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From HK Bitcoin ATM

To: Division 5, Financial Services Branch Financial Services and the Treasury Bureau 24/F, Central Government Offices Tim Mei Avenue, Tamar Central, Hong Kong By email: vaotc-consult@fstb.gov.hk

Q1 Do you agree that the regulation of VA activities should be widened to cover OTC trading of VA?

We support the proposal to extend the regulation of VA activities to cover OTC trading of VA, subject to certain thresholds based on transaction volume and size. As an ATM operator, we will face technical and commercial difficulties in meeting the expected KYC requirements. We suggest that a separate evaluation and development of suitable regulations for ATM businesses be conducted, considering their specific characteristics and challenges. KYC compliance is especially hard to achieve with ATM machines, due to the small transaction sizes and lack of human interaction, whereas larger OTC transactions can afford a human verification and compliance process. ATMs are designed for convenience and small, low volume transactions, with a simple and user-friendly interface. Due to technical constraints, the user experience of ATMs will be adversely affected if they are required to collect full KYC information, which may deter customers from using them.

Q2 Do you agree that we should observe the “same activity, same risks, same regulation” principle in drawing up a new regulatory framework for VA OTC services, incorporating AML/CTF requirements in accordance with international standards while ensuring sufficient investor protection?

We agree that the “same activity, same risks, same regulation” principle should be applied in designing a new regulatory framework for VA OTC services, which should include AML/CTF requirements that are consistent with international standards and provide adequate investor protection. However, we also recognize the need to balance the AML/KYC requirements with the operational and commercial viability of the industry, as they can pose significant challenges and affect profitability in the banking sector for small transaction size “same activity”. We suggest that the AML/KYC measures should not impose undue burden on the industry, but rather target the fraudulent activities by operators that harm the customers.

Q3 Do you agree with the proposed scope and format of VA OTC services to be regulated and that operators of VA OTC services who provide temporary custody/escrow service as part of the transaction process should be brought within the regulatory remit?

The scope and format should exclude ATMs, since, at least for HK Bitcoin ATM, we don't provide temporary custody/escrow services. Our transactions are done directly “on-chain”. It is advisable to minimize KYC/AML requirements for this approach.

Q4 Do you agree that a licence applicant must have a local nexus and suitable premises/relevant local addresses for CCE's effective supervision and monitoring?

We agree that a licence applicant should have a local nexus and suitable premises/relevant local addresses for CCE's effective supervision and monitoring. This would ensure the accountability and responsibility of the applicants, as well as the transparency for the CCE on the UBO of the applicants.

Q5 Do you agree that VA OTC licensees should only be allowed to provide VA-fiat (and vice versa) spot trading services, and subsequent remittance of exchange proceeds on specified conditions?

We agree.

Q6 Do you agree that VA OTC licensees should only be allowed to offer services in respect of VA available for retail trading on at least one SFC-licensed VATP and stablecoins issued by issuers licensed by the HKMA?

We disagree with the restriction that VA OTC licensees should only be allowed to offer services in respect of VA available for retail trading on at least one SFC-licensed VATP and stablecoins issued by issuers licensed by the HKMA. We propose that VA OTC licensees should also be permitted to offer services for VA that are listed on internationally licensed exchanges, as well as other VA that meet certain criteria, such as being well researched, audited and publicly launched for more than 6 months. This would allow more flexibility and diversity for the industry, while preventing uninformed customers from purchasing scamcoins at licensed shops.

Q7 Should other regulatory requirements be added to mitigate the potential ML/TF and fraud risks of VA OTC services?

We suggest that other regulatory requirements should be added to mitigate the potential ML/TF and fraud risks of VA OTC services, depending on the nature and characteristics of the services. For the ATM part of the regulations, we recommend that ATMs should be prohibited from holding customers' assets at any point and that the entire transaction should be executed "on-chain" in real time. This would ensure the security and transparency of the transactions, as well as the traceability of the funds.

Q8 Do you agree that a VA OTC licence should be renewed biennially?

We disagree with the proposal that a VA OTC licence should be renewed biennially. We believe that this would impose an unnecessary administrative and financial burden on the industry, without enhancing the regulatory effectiveness or oversight. We propose that a VA OTC licence should be renewed every five years, unless there are any issues or breaches that warrant a revocation or suspension of the licence. This would provide a more reasonable and proportionate approach for the industry, while ensuring the compliance and accountability of the licensees.

Q9 In respect of the transitional arrangement, do you prefer Option 1 or Option 2, and why?

We prefer Option 1, as it provides a clear and simple transitional arrangement for existing operators. Option 1 does not involve any uncertainty or complexity associated with the “deemed licence” mechanism, which may create confusion or inconsistency for the industry. Option 1 also allows sufficient time for existing operators to submit their licence applications and wind down their business if necessary, without disrupting the market or the customers.

Q10 Do you agree with the exemption arrangement?

We disagree with the exemption arrangement, as we believe that the existing regulatory regimes under the AMLO, the SFO and the BO do not adequately address the specific risks and challenges of the VA industry. We suggest that these entities, if providing VA OTC services, should be required to obtain an additional licence or endorsement that demonstrates their competence and compliance in the VA sector. We also propose that, pending the establishment of another licensing regime for stablecoin issuers, similar requirements should apply to licensed stablecoin issuers.

Q11 Do you agree that, for the purpose of protecting the investing public, persons without a VA OTC licence should not be allowed to actively market a regulated VA OTC service to the public of Hong Kong?

We agree that, for the sake of protecting the investing public, unlicensed persons should be prohibited from actively marketing a regulated VA OTC service to the public of Hong Kong. We acknowledge that the VA industry still needs marketing activities to promote its services and products. Therefore, we urge that the licensed entities be permitted to continue their lawful and ethical marketing practices.

Q12 Do you agree that CCE should be provided with the proposed powers?

We disagree with the proposed powers of CCE, as we believe that they are excessive and disproportionate to the nature and scale of the VA OTC ATM industry. Most of the ATM operators in this industry are small-sized and have limited resources to cope with CCE's intrusive and disruptive inspections and investigations. We propose that CCE should only be authorized to conduct these enforcement activities if they have reasonable grounds to suspect any non-compliance or offence by the licensees.

Q13 Do you agree that the proposed penalty level for carrying out unlicensed VA OTC services will be sufficient to achieve the necessary deterrent effect?

We agree that the proposed penalty level for carrying out unlicensed VA OTC services will be sufficient to achieve the necessary deterrent effect, provided that the ultimate beneficial owners (UBOs) of the unlicensed operators are identified and prosecuted, regardless of their degree of involvement or distance from the actual operations.

Q14 Do you agree with the proposed sanctions, which are comparable to those under the existing regulatory regimes for VATPs and MSOs?

We agree with the proposed sanctions, but we also believe that they should be proportionate to the nature and scale of the offence. We, as small businesses in the VA sector, should not be treated as equivalent to banks or other financial institutions. We request that the sanctions be adjusted to reflect the actual risks and challenges of the offence.

Q15 Do you agree that the purview of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal should be expanded to hear the appeals from VA OTC licensees against the future decisions of CCE?

We agree that the scope of reviewable decisions of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal should be expanded to include the appeals from VA OTC licensees against the future decisions of CCE. We believe that this would provide a fair and impartial mechanism for the licensees to challenge any adverse or unreasonable decisions by CCE, and to safeguard their rights and interests.