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

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

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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:

- *"AMLO"* means the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615);
- "*client"* means a person to whom a licensed corporation or registered institution provides virtual asset advisory services;
- *"Code of Conduct"* means the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission;
- "licensed *corporation"* means a corporation which is licensed by the Securities and Futures Commission (SFC) and upon which these Terms and conditions are imposed by way of a licensing condition pursuant to section 116 of the SFO;
- *"professional investor"* has the meaning as defined in section 1 of Part 1 of Schedule 1 to the SFO;
- *"registered institution"* means an authorized financial institution which is registered under section 119 of the SFO;
- "*retail client*" or "*retail investor*" means any person other than a professional investor;
- "*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);
- *"SFC-licensed platform"* means a virtual asset trading platform operator which is licensed by the SFC pursuant to section 116 of the SFO and/or section 53ZRK of the AMLO; and
- *"virtual asset"* means any "virtual asset" as defined in section 53ZRA of the AMLO.

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[1], a licensed corporation or registered institution should assess a client's knowledge of virtual assets (including knowledge of relevant risks associated with virtual assets) before providing any services to the client[2].

3.2 Where a client does not possess such knowledge, a licensed corporation or registered institution may only provide services in Relevant VA Advisory Activities to the client if the licensed corporation or registered institution has provided adequate training to the client.

3.3 Except for institutional and qualified corporate professional investors, a licensed corporation or registered institution, before providing services in Relevant VA Advisory Activities, should assess a client's risk tolerance level, accordingly determine the client's risk profile and assess whether it is suitable for the client to participate in the trading of virtual assets. The licensed corporation or registered institution should exercise due skill, care and diligence to ensure the methodology for risk profiling is properly designed and should determine the client's risk profile based on an assessment of the information about the client obtained through its know-your-client process. The methodology adopted for categorising clients and an explanation of the risk profiles of clients should be made available to the client[3].

3.4 In conducting any Relevant VA Advisory Activities, a licensed corporation or registered

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1 Same definitions as in paragraph 15 of the 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.

2 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.

3 Where risk-scoring questionnaires are used to risk profile clients, the licensed corporation or registered institution should pay particular attention to the design of the questions and the underlying scoring mechanism, which should be properly designed to accurately reflect the personal circumstances of a client. The licensed corporation or registered institution should also have appropriate processes in place to periodically review the risk profiling methodology and mechanism for clients.

institution should enter into a written client agreement with each client[4] 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.*"

3.5 Where a licensed corporation or registered institution provides services in Relevant VA Advisory Activities to retail clients, the licensed corporation or registered institution should take all reasonable steps to ensure that the virtual asset recommended:

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

Note 1: An acceptable index refers to an index which has a clearly defined objective to measure the performance of the largest virtual assets in the global market, and should fulfil the following criteria:

(a) The index should be investible, meaning the constituent virtual assets should be sufficiently liquid;

(b) The index should be objectively calculated and rules-based;

(c) The index provider should possess the necessary expertise and technical resources to construct, maintain and review the methodology and rules of the index;

(d) The methodology and rules of the index should be well documented, consistent and transparent.

Note 2: The two index providers should be separate and independent from each other, the issuer of the virtual asset (if applicable) and the licensed corporation or registered institution (for example, they are not within the same group of companies). Further, at least one of the indices should be issued by an index provider which complies with the IOSCO Principles for Financial Benchmarks and has experience in publishing indices for the conventional securities market.

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

[4] Except for institutional and qualified corporate professional investors.