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Private and Confidential

Securities and Futures Commission
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BY EMAIL:
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Dear Sirs,

Re: Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators licensed by the Securities and Futures Commission (the "**Consultation Paper**")

We refer to the Consultation Paper published by the Securities and Futures Commission (the "**SFC**") dated 20 February 2023. As a Hong Kong law firm focused on the financial technology and virtual asset ("**VA**") sectors, we would like take the present opportunity to provide our feedback and views on the SFC's proposed regulatory requirements under the new licensing regime for licensed virtual asset trading platform operators ("**VATPs**") which will commence on 1 June 2023.

Question 1: Do you agree that licensed platform operators should be allowed to provide their services to retail investors, subject to the robust investor protection measures proposed? Please explain your views.

We believe the SFC's proposal to allow licensed VATPs to offer their services to retail investors is a step in the right direction, and an important one in Hong Kong's virtual asset regulatory

development, in view of the increasing popularisation of VAs amidst rapid evolution of the digital economy.

However, we are of the view that the extensive investor protection measures being proposed by the SFC as a condition for retail access to trading services of licensed VATPs may be more than necessary to achieve their intended purpose of ensuring that investors are not exposed to undue levels of risks arising from investing in VAs having regard to their risk tolerance levels. In particular, we submit that, provided appropriate trading limits tailored to individual clients are put in place and sufficient disclosures of information are made available to investors, a client's relative lack of knowledge in VAs and/or financial means should not act as a bar to the client's access to the services of licensed VATPs. This is especially so given that such investors, if not permitted to trade on licensed VATPs, would likely be driven to unregulated overseas cryptoexchanges which offer very little investor protection, if any at all. Further, we suggest that the SFC should consider adopting a "*de minimis* threshold" (for example, 10% of the retail client's verified net worth), such that, if a trading limit less than or equal to such *de minimis* threshold is imposed by the licensed VATP on a client, then the VA knowledge test and the suitability assessment required to be conducted on that client could be significantly simplified to facilitate and expedite the client onboarding process.

Overall, we believe that the SFC should inject more flexibility into the investor protection requirements for the offering of services to retail investors and to allow licensed VATPs greater freedom in determining the policies, procedures and measures to be adopted for investor protection purposes in the context of the characteristics and features of the VATP's operational model and its client base.

Question 2: Do you have any comments on the proposals regarding the general token admission criteria and specific token admission criteria?

We are largely in agreement with the SFC's proposed general token admission criteria, which are the same as those currently imposed upon VATPs licensed under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the "**SFO**"). However, with respect to the proposed specific token admission criteria applicable to VAs to be offered for trading by retail investors, we are of the view that the "eligible large-cap virtual asset" requirement and "non-securities" nature requirement proposed by the SFC may be overly restrictive as these requirements would likely limit retail investors to only Bitcoins and a few other mainstream tokens (if any at all), considering that the "non-securities" nature of many VAs is currently uncertain and may be subject to challenge. Indeed, as the SFC must be very well aware, high-profile actions have been taken by the U.S. Securities and Exchange Commission (the "**SEC**") against issuers of certain popular, widely traded VAs, such as Ripple (XRP).[1] The SEC Chairman has even expressed his view (which surprised many) that all cryptocurrencies other than Bitcoin are securities. Indeed, since Ethereum changed its consensus mechanism from "proof of work" to "proof of stake", the nature of the second-largest VA in the market is also being questioned. In light of these developments, it becomes increasingly doubtful as to which VAs can be safely opined as "non-securities" tokens.

[1] *SEC v. Ripple Labs Inc*, U.S. District Court, Southern District of New York, No. 20-CV-10832.

In view of the aforementioned, we would suggest the SFC to relax its proposed specific token admission criteria so long as the general token admission criteria are adhered to and appropriate trading limits are imposed by VATPs for retail clients. We believe that VAs which do not meet the "eligible large-cap virtual asset" requirement and/or the "non-securities" requirement should not be completely prohibited from being offered for trading by retail investors, provided that measures are put in place to ensure that the retail client's risk exposure is proportionate to his or her overall risk appetite and risk tolerance levels.

Further, even if the SFC were minded to implement the proposed "eligible large-cap virtual asset" requirement, we submit that the SFC should clarify as to whether it would accept any kind of index that tracks the performance of the largest tokens by market capitalisation, or whether there would be any restriction on the size of the index's constituency. For instance, we would like to seek the SFC's views as to whether or not an index that tracks the top 100 tokens by market capitalisation would be regarded an "acceptable index" for the purpose of fulfilling the "eligible large-cap virtual asset" requirement, as the current example of an index tracking the top 10 largest tokens provided by the SFC in the Consultation Paper would appear to suggest that the SFC proposes to take a much more restrictive approach. It is submitted that making available to retail investors a wider variety of tokens is not only a matter of consumer choice or profitability of VATPs, but is also in the interests of the development of innovative and fintech businesses in Hong Kong as a whole, to be considered in line with the proposed rules and regulations on crowd-funding. By allowing retail investors to trade a wider range of VAs, including relatively smaller tokens issued by newly launched innovative projects, greater support could be given to newly established local fintech businesses, in line with the Hong Kong Government's stated goal of developing a "vibrant sector and ecosystem" for VAs in Hong Kong.[2]

Question 3: What other requirements do you think should be implemented from an investor protection perspective if the SFC is minded to allow retail access to licensed VA trading platforms?

As stated above, we are of the opinion that the investor protection requirements proposed by the SFC are already very comprehensive and likely more than necessary to protect the interests of investors. Rather than making sufficient VA knowledge and sufficient financial means prerequisites to participation in the trading of VAs, we suggest that the imposition of appropriate overall trading limit (eg. 10% of the client's VA portfolio) and/or concentration limit in respect of particular VAs (eg. those that do not meet the "eligible large-cap virtual asset" and/or "non-securities" criteria) would be equally (if not more) effective ways to limit the risk exposure of clients. We submit that licensed VATPs and their clients should be able to choose the appropriate levels and combinations investor protection measures (within the SFC's permitted framework to be adjusted and finetuned) to allow greater flexibility and to better tailor to the needs of each investor. For example, it should be possible for the VATP and its clients to choose whether to have a higher trading limit but relatively stringent VA knowledge test (including training where required) and suitability assessment procedures or to have a lower trading limit but simplified assessment and training requirements.

[2] See paragraphs 1 and 2 of the "Policy Statement on Development of Virtual Assets in Hong Kong" issued by the Financial Services and the Treasury Bureau (the "**FSTB**") on 31 October 2022.

Question 4: Do you have any comments on the proposal to allow a combination of third-party insurance and funds set aside by the licensed platform operator or a corporation within its same group of companies? Do you propose other options?

Overall, we agree with the SFC's proposal to allow a combination of third-party insurance and funds of the licensed VATP itself and/or its affiliated group companies set aside on trust (the "**Group Funds**") in its risk compensation arrangement, which would help alleviate the hefty financial burden faced by VATPs in maintaining third-party insurance due to the exorbitant premiums charged by insurance companies, particularly for VAs held in hot storage.

However, we shall be grateful if the SFC will provide some guidance as to its expected proportions of third-party insurance and the Group Funds within the risk compensation arrangement. For instance, we would like to seek the SFC's views on whether it would be prepared to accept a risk compensation arrangement consisting of third-party insurance coverage and Group Funds on a 50:50 basis, which would go a long way towards reducing the heavy costs borne by VATPs in maintaining third-party insurance.

Further, given that licensed VATPs are required to maintain at all times sufficiently liquid assets equivalent to not less than 12 months of its operating expenses on a rolling basis, it may be difficult for many VATPs to set aside additional funds for risk compensation purposes. Therefore, we suggest the SFC to consider adjusting the required extent of risk compensation coverage (including third-party insurance and Group Funds) from the current requirement of full coverage for client VAs held in hot wallets and not less than 95% for client VAs held in cold wallets. For example, a risk compensation arrangement covering 75% of the value of client VAs held in cold wallets and 90% of the value of client VAs held in hot wallets should be sufficient to afford an adequate level of protection against loss or theft of client VAs, provided that robust security, encryption and anti-hacking systems and internal controls and procedures are in place. This would further help to bring the operational costs of VATPs to more commercially sustainable levels, thereby promoting the growth of the Hong Kong VA industry and attracting more overseas cryptoexchanges to come to Hong Kong.

Question 5: Do you have any suggestions as to how funds should be set aside by the licensed platform operators (for instance, under house account of the licensed platform operator or under an escrow arrangement)? Please explain in detail the proposed arrangement and how it may provide the same level of comfort as third-party insurance.

We are of the opinion that as long as the Group Funds are set aside on trust and designated solely for the purpose of the VATP's risk compensation arrangement, VATPs should be free to decide whether to place the Group Funds in its own fixed deposit bank account or in a custodial or escrow account under a custodian or escrow arrangement. It can be expected that a number of VATPs would opt for holding the Group Funds in a house account in order to avoid incurring additional fees and expenses charged by custodians and escrow agents, which, although likely not as expensive as third-party insurance premiums, would nevertheless add to the already very high (and nearly prohibitive) operational costs of licensed VATPs.

In connection with the issue of risk compensation, we have received feedback from certain market participants suggesting the alternative of increasing the financial resources requirements as a way to ensure that there are sufficient funds for to compensate for losses to client VAs. For

instance, the liquid asset requirement could be increased from the current 12 months to 18 months of operational expenses calculated on a rolling basis, whereas the required insurance coverage for client VAs held in both hot and cold storage could be lowered to a corresponding extent. Given that the required liquid assets must be maintained by the VATP at all times, this alternative arrangement could be a simple and effective way of ensuring that VATPs will have sufficient funds to disburse to its clients in the event of loss to client assets, in the same way that it serves to ensure that the VATP would be able to continue to operate even if it were to make no income for 12 months.

Question 6: Do you have any suggestions for technical solutions which could effectively mitigate risks associated with the custody of client virtual assets, particularly in hot storage?

We submit that licensing of the rights to use the existing technical and operating systems of VATPs which have been licensed by the SFC (or regulators of other jurisdictions with comparable requirements and standards) (the "**Existing Systems**") would be a practical solution that could save much of the hassle, man-power and costs of developing the systems for safe custody of client VAs in-house and engaging experts to analyse and test those systems. At the same time, provided that technical audit is conducted by suitably qualified specialists on the Existing Systems on a regular basis (eg. annually), the SFC could be better assured of the security and reliability of the client VA custody systems being adopted by licensed VATPs under its regulation as well as VATPs in the process of applying for a licence from the SFC.

Additionally, we suggest that the SFC may consider requiring licensed VATPs to adopt and implement written internal policies and controls for the management of wallets holding client VAs, which should clearly set out, *inter alia*, the rules and procedures for handling transactions into and out of the VATP's hot and cold wallets, segregation of client VAs, secured storage of private keys, encryption and access encryption. Further, to provide greater confidence in the preservation and protection of client VAs, the SFC could consider imposing a requirement (by way of licensing condition) for a licensed VATP to furnish on a regular basis (eg. monthly) proof that VAs of the same type and amount as those which are owed or belong to its clients are held by the VATP.

Question 7: If licensed platform operators could provide trading services in VA derivatives, what type of business model would you propose to adopt? What type of VA derivatives would you propose to offer for trading? What types of investors would be targeted?

Based on our discussion with some of our clients and other VA industry players, a number of market participants have expressed interested in the possibility of offering VA derivatives similar to Bitcoin and Ethereum futures and options, which have been in existence in the VA market for several years by now and therefore quite familiar to at least certain segments of the investing public globally and in Hong Kong. Whilst the terms, features and risks of VA derivatives may be less readily understandable by some investors, in line with our responses to Questions 1 to 3 above, we are of the opinion that retail investors (not to mention professional investors) should not be barred from trading VA derivatives provided that appropriate trading limits and/or concentration limits are put in place to contain the risk exposure levels of investors. In any event, so long as the investor protection requirements (including suitability tests and due diligence obligations) under the complex product regime as provided by paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the SFC (the "**Code of Conduct**") and

Chapter 6 of the Guidelines on Online Distribution and Advisory Platforms dated July 2019 published by the SFC (the "**Online Distribution Guidelines**") are complied with, there is no reason why the offer of VA derivatives to retail investors should be prohibited, if the "same business, same risks, same rules" principle espoused by the Hong Kong financial regulators is to be applied. More broadly, the continued ban on the trading of VA derivatives on VATPs has become out of step with the rapid development of the VA market landscape both locally and overseas in recent years. Therefore, it is hoped that the SFC will start taking active steps to prepare for the introduction of VA derivatives for trading on licensed VATPs in the near future in the interests of promoting Hong Kong's status as a leading VA and blockchain hub and encouraging more VA businesses and investments to choose Hong Kong.

Question 8: Do you have any comments on how to enhance the other requirements in the VATP Terms and Conditions when they are incorporated into the VATP Guidelines?

As mentioned, we believe the proposed requirements as contained in the VATP Guidelines already very robust and, indeed, there is room for introducing greater flexibility (for example, in terms of investor protection requirements, as discussed in our responses to Questions 1 to 5 and Question 7 above). Where any requirements in the VATP Terms and Conditions are not incorporated by the SFC into the VATP Guidelines, we agree and believe it is for good reason. For instance, we welcome the SFC's proposal to remove the existing requirements specific to admission of security tokens, such as the requirements for asset backing, approval by regulators in comparable jurisdictions and post-issuance track record of not less than 12 months, as we believe that, as long as the general token admission criteria set out in the VATP Guidelines are adhered to, security tokens should not pose significantly higher risks than non-security tokens and therefore the same treatment should apply to both types of VAs. Similarly, we also welcome the SFC's proposal to abolish the requirement for approval by the SFC prior to admission of VAs for trading by professional investors, and it is hoped that the same will apply to VAs offered to retail investors for trading so long as adequate written policies, rules and procedures in relation to the admission of VAs for trading are implemented by the VATP.

Question 9: Do you have any comments on the requirements for virtual asset transfers or any other requirements in Chapter 12 of the AML Guideline for LCs and SFC-licensed VASPs? Please explain your views.

Whilst we agree that the Hong Kong regulations on anti-money laundering and counter-terrorist financing ("**AML/CTF**") should be updated to reflect the growing significance of VAs and address the issue of potential abuse by illicit or criminal actors, we are of the view that the commencement of the "travel rule" as mentioned in Chapter 12 of the AML Guideline for LCs and SFC-licensed VASPs (the "**Travel Rule**") should be postponed by approximately 12 to 18 months to allow more time for VATPs to adapt to the new requirements, including developing and preparing new standards, systems and procedures for the collection, handling, and record-keeping of originator and recipient information.

Further, despite that the Travel Rule has been incorporated into the Recommendations of the Financial Action Task Force (the "**FATF**") as Recommendation 16 since June 2019, only 29 out of 98 jurisdictions surveyed by the FATF had passed legislation to implement the Travel Rule as

of March 2022, reflecting only a marginal increase from the previous year.[3] Indeed, as at the date of this Letter, the Travel Rule has yet to be implemented or to take effect in a number of key jurisdictions, including but not limited to the United Kingdom, Australia, South Africa and certain parts of the European Union. Therefore, if the Travel Rule were to be implemented in Hong Kong from 1 June 2023, licensed VATPs in Hong Kong would face great difficulties in executing VA transfers involving ordering institutions, beneficiary institutions or intermediaries and other counterparties located in those jurisdictions in which the Travel Rule has not yet been implemented due to severe time constraints in coordinating with overseas institutions for the purposes of complying with the Travel Rule by the 1 June 2023 deadline. Additionally, if VATPs in Hong Kong were to disclose originator and beneficiary information to institutions in such jurisdictions, it is uncertain how those overseas institutions would deal with the information, raising concerns about client data privacy and security.

In the circumstances, it would not be practicable (or arguably, desirable) to require VATPs to comply with the Travel Rule immediately upon the commencement of the VATP licensing regime with effect from 1 June 2023. Therefore, in recognition of the practical difficulties faced by VATPs in preparing for compliance with the Travel Rule and to minimise disruptions to the operations of VATPs (particularly those operating in Hong Kong before 1 June 2023), we recommend that the SFC should give serious consideration to the possibility of postponing the commencement of the Travel Rule as mentioned above.

Question 10: Do you have any comments on the Disciplinary Fining Guidelines? Please explain your views.

Based on our reading of paragraph 68 of the Consultation Paper and the Disciplinary Fining Guidelines, it appears that VATPs licensed under the AMLO will be subject to the Disciplinary Fining Guidelines made under section 53ZSS(1) of the AMLO (the "**AMLO Fining Guidelines**") whereas VATPs licensed under the SFO will be subject to the existing disciplinary fining guidelines made under section 199(1)(a) of the SFO (the "**SFO Fining Guidelines**"). Although the provisions of the AMLO Disciplinary Fining Guidelines and the SFO Disciplinary Fining Guidelines (each and collectively "**Fining Guidelines**") are very similar overall, there are a number of material differences. Most significantly, the definition of "misconduct" under the AMLO is broader than that of the same term under the SFO. Whereas under the SFO the term "misconduct" refers to any act or omission relating to the conduct of the relevant regulated activit(ies) which, in the opinion of the SFC, is or is likely to be prejudicial to the interests of the investing public or to the public interest, the definition of the same term additionally covers the contravention of any provision of the AMLO or any licensing condition which the SFC regards as having or being likely to have such effect. Further, "conduct that brings the reputation of Hong Kong as an international financial centre into disrepute" (the meaning of which is at present uncertain), which is not mentioned in the SFO Fining Guidelines, is included in the list of (mis)conduct generally regarded by the SFC as being more serious in the AMLO Fining Guidelines. Similarly, whether the (mis)conduct has facilitated or occasioned any offence or whether an offence is attributable to the (mis)conduct has been included in the list of specific considerations in the AMLO Finding Guidelines in addition to those set out in the SFO Fining Guidelines.

[3] See paragraph 12 of the "Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers" published by the FATF dated June 2022.

However, it is difficult to see why the same set of Fining Guidelines should not apply to both AMLO-licensed VATPs and SFO-licensed VATPs, when the activities and functions carried out by the two types of VATPs are essentially the same and the only difference lies in the "securities" or "non-securities" nature of the tokens being traded. Indeed, in view of the fact that the SFC expects VATPs to apply for licences under both the SFO and the AMLO due to the uncertainty and potential change of a VA's categorisation, it would be confusing for VATPs to be subject to two different sets of Fining Guidelines at the same time. Given that the VATP Guidelines and AML Guideline for LCs and SFC-licensed VASPs and will apply equally to both AMLO-licensed VATPs and SFO-licensed VATPs upon the commencement of the new licensing regime on 1 June 2023, we submit that, for the sake of consistency, the same approach should be adopted in relation to the rules and principles for disciplinary fining of VATPs.

Other comments

We would also like to take the present opportunity to make the following submissions and seek the SFC's views on the following issues:

1. *Type 1 intermediaries*

Currently, pursuant to the "Joint Circular on Intermediaries' Virtual Asset-related Activities" published by the SFC and the Hong Kong Monetary Authority (the "**HKMA**") dated 28 January 2022 (the "**Joint Circular**"), Type 1 intermediaries are only permitted to provide virtual asset dealing services to their existing clients who are professional investors. However, given that the SFC proposes to allow licensed VATPs to offer VA trading services to all types of investors (including but professional and retail investors) under the new licensing regime for VATPs, we would like to seek the SFC's clarification as to whether Type 1 intermediaries would also be permitted to provide virtual asset dealing services to retail clients from 1 June 2023 onwards. Similarly, according to the Joint Circular, Type 1 intermediaries are not allowed to permit their clients to deposit or withdraw VAs to and from their own external wallets, so that all inward and outward transactions of the client account must be in fiat currencies. However, it is our understanding that no such restriction is imposed on licensed VATPs or their clients under the new VATP licensing regime.

In view of the above discrepancies in the regulation of licensed VATPs and Type 1 intermediaries, it appears that Type 1 intermediaries would be placed in significant disadvantage as it would become much less attractive for investors (particularly retail investors) to trade VAs through Type 1 intermediaries when they could open an account directly with the VATP and freely deposit and withdraw VAs thereto and therefrom. However, as in the case of the traditional financial market, the broker-dealer layer plays an important role to play in the sale and distribution of products to investors. Therefore, to facilitate the collaboration between licensed VATPs and Type 1 intermediaries and the development of the market infrastructure for VAs, we would suggest that the restrictions on offer to retail investors and on deposit and withdrawal of VAs currently imposed on Type 1 intermediaries should be lifted to better align with the new VATP licensing regime.

At the same time, recent news of the SFC's grant of approval-in-principal to Signum Digital to operate its security token offering ("**STO**") and subscription platform has sparked much interest within the Hong Kong VA industry, as it provides a new model that enables Type 1 intermediaries

to distribute security tokens independently without being restricted to the two options of acting as introducing agent to SFC-licensed VATPs and operating an omnibus account opened with SFC-licensed VATPs as set out in the Joint Circular. Additionally, although Signum Digital has announced that security tokens offered via its platform will (at least in the initial stage) be available to professional investors only, it nevertheless raises the possibility that Type 1 intermediaries will no longer to limited to their *existing* clients in the distribution of security tokens. In this connection, we would welcome the SFC's clarifications on the conditions and requirements for the operation of STO and subscription platforms by Type 1 intermediaries and potential updates to the current rules and regulations applicable to the offer of VA dealing services by Type 1 intermediaries.

2. *Algorithmic trading services*

One of the activities proposed to be prohibited under the Consultation Paper is the provision of algorithmic trading services, which is permitted (or at least not explicitly prohibited) under the existing licensing regime for VATPs under the SFO. However, similarly to our views on the continued ban of VA derivatives as proposed by the SFC, we are of the opinion that the proposed prohibition on the provision of algorithmic trading services is unnecessary and, indeed, unwarranted given that licensed corporations are permitted to provide such services to their clients subject to the provisions of the Code of Conduct. Therefore, in line with the "same business, same risk, same rule" principle, we suggest that so long as effective qualification, testing and risk management policies and procedures similar to those required under the Code of Conduct are implemented by the VATP and sufficient information is provided to investors which enables them to adequately understand the terms, features and operation of its algorithmic trading services, VATPs should not be treated differently from other licensed corporations regulated by the SFC.

3. *Non-fungible tokens ("**NFTs**")*

We would also like to seek the SFC's clarifications on the treatment of NFTs under the new VATP licensing regime, in particular whether the NFTs would fall within the definition of "virtual asset" as provided by the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance (the "**AMLO Amendment Ordinance**").

In the report of the Bills Committee of the Legislative Council dated 7 December 2022 (the "**Bills Committee Report**"), it is stated that, where a NFT merely represents a genuine digital representation of a collectible, it will unlikely fall within the definition of "virtual asset" under the AMLO Amendment Ordinance as it will unlikely be (i) a unit of account or a store of economic value; (ii) a medium of exchange accepted by the public; or (iii) a digital representation of value that provides holders with rights, eligibility or access to vote. The Bills Committee Report also states that NFTs which are not intended by their issuers to be convertible into money or other medium of exchange accepted by the public may fall within the "limited purpose digital token" exception, whereas NFTs which are cryptographically secured digital representations of economic value which are capable of being bought, sold, auctioned or otherwise transferred on trading platforms and which are used, or intended to be used, as a medium of exchange accepted by the public *or* allow holders to vote on their management, administration, governance or terms of arrangement may potentially be regarded as "virtual assets" within the meaning of section 53ZRA(1) of the AMLO Amendment Ordinance.

With respect, however, the above explanation contained in the Bills Committee Report provide little guidance on the status of NFTs under the new VATP licensing regime, as not much is said beyond re-stating the definition of "virtual asset" in the AMLO Amendment Ordinance. For instance, it remains unclear what would be regarded by the SFC as a "genuine digital representation of a collectible" and whether NFTs which are truly unique and non-fungible (unlike cryptocurrencies such as Bitcoin and Ethereum and unlike money, shares and other equity and debt interests) would be treated as such. Further, given that most NFTs are capable of being bought, sold, auctioned or otherwise transferred digitally and some may be seen as possessing the potential for appreciation in value and therefore an investment opportunity (in the same way that a piece of artwork can be seen as an investment) due to its rarity, popular trends or other reasons, it becomes questionable whether such NFT, despite being a unique digital collectible, would fall within the "investment purposes" limb of the definition of "virtual asset" in sub-section (ii)(A)(III) of the AMLO Amendment Ordinance. Additionally, it is equally unclear whether the fact that an NFT entitles its holder to the right to vote on the governance and future direction of a Web3 community or project associated with the NFT would mean that the NFT provides rights to vote on "the management, administration or governance of the affairs in connection with" a "cryptographically secured digital representation of value" as provided by sub-section (ii)(B) of the AMLO Amendment Ordinance.

Additionally, in the event that a truly unique NFT fell within the definition of "virtual asset" as provided by the AMLO Amendment Ordinance, it is uncertain how the "eligible large-cap virtual asset" requirement would apply to such NFT as its non-fungible nature would mean that its "market capitalisation" would be simply its market price, which would be a fraction of the market capitalisation of Bitcoin, Ethereum and other mainstream fungible tokens even in the case of the most expensive NFTs. In any event, one would be hard-pressed to find any VA index that includes an NFT in its list of constituencies. Therefore, if the "eligible large-cap virtual asset" requirement was applied to NFTs, it would become virtually impossible for retail clients to trade NFTs on licensed VATPs in Hong Kong, which would be undesirable given that the NFT market is generally geared towards retail clients.

Given the above-mentioned ambiguities, it is hoped that the SFC will provide clarification and guidance on the status and treatment of NFTs under the new VATP licensing regime, which would be highly relevant for market participants operating or looking to launch NFT trading platforms similar to OpenSea and Rarible in Hong Kong or admit NFTs to their VA trading platforms for trading by retail clients.

We thank the SFC for the opportunity to submit our views on the key issues raised in the Consultation Paper, and sincerely hope that our above submissions will provide useful inputs to the SFC in finalising the rules and guidelines to be applied to VATPs under the new licensing regime for VATPs and more generally in formulating policies and regulatory frameworks to support the development of the Hong Kong VA industry.

Should you have any enquiries, please do not hesitate to reach out a member of us by phone at or by email to

Yours Faithfully,