



Established 1979

香港證券業協會  
HONG KONG SECURITIES ASSOCIATION



6 May 2021

Securities and Futures Commission  
54/F One Island East  
18 Westlands Road  
Quarry Bay  
Hong Kong

Dear Sirs,

**Re: Consultation Paper on (i) the Proposed Code of Conduct on Bookbuilding and Placing Activities in Equity Capital Market and Debt Capital Market Transactions and (ii) the “Sponsor Coupling” Proposal**

The Hong Kong Securities Association (“HKSA”) welcomes the opportunity to respond to the Consultation Paper issued by The Securities and Futures Commission (“SFC”).

*Q1. Do you consider the definitions of “bookbuilding activities” and “placing activities” to be clear and sufficient to cover key capital raising activities? If not, please explain.*

The proposed “bookbuilding activities” covers all intermediaries who places orders regardless they are part of the syndicate of the offer or whether it earns any fees or being allocate with any securities. HKSA suggest the definition should be restricted to those intermediaries who is the mandated agent or a member of the syndicate only. Otherwise, any intermediaries who places orders to the mandated agent or any members of the syndicate would also fall under the definition of “bookbuilding activities” regardless whether it owes any duty of care to the issuer or mandated agent or any member of the syndicate.

*Q2. Do you agree with the proposed scope of coverage for both ECM and DCM activities?*

The proposed definition of ECM activities purposely exclude “.. share offering which has been subscribed by an intermediary as principal deploying its own



Established 1979

# 香港證券業協會 HONG KONG SECURITIES ASSOCIATION



balance sheet, for onward selling to investors or otherwise". This is a loophole for firms with big balance sheet to outside the regime circumvent the Code. This also creates an unlevel playing field for smaller CMIs.

*Q3. Do you consider the role of an OC to be properly defined? If not, please explain.*

The role of any member in syndicate is a result of commercial negotiations between the Issuer and the syndicate or its representative(s) if there any. It is not unusual for an Issuer with its own experienced team of capital market experts (whether internal or otherwise) to take on some or all of the important activities e.g overall management of the share offering, price determination. While reallocation shares between the placing tranche and public subscription tranche and reduction the number of offer shares are always governed by the prevailing regulatory requirements and practices without any genuine discretion of the syndicate. The stabilization manager is often an execution role with little economics and which activities are also subject to regulatory requirements and contractual constrains and can be filled by any syndicate with dealing capability therefore not a key role in book building function.

*Q4. Do you agree that the appointments of OCs and other CMIs and the determination of their roles, responsibilities and fee arrangements, should all take place at an early stage? If not, please explain.*

The roles, timing and fee arrangement of engagement of OCs and CMIs often dictated by market conditions and the best out would often through commercial negotiations rather than regulations which would undermine the free market.

*Q5. Do you agree that an OC should provide advice to the issuer on: (i) syndicate membership and fee arrangements; (ii) marketing strategy; and (iii) pricing and allocation? If not, please explain. What else should the OC advise the issuer about?*

The roles of OCs and other CMIs often dictated by market conditions and the best out would often through commercial negotiations rather than regulations which would undermine the free market.



Established 1979

香港證券業協會  
HONG KONG SECURITIES ASSOCIATION



*Q6. Do you agree that a private bank should not pass on to investor clients any rebates provided by the issuer? If not, please explain.*

It is private bank's commercial decision entirely.

*Q7. Do you agree that an OC should provide relevant information to CMIs to enable them to identify investor clients which are Restricted Investors in share offerings or have associations with the issuer in debt offerings? If not, please explain.*

No. It works only if an OC is undertake such role. What if there are more than one OCs? But who should provide such Restricted Investor List to OC or responsible to the accuracy and completeness of the List in case of secondary offering? Any OC who is a Type 6 licensee may not have the competence to assess the accuracy and completeness of the List.

*Q8. Do you agree that information about the underlying investors should be provided to an OC by CMIs placing orders on an omnibus basis when they place orders in the order book? If not, please explain.*

No. It is an established practice if not a regulatory expectation save for complying with legal or regulatory requirements, information of clients is subject to confidentiality between broker and clients and it must not be diverted to any third party with consent from clients. Further, client information are commercial sensitive and OCs and CMI are by definition competitors and it would commercial disaster if an OC have a right to assess to the information of underlying client of CMIs.

*Q9. Do you think there would be difficulties in a large IPO or debt offering for OCs to remove duplicated orders and identify irregular or unusual orders in the order book? If so, please provide examples.*

Yes. According to the current proposal, investors ID is not unique amongst different CMI. The book building process is akin to closing auction, during which the investors can place, withdraw or amend orders. As long as the orders remain on book are firm orders, the question of order inflation would become irrelevant.



Established 1979

# 香港證券業協會 HONG KONG SECURITIES ASSOCIATION



*Q10. Do you agree that OCs and CMI's should not accept knowingly inflated orders? If not, please explain.*

The key is “knowingly” inflated. So long as they are firm orders, question of order inflation would become irrelevant. Perhaps investors cannot place order more than the max numbers of shares under the placing tranche.

*Q11. Do you agree that OCs should ensure the transparency of the order book? If not, please explain.*

There are times none of the OC may have fully access to the order book, e.g. Split book arrangements. There are endless ways as to how a book should be run.

*Q12. Do you agree that “X-orders” should be prohibited? If not, please explain.*

CMI should be responsible to file place list to SEHK.

*Q13. Do you agree that OCs and CMI's should be required to establish and implement allocation policies? If not, please explain.*

We concern what about the right of the issuer? In sizeable issuer or where the issuer has its own experienced team of capital market, issuer often has the last say on price and allocation.

*Q14. Do you agree that client orders must have priority over proprietary orders at all times? If not, please explain.*

The current Code of Conduct already laid down this principle.

*Q15. Do you agree that proprietary orders can only be price takers? If not, please explain.*

Agree.

*Q16. Do you agree that a CMI's proprietary orders and those of its Group Companies should also include orders placed on behalf of funds and portfolios in which a CMI or its Group Companies have a substantial interest? If not, please explain.*



Established 1979

# 香港證券業協會 HONG KONG SECURITIES ASSOCIATION



Firms with proper Chinese wall, especially with global operations, ECM team may not have sufficient information to tell whether the Group Companies has any interest in the orders from its asset management arm. Further it would be unfair to independent investors of such funds having a low priority for IPO allocations. It is not too difficult to devise a scheme to circumvent this requirement, e.g. Asset manager of CMI can place order to one another.

*Q17. Orders received and entries placed in the order book are subject to constant amendments and updates throughout the bookbuilding process. Do you think it is feasible for the OC and CMIs to maintain records which evidence every change? If not, please explain.*

Yes.

*Q18. Do you agree with the scope of fee-related advice to be provided by an OC to an issuer? If not, please explain.*

No. An issuer should be free to determine whether it requires advice and guidance on fee-related matters even it ask for such service, it should not be required to act upon it as OC has vested interests in such matters and therefore has a potential conflict of interest.

*Q19. Would you envisage substantial practical difficulties in an issuer determining the syndicate membership, the ratio between the fixed and discretionary portions of the fees to be paid to all syndicate CMIs and fixed fees allocation four clear business days before the Listing Committee Hearing? If yes, please cite examples.*

By definition, market condition is unpredictable, syndicate membership, the ratio between the fixed and discretionary portions of the fees to be paid to all syndicate CMIs and fixed fees allocation are checks and balances and useful risk management tools for both the issuer and CMIs to empower both sides negotiations continued to be on arms length basis. It is in their respective interest and indeed in the interest of a free market to have these to be determined after the hearing.

*Q20. Would you envisage substantial difficulties in issuers determining the allocation of discretionary fees and the fee payment schedule no later than listing?*



Established 1979

香港證券業協會  
HONG KONG SECURITIES ASSOCIATION



*If yes, please cite examples.*

Discretionary fee often is an incentive to award the Syndicate for overall performance of the IPO as a whole. Issuer would only be possible to make this assess post listing. Suggest a deadline should be made e.g. x day post listing etc.

*Q21. Do you agree that (i) the syndicate membership (including the names of OCs) should be disclosed at an early stage; (ii) the total fees to be paid to all syndicate CMI's participating in the offering for the international placing tranche should be disclosed in the prospectus; and (iii) the total monetary benefits paid to each syndicate CMI should be disclosed after listing? If not, please explain.*

Like the comments for Q19. This should be market driven.

*Q22. Do you agree with the "sponsor coupling" proposal? If not, please explain.*

There are two conflicting school of thoughts. Both has its own merits. One being OCs should not be a sponsor and sponsor should only act for the interests of issuer and of the market as a whole. Where OC or its group company also act as a sponsor, it is more likely than not the OC+Sponsor group would likely exert significant influence if not override the sponsor who has lesser interest in the distribution side of the IPO. This is because the fee derived from distribution side of the IPO is often much more lucrative than fee from acting as sponsor. This also create uneven level playing for smaller firms who can only offer either sponsorship services or CMI services.

*Q23. Do you think one Sponsor OC is adequate or should more OCs be required to act as sponsors? For example, should the majority of OCs be required to act as sponsors (ie, if the issuer appoints three OCs, two must also act as sponsor)? Please explain.*

Like the comments for Q22. This should be market driven.

*Q24. Do you have any comments on the proposed implementation timeline?*

We suggest a nine-month transition period should be provided for the industry as six-month is insufficient.



Established 1979

香港證券業協會  
HONG KONG SECURITIES ASSOCIATION



As a summary, there are quite many areas creating interest conflicts, which caused most of the problem in the IPO processes under review. For example, most of the Sponsors having two capacities, one acting as Sponsor and another acting as Underwriter. These two roles control almost the whole process, while they have conflict of interest between themselves. We agree with most of the definitions/suggestions appearing in the consultation, but the core issue seems still stand.

Yours faithfully,

Hong Kong Securities Association