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Competence requirements for individuals

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Q1: How many ROs does a dually-licensed Platform Operator (ie, a Platform Operator licensed under both the SFO and the AMLO) need to have?

A: A dually-licensed Platform Operator is only required to have not less than two dually-licensed ROs to meet the minimum two RO requirements under section 125(1) of the SFO and section 53ZRO(1) of the AMLO. However, it will be required to hire more than two individuals as ROs if any of its ROs are not dually-licensed under the SFO and the AMLO.

One of the ROs of a Platform Operator must have not less than three years' direct industry experience in operating a virtual asset trading platform (VATP) or providing automated trading services (ATS) as defined in Schedule 5 to the SFO. He or she should possess sufficient technical knowledge and skills in relation to a VATP's operations and controls. In this regard, the SFC may recognise an RO applicant's previous direct experience in technology as relevant industry experience if he or she has been a key person in developing, or ensuring the proper and continued functioning of, a technology, platform or system; and the technology, platform or system in which the RO applicant has expertise is central to the VATP operated by his or her principal.

Q2: If an RO applicant's industry experience is mainly in relation to non-securities tokens and does not have industry experience in dealing in securities (or vice versa), would the SFC still consider the RO applicant as meeting the overall industry experience requirement, which is one of the competence requirements under paragraph 3.16 of the VATP Guidelines, in assessing his or her dual licence applications under the SFO and the AMLO?

A: The SFC is aware that some potential RO applicants have been mainly working in the VA industry dealing in non-security tokens and they may not have industry experience in securities-relevant activities. On the other hand, some potential RO applicants may be currently licensed by the SFC or other non-Hong Kong securities regulators. They may only have industry experience in Type 1 regulated activity and may not have industry experience in operating a VATP.

The SFC understands that the licensing regime for VATPs under the AMLO is new and there may be a lack of talent with both virtual asset and securities-related experience in the market at this early stage. In addition, one of the main reasons for VATPs and their proposed ROs to make dual licence applications under the AMLO and the SFO is to avoid contravening any of the licensing regimes and ensure business continuity due to the possible change of a virtual asset's classification from a non-security token to a security token (or vice versa). Having considered all these factors, the SFC

RO applicant who only has virtual asset experience

For an RO applicant who only has industry experience in dealing in VA, such experience will be considered as industry experience relevant to Type 1 (dealing in securities) regulated activity under the SFO. However, a licensing condition will be imposed on his or her licence for Type 1 regulated activity under the SFO, if granted, to the effect that he or she could only provide services of Type 1 regulated activity for the business of a Platform Operator licensed by the SFC.

RO applicant who only has experience in Type 1 regulated activity

For an RO applicant who only has industry experience in Type 1 (dealing in securities) regulated activity, such industry experience will be considered as industry experience relevant to the provision of VA service under the AMLO. However, in granting his or her licence for providing a VA service under the AMLO, he or she will be subject to a “non-sole” condition on his or her licence.

The above pragmatic approach also applies to the dual licence applications of proposed ROs to be accredited to existing SFO-licensed VATPs or VATPs whose licence applications under the existing SFO regime are being reviewed.

For the avoidance of doubt, RO applicants still have to meet the requirement on the length of relevant industry experience and other competence requirements as set out in paragraph 3.16 of the VATP Guidelines.

The above pragmatic approach is only intended to be a temporary measure and the SFC will review its continued applicability from time to time.

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