April 12, 2024

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

Email: vaotc-consult@fstb.gov.hk

Dear Sir or Madam,

Ripple Labs Inc. ("Ripple") welcomes the opportunity to comment on the consultation paper on the Legislative Proposals to Regulate Over-the-Counter ("OTC") Trading of Virtual Assets ("VAs") (the "Consultation") published by the Financial Services and the Treasury Bureau (the "FSTB") on February 8, 2024.[1]

Ripple would like to thank the FSTB for the in-depth and comprehensive analysis that has been undertaken in the Consultation. We appreciate having the opportunity to provide our comments, and respectfully request the FSTB take them into consideration as it examines the policy direction and scope of intended regulation for VA OTC services in Hong Kong. We welcome the opportunity for further engagement with the FSTB on this Consultation and any other related consultations as may be appropriate.

In responding to the Consultation, there are two overall themes that we wish to bring to the attention of the FSTB:

- The need for retail investor protection appears to be the underlying objective of the proposed VA OTC regime. However, the broad definition of VA OTC business also captures firms operating in the institutional sector, imposing on them unnecessary requirements which does not serve to meet this objective; and
- We do not believe that the principle of "same activity, same risk, same regulation" is applied consistently in the proposed requirements, notably the requirement for a licence to be renewed biennially.

[1] *See* https://www.fstb.gov.hk/fsb/en/publication/consult/doc/VAOTC_consultation_paper_en.pdf, Legislative Proposals to Regulate Over-the-Counter Trading of Virtual Assets.

1. Introduction

Ripple's software products allow financial institutions to send money globally, on a real-time basis, at a fraction of the cost of traditional services available to market participants. Using blockchain technology and VAs, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world.

Ripple's aim is not to replace fiat currencies, but rather to enable a faster, less expensive, and more transparent method of making cross-border payments that is in the public's best interest.

2. Cross-border Payments using Ripple Payments

Ripple believes that blockchain technology demonstrates the potential to transform many sectors of Hong Kong's economy, including in cross-border payments. However, we also believe that for any technology, success is based on its use cases and ability to solve real-world problems.

Cross-border payments are costly, full of friction and slow. Much of this friction is the result of the dated processes followed in cross-border payments, until now the domain of incumbent banks (referred to as correspondent banks). A definition cited by the Bank for International Settlements defines correspondent banking as *"the provision of current or other liability account and related services to other financial institutions (including affiliates), used for the execution of third-party payments and trade finance as well as its own cash clearing, liquidity management, short-term borrowing and investment needs in a particular currency."*[2]

As this definition highlights, banks use correspondent relationships - a network of bilateral accounts-based relationships - spread across the world to process payments. Although widely proliferated, the market structure of correspondent-banking injects significant friction, delays, and costs in processing payments for the respondent banks, primarily due to the need to prefund accounts.[3]

Ripple Payments connects hundreds of financial institutions around the world via a single application programming interface ("API") which makes transferring money faster, cheaper, and more reliable. It also helps to reduce, and even eliminate, the need to prefund accounts by using the VA XRP to source liquidity during cross-border transactions as an alternative to traditional funding mechanisms. Ripple Payments customers can use XRP to bridge two currencies in a matter of minutes, ensuring payments are quickly sent and received in local currency on either side of a transaction. The broad Ripple Payments flow is outlined in Figure 1 below.

---

[2] *See* https://www.bis.org/cpmi/publ/d147.pdf, Committee on Payments and Market Infrastructures – Correspondent Banking.

[3] *See* https://www.bis.org/publ/qtrpdf/r_qt2003f.pdf, BIS Quarterly Review March 2020, page 31.

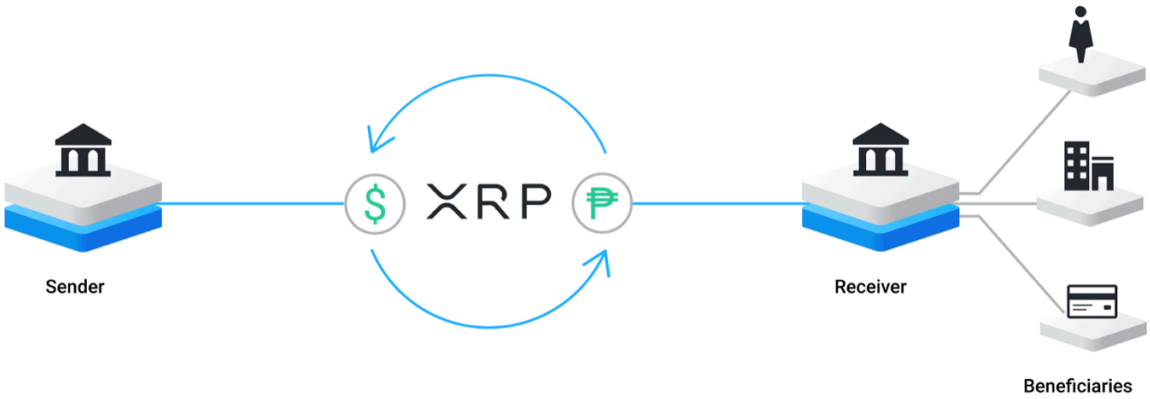

Figure 1: Ripple Payments Flow

VAs issued on blockchains that serve the same end-use as the incumbent correspondent banking model can offer a compelling alternative for end-users while still being compliant with anti-money laundering ("AML") and countering the financing of terrorism ("CFT") requirements. Global multilateral bodies have also recognized the potential digital assets and blockchain technology have in facilitating faster cross-border payments.[4]

3. General comments and policy considerations

We respectfully submit that any regulatory framework for VA OTC services should encourage responsible innovation by service providers and intermediaries while also ensuring appropriate risk management. In doing so, the FSTB will not only promote the strengthened operational resilience of the VA ecosystem, but also transform the way VA OTC services are provided. This will ultimately benefit both industry and end-users, and encourage investment in new technologies and innovation.

We therefore believe it is imperative that the FSTB take into account the following guiding principles as it develops a regulatory framework for VA OTC services. Taken together, these principles will encourage the potential of blockchain and VA technology, while also establishing important consumer and market protections that ensure global alignment and reduce the risk of regulatory arbitrage.

Principle 1 - Adopt a globally consistent taxonomy

It is important to note that there is no single or generally recognised definition of VAs in Hong Kong at present. Ripple respectfully submits such assets should not be solely defined relative to a specific technology (e.g., cryptography), but, for the purposes of regulation, should instead fall under a broader heading such as "digital assets", and

[4] *See* https://blogs.worldbank.org/psd/paying-across-borders-can-distributed-ledgers-bring-us-closer-together, World Bank blog.

subsequently classified depending on the particular economic function and purpose they serve. Such an approach is consistent with that taken by other jurisdictions like the United Kingdom ("UK") and Singapore, which have issued classifications that do not depend on whether a business model uses distributed ledger technology or not, but rather on the inherent characteristics of a token and the rights that attach to it.

Therefore, we respectfully request that the FSTB consider adopting a taxonomy for VAs consistent with global best practices to provide clarity as to the legal character of such assets in Hong Kong. Additionally, Ripple recommends that there be a clear distinction between payment tokens, utility tokens, and security tokens, as outlined below:

- *Payment or Exchange tokens*: to describe non-fiat native digital assets that are used as means of exchange and have no rights that may be enforced against any issuer;
- *Utility tokens*: to describe those digital assets that create access rights for availing service or a network, usually offered through a blockchain platform; and
- *Security tokens*: to describe tokens that create rights mirroring those associated with traditional securities like shares, debentures, security-based derivatives, and collective investment schemes.

Principle 2 - Implement a risk-sensitive regulatory framework

We are supportive of the FSTBs approach of applying effective regulation, supervision, and oversight to VA OTC services in proportion to the financial stability and consumer protection risks they pose (or potentially pose), in line with the principle of "same activity, same risk, same regulation". However, we recommend that the FSTBs proposed regulatory framework should also align with the following principles to be truly risk-sensitive:

- The regulatory framework should be **technology-agnostic**, and should not explicitly or otherwise endorse any particular technology. In practical terms, this means that financial services using VAs as a solution should not be treated differently from financial services embedding legacy architectures, and there should be parity in the treatment of all technology;

- Given the dynamic nature of VAs, prescriptive regulation risks obsolescence. Prescriptive regulation could also have the unintended consequence of hindering innovation and unwittingly increasing financial stability risk through 'business-model herding'.[5] Therefore, we recommend that the FSTB consider a **principles-based** regulatory framework that is drafted in a way to steer market

[5] That is, the implicit market bias towards certain business models due to the regulatory requirements attached to given financial activities rather than to the behaviour of the market and fundamentals. This can reduce financial stability by undermining actor diversity and hence overall resilience within a financial system.

participants to specific regulatory and policy objectives while maximizing flexibility and breadth of application; and

- The regulatory framework should use a **risk-based** approach to identify VA OTC services that pose sufficient risk to warrant regulation. A simple, and obvious initial distinction in risk-profile should be between VA intermediaries that provide services to consumers ("B2C") and those that only provide enterprise services to businesses ("B2B").[6]

The recommended regulatory framework, as proposed above, should be forward-looking and flexible while providing regulatory certainty and consumer safeguards, and at the same time meet the policy goals of encouraging innovation and growth of VAs in Hong Kong.

Principle 3 - Foster innovation sandboxes

Innovation sandboxes for market participants to test new and innovative products, services and business models with end-users in a controlled environment while being subject to regulatory oversight have been set up in multiple jurisdictions. However, while some regulators have set up successful sandboxes, many regulators currently do not offer any opportunity for such experimentation. This could lead to a potential divergence between jurisdictions in their expertise of supporting the VA sector with the likelihood of regulatory fragmentation, and potentially even regulatory arbitrage, arising.

In order to incentivise innovation and inform the development of clear and consistent regulatory frameworks for digital assets, we believe innovation sandboxes should be encouraged in Hong Kong, at the very least for specific use cases such as cross-border payments and tokenization of real world assets.

For example, the Monetary Authority of Singapore has a FinTech Regulatory Sandbox[7] which allows market participants to experiment with innovative solutions in a live environment, but within a well-defined space and duration.

Additionally, the Hong Kong Monetary Authority ("HKMA") has recently launched a stablecoin issuer regulatory sandbox. HKMA intends to leverage the sandbox to communicate supervisory expectations to entities interested in issuing fiat-referenced

[6] Regulation has often drawn distinctions between B2B and B2C business models given the inherent differences between retail consumers and more sophisticated market actors. Examples include but are not limited to the European Union's Second Payment Services Directive and Markets in Financial Instruments Directive.

[7] *See* https://www.mas.gov.sg/development/fintech/regulatory-sandbox, Overview of Regulatory Sandbox.

stablecoins in Hong Kong, as well as to obtain feedback from on the proposed regulatory requirements.[8]

However, it is important to note that innovation sandboxes will only be useful if there are clear entry and exit criteria defined, as well as parameters to measure the success of the sandbox.

Principle 4 - Encourage public-private collaboration

Any policy framework intended to regulate VAs should promote an active dialogue between regulators and market participants. Such public-private collaboration will lead to more appropriate and effective policy outcomes for the industry and consumers alike. A collaborative forum that brings regulators and industry stakeholders together to build a rational and holistic framework for blockchain and digital assets would represent a substantial step forward toward achieving regulatory clarity in Hong Kong.

We welcome the opportunity to provide feedback to the FSTB on the Consultation, and recognise this is an important step towards public-private collaboration.

Principle 5 - Ensure global consistency and comparability

Lastly, given the cross-border nature of VA OTC markets, Ripple supports having minimum global standards, supported by cross-border cooperation and information sharing across jurisdictions, to help ensure an approach that is consistent and comparable.

However, we posit that a framework that supports mutual recognition of licenses across jurisdictions could also lead to a level playing field globally, thereby supporting the sustainable growth and development of the digital assets ecosystem.

Such mutual recognition decisions exist for traditional financial institutions and infrastructures, which can be used as a template for digital asset platforms. Many of the regulatory and supervisory institutions for VAplatforms would be the same as those for the traditional financial sector, which should foster trust and ease communication between jurisdictions.

However, we would also like to highlight that in making such a determination, a principles-based approach should be followed (in line with Principle 2 noted above). An overly prescriptive process for a mutual recognition determination could disincentivize global firms from exploring this option.

[8] *See* https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/03/20240312-4/, Stablecoin Issuers Sandbox.

***

With this overview, Ripple respectfully submits the following responses to the consultation questions set forth in the Consultation in the attached Appendix.

Ripple appreciates the opportunity to provide feedback on the Consultation as the FSTB studies these important issues, and we would encourage and support further dialogue with all stakeholders. Should you wish to discuss any of the points raised in this letter, please do not hesitate to contact Rahul Advani (Senior Policy Director, APAC) at radvani@ripple.com.

Sincerely,

Ripple Labs Inc.

APPENDIX

Ripple respectfully submits the following responses to the consultation questions set forth in the Consultation.[9]

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

Ripple believes that by bringing VA OTC trading within the scope of regulation, the FSTB is acting in line with other major VA regulatory frameworks around the world. Therefore, we are supportive of the FSTB widening the regulatory perimeter for VA activities for this purpose, and support the FSTB aligning with international standards and best practices.

However, we should note that the principal driver behind the proposals outlined in the Consultation is the fact that a number of fraud cases associated with alleged virtual asset trading platforms ("VATPs") have heightened concerns over the risks of some VA activities, primarily the involvement of VA OTC platforms targeting retail investors.[10]

While Ripple supports the policy intent of the proposals outlined in the Consultation, i.e., retail investor protection, we would also like to highlight the fact that there are a number of legitimate VA OTC platforms that operate in Hong Kong. Therefore, we urge the FSTB to ensure that any final VA OTC regulatory framework for VA OTC services is risk-sensitive, and aligns with Principle 2 of Section 2 (General comments and policy considerations) of this response, including a clear distinction between businesses that serve retail customers (i.e., B2C activities), and those that serve enterprise customers (i.e., B2B activities).

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?

Ripple supports the FSTBs objective to align any new regulatory framework with international standards.

However, we would like to highlight that it is also essential that any final VA OTC regulatory framework doesn't create the potential for regulatory arbitrage given the different supervisory powers of the Commissioner of Customs and Excise ("CCE") and the Securities and Futures Commission ("SFC"), and between the proposed VA OTC regime and existing VATP regulations.

[9] Unless otherwise defined, all terms in this section use the definitions provided in the Consultation.
[10] *See* Consultation, Page 3.

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?

As highlighted in our response to Question 1 above, the principal driver behind the proposals outlined in the Consultation is the need to protect retail investors from suspected fraudulent schemes.[11]

Therefore, we respectfully recommend that the definition of VA OTC business[12] be restricted to those businesses that target retail activities (i.e., B2C activities), and not be so broad as to capture enterprise activities (i.e., B2B activities) which do not present the same level of risk to retail investors, in line with Principle 2 of Section 2 (General comments and policy considerations) of this response.

We note the FSTBs position that there is a *"need to ensure that all forms of VA OTC services will fall under the regulation of the proposed regime"*.[13] Our concern is that applying the same requirements to enterprise/B2B services as retail/B2C facing providers, particularly in relation to investor protections, has the potential to impact innovation in the sector as well as Hong Kong's aspirations to become a Web3 hub.[14]

Additionally, by defining VA OTC business as *"by way of business, provision of service of spot trade of any VA"*,[15] the scope of the regime is vaguer than it needs to be, and we believe an approach clarifying specific activities would be beneficial.

Our understanding of the proposed scope of regulation in Hong Kong is as follows:

1. VA OTC firms (spot VA brokers and spot VA dealers) offering VA to fiat (and vice versa) services will be regulated under the new regime (we also believe VA to VA OTC activity should be included within scope, and we expand on this in our response to Question 5 below);
2. VATPs (spot VA exchanges) will be regulated by the SFC under existing regulations (via exemption from this proposed regime); and
3. Decentralised VA services that exchange spot VAs fall outside of scope.[16]

Setting out the scope in this or a similar manner, along with any other activities that the FTSB may wish to confirm as within or outside the regulatory perimeter, will provide greater clarity to firms in this sector and to the competitiveness of Hong Kong as a VA and Web3 hub.

---

[11] *See* Consultation, Page 3.
[12] *See* Consultation, Page 7.
[13] *See* Consultation, Page 8.
[14] *See* https://www.budget.gov.hk/2023/eng/budget10.html, 2023-2024 Budget Speech
[15] *See* Consultation, Page 7.
[16] *See* Consultation, Page 8, Footnote 8.

We therefore ask that the FSTB considers revising the definition of VA OTC business more precisely to better reflect the objectives of this proposal (i.e. to protect retail investors in Hong Kong), to provide further clarity on the scope of the regime, and to factor in the different levels of risks posed to investors by different business models (i.e. B2C and B2B).

We also request the FSTB consider an exemption for "professional investors", in line with such existing exemptions under the Securities and Futures Ordinance ("SFO")[17] and the SFC's related regulations on offers of investments[18] and trading of VAs.[19]

In short, such an exemption will ensure that the VA OTC regulations will not apply to any VA OTC businesses that offer their services only to professional investors. In order to align with the principle of "same activity, same risk, same regulation" and in line with Principle 2 of Section 2 (General comments and policy considerations) of this response, we propose that the "professional investors" exemption be the same as that under the SFO. Namely, an individual having a portfolio of not less than HKD 8 million, or a corporation or partnership having a portfolio of not less than HKD 8 million or total assets of not less than HKD 40 million should be regarded as a "professional investor" for the purposes of the exemption.

Such a "professional investors" exemption will ensure that the policy intent of protecting retail investors is met while at the same time allowing innovation in enterprise use cases, helping support Hong Kong's aspirations to become a VA and Web3 hub.

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?

Ripple supports the FSTBs proposal to require applicants to be locally incorporated companies with a permanent place of business in Hong Kong. We believe such requirements are necessary for the regulatory authorities to be able to properly supervise and if necessary, hold to account firms operating within their jurisdiction.

We believe it would be useful for applicants if the FSTB was to consider providing further details on the expectations in relation to the positions that must be held by residents of Hong Kong and the requirements to hold such positions, given that such requirements could have an impact on the final decision of international firms looking to apply under the new licensing regime.

---

[17] *See* https://www.elegislation.gov.hk/hk/cap571, Securities and Futures Ordinance.
[18] *See* https://www.sfc.hk/sfc/doc/EN/legislation/securities/others/sfo_training/faq_ip_200303.pdf, Frequently Asked Questions Part IV of the Securities and Futures Ordinance on Offers of Investments, Page 1.
[19] *See* https://www.sfc.hk/en/Welcome-to-the-Fintech-Contact-Point/Virtual-assets/Virtual-asset-trading-platforms-operators/Regulatory-requirements/FAQs-on-conduct-related-matters/Trading-of-virtual-assets/31-May-2023-Trading-of-virtual-assets#9A636F381FF744DAB557F827EBB363B2, Trading of virtual assets.

We also note that the SFCs Guidelines for Virtual Asset Trading Platform Operators[20] requires that at least one responsible officer must be ordinarily resident in Hong Kong, in line with requirements for other licensed corporations under the SFO. It would be useful to know whether the FTSB will be considering a similar requirement under this proposed regime.

At the same time, given the cross-border nature of VA markets and in line with Principle 5 of Section 2 (General comments and policy considerations) of this response, we recommend that the FSTB also consider recognition of similar VA licenses from other jurisdictions. For example, the Monetary Authority of Singapore ("MAS") requires that firms "dealing in" digital payment tokens ("DPTs") require a Major Payment Institution ("MPI") license. Recognition of an MPI license will ensure that cross-border VA flows remain unhindered, therefore ensuring innovation and growth of VAs in Hong Kong continues, while ensuring a high degree of consumer protection.

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 note that Section 2.7 of the Consultation states that any business activity of spot trading of VAs will be captured. We also note that Section 2.12 of the Consultation states that licensees will not be permitted to provide VA to VA trades, and that service providers seeking to provide these services should consider applying for a VATP licence.

We believe that the restriction on VA-to-VA trades under the proposed VA OTC licensing regime is potentially burdensome for VA OTC businesses that would be looking to undertake both VA-to-fiat and VA-to-VA trading.

If, for instance, a licensed VA OTC business has a client willing to sell Bitcoin ("BTC") and wants to buy Ethereum ("ETH"), under the current proposal the firm would be required to either first change this BTC to fiat before then purchasing ETH for the client, or to become a licensed VATP. By imposing this unnecessary step of fiat conversion between the trading of VAs, licensed VA OTC providers may be faced with additional fees and operational steps that will only serve to make trading more difficult and inefficient.

We also believe that requiring VA OTC businesses seeking to offer VA-to-VA trading services to apply for a VATP licence is not proportionate given that these providers will, as a result, have different regulatory obligations than VA-to-fiat (or vice versa) OTC providers, whilst the risks and operational models are the same or similar.

---

[20] *See* https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/Guidelines-for-Virtual-Asset-Trading-Platform-Operators/Guidelines-for-Virtual-Asset-Trading-Platform-Operators.pdf?rev=f6152ff73d2b4e8a8ce9dc025030c3b8, Guidelines for Virtual Asset Trading Platform Operators.

It's also important to note that such VA OTC businesses may not even meet the definition of VATPs provided by the SFC under their licensing scope, namely *"Centralised platforms providing trading services in non-security tokens using an automated trading engine which matches client orders and also providing custody services as an ancillary service to their trading services"*.[21]

VA OTC businesses, whether providing VA-to-fiat trading services (or vice versa), or VA-to-VA, may not meet this definition of a VATP, given that they do not use automated trading engines to match client orders. Given the proposal to prohibit VA OTC businesses from facilitating trading of VAs in exchange for other VAs, it would appear as if VA-to-VA OTC activities would not be under the scope of either regime and therefore potentially unregulated.

Therefore, we do not believe this significantly reduces AML risk, which appears to be the FSTBs intention, and risks leaving some types of VA OTC businesses unregulated, thereby leading to less investor protection. Alternatively, we believe that licensed VA OTC businesses should be permitted to facilitate client VA-to-VA trades provided that the correct controls are in place and due diligence undertaken.

Therefore, we recommend that VA-to-VA OTC activity is brought within regulatory scope by the proposed VA OTC regulatory regime, as this will increase the level of investor protection and market integrity.

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?

Section 2.15 of the Consultation references investor protection as the reason for the requirement that only VAs that are available for retail trading on at least one SFC-licensed trading platform, and stablecoins only issued by issuers licensed by the HKMA, are permitted to be traded under a VA OTC licence.

We agree with the proposal to restrict services only to those VAs available for retail trading on an SFC-licensed VATP when a VA OTC licensee is dealing with retail investors, given these types of investors are at most risk and most in need of investor protection measures.

However, as per our response to Question 3, the broad definition of VA OTC businesses means that it captures enterprise operators as well as retail-facing operators. These B2B firms do not present the same risks to retail investors as B2C retail operators and

[21] *See* https://www.sfc.hk/en/Welcome-to-the-Fintech-Contact-Point/Virtual-assets/Virtual-asset-trading-platforms-operators, Virtual asset trading platform operators.

therefore we believe they should not be held to the same requirements in the name of investor protection.

We do not believe that a VA being available for retail trading on an SFC-licensed VATP should have significant bearing on institutional trading. We therefore ask the FSTB to consider differentiating between retail facing VA OTC businesses and institutional facing businesses, and to consider allowing an exemption to this requirement for those VA OTC providers that do not serve retail investors. Similarly, VA OTC providers that service both retail and institutional investors should be exempt from this restriction in their offering to institutional investors, as well as the proposed "professional investor" exemption outlined in our response to Question 3.

The proposal in its current form risks disincentivizing industry participants from setting up business in Hong Kong, particularly if there are only a limited number of SFC-licensed VATPs offering a limited number of VAs, as is currently the case.[22]

Additionally, we believe that the requirement for VA OTC licensees to only offer services in respect stablecoins issued by issuers licensed by the HKMA is equally restrictive, especially since the HKMA's stablecoin regulatory regime has not come into effect yet, nor are there any participants in the HKMA's regulatory sandbox as of the date of this letter.[23]

An alternative approach to placing restrictions on the types of VAs and stablecoins available would be to place the onus on VA OTC licensees by requiring them to establish and maintain listing rules. This would set out the due diligence and risk analysis carried out on VAs and stablecoins prior to approval for offering to investors. It would also include the conditions for de-listing a VA or stablecoin from their services and the processes around ongoing monitoring to ensure that the VAs and stablecoins listed remain suitable for offering to investors. This approach would be less restrictive and in line with approaches taken by other regulatory authorities globally.

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

We agree with the proposed requirements set out in Section 2.18 of the Consultation, which are in line with international standards.

However, we feel additional regulatory requirements should include the obligation on VA OTC businesses to carry out Know Your Transaction ("KYT") monitoring, using

[22] As of the date of this response, there are only 2 licensed VATPs in Hong Kong, with 18 VA trading pairs in aggregate. *See* https://www.sfc.hk/en/Welcome-to-the-Fintech-Contact-Point/Virtual-assets/Virtual-asset-trading-platforms-operators/Lists-of-virtual-asset-trading-platforms, Lists of virtual asset trading platforms.

[23] *See* https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/stablecoin-issuers/, Stablecoin Issuers.

blockchain analytics software or otherwise, in order to ensure that deposits do not come from wallets connected to illicit sources, withdrawals are not sent to wallets connected to illicit sources, and that assets received are not tainted.

This requirement is in line with Section 12.7 of the SFC's Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers).[24]

We believe that the FSTB may wish to also consider setting additional requirements in relation to safeguarding of client assets if the VA OTC business is also providing temporary custody services, given the proposal to bring these firms within the regulatory remit as per Section 2.9 of the Consultation.

Additionally, we also believe that the FSTB may also wish to consider regulatory requirements in relation to marketing and financial promotions, given that the scope of the proposal extends to not only persons operating a VA OTC business in Hong Kong, but also persons actively marketing the provision of VA OTC services to the Hong Kong public, as per Section 2.6 of the Consultation. Setting high-level regulatory requirements in relation to the expectations of a VA OTC business when issuing marketing and promotional communications would be beneficial in reducing the risk of potential fraud.

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

Ripple does not agree with the proposal for a licence that requires renewal biennially. Such a requirement does not align with any other regulatory regimes for VAs we have seen globally.

Such a requirement is also not aligned with the FSTBs commitment to the principle of "same activity, same risk, same regulation", given that OTC providers dealing in financial instruments, or any other financial service providers in Hong Kong, are not subject to this licensing requirement (for example, the SFC does not require licensees under the OTC derivatives regime to renew their licence biennially).

We are of the view that as is the case with most regulatory regimes, including those in Hong Kong, the regulatory authority should maintain the power to suspend or revoke a licence based on supervisory and/or enforcement findings, rather than because a given period of time has elapsed.

---

[24] *See* https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/guideline-on-anti-money-laundering-and-counter-financing-of-terrorism-for-licensed-corporations/AML-Guideline-for-LCs-and-SFC-licensed-VASPs_Eng_1-Jun-2023.pdf?rev=d250206851484229ab949a4698761cb7, Guideline on Anti-Money Laundering and CounterFinancing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers).

We also believe that such a requirement to undertake a licensing process every two years will be overly burdensome to firms and risks diverting resources from operational areas that need them most, resulting in potentially negative outcomes for a firm looking to renew its licence. Such onerous requirements also risk disincentivizing industry participants from setting up in Hong Kong.

Therefore, we respectfully request that the FSTB reconsider this requirement, especially given its commitment to the principle of "same activity, same risk, same regulation", and opts for the more practical and conventional approach of a license issued in perpetuity, in line with international standards and best practices.

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

Ripple believes both options to be reasonable and we welcome the way in which the SFC has approached and executed the transitional period for VATPs.

However, we would favour Option 2 as we believe it would provide the CCE with additional time to consider applications rather than what may be a more hurried approach set out in Option 1, which would require the CCE to make a determination on all licensing applications within at most, a 3-4 month period.

Option 2 would also provide applicants with an opportunity to act upon any CCE feedback and as a result, give them a better chance of becoming fully licensed.

Q10: Do you agree with the exemption arrangement?

We agree with the exemption arrangement and believe it could be far less burdensome for licensed VATPs and lessen the risk of regulatory arbitrage that a dual licensing system would create.

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?

Ripple is broadly supportive of this requirement. However, in line with our response to Question 4, and given the cross-border nature of VA markets and in line with Principle 5 of Section 2 (General comments and policy considerations) of this response, we recommend that the FSTB also consider recognition of similar VA licenses from other jurisdictions, and that such recognised license holders be exempt from this requirement.

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

Ripple has no comments on this question.

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

Ripple does not see an issue with the proposed penalties, which appear to be in line with sanctions detailed in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance ("AMLO"). However, we believe It would be useful for the industry to be provided with further clarity on exactly what the FSTB considers to be "actively marketing from a place outside of Hong Kong to the Hong Kong public"[25] to be sure that they do not accidently fall afoul of any rules. It would also be useful to know whether the intention of the FSTB is to apply the same meaning of 'actively marketing' as referred to under the SFO, and thereby apply the same guidance as provided by the SFC.[26]

Additionally, as per our response to Question 3 and Question 4, we request that any appropriate exemptions be considered for "professional investors" and recognition of VA licenses from other jurisdictions.

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

Ripple has no comments on this question.

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?

Ripple is supportive of the proposed expansion of the AML/CFT Review Tribunal for this purpose.

[25] *See* Consultation, Page 16, Footnote 20.
[26] *See* https://www.sfc.hk/en/faqs/intermediaries/licensing/Actively-markets-under-section-115-of-the-SFO#9CAC2C2643CF41458CEDA9882E56E25B, "Actively markets" under section 115 of the SFO.