

## Appendix 1

### **Non-exhaustive criteria for assessing whether a client can be regarded as having knowledge of virtual assets**

1. Whether the client has undergone training or attended courses on virtual assets or VA-related products;
2. Whether the client has current or previous work experience related to virtual assets or VA-related products; or
3. Whether the client has prior trading experience in virtual assets or VA-related products.

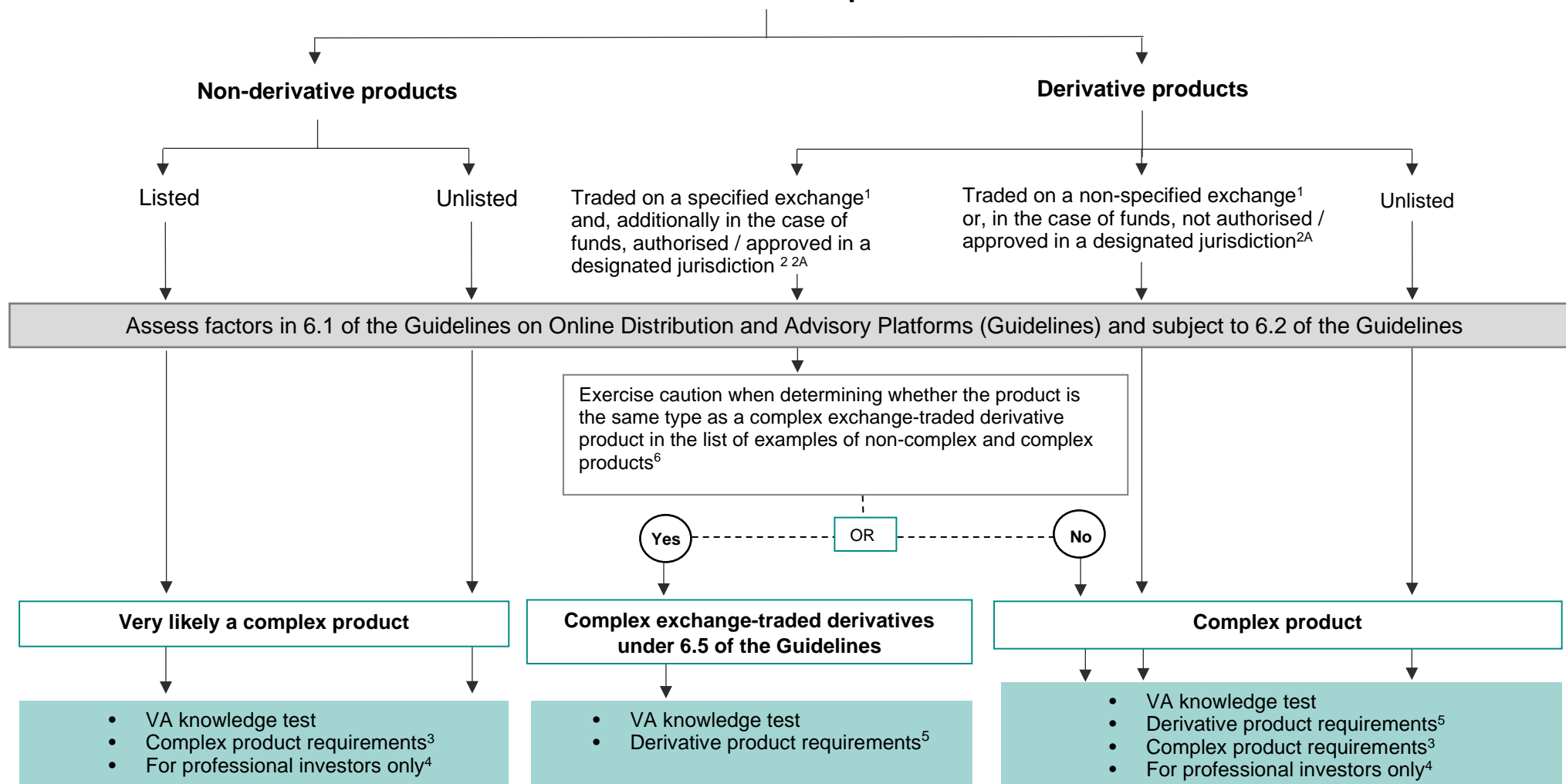
A client will be considered as having knowledge of virtual assets if the client has executed five or more transactions in any virtual asset or VA-related product within the past three years.

## Appendix 2

### List of designated jurisdictions for exchange-traded unauthorised VA derivative funds

- Australia
- France
- Germany
- Ireland
- Luxembourg
- Malaysia
- The Netherlands
- Switzerland
- Taiwan, China
- Thailand
- United Kingdom
- United States of America

## Virtual asset-related products



<sup>1</sup> "Specified exchange" refers to the list of specified exchanges in Schedule 3 to the Securities and Futures (Financial Resources) Rules.

<sup>2</sup> This refers to exchange-traded VA derivative funds traded on specified exchanges and authorised or approved in a designated jurisdiction for offering to retail investors by the respective regulator.

<sup>2A</sup> "Designated jurisdictions" are Australia; France; Germany; Ireland; Luxembourg; Malaysia; the Netherlands; Switzerland; Taiwan, China; Thailand; the UK and the US.

<sup>3</sup> This includes ensuring suitability, minimum information and warning statements.

<sup>4</sup> In addition to existing selling restrictions, only professional investors will be allowed to invest in the product if it is classified as complex.

<sup>5</sup> This refers to paragraphs 5.1A (knowledge assessment) and 5.3 (eg, ensure sufficient net worth) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

<sup>6</sup> 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>.

\* This flowchart is for illustration purposes only. Please refer to the Joint Circular on intermediaries' virtual asset-related activities issued by the SFC and the HKMA on 28 Jan 2022 regarding the specific requirements for determining whether or not a virtual asset-related product is a complex product.

### Product due diligence - unauthorised VA funds

#### Additional due diligence requirements

Intermediaries distributing VA funds which are not authorised by the SFC should conduct proper due diligence on the funds as well as their fund managers and the parties which provide trading and custodian services for the funds. This should include, but is not limited to, scrutinising the fund's constitutive documents and due diligence questionnaire and making enquiries with the fund manager to develop an in-depth understanding of the following matters where applicable:

#### (a) *About the fund manager*

##### (i) General

- Its background, relevant experience and, where applicable, the track record of its senior management, including its chief investment, operation, risk and technology officers;
- its regulatory status, for example, whether the fund manager is subject to any regulatory oversight and its robustness; and
- its compliance history, for example, whether any regulatory authorities have taken any disciplinary or regulatory actions against it.

##### (ii) Operations

- Its internal controls and systems, for example:
  - whether there is a proper segregation of key functions, such as portfolio management, risk management, valuation and custody of assets, and, if not, whether there are any adequate compensating controls to prevent abuse;
  - the persons who can transfer assets from the fund or custodians and what safeguards are in place;
  - the persons responsible for and the procedures for reconciling transactions and positions, including the frequency at which such reconciliations are performed;
  - the methodology and persons responsible for determining the pricing and assessment of the reasonableness of the determined price of each virtual asset; and
  - measures adopted by the fund manager to mitigate the risks of money laundering and terrorist financing, especially in respect of subscriptions made by fund investors in virtual assets (where applicable).

(iii) IT system

- Its IT infrastructure (for example, its security and access management).

(iv) Risk management

- Its risk management procedures, including concentration limits, counterparty risk management procedures, stop-loss arrangements and stress testing;
- its liquidity risk management policy;
- its risk management policy for other risks associated with VA fund management, for example, hacking or other technology-related risks; and
- its disaster recovery plan.

*(b) About the fund*

(i) The fund's targeted investors;

(ii) the list of instruments the fund intends to trade or invest in and any limitations on the size of its virtual asset holdings issued by way of an initial coin offering (**ICO Tokens**), pre-ICO Tokens or other illiquid or hard-to-value instruments;

(iii) the fund's valuation policy (especially for ICO Tokens, pre-ICO Tokens or other illiquid or hard-to-value instruments);

(iv) the custody arrangement of the fund assets, including the policy for allocating assets to be kept at different host locations, such as exchanges, custodians, hot storage and cold storage;

(v) the use of leverage and derivatives by the fund;

(vi) the fund's targeted risk and return per annum;

(vii) the fund's key risks (please refer to the "Information for clients" section in Appendix 5 to this circular);

(viii) the fund's auditors and audited financial statements, including whether the fund received a qualified audit opinion in the past, and whether the audited statements are up-to-date; and

(ix) the exchanges on which the fund are traded.

*(c) About the fund's counterparties*

(i) Their legal and regulatory status (ie, whether they are regulated by any authorities to, amongst other things, undertake custody business or trade in virtual assets);

(ii) their experience and track record in dealing with virtual assets;

(iii) the robustness of their IT systems (including cybersecurity risk management measures) and contingency plans; and

(iv) their financial soundness and insurance coverage, for example, to cover losses of customer assets.

### Information for clients investing in VA-related products – a non-exhaustive list of warning statements

For virtual asset futures contracts, in addition to disclosing the general risks of trading in futures contracts, warning statements should also cover the risks specific to virtual asset futures contracts, such as:

- (a) the risks of the underlying virtual assets (eg, insufficient liquidity, high price volatility and potential market manipulation) may be magnified in trading virtual asset futures contracts by the speculative nature of the underlying virtual assets and the leverage inherent in futures contracts; and
- (b) the difficulty of valuing the underlying virtual assets poses significant challenges for investors in reliably valuing virtual asset futures contracts.

For all VA-related products, in addition to disclosing the risks specific to the product, the warning statements should cover, amongst other things, and where applicable:

- (a) the continuing evolution of virtual assets and how this may be affected by global regulatory developments;
- (b) price volatility;
- (c) potential price manipulation on trading, lending or other dealing platforms;
- (d) a lack of secondary markets for certain virtual assets;
- (e) most trading, lending or other dealing platforms and custodians of virtual assets are presently unregulated;
- (f) counterparty risk when effecting transactions with issuers, private buyers and sellers or through trading, lending or other dealing platforms;
- (g) risk of the loss of virtual assets, especially if held in “hot wallets”;
- (h) hacking and technology-related risks; and
- (i) new risks which may arise from investing in new types of virtual assets or market participants’ engagement in more complex transaction strategies.



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

**Licensing or registration conditions and terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services and virtual asset advisory services**

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January 2022



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## Part I – Virtual asset dealing services

### Licensing or registration conditions for licensed corporations or registered institutions acting as introducing agents for virtual asset trading platform operators

- (a) With respect to introducing clients to virtual asset trading platform operators, the licensee or registered institution shall only engage in the introduction of persons to establish accounts with an SFC-licensed virtual asset trading platform (SFC-licensed platform) to effect dealing in or make offers to deal in virtual assets directly. The licensee or registered institution shall not communicate any offers to effect dealings in virtual assets to the SFC-licensed platform. Prior to introducing clients to establish accounts with an SFC-licensed trading platform, the licensee or registered institution should enter into a written client agreement with clients which should set out a clear description of the nature of the services to be provided to or available to the client, including the role and obligation of the licensee or registered institution and that it would not provide any dealing, financial accommodation, settlement or custody services. The term “*SFC-licensed platform*” means a virtual asset trading platform operator which is licensed by the SFC pursuant to section 116 of the Securities and Futures Ordinance. The term “*virtual asset*” is defined in Part I of the Terms and conditions for virtual asset trading platform operators (as amended from time to time).
- (b) With respect to introducing clients to virtual asset trading platform operators, the licensee or registered institution shall only introduce persons which are professional investors and are its clients in respect of its business in Type 1 regulated activity (dealing in securities). The term “*professional investor*” is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (“SFO”) together with the Securities and Futures (Professional Investor) Rules. The term “*dealing in securities*” is specified in Part 2 of Schedule 5 to the SFO. The term “*virtual asset*” is defined in Part I of the Terms and conditions for virtual asset trading platform operators (as amended from time to time).
- (c) With respect to introducing clients to virtual asset trading platform operators, the licensee or registered institution shall not hold client assets.
- The term “hold” is as defined under the Securities and Futures Ordinance; and
  - The term “client assets” means:
    - (i) “client virtual assets”, which means any virtual assets received or held by the licensee or registered institution, which are so received or held on behalf of a client or in which a client has a legal or equitable interest, and includes any rights thereto. The term “*virtual asset*” is defined in Part I of the Terms and conditions for virtual asset trading platform operators (as amended from time to time); and
    - (ii) “client money”, which means any money received or held by the licensee or registered institution, which is so received or held on behalf of a client or in which a client has a legal or equitable interest, and includes any accretions thereto whether as capital or income.

**Licensing or registration conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement**

- (a) With respect to providing virtual asset dealing services, the licensee or registered institution shall only provide such services through operating an omnibus account established and maintained with an SFC-licensed platform. The term “*SFC-licensed platform*” refers to a virtual asset trading platform operator which is licensed by the SFC pursuant to section 116 of the Securities and Futures Ordinance. The term “*virtual asset*” is defined in Part I of the Terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement (as amended from time to time).
- (b) With respect to providing virtual asset dealing services, the licensee or registered institution shall only provide such services to professional investors which are, and remain at all times, its clients in respect of its business in Type 1 regulated activity (dealing in securities). The term “professional investor” is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (“SFO”) together with the Securities and Futures (Professional Investor) Rules. The term “dealing in securities” is specified in Part 2 of Schedule 5 to the SFO. The term “virtual asset” is defined in Part I of the Terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement (as amended from time to time).
- (c) With respect to providing virtual asset dealing services, the licensee or registered institution shall comply with the attached “*Terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement*” (as amended from time to time). The term “virtual asset” is defined in Part I of the Terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement (as amended from time to time).

## Terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement

### I. Interpretation

A reference in these Terms and conditions for licensed corporations or registered institutions providing virtual asset dealing services under an omnibus account arrangement (Terms and conditions) to:

- “*client*” means a person to whom the licensed corporation or registered institution provides services in Relevant VA Dealing Activities (see below);
- “*client asset*” means client virtual assets and client money;
- “*client money*” means any money received or held by or on behalf of the licensed corporation or registered institution, which is so received or held on behalf of a client or in which a client has a legal or equitable interest, and includes any accretions thereto whether as capital or income;
- “*client virtual asset*” means any virtual asset received or held by or on behalf of the licensed corporation or registered institution, which is so received or held on behalf of a client or in which a client has a legal or equitable interest, and includes any rights thereto;
- “*group of companies*” is defined in section 1 of Part 1 of Schedule 1 to the SFO;
- “*licensed corporation*” means a corporation which is licensed by the SFC and upon which these Terms and conditions are imposed by way of a licensing condition pursuant to section 116 of the SFO;
- “*registered institution*” means an authorised financial institution which is registered by the SFC and upon which these Terms and conditions are imposed by way of a registration condition pursuant to section 119 of the SFO;
- “*Relevant VA Dealing Activities*” means any virtual asset dealing activities carried out by the licensed corporation or registered institution on behalf of its clients through operating an omnibus account established and maintained with an SFC-licensed platform;
- “*SFC-licensed platform*” means a virtual asset trading platform operator which is licensed by the SFC pursuant to section 116 of the SFO;
- “*SFO*” means the Securities and Futures Ordinance (Cap. 571); and
- “*virtual asset*” means digital representations of value which may be in the form of digital tokens (such as utility tokens, stablecoins or security or asset-backed tokens) any other virtual commodities, crypto assets or other assets of essentially the same nature, irrespective of whether they amount to “securities” or “futures contracts” as defined under the SFO, but excludes digital representations of fiat currencies issued by central banks.

## **II. Codes and guidelines**

- 2.1 In conducting Relevant VA Dealing Activities, to the extent not already covered elsewhere in these Terms and conditions, a licensed corporation or registered institution is expected to observe the requirements of the Codes and guidelines (as supplemented by circulars, frequently asked questions (FAQs) and other related guidance issued by the SFC from time to time) listed in Schedule 1 hereto as if:
- (i) any reference to a financial product (for example, securities) or investment product included virtual assets;
  - (ii) any reference to a client included a person to whom a licensed corporation or registered institution provides services in Relevant VA Dealing Activities;
  - (iii) any reference to client assets included client virtual assets; and
  - (iv) any reference to regulated activities included Relevant VA Dealing Activities.

## **III. Financial soundness**

- 3.1 In addition to the requirements under the Securities and Futures (Financial Resources) Rules (Cap. 571N), a licensed corporation should maintain in Hong Kong at all times excess liquid capital equivalent to at least 12 months of its actual operating expenses<sup>1</sup> calculated on a rolling basis.

## **IV. Operations**

- 4.1 A licensed corporation or registered institution should only establish and maintain an omnibus account (designated as a trust or client account) with an SFC-licensed platform.
- 4.2 A licensed corporation or registered institution should only execute transactions for a client on the platform of the SFC-licensed platform.
- 4.3 A licensed corporation or registered institution should ensure that clients can only deposit fiat currencies into and withdraw the same from the licensed corporation or registered institution's segregated account; and that no withdrawal or transfer of virtual assets by clients is permitted at any time, even after cessation of the account maintained with the licensed corporation or registered institution.
- 4.4 A licensed corporation or registered institution should execute a trade for a client through the omnibus account only if there are sufficient fiat currencies or virtual assets in the client's account to cover that trade.
- 4.5 A licensed corporation or registered institution should not provide any financial accommodation<sup>2</sup> for its clients to acquire virtual assets and should ensure, to the extent possible, that no corporation within the same group of companies as the licensed corporation or registered institution does so.

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<sup>1</sup> This refers to the total amount of overheads reported under Form 7 of the financial returns, excluding the amounts representing depreciation and provision for bad and doubtful debts.

<sup>2</sup> This term is defined in section 1 of Part 1 of Schedule 1 to the SFO.

- 4.6 Where a client is entitled to voting rights arising out of its ownership of a virtual asset, upon notification by the SFC-licensed platform, the licensed corporation or registered institution should inform the client of such rights and facilitate the exercise of these rights.
- 4.7 Where a licensed corporation or registered institution is authorised by a client in writing to operate the client's account for trading securities on a discretionary basis as an ancillary service and the client has further authorised the licensed corporation or registered institution to operate the client's account to trade in virtual assets on a discretionary basis, the licensed corporation or registered institution should only invest less than 10% of the gross asset value of the client's account in virtual assets.
- 4.8 In relation to Relevant VA Dealing Activities, a licensed corporation or registered institution should clearly set out how different fees may apply based on the type of order, transaction size and type of virtual assets transacted (if applicable).

## **V. Prevention of market manipulative and abusive activities**

- 5.1 A licensed corporation or registered institution should establish and implement written policies and controls for identifying any red flags which may arouse reasonable suspicions of market manipulative or abusive trading activities, such as anomalies in trading patterns and the potential use of abusive trading strategies.
- 5.2 Upon becoming aware of any actual or potential market manipulative or abusive activities, a licensed corporation or registered institution should notify the SFC as soon as practicable, take immediate steps to prevent these activities from continuing and provide the SFC with additional assistance in connection with such activities as it might request.

## **VI. Dealing with clients**

- 6.1 Except for institutional and qualified corporate professional investors<sup>3</sup>, a licensed corporation or registered institution should assess a client's knowledge of virtual assets (including knowledge of the risks associated with virtual assets) before providing any services to the client<sup>4</sup>.
- 6.2 Where the client does not possess such knowledge, a licensed corporation or registered institution may only provide virtual asset dealing services to the client if the licensed corporation or registered institution has provided training to the client and enquired into the personal circumstances of the client.
- 6.3 A licensed corporation or registered institution should set a trading limit, position limit or both, with reference to the client's financial situation with a view to ensuring that the client has sufficient net worth to be able to assume the risks and bear the potential

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<sup>3</sup> Same definitions as in paragraph 15 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct). "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.

<sup>4</sup> The following are some non-exhaustive criteria for assessing whether a client can be regarded as having knowledge of virtual assets: (i) whether the client has undergone training or attended courses on virtual assets; (ii) whether the client has current or previous work experience related to virtual assets; or (iii) whether the client has prior trading experience in virtual assets. A client will be considered as having knowledge of virtual assets if the client has executed five or more transactions in any virtual asset within the past three years.

losses of trading in virtual assets.

- 6.4 A licensed corporation or registered institution should ensure that it complies with the applicable laws and regulations in the jurisdictions where its clients are located. In particular, it should establish and implement measures to ensure that it will not provide or market its services to any persons in jurisdictions which have banned trading in virtual assets.

### **Client identity: origination of instructions and beneficiaries**

- 6.5 A licensed corporation or registered institution should be satisfied on reasonable grounds about:

- (a) the identity, address and contact details of:
  - (i) the person or entity (legal or otherwise) ultimately responsible for originating the instruction in relation to a transaction;
  - (ii) the person or entity (legal or otherwise) that stands to gain the commercial or economic benefit of the transaction and/or bear its commercial or economic risk; and
- (b) the instruction given by the person or entity referred to in paragraph 6.5(a)(i) above.

- 6.6 A licensed corporation or registered institution should not do anything to effect a transaction unless it has complied with, and kept records in Hong Kong of the details referred to in, paragraph 6.5 above.

### **Client agreement**

- 6.7 In conducting any Relevant VA Dealing Activities, a licensed corporation or registered institution should enter into a written client agreement with each client<sup>5</sup> in the same manner as set out in paragraph 6 of the Code of Conduct and include a provision stating that:

*“In conducting any Relevant VA Dealing Activities, if we [the licensed corporation or registered institution] solicit the sale of or recommend any product including any virtual assets to you [the client], the product must be reasonably suitable for you, having regard to your financial situation, investment experience and investment objectives. No other provision of this agreement or any other document we may ask you to sign and no statement we may ask you to make derogates from this clause.”*

### **Disclosure**

- 6.8 A licensed corporation or registered institution should fully disclose the nature and risks that clients may be exposed to when dealing in virtual assets<sup>6</sup>. All information provided to clients should be presented in a clear and fair manner which is not misleading. The disclosed risks should, amongst other things, include:

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<sup>5</sup> Except for institutional and qualified corporate professional investors (see footnote 3 for definitions).

<sup>6</sup> A one-off disclosure made by the licensed corporation or registered institution prior to entering into a virtual asset transaction is acceptable.



- (a) virtual assets are highly risky and investors should exercise caution in relation to these products;
- (b) a virtual asset may or may not be considered as “*property*” under the law, and such legal uncertainty may affect the nature and enforceability of a client’s interest in such virtual asset;
- (c) the offering documents or product information issued by the issuer have not been subject to scrutiny by any regulatory body;
- (d) the protection offered by the Investor Compensation Fund does not apply to transactions involving virtual assets (irrespective of the nature of the tokens);
- (e) a virtual asset is not legal tender, ie, it is not backed by the government and authorities;
- (f) transactions in virtual assets may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;
- (g) the value of a virtual asset may be derived from the continued willingness of market participants to exchange fiat currencies for a virtual asset, which means that the value of a particular virtual asset may be completely and permanently lost should the market for that virtual asset disappear. There is no assurance that a person who accepts a virtual asset as payment today will continue to do so in the future;
- (h) the volatility and unpredictability of the price of a virtual asset relative to fiat currencies may result in significant losses over a short period of time;
- (i) legislative and regulatory changes may adversely affect the use, storage, transfer, exchange and value of virtual assets;
- (j) some virtual asset transactions may be deemed to be executed only when they are recorded and confirmed by an SFC-licensed platform, which may not necessarily be the time at which the client initiates the transaction;
- (k) the nature of virtual assets exposes them to an increased risk of fraud or cyber-attack; and
- (l) the nature of virtual assets means that technological difficulties experienced by an SFC-licensed platform may prevent clients from dealing in their virtual assets.

6.9 A licensed corporation or registered institution should also disclose the following information in relation to its Relevant VA Dealing Activities:

- (a) its services in relation to Relevant VA Dealing Activities are only available to professional investors;
- (b) transactions for a client will only be executed on the platform of an SFC-licensed platform;

- (c) clients are only permitted to deposit fiat currencies into and withdraw the same from the licensed corporation or registered institution's segregated account; and no withdrawal or transfer of virtual assets by clients is permitted at any time, even after cessation of the account maintained with the licensed corporation or registered institution;
- (d) the licensed corporation or registered institution will 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
- (e) trading hours and other trading and operational matters.

### **Provision of contract notes, statements of account and receipts to clients**

6.10 A licensed corporation or registered institution should provide to each client timely and meaningful information about transactions conducted with or on the client's behalf, consisting of holdings and movements of the client virtual assets and fiat currencies, and a monthly statement of all activities and holdings in the client's account. Where contract notes, statements of account and receipts are provided by a licensed corporation or registered institution to a client, the licensed corporation or registered institution should ensure that the information included in the contract notes, statements of account and receipts should be fit for purpose, comprehensive and accurate in respect of the particular type of virtual asset involved.

#### Contract notes

- (a) Where a licensed corporation or registered institution enters into a relevant contract with or on behalf of a client, it must prepare and provide a contract note to the client no later than the end of the second business day after entering into the relevant contract. The term "*relevant contract*" means a contract, entered into in Hong Kong by a licensed corporation or registered institution with or on behalf of a client in the conduct of its businesses which constitute any Relevant VA Dealing Activities, that is a contract for dealing in virtual assets.
- (b) Where a licensed corporation or registered institution enters into more than one relevant contract with or on behalf of a client on the same day, unless the client has given contrary instructions to the licensed corporation or registered institution, the licensed corporation or registered institution may prepare a single contract note which:
  - (i) records all of those relevant contracts; and
  - (ii) in respect of each of those relevant contracts, includes all of the information which would have been required to be included in the contract note.
- (c) If such a single contract note is prepared, the licensed corporation or registered institution should provide it to the client no later than the end of the second business day after entering into those relevant contracts.
- (d) A contract note should include, to the extent applicable, the following information:

- (i) the name under which the licensed corporation or registered institution carries on business;
- (ii) the name and account number of the client;
- (iii) full particulars of the relevant contract including:
  - (1) the quantity, name, description and such other particulars of the virtual asset contract involved, as are sufficient to enable it to be identified;
  - (2) the nature of the dealing;
  - (3) the date (i) on which the relevant contract is entered into; (ii) of settlement or performance of the relevant contract; and (iii) on which the contract note is prepared;
  - (4) the name of the SFC-licensed platform on which the relevant contract has been executed;
  - (5) the rate or amount of commission payable in connection with the relevant contract;
  - (6) the price per unit of the virtual asset traded;
  - (7) the amount of consideration payable under the relevant contract; and
  - (8) the rate or amount of fees and charges payable in connection with the relevant contract.
- (e) Where a licensed corporation or registered institution has entered into a relevant contract with or on behalf of a client, it may, at the request of the client, include in the contract note in respect of the relevant contract, the average price per unit for the purchase or sale (as the case may be) of the same description of virtual assets, rather than the price per unit as referred to in subparagraph (d)(iii)(6) above;
- (f) Where a licensed corporation or registered institution has included in a contract note an average price as referred to in subparagraph (e) above and the client requests an analysis of such average price within two years after the date on which the relevant contract is entered into, the licensed corporation or registered institution shall provide to the client, no later than the end of the fifth business day after receiving the request, the price per unit as referred to in subparagraph (d)(iii)(6) above;
- (g) A licensed corporation or registered institution may, instead of preparing and providing to a client one or more than one contract note under subparagraph (a) above in respect of one or more than one relevant contract entered into on the same day, consolidate the contract note with any statement of account it is required to prepare and provide to the client under sections 8 or 9 (or any consolidation of such statements of account under section 10) of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules

(Cap. 571Q) in respect of the same day.

Monthly statements of account

- (h) Where any of the following circumstances apply, a licensed corporation or registered institution should prepare and provide a monthly statement of account to its client no later than the end of the seventh business day after the end of the monthly accounting period:
  - (i) during a monthly accounting period, the licensed corporation or registered institution is required to prepare and provide to the client a contract note or receipt;
  - (ii) at any time during a monthly accounting period, the client has an account balance which is not nil; or
  - (iii) at any time during a monthly accounting period, any client virtual assets are held for the account of the client.
- (i) Where a licensed corporation or registered institution is required to prepare a monthly statement of account, it should include the following information:
  - (i) the name under which the licensed corporation or registered institution carries on business;
  - (ii) the name, address and account number of the client to whom the licensed corporation or registered institution is required to provide the statement of account; and
  - (iii) the date on which the statement of account is prepared.
- (j) A licensed corporation or registered institution should also include, to the extent applicable, the following information in the monthly statement of account:
  - (i) the address of the licensed corporation or registered institution's principal place of business in Hong Kong;
  - (ii) the outstanding balance of that account as at the beginning and the end of that monthly accounting period and details of all movements in the balance of that account during that period;
  - (iii) details of all relevant contracts entered into by the licensed corporation or registered institution with or on behalf of the client during that monthly accounting period, indicating those initiated by the licensed corporation or registered institution;
  - (iv) details of all movements during that monthly accounting period of any client virtual assets held for that account;
  - (v) the quantity and, in so far as readily ascertainable, the market price and market value of each client virtual asset held for that account as at the end of that monthly accounting period; and
  - (vi) details of all income credited to and charges levied against that account

during that monthly accounting period.

Duty to provide statements of account upon request

- (k) Where a licensed corporation or registered institution receives a request from a client for a statement of account as of the date of the request, it should:
  - (i) prepare a statement of account in respect of the client which includes the information required for all statements of account (see subparagraph (i) above) and, to the extent applicable, the following information relating to the account of the client as of the date of the request:
    - (1) the outstanding balance of that account; and
    - (2) the quantity and, in so far as readily ascertainable, the market price and market value of each client virtual asset, held for that account.
  - (ii) provide the statement of account to the client as soon as practicable after the date of the request.

Receipts

- (l) On each occasion that a licensed corporation receives any client money from or on behalf of a client, the licensed corporation should prepare and provide a receipt to the client no later than the end of the second business day after receiving the client money.
- (m) The requirement under subparagraph (l) is not applicable under the following circumstances:
  - (i) Where the client money is deposited directly into the bank account of a licensed corporation by the client or on behalf of the client by any person other than the licensed corporation; or
  - (ii) where a contract note or other trade document provided to the client expressly states that it also serves as a receipt and includes the information specified in subparagraph (n) below.
- (n) A licensed corporation should include the following information in the receipt:
  - (i) the name under which the licensed corporation carries on business;
  - (ii) the date on which the receipt is prepared;
  - (iii) the name and account number of the client; and
  - (iv) in respect of the client money received:
    - (1) the amount of client money received;

- (2) the account into which the client money has been deposited; and
- (3) the date on which the client money was received.

Miscellaneous

- (o) Where a licensed corporation or registered institution receives a request from a client for a copy of any contract note, statement of account or receipt that the licensed corporation or registered institution was required to provide to the client, the licensed corporation or registered institution should, as soon as practicable after receiving the request, provide the copy to the client. A licensed corporation or registered institution may impose a reasonable charge for a copy of the document provided by it under this paragraph.
- (p) If, on an application made by a client, the SFC so directs, a licensed corporation or registered institution should make available for inspection by the client during the ordinary hours of business of the licensed corporation or registered institution a copy of any contract notes, statements of account or receipts, except for those dated after the expiration of the period for which the licensed corporation or registered institution is required to retain them.
- (q) Where a licensed corporation or registered institution is required to prepare any contract notes, statements of account or receipts, the licensed corporation or registered institution should prepare them in the Chinese or English language as preferred by the client to whom they are intended to be provided.
- (r) Any contract notes, statements of account or receipts (or any copies of any such documents) required to be provided to a client should for all purposes be regarded as duly provided to the client if they are served on:
  - (i) the client; or
  - (ii) any other person (except an officer or employee of the licensed corporation or registered institution which is required to provide the documents to the client) designated by the client for the purposes of this paragraph by notice in writing to the licensed corporation or registered institution which is required to provide the documents to the client.
- (s) A licensed corporation or registered institution should ensure that it has obtained consent from its clients and put in place adequate operational safeguards if any contract notes, statements of account or receipts required to be provided to a client are provided by accessing its website<sup>7</sup>.

6.11 Where a client of a licensed corporation or registered institution is a professional investor within the meaning of:

- (a) any of paragraphs (a) to (i) of the definition of professional investor in section 1 of Part 1 of Schedule 1 to the SFO, and the licensed corporation or registered institution has notified the client in writing that unless the client objects, it will not provide to the client any contract notes, statements of account or receipts

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<sup>7</sup> Due regard should be paid to the SFC's [circular](#) dated 29 September 2020 on Provision of Trade Documents to Clients by Access through Intermediaries' Websites.

(as the case may be) in accordance with paragraph 6.10 above and it has not received any objection from the client; or

- (b) paragraph (j) of the definition of professional investor in section 1 of Part 1 of Schedule 1 to the SFO and has agreed in writing with the licensed corporation or registered institution not to receive from it any contract notes, statements of account or receipts (as the case may be) in accordance with paragraph 6.10 above;

then paragraph 6.10 (except for subparagraphs (k), and (o) to (s)) does not apply to the licensed corporation or registered institution in relation to the client.

## **VII. Custody of client assets**

### **Client virtual assets**

7.1 A licensed corporation or registered institution should hold client virtual assets on trust for its clients in a segregated account established and maintained with an SFC-licensed platform and ensure the following:

- (a) Subject to paragraph 4.3, the licensed corporation or registered institution should not deposit, transfer, lend, pledge, repledge or otherwise deal with or create any encumbrance over client virtual assets except for the settlement of transactions, and fees and charges owed by the client to the licensed corporation or registered institution in respect of the Relevant VA Dealing Activities carried out by the licensed corporation or registered institution on behalf of the client or in accordance with the client's written instructions (including standing authorities or one-off written directions); and
- (b) Access to the control of the movement of client virtual assets should be tightly restricted to authorised personnel of the licensed corporation or registered institution to guard against losses arising from theft, fraud or other dishonest acts, professional misconduct or omissions.

### **Client money**

7.2 A licensed corporation should properly handle and safeguard client money. In particular, a licensed corporation should, amongst others, comply with the following when conducting Relevant VA Dealing Activities:

- (a) Establishing one or more segregated bank accounts for holding client money received by it. Such segregated bank accounts should be established and maintained with an institution as specified in subparagraph (b) or (c) below, into which money received from or on behalf of a client should be paid within one business day of receipt.
- (b) Client money received by the licensed corporation in Hong Kong should be paid into a segregated account maintained with an authorised financial institution in Hong Kong.
- (c) Client money received by the licensed corporation in any other jurisdiction should be paid into a segregated account maintained with an authorised

financial institution in Hong Kong or another bank in another jurisdiction as agreed by the SFC from time to time.

- (d) No client money should be paid or permitted to be paid to:
  - (i) any officers or employees of the licensed corporation; or
  - (ii) any officers or employees of any corporations with which the licensed corporation is in a controlling entity relationship,

unless that officer or employee is the client of the licensed corporation from whom or on whose behalf such client money has been received or is being held.

- (e) No client money should be paid out of a segregated bank account other than for: (i) paying the client on whose behalf it is being held; (ii) meeting the client's settlement obligations in respect of Relevant VA Dealing Activities carried out by the licensed corporation on behalf of the client, being the client on whose behalf it is being held; (iii) paying money that the client, being the client on whose behalf it is being held, owes to the licensed corporation in respect of the conduct of Relevant VA Dealing Activities; or (iv) paying in accordance with the client's written instructions, including standing authorities or one-off directions.

7.3 Subject to paragraph 7.4 below, any amount of interest derived from the holding of client money in a segregated bank account should be dealt with in accordance with paragraph 7.2 above.

7.4 A licensed corporation should ensure that any amount of interest retained in a segregated bank account which the licensed corporation is entitled to retain under an agreement in writing with a client of the licensed corporation, being the client on whose behalf the client money is being held, should be paid out of the account within one business day after:

- (a) the interest is credited to the account; or
- (b) the licensed corporation becomes aware that the interest has been credited to the account,

whichever is later.

7.5 A licensed corporation should use its best endeavours to match any unidentified receipts in its bank accounts (including segregated accounts) with all relevant information in order to establish the nature of any payment and the identity of the person who has made it.

- (a) Upon ascertaining that a receipt represents client money, the amount should be transferred into a segregated account within one business day, even if it has not been able to identify which specific client has made the payment.
- (b) Where the receipt is not client money, within one business day of becoming so aware, that amount of money should be paid out of the segregated account.

## **Disclosure to clients**



- 7.6 A licensed corporation or registered institution should fully disclose to its clients the custodial arrangements in relation to client assets held on their behalf, including the rights and obligations of each party and how client assets are stored. This should include:
- (a) for a licensed corporation or registered institution, client virtual assets may not enjoy the same protection as that conferred on “*client securities*” under the SFO and the Securities and Futures (Client Securities) Rules (Cap. 571H);
  - (b) for a licensed corporation, client money may not enjoy the same protection as that conferred on “*client money*” under the SFO and the Securities and Futures (Client Money) Rules (Cap. 571I);
  - (c) how the licensed corporation or registered institution will compensate its clients in the event of hacking or any other losses of client virtual assets caused by the default of an SFC-licensed platform or its associated entity; and
  - (d) the treatment of client virtual assets kept at the SFC-licensed platform and their respective rights and entitlements when events such as, but not limited to, hard forks and airdrops occur. Upon becoming aware of such events, a licensed corporation or registered institution should notify its clients as soon as practicable.

## VIII Record keeping

- 8.1 A licensed corporation or registered institution should establish policies and procedures to ensure the integrity, security, availability, reliability and completeness of all information, both in physical and electronically stored form, in relation to Relevant VA Dealing Activities.
- 8.2 A licensed corporation or registered institution should, in relation to its Relevant VA Dealing Activities:
- (a) keep, where applicable, such accounting, trading and other records as are sufficient to:
    - (i) explain and reflect the financial position and operation of such businesses;
    - (ii) enable profit and loss accounts and balance sheets which give a true and fair view of its financial affairs to be prepared from time to time;
    - (iii) account for all client virtual assets and client money it receives or holds in relation to its Relevant VA Dealing Services;
    - (iv) enable all movements of such client virtual assets and client money it receives or holds in relation to its Relevant VA Dealing Services to be traced through its accounting systems;
    - (v) reconcile, on a daily basis, any differences in its balances or positions with other persons, including banks and SFC-licensed platform(s), and show how such differences were resolved;

- (vi) demonstrate compliance with, and that it has systems of control in place to ensure compliance with, Part VII (Custody of Client Assets) herein; and
  - (vii) enable, in relation to a licensed corporation, it to readily establish whether it has complied with the Securities and Futures (Financial Resources) Rules and other financial resources requirements in Part III (Financial Soundness);
- (b) keep those records in such a manner as will enable an audit to be conveniently and properly carried out; and
  - (c) make entries in those records in accordance with generally accepted accounting principles.

The records required to be kept are specified in paragraph 8.6 below.

### **Form and premises in which records are to be kept**

- 8.3 A licensed corporation or registered institution should keep all the required records:
- (i) in writing in the Chinese or English language; or
  - (ii) in such a manner as to enable them to be readily accessible and readily convertible into written form in the Chinese or English language.
- 8.4 A licensed corporation or registered institution should adopt all reasonably necessary procedures to guard against the falsification of any of the required records and facilitate discovery of any such falsification.
- 8.5 A licensed corporation should keep all the required records at the premises used by it which have been approved under section 130(1) of the SFO. A registered institution should keep all required records in accordance with the applicable requirements.

### **Records to be kept**

- 8.6 A licensed corporation or registered institution should retain the following records:
- (a) Records showing particulars of:
    - (i) all money received by it, whether or not such money belongs to it, or is paid into accounts maintained by it or on its behalf, and disbursed by it;
    - (ii) all income received by it, whether the income relates to charges made by it for the provision of services, commissions, brokerage, remuneration, interest or otherwise;
    - (iii) all expenses, commissions and interest incurred or paid by it;
    - (iv) all orders or instructions concerning virtual assets that it receives or initiates, including particulars:

- (1) of the date and time that any order or instruction was received, executed, modified (including particulars of any subsequent modifications) or cancelled;
  - (2) of each transaction entered into by it or on its behalf to implement any such order or instruction;
  - (3) identifying with whom or for whose account it has entered into such transaction; and
  - (4) that enable such transaction to be traced through its accounting, trading and settlement systems;
- (v) all disposals of client virtual assets initiated by it, showing in the case of each disposal:
- (1) the name of the client;
  - (2) the date on which the disposal was effected;
  - (3) the name of the SFC-licensed platform which effected the disposal;
  - (4) the charges incurred for effecting the disposal; and
  - (5) the proceeds of the disposal and how such proceeds were dealt with;
- (vi) its assets and liabilities, including financial commitments and contingent liabilities;
- (vii) all virtual assets belonging to it, identifying:
- (1) with whom such virtual assets are deposited; and
  - (2) the date on which they were so deposited;
- (viii) all virtual assets held by it but not belonging to it, identifying:
- (1) for whom such virtual assets are held and with whom they are deposited, ie, the relevant SFC-licensed platform; and
  - (2) the date on which they were so deposited;
- (ix) all bank accounts held by it, including segregated accounts maintained;
- (x) all other accounts held by it; and
- (xi) all off-balance sheet transactions or positions.
- (b) Records of all contracts (including written agreements with clients) entered into by it.

- (c) Records evidencing:
  - (i) any authority given to it by a client and any renewal of such authority; and
  - (ii) any written directions given to it by a client.
- (d) In respect of a client who is a professional investor any notice given by it to the client or agreement by the client with it referred to in paragraph 6.11 above.
- (e) A copy of each monthly statement of account prepared in accordance with Part VI (Dealing with Clients) above;
- (f) Records of all client complaints relating to client virtual assets and client money it receives or holds in relation to the Relevant VA Dealing Services and details of follow-up action, including the substance and resolution of each complaint;
- (g) Records regarding client identity for confirmation of the origination of the instructions and the beneficiaries and details of the instructions as prescribed in paragraph 6.5 above; and
- (h) To the extent not already covered elsewhere in this paragraph, records evidencing the licensed corporation or registered institution's compliance with these Terms and conditions.

8.7 A licensed corporation or registered institution should retain the records required under paragraph 8.6 (except for records required to be kept under paragraph 8.6(a)(iv)) for a period of not less than seven years.

8.8 A licensed corporation or registered institution should retain the following for a period of not less than two years:

- (a) a copy of each contract note and receipt prepared in accordance with Part VI (Dealing with Clients) above;
- (b) a copy of each statement of account prepared upon a client's request in accordance with paragraph 6.10(k) above; and
- (c) records required to be kept under paragraph 8.6(a)(iv) above.

## **IX. Auditors**

9.1 A licensed corporation should prepare and submit an auditor's report in respect of a financial year which contains, in addition to other information required under the laws, a statement by the auditor as to whether, in the auditor's opinion:

- (a) during the financial year in question, the licensed corporation had systems of control in place which were adequate to ensure compliance with Part VII (Custody of Client Assets) above;
- (b) during the financial year in question, the licensed corporation complied with Part VII (Custody of Client Assets) and Part VIII (Record Keeping) above; and

- (c) whether the licensed corporation has contravened the financial soundness requirement under Part III (Financial Soundness) above.

## **X. Anti-money laundering / counter-financing of terrorism**

- 10.1 A licensed corporation or registered institution should ensure that its anti-money laundering and counter-financing of terrorism (AML/CFT) systems can adequately manage the money laundering and terrorist financing (ML/TF) risks relating to its Relevant VA Dealing Activities and take specific measures which include, but are not limited to the following:
- (a) to identify and assess the ML/TF risks which may arise in relation to virtual asset dealing services, business practices and technologies prior to their launch;
  - (b) to establish and maintain adequate and effective systems and processes, including suspicious transaction indicators relating to its Relevant VA Dealing Activities to monitor a client's transactions and conduct appropriate enquiries and evaluations of potentially suspicious transactions. In particular, to regularly review the factors which determine the extent and depth of monitoring (including suspicious transaction indicators and any monetary or other thresholds used for monitoring) for continued relevance to its current monitoring programme; and
  - (c) to regularly review the effectiveness of its AML/CFT systems and introduce enhancement measures where appropriate, taking into account any relevant guidance issued by the SFC or the Hong Kong Monetary Authority (HKMA), where applicable, and updates from the Financial Action Task Force Recommendations applicable to virtual asset-related activities (for instance, the Interpretive Note to Recommendation 15 and Updated Guidance for a Risk-based Approach to Virtual Assets and Virtual Asset Service Providers).

## **XI. Conflicts of interest**

- 11.1 A licensed corporation or registered institution should not engage in virtual asset market making activities on an SFC-licensed platform through which it provides to its clients services in Relevant VA Dealing Activities.

## **XII. Ongoing reporting obligations**

- 12.1 A licensed corporation or registered institution should report to the SFC (and the HKMA in the case of a registered institution) as soon as practicable upon the happening of any actual or suspected material non-compliance with these Terms and conditions.
- 12.2 A licensed corporation or registered institution should provide any information in relation to its Relevant VA Dealing Activities as may be requested by the SFC (and the HKMA in the case of a registered institution) from time to time. The SFC (and the HKMA in the case of a registered institution) may request information on a periodic or ad hoc basis.

## **Schedule 1 – Existing regulatory requirements applicable to a licensed corporation or registered institution providing virtual asset dealing services under an omnibus account arrangement**

### Relevant codes

- (1) The Code of Conduct, except for the following paragraphs which are not relevant or have been modified and incorporated in these Terms and conditions:
- Paragraph 5.1A (Know your client: investor characterization)
  - Paragraph 5.3 (Know your client: derivative products)
  - Paragraph 5.4 (Client identity: origination of instructions and beneficiaries)
  - Paragraph 16 (Analysts)
  - Paragraph 17 (Sponsors)
  - Paragraph 19 (Alternative liquidity pools)
  - Paragraph 20 (Dealing with group affiliates and other connected persons)
  - Schedule 3 (Additional requirements for licensed or registered persons dealing in securities listed or traded on The Stock Exchange of Hong Kong Limited)
  - Schedule 4 (Additional requirements for licensed or registered persons dealing in futures contracts and/or options contracts traded on Hong Kong Futures Exchange Limited)
  - Schedule 5 (Additional requirements for licensed persons providing margin lending)
  - Schedule 6 (Additional requirements for licensed persons engaging in leveraged foreign exchange trading)
  - Schedule 8 (Additional requirements for licensed or registered persons operating alternative liquidity pools)
  - Schedule 10 (Risk mitigation requirements and margin requirements in relation to non-centrally cleared OTC derivative transactions)

### Relevant guidelines

- (2) Guidelines on Online Distribution and Advisory Platforms
- (3) Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) and Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions) (as applicable)
- (4) Guidelines for Reducing and Mitigating Hacking Risks Associated with Internet Trading
- (5) Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission
- (6) Fit and Proper Guidelines
- (7) Guidelines on Competence
- (8) Guidelines on Continuous Professional Training

## Part II – Virtual asset advisory services

### **Licensing or registration conditions for licensed corporations or registered institutions providing virtual asset advisory services**

- (a) With respect to providing virtual asset advisory services, the licensee or registered institution shall only provide such services to professional investors which are, and remain at all times, clients of the licensed corporation or registered institution in respect of its business in Type 4 regulated activity (advising on securities). The term “professional investor” is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (“SFO”) together with the Securities and Futures (Professional Investor) Rules. The term “advising on securities” is specified in Part 2 of Schedule 5 to the SFO. The term “virtual asset” is defined in Part I of the Terms and conditions for licensed corporations or registered institutions providing virtual asset advisory services (as amended from time to time).
- (b) With respect to providing virtual asset advisory services, the licensee or registered institution shall comply with the attached “*Terms and conditions for licensed corporations or registered institutions providing virtual asset advisory services*” (as amended from time to time). The term “*virtual asset*” is defined in Part I of the Terms and conditions for licensed corporations or registered institutions providing virtual asset advisory services (as amended from time to time).



## Terms and conditions for licensed corporations or registered Institutions providing virtual asset advisory services

### I. Interpretation

A reference in these Terms and conditions for licensed corporations or registered Institutions providing virtual asset advisory services (Terms and conditions) to:

- “*client*” means a person to whom a licensed corporation or registered institution provides virtual asset advisory services;
- “*licensed corporation*” means a corporation which is granted a licence under section 116 of the SFO;
- “*registered institution*” means an authorised financial institution which is registered under section 119 of the SFO;
- “*Relevant VA Advisory Activities*” means any virtual asset advisory services provided by the licensed corporation or registered institution to its clients;
- “*SFO*” means the Securities and Futures Ordinance (Cap. 571);
- “*Code of Conduct*” means the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission; and
- “*virtual asset*” means digital representations of value which may be in the form of digital tokens (such as utility tokens, stablecoins or security or asset-backed tokens) any other virtual commodities, crypto assets or other assets of essentially the same nature, irrespective of whether they amount to “securities” or “futures contracts” as defined under the SFO, but excludes digital representations of fiat currencies issued by central banks.

## II. Codes and guidelines

- 2.1 In conducting its Relevant VA Advisory Activities, to the extent not already covered elsewhere in these Terms and conditions, a licensed corporation or registered institution is expected to observe the requirements of the codes and guidelines (as supplemented by the circulars and FAQs issued from time to time and, in particular, the suitability requirement under paragraph 5.2 of the Code of Conduct) published by the SFC as if:
- (i) any reference to a financial product (for example, securities) or investment product included virtual assets;
  - (ii) any reference to a client included a person to whom the licensed corporation or registered institution provides services in Relevant VA Advisory Activities; and
  - (iii) any reference to regulated activities included Relevant VA Advisory Activities.

## III. Virtual asset-knowledge test and suitability

- 3.1 Except for institutional and qualified corporate professional investors<sup>8</sup>, a licensed corporation or registered institution should assess a client's knowledge of virtual assets (including knowledge of the risks associated with virtual assets) before providing any services to the client<sup>9</sup>.
- 3.2 Where a client does not possess such knowledge, a licensed corporation or registered institution may only provide virtual asset advisory services to the client if the licensed corporation or registered institution has provided training to the client.
- 3.3 A licensed corporation or registered institution should also ensure that the client has sufficient net worth to be able to assume the risks and bear the potential losses of trading in virtual assets.
- 3.4 In conducting any Relevant VA Advisory Activities, a licensed corporation or registered institution should enter into a written client agreement with each client<sup>10</sup> in the same manner as set out in paragraph 6 of the Code of Conduct and include a provision stating that:

*“..... if we [the licensed corporation or registered institution] solicit the sale of or recommend any product including any virtual assets to you [the client], the product must be reasonably suitable for you, having regard to your financial situation, investment experience and investment objectives. No other provision of this agreement or any other document we may ask you to sign and no statement we may ask you to make derogates from this clause.”*

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<sup>8</sup> See footnote 3 above.

<sup>9</sup> See footnote 4 above.

<sup>10</sup> Except for institutional and qualified corporate professional investors (see footnote 3 for definitions).