

2022 Joint Circular of SFC and HKMA on Virtual Asset Dealing and Advisory Service

The Securities and Futures Commission (“SFC”) and the Hong Kong Monetary Authority (“HKMA”) recently published [a joint circular on intermediaries’ virtual asset-related activities on 28 January 2022 \(the “Circular”\)](#). The Circular supersedes the earlier [circular to intermediaries on distribution of virtual asset funds on 1 November 2018 \(the “2018 Circular”\)](#).

The Circular addresses the evolving virtual asset landscape and allowing intermediaries to distribute virtual asset-related derivative products to retail investors under limited circumstances (unlike the overarching “professional investors only” restriction in the 2018 Circular).

We highlight below certain aspects of the Circular worth noting.

A. Distribution of virtual asset-related products

The SFC and HKMA’s view is that retail investors are not reasonably likely to understand the investor protection issues associated with virtual asset-related products. These risks can include lack of pricing transparency, potential market manipulation and counterparty risks. Accordingly, virtual asset-related products are very likely to be considered complex products. This will result in investor protection measures and additional requirements under the complex product regime being imposed.

The measures and additional requirements aim to redress a perceived imbalance between regulation of service providers for virtual asset-related products and the level of robust regulation for service providers and products in traditional financial markets. The following are the measures to be implemented:

1. Selling restrictions: Virtual asset-related products which are complex products can generally only be offered to professional investors.

However, this professional investors restriction is not applicable to virtual asset-related derivative products traded on a specified exchange that are of the same type as a complex exchange-traded derivative product in the [list of examples of non-complex and complex products](#).

Where the virtual asset-related derivative product are funds, they must be authorised or approved in a designated jurisdiction to offer to retail investors.

2. Virtual asset knowledge test: Intermediaries need to assess whether clients have knowledge of investing in virtual asset or virtual asset-related products, unless the clients are institutional professional investors or qualified corporate professional investors. Intermediaries must also ensure their clients have sufficient net worth to be able to assume the risks and bear the potential losses of trading virtual asset-related products.

B. Provision of virtual asset dealing services

Intermediaries providing virtual asset dealing services must comply with all regulatory requirements of the SFC and HKMA on virtual asset dealing services to be fit and proper. This is the case even if the virtual asset dealing services involve only trading non-security virtual assets.

The SFC and HKMA will require intermediaries to partner only with SFC-licensed virtual asset trading platforms for the provision of virtual asset dealing services.

Additionally, summarising two requirements mentioned separately in the Circular, an intermediary can only provide virtual asset dealing services to existing professional investors clients of the intermediary's Type 1 (dealing in securities) regulated activity.

Intermediaries can only permit clients to deposit or withdraw fiat currencies from their accounts. Depositing or withdrawing client virtual asset is not allowed.

C. Provision of virtual asset advisory services

Similarly, intermediaries providing virtual asset advisory services must comply with all regulatory requirements of the SFC and HKMA on virtual asset advisory services to be fit and proper. Again, this is the case even if the intermediary is advising on non-security virtual assets.

Summarising three requirements mentioned separately in the Circular, an intermediary can only provide virtual asset advisory services to existing professional investor clients of the intermediary's Type 1 (dealing in securities) or Type 4 (advising on securities) regulated activities after a virtual asset knowledge test.

D. Conduct requirements for virtual asset dealing services and virtual asset advisory services

Additionally, the SFC, in consultation with HKMA, have set out conduct requirements of virtual asset dealing services and virtual asset advisory services for intermediaries as licensing or registration conditions (see Appendix 6 of the Circular).

E. Implementation

There will be a six-month transition period for the full implementation of this circular.

As always, we at Tanner De Witt, are ready to help you with the changes ahead.

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