

By email: ECM_DCM_consultation@sfc.hk

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

7th May, 2021

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

Anglo Chinese Securities, Limited agrees that distrust between members of an underwriting group has prevented the proper sharing of information during the bookbuilding of a new issue and that the proposals set out in the Consultation Paper assist in addressing this issue. What the Consultation Paper side steps is the more serious issue of the evident conflict of interest between the OC and the underwriting group on the one hand and the issuer on the other. It must be apparent that this is the case and the more so in the circumstance of a large, popular equity issue when the OC has in its gift the distribution of substantial potential trading profits. We believe that where a serious conflict may exist, the issuer should be independently advised. An appropriate advisor would be a sponsor which is not an OC.

But the proposals set out in the Consultation Paper go further than this: they institutionalise the conflict by recommending that the OC must be a sponsor and it follows in many cases the sole sponsor. This places the OC in a position of considerable strength during the pricing and distribution of an equity issue as the issuer cannot easily replace a sponsor and, if it does, faces substantial delays in completing its initial public offer, additional costs and risks missing out on a favourable market.

It should be apparent also that the OC and underwriting group are retained to bring their balance sheets and distribution capability to a new equity issue. There is no logical reason why the OC needs to be in place at the beginning of the initial offer timetable. The ability to underwrite and price does not necessarily equate to the ability to sponsor a new equity issue. All the present proposals do is to prejudice financial advisory firms which have the capability and experience to sponsor an issue and which could be counted on providing an issuer with impartial advice during the bookbuilding and pricing of an issue but may not have the balance sheet size or distribution capability. This cannot be in the interest of either the issuer or the market as a whole.

Lastly, it appears that the Consultation Paper has been primarily aimed at large issues, when the underwriting syndicate is appointed well in advance of the actual issue. Given the uncertainties in the clearance process for smaller issues an underwriting syndicate is often only formed when the listing hearing date has been fixed.

Question 1: 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.

Yes.

Question 2: Do you agree with the proposed scope of coverage for both ECM and DCM activities?

Paragraph 46 is not quite clear that the Proposed Code would apply to an offer of existing shares by way of IPO, commonly described as an offer for sale in contrast to an offer for subscription.

Question 3: Do you consider the role of an OC to be properly defined? If not, please explain.

No, if the definition embraces advising the issuer on the pricing and distribution of an issue because of the obvious conflicts of interest that are likely to arise.

Question 4: Do you agree that the appointments of OCs and other CMI's and the determination of their roles, responsibilities and fee arrangements, should all take place at an early stage? If not, please explain.

We do not agree that OCs and CMI's should be appointed at any early stage. It is proposed that in the case of OCs such appointment should be within two weeks of the submission of the listing application while for CMI's no specific time limit is specified. There is also reference in the paragraphs leading up to this question to the requirement that one OC must also be appointed as sponsor which requires such appointment to be made at least two months before the listing application is submitted. The Group considers that the role of sponsor should not be conflated with that of an OC and the need to appoint OCs and CMI's can quite rightly take place at a much later stage in the listing process. As mentioned in our introduction, many underwriters will not commit before the listing hearing date for smaller issues. In the Group's view for the reasons set out in the preamble and in the response to question 22, there should be no requirement for an OC to be a sponsor. The roles and the related responsibilities of a sponsor and an OC are quite different as is the potential for a serious conflict of interest.

Among the sponsor's responsibilities will be to ensure that the prospectus contains all material information to enable investors to make an informed judgement on the investment merits of the proposed IPO candidate. Investors are currently given a limited period based on the published preliminary or registered prospectus in which to decide whether to participate in the offer. The time for such consideration starts with the launch of the offer and ends with its closing. While clearly the OCs and the CMI's should be appointed before the launch of the offer there is no logical reason to require their appointment to be at early stage of the IPO process; the time for CMI's to assess the IPO candidate does not need to be longer than that provided to investors.

Typically in larger issues the OC will be appointed at a relatively early stage to enable a marketing strategy to be agreed but the optimum timing of this appointment if the OC is not a sponsor should be left to the discretion of the sponsor and the issuer.

Question 5: 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?

No, we believe that the issuer should be independently advised.

Question 6: Do you agree that a private bank should not pass on to investor clients any rebates provided by the issuer? If not, please explain.

We do not have a strong view on this and would not object were private banks to be permitted to pass on rebates to their clients.

Question 7: Do you agree that an OC should provide relevant information to CMI's 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.

Yes, except this could be provided by a sponsor which was not an OC.

Question 8: Do you agree that information about the underlying investors should be provided to an OC by CMI's placing orders on an omnibus basis when they place orders in the order book? If not, please explain.

No, we believe that information about the underlying investors should be provided to the OC and also to the sponsor and the issuer but recognise the sensitivity of CMI's to poaching. We suspect this concern is overstated by CMI's. As bookrunner the OC is the only party to the offer, other than the sponsor and the issuer, who will see the book. Under this proposed provisional orders can be placed on an omnibus basis, but details of the underlying investors will be provided separately to the OC (and there may be more than one). If such details are given to the OC it does not address the poaching concern by the OC or OCs.

Question 9: 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.

If the information is available it should not be unduly difficult to identify such orders.

Question 10: Do you agree that OCs and CMI's should not accept knowingly inflated orders? If not, please explain.

It has been common market practice to adjust orders to take into account the anticipated level of over-subscription of an offer. Such investors will be aware of the risk of receiving a greater allocation than they intended. We do not agree that that inflated orders whether known or unknown to the OCs should be unacceptable.

Question 11: Do you agree that OCs should ensure the transparency of the order book? If not, please explain.

Yes, but this must include the issuer and its advisers.

Question 12: Do you agree that "X-orders" should be prohibited? If not, please explain.

Yes.

Question 13: Do you agree that OCs and CMI's should be required to establish and implement allocation policies? If not, please explain.

A requirement of an allocation policy may be of some help towards addressing the conflict of interest that exists in offers of securities. We believe this is best addressed by the sponsor as the overall adviser to the Company having access to the transparent order book and an influence over the ultimate allocation of the securities. This suggestion best serves the interests of the issuer.

Question 14: Do you agree that client orders must have priority over proprietary orders at all times? If not, please explain.

We do not agree. The determining factor for the allocation of the securities should be the interests of the issuer, the aftermarket and the offer as a whole. There may be merit in only permitting a short period at the beginning of the bookbuilding process for proprietary orders to be placed.

Question 15: Do you agree that proprietary orders can only be price takers? If not, please explain.

Favouring proprietary orders is already prohibited. Proprietary orders should have the same influence on price discovery and should be treated in the same way as other orders. Further, it is not clear how the proposal would work. Would proprietary orders only stipulate the number of securities and be subject to allocation at any price up to the top of the price range?

Question 16: 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.

We disagree with this proposal as it penalises other investors in the fund or portfolio in which the OC or CMI may have a substantial interest. It also hampers the price discovery process.

Question 17: 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 CMI's to maintain records which evidence every change? If not, please explain.

We believe that it should be feasible to record every material change to the order book.

Question 18: Do you agree with the scope of fee-related advice to be provided by an OC to an issuer? If not, please explain.

We are unclear about the scope of the requirement but would support arrangements that require the OC to give complete information to the issuer and other members of the underwriting group on both fee-related matters and the identities and basis of allocation of subscribers to the new issue.

Question 19: 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 CMI's and fixed fees allocation four clear business days before the Listing Committee Hearing? If yes, please cite examples.

We do not understand the reason why this information is required before the listing hearing. The listing hearing is to confirm the suitability of the IPO candidate for admission for listing on the Exchange. The

selling arrangements are not part of this process. Further market conditions can change rapidly requiring adjustments to pricing and fee arrangements. It is, however, acknowledged that alterations to fee arrangements may be made as the IPO timetable progresses.

Question 20: Would you envisage substantial difficulties in issuers determining the allocation of discretionary fees and the fee payment schedule no later than listing? If yes, please cite examples.

We do not envisage substantial difficulties in determining the allocation of fees no later than listing as by this stage all allocations of the securities will have been made. There should be recognition of adjustments for any price stabilisation.

Question 21: 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.

- (i) We do not understand why the underwriting syndicate should be disclosed before the commencement of the launch of the offer of securities. The launch will include the provision of a preliminary prospectus on the basis of which questions may be asked of the syndicate members. Prior to the launch of the issue and the publication of the preliminary prospectus the market participants will not have a basis for relevant questions.
- (ii) We agree that total fees payable to CMI's should be disclosed.
- (iii) We do not see the need for this disclosure but do not approve its disclosure.

Question 22: Do you agree with the "sponsor coupling" proposal? If not, please explain.

We strongly disagree with the "sponsor coupling" proposal as explained in more detail in the preamble to this submission. The proposals do not adequately address the inherent conflict that arises between the interests of the issuer and the selling group's interest in satisfying their investing clients. This can be addressed by an issuer appointing a sponsor which may not be a member of the selling group, comprising OCs and CMI's. In relation to the marketing of the issue, such sponsor will not have a conflict in providing advice in respect pricing and allocation. The "sponsor coupling" proposal would enshrine this well recognised inherent conflict through the proposed code.

Further, the separation of the role of sponsor and OC would eliminate the concerns the SFC has had in the past of the work in sponsoring an issue by a OC being effectively subsidised by underwriting commissions.

Question 23: 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.

We see no reason for having more than one sponsor, which generally adds a further burden on the issuer.

Question 24: Do you have any comments on the proposed implementation timeline?

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Given the length of time it can take to obtain clearance from the Stock Exchange, an implementation period should be at least a year, if not longer, so as not to cause potential issuers to be forced to renew their applications because they have been compelled to replace their exiting sponsor.

We trust the above is an order. If any answers require clarification process let us know.

Your faithfully,

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