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Financial Services Regulatory Update 金融服务监管资讯

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Hong Kong Securities and Futures Commission Clarifies Virtual Asset Policy by Statement on Virtual Asset Arrangements Claiming to Offer Returns to Investors

On December 13, 2022, the Securities and Futures Commission (SFC) of Hong Kong issued a statement (Statement) on virtual asset arrangements claiming to offer returns to investors, pursuant to which the SFC wishes to remind investors of the risks associated with virtual asset (VA) platforms offering VA “deposits”, “savings”, “earnings” or “staking” services (VA Arrangements) to investors in Hong Kong in light of their continued prevalence despite previous investor warnings and recent events in the virtual asset industry. The SFC also reminds the industry of the potential legal requirements when they offer VA Arrangements to investors in Hong Kong.

The SFC has observed that some of these platforms may offer a high “interest rate” on VA “deposits” or a daily generation of additional VA at a guaranteed or fixed rate to investors. The VA deposited by investors with the platform may then be on-lent by the platform to borrowers on other platforms or decentralized lending protocols or used in investment or other activities. Some platforms may also offer staking services to investors where investors’ VA may be delegated to a staking pool to earn staking rewards for investors.

Risks associated with investing in VA Arrangements

The SFC wishes to remind investors of the significant risks associated with investing in these types of VA Arrangements. **Investors may suffer significant or even total loss, especially in the event of fraud or collapse of a VA platform** as evident in the recent fallout of a number of VA platforms.

- Whilst some VA Arrangements are commonly labelled or marketed as “deposits” or “savings” products, they are **not regulated and are not the same as bank deposits**. Investors are not afforded with any form of protection.

- **A vast majority of VA platforms offering VA Arrangements are unregulated.** There may be a lack of transparency in their operations. Their fitness and properness, including their financial soundness and competence, are not subject to any regulation, such as prudential regulation. Particularly, if a VA platform or the counterparty to which the VA deposited by investors are on-lent ceases operation, collapses, or is hacked or exposed to fraud, investors may not be able to get back their VA from their accounts and may risk losing their entire investment held on the platform.
- **VA are exposed to heightened risks** including insufficient liquidity, high price volatility, opaque pricing, potential market manipulation, hacking and fraud and **may lose all value**.
- **Some VA Arrangements** could amount to a collective investment scheme (CIS) as defined under the Securities and Futures Ordinance (SFO) if the participating investors do not have day-to-day control over the management of their VA and the VA are pooled and/or managed as a whole by the operator to generate returns for investors. Such VA Arrangements may be **unauthorized CIS** and may be highly risky. The product will not have been vetted nor its offer and marketing materials reviewed by the SFC. Investors will have no protection under the SFO.

Investors are urged to be wary of the potential high risks associated with VA Arrangements, and if they cannot fully understand them and bear the potential significant or total losses, they should not make an investment. The SFC also wishes to remind parties engaging in these VA Arrangements that certain arrangements could amount to a CIS as described above.

Breach of the SFO

It is an offence under Section 103 of the SFO for a person to issue an advertisement, invitation or document which is or contains an invitation to the Hong Kong public to acquire an interest in or participate in a CIS,

unless the issue has been authorized by the SFC or an exemption applies. Moreover, it is also an offence under Section 114 of the SFO for a person to carry on a business of marketing or distributing interests in a CIS in Hong Kong or targeting Hong Kong investors without an SFC license unless an exemption applies.

The SFC takes breaches of the SFO seriously and will take robust enforcement action promptly to safeguard investors' interests. Investors and parties engaging in VA Arrangements in doubt about the nature and regulatory status of any VA platforms or VA Arrangements are advised to seek professional advice.

Recent developments of the VA industry in Hong Kong

Two new ETFs, i.e. CSOP Bitcoin Futures ETF (Stock code: 3066) and CSOP Ether Futures ETF (Stock code: 3068), which track the standardized, cash-settled Bitcoin futures contracts and Ether futures contracts traded on the Chicago Mercantile Exchange (CME), respectively, were listed on The Stock Exchange of Hong Kong Limited (SEHK) on December 16, 2022. These new ETFs are the first crypto asset ETFs in Asia. These are specially authorized and ETFs with high risks and not traded on CME are unlikely to be allowed at this stage.

The listings of the two new ETFs are expected to further expand the product ecosystem of the SEHK by offering Hong Kong and international investors greater choice, and that would also provide investors with exposure to the digital asset space for the first time in Asia and reflect both the SEHK's ongoing commitment to, and the market's appetite for, the digital economy.

SFC's concerns about investments associated with high risks

On November 25, 2022, the SFC issued its Consultation Paper (Consultation Paper) on Proposed Risk Management Guidelines for Licensed Persons Dealing in Futures Contracts (Guidelines), the Guidelines intend to supplement existing risk management requirements for futures dealing activities, which are principally set out in the Code of Conduct for Persons Licensed by or Registered with the SFC; the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC; and the Suggested Control Techniques and Procedures for Enhancing a Firm's Ability to Comply with the Securities and Futures (Client Securities) Rules and the Securities and Futures (Client Money) Rules.

The SFC considers that the Guidelines are required in light of the losses incurred by futures investors and by their brokers under the extreme market volatility in the financial and commodity futures markets against the backdrop of the COVID-19 pandemic which lasted for 2

years. In some cases, clients might be unable to meet margin calls, such that they would suffer loss, and that their futures brokers would require emergency funding or financial assistance to prevent them from defaulting on their obligations to clearing houses, or to enable them to comply with their obligations under the Securities and Futures (Financial Resources) Rules.

Therefore, the SFC issued the Consultation Paper with a view to addressing unsatisfactory risk management practices of futures brokers. Some proposed obligations under the Guidelines include, among others, (i) compliance with the risk management framework, including the designation of a responsible officer and/or Manager-In-Charge for this purpose; (ii) conducting market risk management; (iii) conducting client credit risk management; (iv) conducting counterparty risk management; (v) conducting funding of liquidity risk management; and (vi) safeguarding client assets.

Remarks

With the Hong Kong Government's proclamation of a new policy to develop the virtual-assets industry to help drive the local economy last month, a new licensing regime for virtual-asset providers has been statutorily established on December 7, 2022, and Asia's first crypto asset ETFs have been listed on SEHK on December 16, 2022. The digital economy is undeniably an area with investment potential. However, the Government and regulators are mindful of the hazards of the path of developing digital economy, as seen by the SFC's latest statement on VA arrangements aforesaid involving high risks. Recent incidents such as the collapse of the cryptocurrency exchange FTX must have been noticed by the SFC when issuing the new statement. The Hong Kong Government and regulators are making efforts to strike a balance between developing the markets by introducing diversified investment models or choices and offering adequate protection to investors. In any event, maintaining a versatile and vigilant attitude would be a way forward to develop the market steadily. Ultimately, the investors should also be wary of the risks associated with high-risk investments and those who do not fully understand VAs or other complex financial products, and are unable to bear high losses, should not invest in such products.

香港证券及期货事务监察委员会以声明就声称向投资者提供回报的虚拟资产安排澄清虚拟资产政策

于2022年12月13日，香港证券及期货事务监察委员会（证监会）就声称向投资者提供回报的虚拟资产安排发布了一份声明，其中证监会观察到，尽管先前已发出投资者警示，且近期虚拟资产产业发生多宗事件，但虚拟资产平台向香港投资者提供虚拟资产“存款”、“储蓄”、“收益”或“质押”服务（虚拟资产安排）的情况仍续见盛行，

故证监会谨此提醒投资者注意与虚拟资产安排相关的风险，并藉此机会提醒业界在向香港投资者提供虚拟资产安排时，务须注意潜在的法律规定。

从证监会的观察所见，当中某些平台可能会就虚拟资产“存款”向投资者提供高“利率”，或按保证或固定利率每天为投资者产生额外的虚拟资产。投资者存放在平台的虚拟资产其后可被该平台转借予其他平台或去中心化借贷协定（decentralized lending protocol）的借入方，或用于投资或其他活动。有些平台更可能向投资者提供质押服务，其虚拟资产可藉此被委托予质押池来为投资者赚取质押奖励。

投资虚拟资产安排相关的重大风险

证监会希望提醒投资者，务必注意与投资此类虚拟资产安排相关的重大风险。尤其是，在虚拟资产平台出现欺诈或倒闭时，**投资者可能会蒙受重大甚至是全部损失，这从近期多个虚拟资产平台倒闭所带来的震荡可见一斑。**

- 虽然一些虚拟资产安排通常被标签或推广为“存款”或“储蓄”产品，但它们**不受监管及不等同于银行存款**。投资者完全没有获得任何形式的保障。
- **绝大部分提供虚拟资产安排的虚拟资产平台均不受监管**。它们的运作可能缺乏透明度，其适当人选资格（包括其财务稳健性和胜任能力）亦没有受到任何监管，例如审慎监管。特别是，如果虚拟资产平台或获转借投资者所存放的虚拟资产的交易对手方停止运作、倒闭、遭黑客攻击或涉及欺诈，投资者可能无法从他们的帐户中取回虚拟资产，并会面临损失其在该平台上持有的全部投资的风险。
- **虚拟资产承受着较高的风险**，包括流通性不足，价格大幅波动，定价欠缺透明度，潜在的市场操纵，黑客攻击和欺诈，及**可能损失所有价值**。
- 如某些虚拟资产安排的投资者对其虚拟资产的管理并无日常控制，而有关虚拟资产是汇集的及 / 或整体上是 by 营运者管理的，以为投资者产生回报，则该等安排可能构成《证券及期货条例》所界定的集体投资计划。有关虚拟资产安排可能属非认可集体投资计划及可能具有高风险。该产品不会获证监会审批，而其发售及推销刊物亦不会经证监会审阅。投资者将不获《证券及期货条例》的保障。

证监会促请投资者注意与虚拟资产安排相关的潜在高风险，及如果他们未能完全了解有关风险及承受潜在的重大或全部损失，便不应进行投资。证监会亦希望提醒参与有关虚拟资产安排的各方注意，某些安排可能如上述般构成集体投资计划。

违反《证券及期货条例》

根据《证券及期货条例》第 103 条，任何人发出任何广告、邀请或文件，而该广告、邀请或文件属或载有诱使香港公众取得集体投资计划的权益或参与集体投资计划的邀请，即属犯罪，但如该项发出获证监会认可或获得豁免，则属例外。此外，根据《证券及期货条例》第 114 条，除非获得豁免，否则任何人在未获证监会发证的情况下经营推广或分销集体投资计划的权益的业务，不论在香港或以香港投资者为对象，即属犯罪。

证监会严正打击违反《证券及期货条例》的行为，并会及时采取果断的执法行动，以保障投资者的利益。

参与虚拟资产安排的投资者及人士，如对任何虚拟资产平台或虚拟资产安排的性质及监管状况有任何疑问，应征询专业人士的意见。

香港虚拟资产行业的近期发展

两只新 ETF — 南方东英比特币期货 ETF（股份代号：3066）及南方东英以太币期货 ETF（股份代号：3068）由南方东英资产管理有限公司管理，分别追踪在芝加哥商品交易所（芝交所）交易的标准化、现金结算的比特币期货合约及以太币期货合约于 2022 年 12 月 16 日在香港联合交易所有限公司（联交所）上市。该新 ETF 为亚洲首批加密资产 ETF。这些是特别授权的，证监会现阶段不太可能允许高风险且不在 CME 交易的 ETF。

两只新 ETF 的上市预期将为香港及国际投资者提供更多选择，从而进一步扩大联交所的产品生态圈，这也将首次在亚洲为投资者提供参与数码资产投资的机会，亦反映联交所对数码经济的关注和市场需求。

证监会对高风险投资的关注

2022 年 11 月 25 日，证监会就建议的《适用于从事期货合约交易的持牌人的风险管理指引》（指引）发表咨询文件（咨询文件），指引旨在补充现有的期货交易活动风险管理规定，其主要载于：《证监会持牌人或注册人操守准则》；《适用于证监会持牌人或注册人的管理、监督及内部监控指引》；及《提高商号遵守〈证券及期货（客户证券）规则〉及〈证券及期货（客户款项）规则〉的能力的建议监控措施及程序》。

证监会认为，鉴于在持续 2 年的新冠疫情大流行的背景下，金融和商品期货市场的极端市场波动导致期货投资者及其经纪人蒙受损失，因此需要该指引。在某些情况下，客户可能无法满足追加保证金要求，从而蒙受损失，而他们的期货经纪将需要紧急资金或财务援助，以防止

他们对结算所的义务违约，或使他们能够遵守履行《证券及期货（财务资源）规则》规定的义务。

就此，证监会发表咨询文件，旨在解决期货经纪行在风险管理方面欠佳的做法。指引规定的一些建议义务包括 (i) 遵守风险管理框架，包括为此目的指定负责人员及/或核心职能主管；(ii) 进行市场风险管理；(iii) 进行客户信贷风险管理；(iv) 进行对手方风险管理；(v) 进行资金流动性风险；及 (vi) 保障客户资产。

评论

随着香港政府上个月宣布了一项发展虚拟资产行业以帮助推动本地经济的新政策，虚拟资产提供商的新许可制度已于 2022 年 12 月 7 日颁布，亚洲首个加密资产 ETF 已于 2022 年 12 月 16 日在联交所上市。数字经济无疑是一个具有巨大投资潜力的领域。然而，正如证监会最近就某些声称向投资者提供回报的虚拟资产安排的声明以及证监会对涉及高风险的投资的关注所表明，政府和监管机构注意到发展数字经济这条道路的危险。证监会在发布新声明时应注意到最近发生的一些事故，例如加密货币交易所 FTX 的倒闭。香港政府和监管机构似乎正在努力在通过引入多元化投资模式或选择来提振市场与为投资者提供保障之间取得平衡。无论如何，保持灵活和警惕的态度，是稳步开拓市场的出路。最后，投资者亦应谨慎应对高风险投资相关的风险，对虚拟资产或其他复杂金融产品不完全了解且无法承受高额损失的投资者不应投资此类产品。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR103>

http://www.hkex.com.hk/news/news-release/2022/221216news?sc_lang=en

<https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=22CP4>

Hong Kong Securities and Futures Commission Announces the Launch of Investor Identification Regime in March 2023

On December 12, 2022, the Securities and Futures Commission (SFC) of Hong Kong announced that the investor identification regime for the securities market in Hong Kong (HKIDR) will be launched on March 20, 2023.

Upon the launch of the HKIDR which will be included in the new paragraph 5.6 of the Code of conduct for Persons Licensed by or Registered with the SFC (Code of Conduct), relevant licensed corporations (LCs) and registered institutions (RIs) are required to tag Broker-to-Client Assigned Numbers (BCANs) to securities orders to be executed on The Stock Exchange of Hong Kong Limited (SEHK) (or off-exchange trades reportable

to it), and submit to SEHK's data repository the names and identity document information of their clients.

Main obligations of LCs and RIs subject to the HKIDR (Relevant Regulated Intermediaries (RRI)) are as follows:

- (a) ensure that a unique identification code, namely the BCAN, be assigned to Relevant Clients (scope of which as explained below) who have placed or propose to place (i) an on-exchange order or (ii) an off-exchange trade reportable to the SEHK under its rules, in securities listed or traded on SEHK's trading system (except for odd lots traded on SEHK's odd lot/special lot market);
- (b) ensure that up-to-date client identification data (CID) has been collected from each Relevant Client and is submitted along with the client's BCAN (by way of putting the BCAN and CID into a "BCAN-CID Mapping File") to a data repository to be maintained by SEHK by a prescribed time;
- (c) ensure that the Relevant Client's BCAN has been included in the order information for each on-exchange order as well as each off-exchange order and included in all reporting of off-exchange trades to SEHK, and report any BCAN error of a matched and executed trade as soon as possible to SEHK by submitting a prescribed error notification form; and
- (d) adopt relevant data privacy and security measures to safeguard the data collected, transmitted and stored, including obtaining express consent from clients for the collection and handling of their personal data in compliance with data privacy laws.

The scope of "Relevant Client" is a direct client of an RRI, save that in the case of (i) a proprietary trade, the RRI should assign a BCAN to itself; and (ii) where an order is routed through a chain of RRI, the BCAN should be assigned to the first person which is not a RRI in the chain. As for investment funds (collective investment schemes) or discretionary account, a Relevant Client refers to a collective investment scheme, discretionary account holder or the asset management company, as appropriate, as the case may be, which has opened a trading account with the relevant licensed or registered person, through whose account an on-exchange order or off-exchange order is placed or proposed to be placed.

Implementation of the HKIDR

Before the HKIDR commences, there are a number of tasks that RRIs are expected to complete as part of their preparation for the implementation:

- (a) RRIs should obtain written (on paper or by electronic means) or other express consent from Relevant

Clients who are individuals (i.e. natural persons) for the transfer of their personal data to SEHK and the SFC;

- (b) RRI should ensure that the identification information has been collected as CID from the Relevant Clients. RRI should issue a notification to their existing securities trading account holders (regardless of nationality) to inform them of the waterfall of the identity documents and request an identity document required under the waterfall (if not already obtained) or updated identity document information, as appropriate, before the launch of the HKIDR;
- (c) Each RRI is responsible for assigning a unique set of BCANs to its Relevant Clients (including to RRI themselves in the case of proprietary trades). RRI do not have to check with one another to determine if a single BCAN has been applied to a client;
- (d) RRI are required to enhance their internal systems for submission of BCANs along with orders via CMG and BCAN-CID Mapping Files (a file containing the BCAN and CID of all the Relevant Clients of a RRI) via SEHK's Electronic Communication Platform (ECP). RRI should submit the latest BCAN-CID mapping data to SEHK, whenever available, from December 19, 2022 onwards prior to the launch of the HKIDR on March 20, 2023; and
- (e) RRI should take all reasonable steps to ensure that the individual client information (including the data constituting the CID) they collect and submit to SEHK's data repository is accurate and kept up-to-date, and to also promptly update SEHK of any changes via the BCAN-CID Mapping File submission. RRI should also put in place measures to require clients to notify them of any updates to the CIDs. These may include obtaining representations and warranties from their clients as they consider appropriate to assist their verification and maintenance of CID. RRI are also free to conduct a refresher of the CID exercise in the timeframe prescribed by the Guidelines on Anti-Money Laundering and Counter-Financing of Terrorism.

Compliance with applicable data privacy laws including Personal Data (Privacy) Ordinance (PDPO)

RRI are reminded to ensure that all necessary authorizations and written or other express consents are obtained from each existing and new individual client regarding the collection, storage, processing, use, disclosure and transfer of personal data in relation to such client's BCANs and Client Identification Data (CID) in full compliance with all applicable laws including the Personal Data (Privacy) Ordinance (PDPO) before

submitting any BCAN, CID and/or BCAN-CID Mapping File to the SEHK.

RRI are also reminded that they should submit the BCAN-CID Mapping File containing BCAN and CID of their clients to SEHK's data repository before a cut-off time on or before the previous trading day prescribed by SEHK, otherwise their clients will not be allowed to place buy orders on the trading day, except for new clients who wish to trade on the day of account opening or dormant clients whose accounts become re-activated on the day of entering into a trade, in which case RRI may submit the BCAN-CID Mapping File containing such client's BCAN and CID to SEHK's data repository by a deadline on a trading day prescribed by SEHK.

香港证券及期货事务监察委员会宣布于 2023 年 3 月推出投资者识别码制度

于 2022 年 11 月 8 日，香港证券及期货事务监察委员会（证监会）宣布投资者识别码制度将于 2023 年 3 月 20 日起实施。

在香港投资者识别码制度（将包括在《证券及期货事务监察委员会持牌人或注册人操守准则》（《操守准则》）新的第 5.6 段）推出后，相关持牌法团及注册机构须将券商客户编码附加在拟于香港联合交易所有限公司（联交所）执行的证券交易指令（或须向联交所汇报的非自动对盘交易），且须向联交所的数据资料库提交其客户的名称及身分证明文件资料。

受投资者识别码制度约束的持牌法团和注册机构（相关受规管中介人）的主要义务如下：

- (a) 确保唯一的识别码（即券商客户编码）已编配给已经或拟就在联交所的交易系统上市或买卖的证券（惟在联交所碎股 / 特别买卖单位市场上买卖的碎股除外）发出(i)自动对盘交易指令或(ii)须根据联交所规则向联交所汇报的非自动对盘交易的“相关客户”（范围如下所述）；
- (b) 确保已向每名相关客户取得最新的客户识别信息，以及在指定时间或之前，连同客户的券商客户编码一并提交（方式是将券商客户编码及客户识别信息载入“券商客户编码与客户识别信息的配对档案（配对档案）”内）予联交所维护的数据资料库；
- (c) 确保相关客户的券商客户编码已包括在每项自动对盘交易指令及非自动对盘交易指令的资料，以及所有向联交所作出的非自动对盘交易汇报之中；及尽快透过提交指定的错误通知表格，向联交所汇报已配对及执行的交易在券商客户编码方面的任何错误；及

- (d) 采取相关的资料私隐及保安措施，以保障所收集、传送及储存的资料，包括遵循资料私隐法例，就收集及处理客户的个人资料取得他们的明示同意。

“相关客户”的范围是相关受规管中介人的直接客户，但

- (i) 在自营交易的情况下，相关受规管中介人应该给自己分配一个券商客户编码；(ii) 如交易指令是经由相关受规管中介人的中介链传递，券商客户编码应分配给中介链中首名非相关受规管中介人的人士。就集体投资计划或委托帐户而言，相关客户指在相关持牌人或注册人开立交易帐户并已或拟透过其帐户发出自动对盘交易指令或非自动对盘交易指令的集体投资计划、委托帐户持有人或资产管理公司（视情况而定）。

投资者识别码制度的实施

在投资者识别码制度开始之前，作为实施准备工作的一部分，相关受规管中介人需要完成一些事宜：

- (a) 相关受规管中介人应获得相关个人（即自然人）客户的书面（纸本或电子方式）或其他明示同意，将其个人资料转移至联交所及证监会；
- (b) 相关受规管中介人前应确保已从相关客户处收集身份信息作为客户识别信息。相关受规管中介人应在投资者识别码制度推出之向其现有的证券交易账户持有人（不论国籍）发出通知，告知他们有关身分证明文件排序表，并要求他们根据排序表提供所需的身分证明文件（如尚未取得）或身分证明文件的更新资料（如适用）；
- (c) 每名相关受规管中介人都有责任为其相关客户（如属自营交易，则为相关受规管中介人自身）编配一组独特的券商客户编码。相关受规管中介人无须互相联系，以确定单一个券商客户编码是否已应用于某名客户；
- (d) 相关受规管中介人须于 2021 年第三季至 2022 年第一季度期间优化各自的内部系统，以便透过现货市场交易网关一并提交券商客户编码及交易指令，以及透过电子通讯平台（e 通讯）提交配对档案。相关受规管中介人应在 2023 年 3 月 20 日推出投资者识别码制度之前，从 2022 年 12 月 19 日起随时向联交所提交最新的券商客户编码与客户识别信息的配对数据；及
- (e) 相关受规管中介人应采取一切合理步骤，以确保所收集及提交至联交所的数据资料库的个人客户资料（包括构成客户识别信息的资料）是准确的及保持更新，并在资料出现任何改动时，尽快透过提交配

对文件向联交所提供最新资料。相关受规管中介人亦应制定措施，规定客户须就客户识别信息的任何更新资料向其作出通知。有关措施可包括向客户取得其认为适当的陈述及保证，以协助相关受规管中介人核实及管理客户识别信息。相关受规管中介人亦可自由在《打击洗钱及恐怖分子资金筹集指引》订明的时限内自行重温客户识别信息的程序。

遵守适用的数据隐私法律包括《个人资料（私隐）条例》

在向联交所提交任何券商客户编码、客户身份数据和/或券商客户编码与客户识别信息配对文件之前，相关受规管中介人应确保从每个现有和新的个人客户那里获得所有必要的授权和书面或其他明确同意，以收集、存储、处理、使用、披露和传输与此类客户的券商客户编码和客户身份数据相关的客户识别信息，以完全遵守所有适用法律，包括《个人资料（私隐）条例》。

相关受规管中介人亦应注意，他们应该在联交所规定的前一个交易日或之前的截止时间之前将包含其客户的券商客户编码和客户身份数据的券商客户编码与客户识别信息配对文件提交给联交所的数据存储库，否则他们的客户将不被允许在交易日下买单，除了希望在开户当天交易的新客户或账户在交易当天重新激活的休眠客户，在这种情况下，相关受规管中介人可以在联交所规定的交易日的截止日期之前提交包含该客户的券商客户编码和客户识别信息的券商客户编码与客户识别信息配对文件到联交所的数据存储库。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR102>
<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=21EC37>
<https://www.hkex.com.hk/-/media/HKEX-Market/Services/Circulars-and-Notices/Participant-and-Members-Circulars/SEHK/2022/CT15722E.pdf>
https://www.hkex.com.hk/-/media/HKEX-Market/Services/Trading/Securities/Overview/Trading-Mechanism/HKIDR/HKIDR-Information-Paper_e.pdf

Hong Kong Financial Services and the Treasury Bureau Publishes Consultation on Enhancing Regulation of Crowdfunding Activities

On December 19, 2022, the Financial Services and the Treasury Bureau (FSTB) published a consultation paper on the proposal to enhance regulation of crowdfunding activities, and launched a three-month public consultation exercise.

The consultation paper mainly sets out various recommendations on enhancing the transparency and accountability of crowdfunding activities, which include requiring in-principle future crowdfunding activities to

make application and obtain permission before commencement; and ensuring sufficient transparency to the public during and after the conduct of crowdfunding activities. The paper suggests setting up a Crowdfunding Affairs Office (CAO) to centrally process regulatory and administrative matters related to crowdfunding activities.

Background

Hong Kong currently does not have a clear mechanism in regulating the increasingly prevalent online crowdfunding activities, which poses risks to public interest and safety. This includes the fundraiser and fund contributor may not be able to recover their funds if the platform suddenly ceases operation; risks of information asymmetry; risks of fundraising outcome not in line with fundraising purpose; or crowdfunding may be used as a means to raise funds or launder money for various types of illegal activities.

Proposed crowdfunding regulatory regime

Major features of the crowdfunding regulatory regime proposed in the consultation paper are as follows:

- all fundraising activities, online or offline, that raise funds publicly from individuals or entities of Hong Kong, or individuals or entities located in Hong Kong, are required to apply in advance to the newly proposed CAO, regardless of their purpose or location;
- when processing applications, the CAO will consider factors including the honesty, reputation and reliability of the applicant; proportionality of the purpose of the crowdfunding activity to its scale; as well as risks brought about by the activity to public interests, public safety and national security;
- the CAO will co-ordinate with relevant government departments with a view to streamlining procedures for fundraising activities which are subject to existing regulation, such as donation activities held physically in public places, or lottery sales;
- the new regulatory regime will not apply to commercial fundraising activities in the market which are already well regulated by financial regulators under existing legislation;
- exemptions and facilitation measures are proposed to facilitate smooth operation and timely commencement of crowdfunding activities which are widely recognized by the society and charitable crowdfunding projects which address sudden and urgent needs;
- fundraisers are required to disclose objectives and arrangements of their crowdfunding

activities, use local bank account and keep proper records of fund movements;

- suggest consideration be given to setting up a registration system for online crowdfunding platforms; and
- empower law enforcement agencies to cease unlawful crowdfunding activities and prosecute offenders.

Conclusion

The consultation paper proposes building a comprehensive mechanism that can strengthen public confidence to participate in lawful and proper crowdfunding activities and prevent lawbreakers from engaging in activities that are fraudulent, jeopardizing public interest, or endangering public and national security in the name of crowdfunding. Crowdfunding involves a host of activities of diverse nature and evolves with technological development, and which may have far-reaching consequences to the community. There is a need to set down the normative and regulatory framework for this emerging form of financing, thereby allowing crowdfunding to serve legitimate social and personal purposes while putting in place risk-management to safeguard public interests and safety.

香港财经事务及库务局公布有关加强规管众筹活动的公众咨询

于 2022 年 12 月 19 日，财经事务及库务局公布有关加强规管众筹活动建议的咨询文件，并展开为期三个月的公众咨询。

咨询文件主要就提升众筹活动的透明度和问责性，作出多项建议，包括要求日后众筹活动原则上须事先作出申请，获得许可后方可开展，以及在众筹活动举行期间及结束时向公众提供足够的透明度。文件建议成立众筹事务办公室以一站式处理众筹活动的规管及行政事宜。

背景

现时香港没有一套清晰的制度规管越趋盛行的网上众筹活动，对市民的利益和公众安全构成风险，例如众筹平台突然中止营运，筹款人及资金提供者皆可能无法追回资金；信息不对称风险；筹款结果与目的不符的风险或不法活动可能以众筹方式取得资金，或通过众筹作洗黑钱途径。

建议的规管架构

咨询文件中建议的众筹活动规管架构重点如下：

- 所有公开向香港人或团体，或身处香港的人或团体进行募集的在线或线下的筹款活动，不论举办的目的及地点为何，均须事先向建议新设的众筹事务办公室提出申请；
- 众筹事务办公室考虑申请的原则包括申请者是否诚实、信誉良好及可靠；众筹目的与规模是否相称；及活动对公众利益、公众及国家安全的风险；
- 对于目前已受规管的筹款活动，包括于公众地方实体举行的捐款活动、售卖奖券，众筹事务办公室日后会与有关政府部门协调处理，以精简程序；
- 新规管制度不适用于目前已受金融监管机构按现行法例充分规管的市场商业集资行为；
- 建议制订豁免及便利措施，让社会公认接受的众筹活动，以及突发应急的慈善众筹项目，能继续顺畅地运作和及时开展；
- 筹款人须披露众筹活动的目的及安排、使用本地银行账户，及妥善保存资金活动纪录等；
- 建议考虑为众筹网上平台设立登记制度；及
- 赋权执法部门可停止非法的众筹活动，并检控违法人士。

结语

咨询文件中提出的建议旨在建立完备的制度，提升公众对参与合法、正当众筹活动的信心，并防范不法之徒藉众筹名义从事诈骗、损害公众利益、或危害公众以至国家安全等违法行为。众筹活动涉及的活动种类繁多，性质迥异，随科技发展而不停演变，对社会亦可带来广泛深远的影响。为这种新兴的资金活动建立基本的规范和框架是有必要的，让众筹活动可以服务社会以及个人的正当目的，并同时为公共利益和安全作好风险管理。

Source 来源:

<https://www.info.gov.hk/gia/general/202212/19/P2022121900514.htm>

https://www.fstb.gov.hk/fsb/en/publication/consult/doc/Crowdfunding_consultation_paper_Eng_final.pdf

Hong Kong Government Launches Pilot Green and Sustainable Finance Capacity Building Support Scheme

On December 13, 2022, the Government of Hong Kong Special Administrative Region (Hong Kong Government) announced the launch of the three-year Pilot Green and Sustainable Finance Capacity Building Support Scheme (Pilot Scheme) to encourage local eligible practitioners and prospective practitioners to

participate in training related to green and sustainable finance in response to the new trend of developing low-carbon and sustainable economy.

As announced by the Financial Secretary of Hong Kong in the 2022-23 Budget Speech, the Pilot Scheme aims to support talent development in green and sustainable finance by providing subsidies to market practitioners as well as prospective practitioners in taking up relevant training and acquiring relevant professional qualifications. The Pilot Scheme will run for a pilot period of three years and is administered by the Centre for Green and Sustainable Finance under the Green and Sustainable Finance Cross-Agency Steering Group.

The Government of Hong Kong has earmarked HK\$200 million for the Pilot Scheme. The Pilot Scheme is open for application by Hong Kong residents who are market practitioners and prospective practitioners of green and sustainable finance, namely students and graduates in relevant disciplines. After completing eligible programs, applicants can apply for a subsidy of up to 80 per cent of the relevant fees (full-time student applicants can apply for a subsidy of up to 100 per cent of the relevant fees), subject to a ceiling of HK\$10,000.

Since October 2022, the Pilot Scheme has been accepting applications for registration as eligible programs. Nineteen of them have been registered as eligible programs, which are provided by the professional and continuing education schools of local universities, professional institutions, international training providers, etc.

The Pilot Scheme reflects the commitment of Hong Kong Government to promoting green and sustainable finance to address climate-related financial risks and raise market awareness as well as participation. It is expected the Pilot Scheme will strengthen Hong Kong market players' capacity on green and sustainable finance by expanding the talent pool and enhancing the capacity building for practitioners as well as prospective practitioners, and eventually develop Hong Kong into a regional hub for green and sustainable finance.

香港政府推出绿色和可持续金融培训先导计划

于 2022 年 12 月 13 日，香港特别行政区政府（香港政府）公布推出为期三年的绿色和可持续金融培训先导计划（先导计划），推动本地合资格从业员及有志从事绿色和可持续金融相关工作的人士参与绿色和可持续金融相关培训，以应对低碳和可持续经济发展的新趋势。

正如香港财政司司长于《2022 至 23 年度财政预算案》演辞中公布，先导计划旨在为从业员及有志从事绿色和可持续金融相关工作人士就接受合资格绿色和可持续金融相关的培训及 / 或获取相关资历提供资助，以支持绿

色和可持续金融的人才发展。先导计划的试验期为三年，并由绿色和可持续金融跨机构督导小组辖下的绿色和可持续金融中心负责管理。

香港政府已为先导计划预留 2 亿港元。先导计划开放予身为从业员及有志从事绿色和可持续金融相关工作（即修读相关学科的学生及毕业生）的香港居民申请。申请人在完成合资格培训或资历后，可申领最多相当于该培训或资历相关费用的 80% 的资助（全日制学生申请人可获最多 100% 的相关费用的资助），以一万港元为上限。

先导计划已于 2022 年 10 月开始接受合资格培训及资历登记的申请。首批合资格培训及资历达十九个，由本地大学的专业进修学院、专业机构、国际培训机构等提供。

先导计划反映了香港政府致力于推动绿色和可持续金融，以应对与气候相关的金融风险，并提高市场意识和参与度。预期先导计划将透过扩大人才库及加强从业员及准从业员的能力建设，加强香港业界对绿色和可持续金融方面的竞争力，最终将香港发展成为区内的绿色和可持续金融枢纽。

Source 来源:

<https://www.info.gov.hk/gia/general/202212/13/P2022121300609.htm>

<https://www.greentalent.org.hk/Programme>

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