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

HONG KONG MONETARY AUTHORITY
香港金融管理局

22 December 2023

Joint circular on intermediaries' virtual asset-related activities

1. The Securities and Futures Commission (**SFC**) and the Hong Kong Monetary Authority (**HKMA**) have received an increasing number of enquiries from intermediaries about distributing to clients investment products with exposure to virtual assets[1]. Intermediaries are also interested in providing virtual asset dealing services to their clients.

2. When the SFC formulated its regulatory approach for virtual assets in 2018, it imposed an overarching "professional investors[2] only" restriction on various types of activities, including the distribution of funds investing in virtual assets. Since then, the virtual asset landscape has evolved rapidly and begun to expand into mainstream finance. A broader range and a larger number of investment products are now available, and provide both retail and professional investors with exposure to virtual assets. In particular, the SFC has allowed SFC-licensed virtual asset trading platforms (**VA trading platforms**) to serve retail investors and has authorised virtual asset futures exchange-traded funds (**VA futures ETFs**) for public offering in Hong Kong.

3. The SFC and the HKMA have reviewed their existing policy for intermediaries which wish to engage in virtual asset-related activities (**VA-related activities**). The policy is updated in light of the latest market developments, where the SFC has authorised VA futures ETFs and is prepared to accept applications for the authorisation of other funds with exposure to virtual assets, including virtual asset spot exchange-traded funds (**VA spot ETFs**)[3]. Specifically, this updated circular:

    - clearly specifies the requirements applicable to intermediaries when they distribute VA-related products[4]; and

    - sets out the standards of conduct expected of intermediaries when distributing VA funds[5] authorised by the SFC (see paragraph 9).

    For the avoidance of doubt, this circular will supersede the joint circulars on intermediaries' VA-related activities issued on 20 October 2023 and 28 January 2022.

A. Distribution of investment products with exposure to virtual assets

4. Although virtual assets are becoming more popular in some parts of the world, the global regulatory landscape remains uneven. The risks associated with investing in virtual

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1 "Virtual asset" refers to any "virtual asset" as defined in section 53ZRA of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**).
2 As defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (**SFO**).
3 See circular on SFC-authorised funds with exposure to virtual assets dated 22 December 2023.
4 See paragraph 5 for definition of "VA-related products".
5 See footnote 6 for definition of "VA funds".

assets identified by the SFC back in 2018 continue to apply. For instance, service providers in the VA industry, including custodians, VA trading platforms and index providers, may be either unregulated, regulated only for anti-money laundering and counter-financing of terrorism (**AML/CFT**) purposes or subject to light-touch regulation (eg, for payment purposes). Thus, they may not be subject to the same robust regulation as service providers or products in traditional financial markets, which poses additional counterparty risks for investment products with exposure to virtual assets. Furthermore, with no unified approach to their regulation, spot markets for virtual assets are more likely to present investor protection issues, ranging from a lack of pricing transparency to potential market manipulation. For instance, a number of overseas non-derivative products with exposure to virtual assets, such as virtual asset exchange-traded products (**VA ETPs**), invest directly in virtual assets and may be subject to the aforementioned risks.

5. As retail investors generally may not understand these risks, virtual asset-related products[6], ie, products which (a) have a principal investment objective or strategy to invest in virtual assets; (b) derive their value principally from the value and characteristics of virtual assets; or (c) track or replicate the investment results or returns which closely match or correspond to virtual assets (**VA-related products**) are very likely considered complex. Intermediaries distributing VA-related products considered to be "complex products" (except for VA-related products considered to be complex exchange-traded derivatives and complex exchange-traded SFC-authorised non-derivative VA funds as discussed in paragraphs 7 and 9 below) should comply with the SFC's requirements on the sale of complex products[7], including ensuring the suitability[8] of VA-related products, irrespective of whether there has been a solicitation or recommendation.

6. However, given the uneven global virtual asset regulatory landscape, the SFC and the HKMA consider that, besides the requirements under the complex product regime, additional investor protection measures should be imposed in the distribution of VA-related products to cover specific risks associated with these products:

   6.1. **Selling restrictions** – Except for a limited suite of products discussed in paragraphs 7 and 9 below, VA-related products which are considered complex products should only be offered to professional investors. For example, an overseas non-derivative VA ETP would very likely be considered a complex product and it should only be offered to professional investors.

   6.2. **Virtual asset-knowledge test** – Except for institutional professional investors and qualified corporate professional investors[9], intermediaries should assess whether clients have knowledge of investing in virtual assets or VA-related products prior to

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[6] For the purpose of this circular, the terms "VA ETFs", "VA ETPs", "VA funds", "VA derivative funds", "VA derivative ETPs" and "VA-related derivative products" refer to exchange-traded funds, exchange-traded products, funds and derivative products (as the case may be) which meet criteria (a), (b) or (c) and are thus VA-related products.

[7] Please refer to paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**) and Chapter 6 of the Guidelines on Online Distribution and Advisory Platforms.

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

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

effecting a transaction in VA-related products on their behalf[10]. If a client does not possess such knowledge, the intermediary may proceed only if it has provided adequate training to the client on the nature and risks of virtual assets. Intermediaries should also ensure that their clients have sufficient net worth to be able to assume the risks and bear the potential losses of trading VA-related products. Appendix 1 to this circular sets out the non-exhaustive criteria for assessing whether a client can be regarded as having knowledge of virtual assets.

7. However, a limited suite of VA-related derivative products are traded on regulated exchanges specified by the SFC[11] and, in the case of exchange-traded VA derivative funds, they are authorised or approved for offering to retail investors by the respective regulator in a designated jurisdiction[12]. For example, in the case of virtual asset futures contracts traded on a specified exchange which is a regulated futures market, trading is governed by conventional rules. Pricing transparency and potential market manipulation may be less of a concern. The same can be said of a public VA futures ETF authorised by the SFC and traded on the SEHK, or one authorised or approved in a designated jurisdiction for offering to retail investors by the respective regulator and traded on a specified exchange. Accordingly, the "professional investors only" restriction is not imposed on the trading of these products on exchange. Furthermore, as such products are considered complex exchange-traded derivatives, under the existing complex product regime, where there has been no solicitation or recommendation, intermediaries may execute client orders in them on exchange without the need to comply with the suitability requirement or the minimum information and warning statements requirement referred to in paragraph 15.1 below, but must comply with the existing requirements for derivative products (see paragraphs 12.2 and 13 below). Intermediaries must also conduct a virtual asset-knowledge test as an additional safeguard (see paragraph 6.2 above).

8. For the avoidance of doubt, other exchange-traded VA-related derivative products (whether traded on a specified exchange or not) would be considered complex products if they are not of the same type as a complex exchange-traded derivative on the non-exhaustive list of examples of non-complex and complex products published on the SFC's website[13]. The distribution of these exchange-traded VA-related derivative products would thus be subject in full to the complex product requirements and additional investor protection measures set out in paragraph 6 above.

9. For VA funds authorised by the SFC for public offering, they will not be restricted to "professional investors only". Nevertheless, the following requirements will apply in their distribution:

   9.1. for those listed and traded on the SEHK, where there has been no solicitation or recommendation, intermediaries may execute client orders in them on exchange without the need to comply with the suitability requirement or the minimum information and warning statements requirements referred to in paragraph 15.1

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

[11] This refers to the list of specified exchanges set out in Schedule 3 to the Securities and Futures (Financial Resources) Rules (Cap. 571N) and the Stock Exchange of Hong Kong Limited (**SEHK**).

[12] The list of designated jurisdictions is set out in Appendix 2 to this circular.

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

below. However, intermediaries should still conduct a virtual asset-knowledge test on the clients concerned (see paragraph 6.2 above); and

9.2. for those not listed, or those listed but with trading in their fund units conducted off exchange[14], intermediaries should comply with the suitability requirement and the minimum information and warning statements requirements referred to in paragraph 15.1 below, and conduct a virtual asset-knowledge test on the clients concerned (see paragraph 6.2 above).

If these funds are also VA derivative funds, intermediaries also need to comply with the existing requirements for derivative products (see paragraphs 12.2 and 13 below).

10. A flowchart is set out in Appendix 3 to illustrate the factors for determining whether an investment product with exposure to virtual assets is a complex product and to specify the applicable selling requirements.

11. In addition to the complex product requirements, the SFC and the HKMA would like to remind intermediaries to observe the selling restrictions in Hong Kong and other jurisdictions which may be applicable to a particular VA-related product. In particular, intermediaries should observe the provisions in Part IV of the SFO which prohibit the offering to the Hong Kong public of investments which have not been authorised by the SFC. Furthermore, depending on the selling restrictions specific to a particular jurisdiction[15], exchange[16] or product, a VA-related product may or may not be offered to retail investors. Intermediaries should ensure strict adherence to all such selling restrictions. Where the VA-related products are distributed on an online platform, it must be properly designed and have appropriate access rights and controls to ensure compliance with such selling restrictions.

12. Intermediaries should also observe the suitability obligations (where applicable) as supplemented by the Suitability FAQs[17], including:

12.1. ensuring that any recommendations or solicitations made are suitable for clients in all circumstances. Intermediaries should diligently assess whether the nature and features of the VA-related product (including the effects of gearing and the risks of the underlying virtual assets) are suitable for the client and are in the best interests of the client, taking into account the client's risk tolerance, financial situation, etc;

12.2. where the VA-related product is a derivative product, ensuring compliance with paragraphs 5.1A and 5.3 of the Code of Conduct; and

12.3. conducting proper due diligence on VA-related products, which would include, amongst others, understanding their risks and features (in particular the inherent high-risk nature of the underlying virtual assets), the targeted investors (including any applicable selling restrictions) and the products' regulatory status. Additional

[14] This includes the unlisted share/ unit class of a VA futures ETF/ VA spot ETF authorised by the SFC.
[15] In some jurisdictions such as mainland China, the sale of VA-related products to Mainland investors may be prohibited.
[16] For example, the rules of an established futures exchange governing virtual asset futures contracts traded on the exchange may prohibit the offering of such futures contracts to retail investors.
[17] The Frequently Asked Questions on Compliance with Suitability Obligations by Licensed or Registered Persons and the Frequently Asked Questions on Triggering of Suitability Obligations (**Suitability FAQs**).

due diligence requirements for non-SFC authorised VA funds are set out in Appendix 4 to this circular.

13. As part of its obligation under paragraph 5.3 of the Code of Conduct, an intermediary assessing whether to provide a client with services for VA-related derivative products should assure itself that the client understands the nature and risks of these products. For example, in providing trading services in virtual asset futures contracts traded on a specified exchange, an intermediary should ensure its client understands that leveraged trading increases the client's exposure to the volatility of the underlying virtual assets. This is because relatively small market movements may have a proportionately larger impact on the margin deposited and the client may lose more than the amount of the initial margin deposited. Intermediaries should also provide clients with risk disclosure statements (which can be a one-off disclosure) specific to virtual asset futures contracts. Examples of these statements are set out in Appendix 5 to this circular.

14. Given the high-risk nature of virtual assets, intermediaries should be cautious in providing any financial accommodation for investing in VA-related products to clients. Where an intermediary provides financial accommodation to a client, it should assure itself the client has the financial capacity to meet the obligations arising from leveraged or margin trading in VA-related products, including in a worst-case scenario. In the absence of such assurance, the intermediary should not accept instructions from the client.

15. Except for institutional professional investors and qualified corporate professional investors, intermediaries distributing VA-related products should:

    15.1. provide clear and easily comprehensible information and warning statements to clients in relation to VA-related products and information on the underlying virtual asset investments; and

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

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

16. The SFC and the HKMA are concerned that many overseas VA trading platforms may not be subject to regulatory standards comparable to those under the SFC's regulatory framework for VA trading platforms[18], and the protections for investors trading on these platforms may be manifestly insufficient. For instance, these platforms are not subject to any client asset protection regulations, eg, the requirements governing hot and cold wallets[19], private key management and insurance. In the event of hacking or fraud, investors may suffer substantial losses without recourse and also have practical

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

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

difficulties in recovering their assets from or pursuing claims against platforms located overseas.

17. To provide adequate investor protection, the SFC and the HKMA consider it appropriate and necessary to require intermediaries to partner only with SFC-licensed VA trading platforms[20] (**SFC-licensed platforms**) for the provision of VA dealing services, by either introducing clients to the platforms for direct trading or establishing an omnibus account with the platforms.

18. Although the provision of VA dealing services does not amount to "dealing in securities", such services may have an impact on an intermediary's fitness and properness to conduct regulated activities[21]. Trading activities involving virtual assets also form part of the dealing services provided by intermediaries[22]. Accordingly, intermediaries are expected to comply with all the regulatory requirements imposed by the SFC and the HKMA when providing VA dealing services. Furthermore, intermediaries should provide such services only to their Type 1 regulated activity[23] clients.

19. The expected conduct requirements for intermediaries' provision of VA dealing services under an omnibus account arrangement will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions. These are set out in Appendix 6 to this circular[24]. One licensing or registration condition will require intermediaries to comply with the prescribed terms and conditions (**Terms and conditions**). The standards set out therein align with the requirements under the SFC's regulatory framework for VA trading platforms[25] to the extent that they relate to the performance of the dealing function carried out by intermediaries.

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

    (a) before providing VA dealing services to retail clients[26], intermediaries should:

        (i) assess each retail client's knowledge of virtual assets and risk tolerance level;

        (ii) set a limit for each retail client to ensure that the client's exposure to virtual assets is reasonable, with reference to the client's financial situation (including net worth) and personal circumstances;

        (iii) ensure that the VA dealing activities are conducted through an omnibus account established and maintained with an SFC-licensed platform which is not subject to the licensing condition that it can only serve professional investors; and

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

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

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

[23] See footnote 22 above.

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

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

[26] "Retail client" means any person other than a professional investor.

(iv) implement adequate controls to ensure that their retail clients can only trade in those virtual assets that are made available by the SFC-licensed platform for trading by retail investors; and

(b) intermediaries, which allow clients to deposit or withdraw virtual assets from their accounts, should receive or withdraw such clients' virtual assets only through the segregated account(s) established and maintained with:

(i) their partnered SFC-licensed platforms; or

(ii) authorized financial institutions[27] (or subsidiaries of locally incorporated authorized financial institutions) which meet the expected standards of virtual asset custody issued by the HKMA from time to time.

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

21. Where Type 1 intermediaries provide VA dealing services as an introducing agent[28], they should not relay any orders on behalf of their clients to SFC-licensed platforms or hold any client assets, including fiat currencies and client virtual assets, for the introducing services. These requirements will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions[29].

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

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

23. With respect to virtual asset portfolio managers and virtual asset discretionary account management services[30], intermediaries providing services which meet the de minimis threshold[31] (ie, a stated investment objective of a portfolio to invest in virtual assets or an intention to invest 10% or more of the gross asset value of a portfolio in virtual assets) are subject to additional requirements set out in the Proforma terms and conditions for licensed corporations or registered institutions which manage portfolios that invest in virtual assets (**RA9 Terms and conditions**) (see Appendix 7[32] to this circular). These

[27] "Authorized financial institution" means an authorized institution as defined in section 2(1) of the Banking Ordinance.
[28] Under the introducing agent model, clients of intermediaries will be onboarded by SFC-licensed platforms and trade directly through the platform. Trading accounts with the platform will be designated in the names of the respective clients. Intermediaries should ensure that a written agreement is entered into with the SFC-licensed platform so as to set out the respective responsibilities of the intermediary and the SFC-licensed platform under the introducing arrangement.
[29] Under section 116(6) or 119(5) of the SFO (as the case may be).
[30] This refers to discretionary account management services provided in the form of an investment mandate or a pre-defined model investment portfolio and which receive a management or performance fee in return.
[31] Currently, the SFC and the HKMA are only prepared to allow intermediaries licensed or registered for Type 9 (asset management) regulated activity to provide asset management activities in respect of virtual assets which meet the de minimis threshold.
[32] The marked-up text of the revisions to the RA9 Terms and conditions (as compared with the RA9 Terms and conditions published on 4 October 2019) are set out in Appendix 7a.

requirements will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions[33].

24. For discretionary account management services, the SFC and the HKMA wish to further clarify that where a Type 1 intermediary is authorised by its clients to provide VA dealing services on a discretionary basis as an ancillary service[34], the intermediary should only invest less than 10% of the gross asset value of the client's portfolio in virtual assets.

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

D. Provision of virtual asset advisory services

26. Provision of advisory services in virtual assets (**VA advisory services**) forms part of an intermediary's advisory business and may therefore affect its fitness and properness to conduct regulated activities[35]. Accordingly, intermediaries are expected to comply with all the regulatory requirements imposed by the SFC and the HKMA when providing advisory services, irrespective of the nature of the virtual assets. Furthermore, intermediaries should provide such services only to their Type 1 or Type 4 regulated activity[36] clients.

27. The expected conduct requirements for VA advisory services are set out in the prescribed Terms and conditions (see Appendix 6[37] to this circular). In particular, intermediaries providing VA advisory services should observe the suitability obligations.

28. When recommending any virtual asset to retail clients, intermediaries should take all reasonable steps to ensure that the virtual asset is:

    (a) of high liquidity; in assessing the liquidity of a specific virtual asset for trading by retail clients, intermediaries should, at a minimum, ensure that the virtual asset is an eligible large-cap virtual asset, ie, it should have been included in a minimum of two acceptable indices issued by at least two different index providers; and

    (b) made available by SFC-licensed platforms for trading by retail investors.

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

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33 Under section 116(6) or 119(5) of the SFO (as the case may be).
34 Such activities are performed wholly incidental to an intermediary's provision of services in Type 1 regulated activity.
35 Currently, the SFC and the HKMA are only prepared to allow intermediaries licensed or registered for Type 1 (dealing in securities) or Type 4 (advising on securities) regulated activity to provide VA-advisory services.
36 See footnote 35 above.
37 The marked-up text of the revisions to the Terms and conditions (as compared with the Terms and conditions published on 28 January 2022) are set out in Appendix 6a.

E. Implementation

30. Intermediaries which are already providing VA dealing services to non-qualified corporate professional investors[38] and individual professional investors[39] and wish to continue providing such services to them should revise their systems and controls to align with the updated requirements. As mentioned in the joint circular on intermediaries' VA-related activities issued on 20 October 2023, there will be a three-month transition period for intermediaries serving the existing clients of their VA dealing services before the expected requirements are fully implemented[40]. For the avoidance of doubt, this transitional period will end on 20 January 2024. Intermediaries which do not currently engage in VA-related activities or which plan to extend their VA dealing services to non-qualified corporate professional investors, individual professional investors, or retail investors should ensure that they are able to comply with the requirements in this circular before introducing such services.

31. Intermediaries are reminded to notify the SFC (and the HKMA, where applicable) in advance if: (a) they intend to engage in any activities involving virtual assets, which include the provision of dealing and advisory services in VA-related products, and virtual assets, as well as VA asset management services[41], or (b) they intend to make any changes to these activities conducted (including changes in the type of clientele served).

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

Intermediaries Division
Securities and Futures Commission

Banking Conduct Department
Hong Kong Monetary Authority

Enclosure

End

[38] "Non-qualified corporate professional investors" refers to corporate professional investors which have not passed the assessment requirements under paragraph 15.3A or have not gone through the procedures under paragraph 15.3B of the Code of Conduct.
[39] "Individual professional investors" refers to individuals falling under section 5 of the Securities and Futures (Professional Investor) Rules.
[40] For the avoidance of doubt, intermediaries may continue to provide VA-related services to their existing clients who have been assessed to possess knowledge of virtual assets based on the results of the VA knowledge tests conducted on the clients before the date of this circular.
[41] Circular to intermediaries on compliance with notification requirements dated 1 June 2018.