

SFC updated the Joint Circular on Intermediaries' Virtual Asset-related Activities

January 2024

Background

On 22 December 2023, the Securities and Futures Commission of Hong Kong ('SFC') and the Hong Kong Monetary Authority revised their joint [circular](#) ('**Revised Circular**') on intermediaries' virtual asset ('VA') -related activities to update their existing policy for intermediaries looking to engage in VA activities. The Revised Circular supersedes an earlier [circular](#) issued on 20 October 2023 ('**2023 Circular**'). For an overview of the 2023 Circular, please refer to our [NewsFlash](#) issued in November 2023.

The updates were made in the context of the SFC greenlighting a broader range of authorised funds with direct and indirect exposure to VA under the SFC's [circular](#) on SFC-authorised funds with exposure to VA ('**Authorised VA Funds Circular**'). For an overview of the Authorised VA Funds Circular, please refer to our [NewsFlash](#) issued in December 2023.

Main updates

In the Revised Circular, the SFC made the following updates to the 2023 Circular:

(1) Definition of 'VA-related products'

In view of the SFC's approval of a wider range SFC-authorised VA funds, the Revised Circular specified that VA-related products can also include exchange-traded funds ('**ETFs**'), exchange-traded products, funds and derivative products provided they meet the existing criteria, namely that they:

- (a) have a principal investment objective or strategy to invest in VA;
- (b) derive their value principally from the value and characteristics of VA; or
- (c) track or replicate the investment results or returns which closely match or correspond to VA.

(2) Requirements as to distribution of SFC-authorised VA funds

In the revised Circular, the SFC explicitly stated that VA funds authorised by the SFC for public offering will not be subject to the 'professional investors only' requirement. However, intermediaries must, depending on the category of the funds they manage, comply with the following requirements when distributing these SFC-authorised VA funds:

(A) Those listed and traded on the Stock Exchange of Hong Kong ('SEHK')

For SFC-authorised VA funds listed and traded on the SEHK, and where there has been no solicitation or recommendation, intermediaries must still conduct a VA-knowledge test on the clients concerned but may execute client orders without complying with (1) the suitability requirement and (2) the minimum information and warning statements requirements.

(B) Those (i) not listed, or (ii) those listed but with trading in their fund units conducted off exchange

For SFC-authorized VA funds not listed or listed but with trading in their fund units conducted off exchange¹, intermediaries must (1) comply with (a) the suitability requirement and (b) the minimum information and warning statements requirements, and (2) conduct a VA-knowledge test on the clients concerned.

If these SFC-authorized VA funds are also VA derivative funds, intermediaries need to comply with the existing requirements for derivative products.

(3) Tokenised securities

In the 2023 Circular, intermediaries needed to notify the SFC in advance if they intended to engage in activities involving VA and tokenised securities. However, under the Revised Circular, intermediaries only need to notify the SFC in advance if they intend to engage in VA-related activities but not tokenised securities activities.

(4) Transitional period

The 'three-month transition period' stipulated in the 2023 Circular for intermediaries serving the existing clients of their VA dealing services will end on 20 January 2024.

What this means for market participants

The Revised Circular does not make significant changes to the existing policy in relation to intermediaries engaging in VA-related activities under the 2023 Circular. Again, for an overview of the 2023 Circular and the Authorised VA Funds Circular, please refer to our NewsFlash issued in [November 2023](#) and [December 2023](#) respectively.

However, it does now contemplate the distribution of SFC-authorized VA funds by licensed intermediaries, which more significantly paves the way for a potential authorisation of such products by the regulator in the near future. Intermediaries that are looking to distribute SFC-authorized VA funds should familiarise themselves with the updated [Appendix](#) to the Revised Circular to ensure full compliance with the most recent SFC's requirements.

¹ Including the unlisted share / unit class of a VA futures ETF/ VA spot ETF authorised by the SFC.

Let's talk

For a deeper discussion of how this impacts your business, please contact us.

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