Intermediaries which provide dealing services in tokenised securities should comply with the existing requirements governing dealing in securities and the expected standards of conduct and guidance on tokenised securities issued by the SFC from time to time.

C. Provision of asset management services in respect of virtual assets

22. With respect to virtual asset portfolio managers and virtual asset discretionary account management services²⁷, intermediaries providing services which meet the de minimis threshold²⁸, ie, a stated investment objective of a portfolio to invest in virtual assets or an intention to invest 10% or more of the gross asset value of a portfolio in virtual assets, are subject to additional requirements set out in the Proforma terms and conditions for licensed corporations or registered institutions which manage portfolios that invest in virtual assets (**RA9 Terms and conditions**) (see Appendix 7²⁹ to this circular). These requirements will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions³⁰.
23. For discretionary account management services, the SFC and the HKMA wish to further clarify that where a Type 1 intermediary is authorized by its clients to provide VA dealing services on a discretionary basis as an ancillary service³¹, the intermediary should only invest less than 10% of the gross asset value of the client's portfolio in virtual assets.
24. Intermediaries which provide asset management services in tokenised securities should comply with the existing requirements governing asset management and the expected standards of conduct and guidance on tokenised securities issued by the SFC from time to time.

D. Provision of virtual asset advisory services

25. Provision of advisory services in virtual assets (**VA-advisory services**) forms part of an intermediary's advisory business and may therefore affect its fitness and properness to conduct regulated activities³². Accordingly, intermediaries are expected to comply with all the regulatory requirements imposed by the SFC and the HKMA when providing advisory services, irrespective of the nature of the virtual assets. Furthermore, such services should only be provided to intermediaries' clients to which they provide services in Type 1 or Type 4 regulated activity³³.

²⁶ Under section 116(6) or 119(5) of the SFO (as the case may be).

²⁷ This refers to discretionary account management services provided in the form of an investment mandate or a pre-defined model investment portfolio and which receive a management or performance fee in return.

²⁸ Currently, the SFC and the HKMA are only prepared to allow intermediaries licensed or registered for Type 9 (asset management) regulated activity to provide asset management activities in respect of virtual assets which meet the de minimis threshold.

²⁹ The marked-up text of the revisions to the RA9 Terms and conditions (as compared with the RA9 Terms and conditions published on 4 October 2019) are set out in Appendix 7a.

³⁰ Under section 116(6) or 119(5) of the SFO (as the case may be).

³¹ Such activities are performed wholly incidental to an intermediary's provision of services in Type 1 regulated activity.

³² Currently, the SFC and the HKMA are only prepared to allow intermediaries licensed or registered for Type 1 (dealing in securities) or Type 4 (advising on securities) regulated activity to provide VA-advisory services.

³³ See footnote 32 above.

26. The expected conduct requirements for VA-advisory services are set out in the prescribed Terms and conditions (see Appendix 6³⁴ to this circular). In particular, intermediaries providing VA-advisory services are expected to observe the suitability obligations.
27. When recommending any virtual assets to retail clients, intermediaries should take all reasonable steps to ensure that the virtual asset recommended:
 - (a) is of high liquidity; in assessing the liquidity of a specific virtual asset for trading by retail clients, intermediaries should, at a minimum, ensure that the virtual asset is an eligible large-cap virtual asset, ie, it should have been included in a minimum of two acceptable indices issued by at least two different index providers; and
 - (b) is made available by SFC-licensed platforms for trading by retail investors.
28. Intermediaries which provide advisory services in tokenised securities should comply with the existing requirements governing advising on securities and the expected standards of conduct and guidance on tokenised securities issued by the SFC from time to time.

E. Implementation

29. Intermediaries which are already providing VA dealing services to non-qualified corporate professional investors³⁵ and individual professional investors³⁶ and wish to continue providing such services to them should revise their systems and controls to align with the updated requirements. Accordingly, there will be a three-month transition period for intermediaries serving existing clients of its VA dealing services before the full implementation of the expected requirements in this circular³⁷. Intermediaries which do not currently engage in VA-related activities or which plan to extend their VA dealing services to non-qualified corporate professional investors, individual professional investors, or retail investors should ensure that they are able to comply with the requirements in this circular before introducing such services.
30. Intermediaries are reminded to notify the SFC (and the HKMA, where applicable) in advance if: (a) they intend to engage in any activities involving tokenised securities and virtual assets, which include the provision of dealing and advisory services in VA-related products, tokenised securities and virtual assets, as well as VA asset management services³⁸, or (b) they intend to make any changes to these activities conducted (including changes in the type of clientele served).

³⁴ The marked-up text of the revisions to the Terms and conditions (as compared with the Terms and conditions published on 28 January 2022) are set out in Appendix 6a.

³⁵ "Non-qualified corporate professional investors" refers to corporate professional investors which have not passed the assessment requirements under paragraph 15.3A or have not gone through the procedures under paragraph 15.3B of the Code of Conduct.

³⁶ "Individual professional investors" refers to individuals falling under section 5 of the Securities and Futures (Professional Investor) Rules.

³⁷ For the avoidance of doubt, intermediaries may continue to provide VA-related services to their existing clients who have been assessed to possess knowledge of virtual assets based on the results of the VA knowledge tests conducted on the clients before the date of this circular.

³⁸ [Circular to intermediaries on compliance with notification requirements](#) dated 1 June 2018.

For enquiries, please contact your case officer at the SFC or Banking Conduct Department of the HKMA (as the case may be).

**Intermediaries Division
Securities and Futures Commission**

**Banking Conduct Department
Hong Kong Monetary Authority**

Enclosure

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