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 only: aml-consult@fstb.gov.hk

Dear Sir or Madam,

We refer to the consultation document issued by the Financial Services and the Treasury Bureau ("**FSTB**") for seeking views on legislative proposals to enhance anti-money laundering and counter-terrorist financing ("**AML/CTF**") regulation in Hong Kong through the introduction of (a) a licensing regime for virtual asset services providers ("**VASPs**"); (b) a two-tier registration regime for dealers in precious metals and stones; and (c) miscellaneous technical amendments under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("**AMLO**") ("**Consultation Paper**").

We set out below our response to Question 8 and Question 12 of the Consultation Paper.

Question 8: Should other regulatory requirements be added to mitigate the risks of VASPs?

No, the regulatory requirements proposed are already too stringent and we do not think that other regulatory requirements should be added to mitigate the risks of VASPs. In particular, the consultation paper proposes that at the initial stage, the licensed VASP should only offer services to professional investors ("**PI Restriction**"). For the following reasons, we disagree with the PI Restriction and we believe that VASPs should be able to offer services to non-professional investors, subject to the usual suitability requirements.

1. As the FSTB has noted, the proposals should strike a balance between the need for introducing AML/CTF regulation and the need for maintaining the competitiveness of the concerned sectors. If VASPs are restricted in offering services to professional investors only, this would greatly diminish the competitiveness of the crypto-currency and wider Fintech space in Hong Kong.

2. The PI Restriction does not mitigate ML/TF risks of the concerned sectors. In fact, we would argue that the PI Restriction is not relevant to ML/TF risks, and we therefore query why the PI Restriction will be imposed by way of AMLO and forms a part of the Consultation Paper. Should the FSTB take the view that VASPs pose an investor-protection issue, FSTB should work with the SFC to publish a consultation paper properly addressing investor protection issues, exemptions, suitability etc.

3. FSTB has noted in the Consultation Paper that the purpose of the proposals is to address the ML/TF risks of VA activities *as the FATF*

revised its standards under Recommendation 15 in February 2019 to require jurisdictions to regulate VASPs for AML/CTF purposes and supervise their compliance. The PI Restriction is irrelevant to the FATF standards and international best practices. FATF does not consider investor protection issues at all, but rather is concerned with AML / CTF.

4. The professional investor regime in Hong Kong is primarily based on financial thresholds. We believe that this is not appropriate for the VA industry, which is heavily focussed on technology. The FSTB notes that the VA industry is "tech-savvy" and that therefore, VASPs should be required to have the know how to operate a VA business correctly. In this regard, we would argue that those with the "proper know-how" would be individuals with a background in technology. Such individuals may not meet the financial thresholds to be considered a professional investor under the Securities and Futures Ordinance and the Professional Investor Rules (together, the "**PI Rules**") and thus would effectively be excluded from the system notwithstanding their robust understanding of the VA industry. Not only is this unfair, but this would also stifle the competitiveness of the VA market in Hong Kong and may lead to a "brain-drain".

5. In addition, by excluding non-professional investors from trading on VASPs which adhere to the FATF Standards, the proposed regulations are forcing such investors to use more dangerous unregulated exchanges or trading methods such as over the counter trading where investors would have less liquidity and protection (for example from fraud, market manipulation etc.), are subjected to higher fees and are more exposed to the risks of financial loss then they would be on regulated VASPs. This is directly contradictory to the SFC's mandate of investor protection.

Question 11: Do you agree that, for investor protection purpose, persons without a VASP licence should not be allowed to actively market a VA exchange business to the public of Hong Kong?

We disagree with this. Please see our responses to question 8 above.

Yours faithfully,

Anonymous