

11 December 2017

Circular to Licensed Corporations and Registered Institutions on Bitcoin futures contracts and cryptocurrency-related investment products

This circular serves to remind intermediaries of the legal and regulatory requirements for providing to Hong Kong investors any financial services in relation to Bitcoin futures contracts (“**Bitcoin Futures**”) and other cryptocurrency-related investment products. Investors are also reminded of the risks associated with these products.

Launch of Bitcoin Futures overseas

Bitcoin Futures have been or will soon be launched by certain well-established futures and commodities exchanges in the United States which are regulated by the U.S. Commodity Futures Trading Commission and authorised by the Securities and Futures Commission (“**SFC**”) to provide automated trading services. Hong Kong investors may be able to trade in Bitcoin Futures through an intermediary which is a member of these exchanges.

Hong Kong legal and regulatory requirements

Bitcoin Futures have the conventional features of a “*futures contract*” which is defined in the Securities and Futures Ordinance (“**SFO**”) to include “*a contract or an option on a contract made under the rules or conventions of a futures market*”. Therefore, even though the underlying assets of Bitcoin Futures are not regulated under the SFO, Bitcoin Futures traded on and subject to the rules of those exchanges are regarded as “*futures contracts*” for the purposes of the SFO.

Accordingly, parties carrying on a business in dealing in Bitcoin Futures, including those who relay or route Bitcoin Futures orders, are required to be licensed for Type 2 regulated activity (dealing in futures contracts)¹ under the SFO unless an exemption applies. The SFC also expects that intermediaries should strictly observe the suitability requirement² (paragraph 5.2 of the Code³) and the conduct requirements in relation to providing services in derivative products to clients under paragraphs 5.1A and 5.3.

Marketing a fund investing in Bitcoin Futures will normally constitute Type 1 regulated activity (dealing in securities) and managing such a fund may constitute Type 9 regulated activity (asset management). The provision of advisory services in relation to Bitcoin Futures may also constitute Type 5 regulated activity (advising on futures contracts).

The industry is reminded that a party is required to have an appropriate licence with the SFC if it provides any other business services relating to Bitcoin Futures which constitute a

¹ An intermediary (for Type 2 regulated activity) should not directly relay bitcoin futures orders for an exchange platform which is not authorised by the SFC under Part III of the SFO. The list of exchanges authorised to provide automated trading services in Hong Kong can be found on the SFC website.

² Depending on the facts and circumstances, it is likely that intermediaries would make recommendations and solicitations to clients when providing services in relation to Bitcoin Futures.

³ Code of Conduct for Persons Licensed by or Registered with the SFC



“*regulated activity*”⁴. This is irrespective of whether the party is located in Hong Kong, so long as its business activities target the Hong Kong public.

In addition, the SFC has noticed that with the growing interest in cryptocurrencies, other forms of cryptocurrency-related investment products are available to investors in Hong Kong, including cryptocurrency options, swaps and contracts for differences. Depending on their terms and features, some cryptocurrency-related investment products may be regarded as “*securities*” as defined under the SFO. Therefore, parties dealing in, advising on, or managing such products in Hong Kong, or targeting such services to investors in Hong Kong, may be subject to the SFC’s licensing, conduct⁵ and authorisation⁶ requirements under the SFO.

Parties engaging in the above activities without a relevant licence or authorisation from the SFC may be committing a criminal offence under the SFO.

Warning to investors

Some unregulated cryptocurrency exchanges are offering cryptocurrency futures contracts and other cryptocurrency-related investment products to investors in Hong Kong. Investors should be aware that depending upon whether or not such products constitute “*futures contracts*” or “*securities*” under the SFO, it may be illegal for such exchanges to offer these services without an appropriate licence or authorisation from the SFC. In some cases, these exchanges may operate entirely outside the SFC’s jurisdiction. Investors should understand the risks of using these services, as in the past some cryptocurrency exchanges have collapsed or been hacked and client assets stolen or misappropriated.

The SFC reminds⁷ investors that trading cryptocurrencies may expose them to risks including insufficient liquidity, high price volatility and potential market manipulation. The SFC further cautions investors that these risks may be magnified in trading cryptocurrency futures contracts and other cryptocurrency-related investment products by the speculative nature of the underlying assets, ie cryptocurrencies, and the leverage inherent in the products.

Investors may be exposed to substantial risks and significant financial losses in trading cryptocurrency futures contracts and other cryptocurrency-related investment products (eg options, swaps and contracts for differences), especially on unregulated exchanges. Investors should fully understand the features of cryptocurrencies and such products, and carefully weigh them against their own risk appetite.

Licensing Department
Intermediaries Division
Securities and Futures Commission

⁴ “*Regulated activities*” are specified in Part 1 of Schedule 5 to the SFO.

⁵ In particular, the requirements under paragraphs 5.1A (Know your client: investor characterization), 5.2 (Know your client: reasonable advice), and 5.3 (Know your client: derivative products) of the Code of Conduct for Persons Licensed by or Registered with the SFC

⁶ Certain requirements relating to automated trading services and recognised exchange companies under Part III of the SFO may also be applicable to cryptocurrency exchanges offering such products. Where the offering of any cryptocurrency-related product involves an invitation to the Hong Kong public to acquire “*securities*” or “*structured products*”, or to participate in a “*collective investment scheme*”, authorisation or registration requirements under the SFO or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (if relevant) may be triggered unless an exemption applies.

⁷ Please refer to the [“Statement on initial coin offerings”](#) published by the SFC on 5 September 2017.