

29 August 2025

Submitted by email (vadealing-consult@fstb.gov.hk)

Division 5, Financial Services Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
Tim Mei Avenue, Tamar Central, Hong Kong

Re: ASIFMA Response to Consultation Paper on the Legislative Proposal to Regulate Dealing in Virtual Assets

Dear Sir/Madam,

The Asia Securities Industry and Financial Markets Association (“ASIFMA”)¹ appreciates the opportunity to respond to the consultation questions set out in the Financial Services and the Treasury Bureau (the “FSTB”) and the Securities and Futures Commission’s (the “SFC”) *Public Consultation on Legislative Proposal to Regulate Dealing in Virtual Assets* published on 27 June 2025 (the “Consultation Paper”). Feedback set out in this response has been obtained from members (“Members”) of ASIFMA’s Fintech Working Group, Crypto Sub-Working Group and Anti-Financial Crime Working Group, which have been closely following global, regional and local developments relating to virtual assets in recent years.

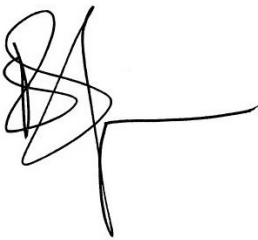
We are grateful to ASIFMA law firm member Latham & Watkins LLP for their support in drafting this response. Unless otherwise defined herein, the terms used in this response have the meanings assigned to them in the Consultation Paper.

¹ ASIFMA is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. More information about ASIFMA can be found at: www.asifma.org.

Overall, Members commend the Hong Kong Government's *Policy Statement 2.0 on the Development of Digital Assets in Hong Kong*, and strongly support Hong Kong's aim to be a premier global hub for digital assets. With respect to this Consultation Paper, Members strongly support establishing a comprehensive regime for virtual asset dealers covering a broad range of dealing services, in order to improve investor protection and, ultimately, investor confidence in digital assets. We hope our comments will help the FSTB and SFC reach an appropriate balance between capitalising on the opportunities and mitigating the risks as they work to develop a robust, market-friendly legal and regulatory regime for digital assets, so that Hong Kong remains an attractive place for digital asset firms to be based, while ensuring that digital asset activities are conducted in a fair, efficient, competitive, transparent and orderly manner.

We would be pleased to discuss our response in further detail. Should you wish to do so, please do not hesitate to contact me at rkapoor@asifma.org.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line and a vertical stroke.

Rishi Kapoor
Executive Director
Head of Technology and Operations
Asia Securities Industry & Financial Markets Association

Question 1	Do you agree with the proposed definition and scope of VA dealing services? Are there any potential exemptions which you consider appropriate?
<p><u>Definition and scope</u></p> <p>Members generally agree with the proposed definition and scope of VA dealing services. However, Members seek confirmation that the proposed VA dealing definition is not meant to capture persons who carry on VA research and analytics (including price discovery), payments, transmission, settlement, clearing and corporate treasury functions.</p> <p>In addition, noting the definition of VA as set out in Section 53ZRA of the AMLO, Members understand, and seek confirmation, that the VA dealing definition would not capture dealing in or advising on VA securities, derivatives (including swaps, options, warrants), structured products where the direct or indirect underlying is a VA, and other VA-related financial instruments which do not fall within the definition of VA under the AMLO. On that basis, intermediaries who only provide asset management, dealing and advisory services in tokenized securities (including collective investment schemes) and futures contracts which fall under the SFO would not be required to be licensed for VA dealing. To the extent that there may be any overlap between the VA dealing regime and the existing regulatory regime as set out in the SFO, there should be appropriate carve-outs and clear delineation of the regulatory perimeters to prevent overlapping regulatory frameworks.</p> <p>Members also seek clarification that the VA dealing definition will not cover token issuers (<i>i.e.</i>, the legal entities which issue tokens would not be required to be licensed for VA dealing) on the same basis that securities issuers are not required to be licensed for Type 1 (dealing in securities) regulated activity under the SFO.</p> <p><u>Exemptions</u></p> <p>In respect of exemptions, in addition to the clarifications and confirmations sought above as to the intended scope of the VA dealing, taking reference from the definition and scope of Type 1 regulated activity, Members consider that the following exemptions from licensing would be appropriate:</p> <p>(a) where the person performs the act through another person who is licensed as a VA dealer (<i>i.e.</i>, dealing through);</p>	

- (b) dealing as principal — where the person (A) performs the act by way of dealing with a person who is an institutional professional investor (whether acting as principal or agent) or (B) acquires, disposes of, subscribes for or underwrites VAs (*i.e.*, where such person trades for a proprietary purpose and not as a service to other persons); and
- (c) where the person is licensed to carry on VA asset management and the relevant VA dealing activity is incidental to the carrying on of VA asset management activity (if there will be a separate VA asset management regulated activity introduced in due course, per paragraph 2.20 of the Consultation Paper).

Application to existing SFC intermediaries with VA uplifts

Currently, SFC licensed entities with a Type 1 (dealing in securities) and/or Type 9 (asset management) licence must follow additional terms and conditions issued by the SFC when carrying on VA dealing services (“**VA uplift**”). Members understand that such entities would also be required to obtain a VA dealing licence under the proposed regime. Members seek clarification regarding whether the proposed licensing regime is intended to replace the VA uplift for the Type 1 and/or 9 license. Members propose that existing requirements be updated and streamlined to align with the incoming regime.

Question 2	Do you have any comments on the proposed scope of allowed activities?
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With respect to paragraph 2.20 of the Consultation Paper, Members seek clarification whether it is intended that other VA services *e.g.*, advisory, asset management, borrowing/lending (where there is no ‘dealing’ activity) would be separately licensable, or whether the stated regulatory and approval requirements would only apply to VA dealers who also carry on such services.

Members also propose that the licensing regime clarify that VA dealers can provide their services to Hong Kong clients via either a principal or an agency model, provided that sufficient investor protection measures are in place. Furthermore, there should be no restrictions on how VA dealers can fulfill the VA orders from their clients to acquire or dispose of VAs (*e.g.*, the VA dealers can exercise their discretion whether to square off net positions, warehouse positions or route orders to an SFC-licensed VATP or non-SFC-regulated VATP).

With respect to paragraph 2.19 of the Consultation Paper, Members propose that the licensing regime allows VA dealers to align their token offering procedures with that of the non-SFC-licensed VATPs which are regulated in their respective jurisdictions. Members propose that the licensing regime allows these VA dealers to provide VA dealing services for all VAs (including stablecoins) and tokens that are listed on non-SFC-licensed VATPs *i.e.*, VA dealers do not have to have their own admission criteria, token admission and review committee, but rather can rely on these processes having been undertaken by the non-SFC-licensed VATP.

Question 3	If licensees or registrants providing VA dealing services are allowed to acquire or dispose of VAs for clients via non-SFC-licensed VATPs or liquidity providers, what are your comments on the safeguards that should be put in place?
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Members strongly agree that VA dealers should be permitted to acquire or dispose of VAs for clients via non-SFC-licensed VATPs or liquidity providers. In order to ensure that Hong Kong remains an attractive place for VA dealers to establish themselves, and remains competitive with other jurisdictions, it is essential that VA dealers have the flexibility to choose the venues which will allow them to achieve best execution for their clients.

Members consider it would be reasonable for the SFC to allow licensed VA dealers to transact with non-SFC licensed VATPs and liquidity providers subject to:

- independently verifying that non-SFC licensed VATPs and liquidity providers are regulated in other jurisdictions; or
- where proposing to transact with VATPs and/or liquidity providers which are not regulated by foreign regulators, conducting appropriate AML/CTF-related due diligence.

Question 4	If licensees or registrants providing VA dealing services are required to hold client VAs via regulated VA custodians, what are your comments on a commercially viable and AML-compliant operational flow to conduct VA dealing activities?
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Requirement to hold client VAs via regulated VA custodians

Members strongly disagree that VA dealers should be required to hold client VAs via SFC-

regulated VA custodians. VA dealers should have the flexibility to choose the most appropriate VA custodian for their activities, including those which may be licensed or registered outside of Hong Kong. For example, in the case of VA dealers providing asset management services, the appointed custodian could be prescribed under the fund documents (similar to existing Type 9 asset managers) and clients may also have their own preference as to the custody model. To require VA dealers to custody the client VAs with an SFC-regulated VA custodian may cause firms to avoid setting up operations in Hong Kong since this would limit flexibility for the VA dealer and the client to determine the most effective way to hold the client VAs. Having a strict requirement to hold client VAs with a SFC-regulated VA custodian in Hong Kong could be detrimental to the long-term scalability and success of the regime.

Even if VA dealers are required to hold client VAs via SFC-regulated VA custodians, Members seek confirmation that such VA dealers who hold tokenized securities would not be required to comply with the requirement to hold client VAs via SFC-regulated VA custodians, noting that such tokenized securities should fall within the existing securities regime.

AML/CFT obligations

Members expect that the VA custodian would be required to comply with AML/CFT measures consistent with the SFC's existing guidance on VA transfers to and from custodial and unhosted wallets (including, for example, the Travel Rule). The primary responsibility for conducting customer due diligence and KYC on the end client would be on the VA dealer.

Question 5	Do you think the regulatory requirements proposed suffice in addressing potential ML/TF risks and offering adequate investor protection?
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After the introduction of the VA dealing regime, Members seek confirmation that the SFC and the HKMA's *Joint circular on intermediaries' virtual asset-related activities* dated 22 December 2023 would still apply in connection with the distribution of VA-related products which do not meet the definition of VA as set out in Section 53ZRA of the AMLO. For example, Members expect that the selling restrictions, VA knowledge test and distribution requirements (including exemptions for institutional professional investors and qualified corporate professional investors) will continue to apply.

Question 6	Do you agree with the proposed transitional arrangement?
<p>Members are concerned about the lack of a transitional period since a number of VA dealers currently operate in Hong Kong without any licence, and would not benefit from the expedited licensing or registration arrangements. Any disruption in their ability to operate would undermine Hong Kong's ability to attract leading VA firms.</p> <p>If the FSTB and the SFC are not minded to have a transitional arrangement for VA dealers, Members consider it is crucial that there is sufficient clarity, adequate guidance and lead time given to the industry in relation to the licensing process in order to ensure that VA dealers currently operating could properly make licensing applications. Further, it is imperative that the SFC provides appropriate assurances to the industry that it will have sufficient resources to process such applications prior to the implementation date.</p> <p>In addition, to the extent that the SFC imposes a requirement for VA dealers to arrange for client assets to be held with licensed VA custodians, then the VA custodian licensing framework should be implemented first or in a manner so that VA dealers can comply with their regulatory obligations at the time of licensing.</p>	
Question 7	Do you agree with the expedited licensing or registration arrangement?
Yes, Members agree with the expedited licensing or registration arrangement.	
Question 8	Based on the “user-pays” principle, do you have any comments on aligning the licensing application fee and annual fee for a licensee or registrant providing VA dealing services with those for Type 1 regulated activity under the SFO?
Members have no comments.	
Question 9	Do you agree that, for the purpose of protecting the investing public, persons not licensed by or registered with the SFC should not be allowed to actively market VA dealing services to the public of Hong Kong?
Members agree. Members would welcome confirmation that the SFC's FAQ on the meaning	

of ‘actively markets’ under section 115 of the SFO and section 53ZRB of the AMLO would equally apply to active marketing of VA dealing.

Question 10	Do you agree that the SFC and the HKMA should be provided with the proposed powers?
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Members agree.

Question 11	Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs?
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Members agree.

Question 12	Do you agree that a review tribunal mechanism should be put in place to handle appeals against the decisions to be made by the SFC or the HKMA in implementing the licensing regime?
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Members agree.