

## **GENERAL COMMENTS**

### **Not the responsibility of the issuer to ensure fair allocation and orderly aftermarket**

Qualification for listing requirements under Rule 8.08 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules") are (i) an open market in the securities for which listing is sought; (ii) an adequate spread of holders of the securities to be listed; and (iii) not more than 50% of the securities in public hands at the time of listing can be beneficially held by the three largest shareholders. In general, the Listing Rules does not require the issuer to ensure a fair allocation to investors and an orderly aftermarket. The priority of the issuer is to complete the IPO and to maximise the proceeds, the quality of the shareholder base may be secondary to issuers. The maintenance of an orderly market at the time of listing, while already complied with Listing Rules requirements, is not the obligation of the issuer.

### **Unfair to label and alienate niche investors base of small to medium sized firms**

The playing field is not level. The competitive strength of large and multi national firms far outweigh medium sized and domestic firms, and medium sized and domestic firms have to find niche to win CMI roles. The medium sized and domestic firms network ensure the efficiency of the market such that the distribution network can cover all investors. Unconventional investors of a small to medium sized CMI should not be alienated.

### **CMIs cannot guarantee fair allocation and best shareholder base**

Whether an allocation is fair and a set of shareholders is best are subjective, and whether the best price is achieved is argumentative. All the above depends on various factors including, inter alia, the level of demand, market dynamics, the preference of the issuer (if any), and vested interests of the CMIs and the issuer which do not contravene, but comply with, the rules and regulations. The obligation of the CMIs are to distribute the securities and can only advise the pricing, distribution strategy and allocation on best intent and cannot guarantee the outcome.

## **RESPONSE TO THE CONSULTATION PAPER**

Q01: Yes

Q02: Stapled securities, CB nor EB are not covered for now. Please consider if such securities to be added into the scope of coverage.

Q03: Yes apart from stabilising manager which can be conducted by a non-OC JGC.

Q04: We agree that OCs and JGCs should be appointed at an early stage (for example, within two to three weeks of the submission of the listing application), and roles and responsibilities defined, as they have to advise the issuer on marketing and distribution. However, in order to protect the issuer, the issuer should have the flexibility in appointing additional JGCs if it doesn't believe the early appointed OCs/JGCs can distribute the transaction satisfactorily.

We disagree with the appointment of other CMIs at an early stage since (1) CMI effort cannot be known too early and such effort cannot be reflected fairly; (2) such early appointments lack flexibility; (3) there is significant time lag between A1 submission and commencement of bookbuilding; and (4) market sentiment keeps changing and hence the appetite of respective investor of each CMI may change throughout time. Their appointment can be four business days before Listing Hearing.

We agree that a fee structure (for example, the underwriting commission comprising a management fee and a selling concession (the fixed allocation of this management fees among JGCs), and discretionary bonus) can be determined at an early stage. We disagree that the numerical value of the underwriting commission can be fixed (without changes) at an early stage as the market sentiment at the time of launch may lead to higher or lower level of fees being negotiated. Though the determination of a range at an early stage can be considered.

Q05: We agree that an OC should provide advice to the issuer on (i) to (iii) as proposed. We have reservation in the statement "where the issuer decides not to adopt an OC's advice or recommendations in relation to pricing or allocation..., its decisions may lead to a lack of open market, an inadequate spread of investors or may significantly and negatively affect the trading of such shares in the secondary market" in paragraph 75 of the consultation paper. The criteria for an open market and adequate spread are clearly defined in the Listing Rules and not subjective. The above statement seems to suggest an issuer's decision against an OC's advice or recommendations would lead to lack of open market and inadequate spread of investors that are subject to subjective interpretation, and deter an issuer to assert its influence to protect its interests (for example, maximizing proceeds).

As there are clear quantification in the Listing Rules on open market and adequate spread of shareholders, please clarify the meaning of "amount to material non-compliance with the SHE Requirements" in paragraph 75 of the consultation paper.

We cannot think of other matters that an OC should advise.

Q06: Before going into question 6, we would like to express our views on paragraphs 79 and 80 of the consultation paper. Each CMI has its own strength and network.

While the benefits of marketing strategy noted, CMIs should be allowed to deviate from it to accumulate demand and investor diversify for the good of the offer.

We disagree that CMIs should not market to investor clients who fall outside of the "strategy". These investors can be placed in a lower priority tier when it comes to allocation. However, in the event that the "correctly strategized investors" fail to fill the book, an issuer may need to allocate to these investors to complete the offering.

A rigid code provision relating to the above may work against the interests of an issuer while complying with the Listing Rules.

We agree with question 6.

Q07: Disagree as this may lead to a duplication of effort by the CMIs the OCs. All CMIs should pass the placee list to the OC(s), and OC(s) to decide to check by themselves or through sponsor whether any of these placees will be considered as a Restricted Investor.

**Q08: Disagree as client information is business asset of a CMI. Larger CMIs would otherwise bypass the smaller CMIs to get in touch with the aforesaid investors.**

**Q09: Not difficult.**

**Q10: Agree.**

**Q11: Agree.**

**Q12: No comment.**

**Q13: Before responding to question 13, we would like to make the following comments:**

**Paragraph 95 – Apart from an OC, a non-OC JGC should also perform the same function.**

**Paragraph 96 – It may be difficult to ensure fair allocation. Firstly, fair is subjective and cannot be quantified, for example, one may consider a different rate of allocation for investors being unfair. In addition, allocation may take into the preference of an issuer (for example, more long funds to ensure longer holding but which may negatively affect market liquidity, more hedge funds/high net worth to promote liquidity but which may lead to higher after market volatility), and the allocation result won't be "fair", raising code concerns.**

**Paragraph 99 – Sub-paragraph (d) – It will be difficult to determine these items before a book is built. Please also refer to comment on paragraph 96 above in relation to an issuer's preference (while complying with the Listing Rules). Besides, the required minimum spread of investors and maximum holding are set out in the Listing Rules.**

**We agree with question 13.**

**Q14: Agree.**

**Q15: Agree.**

**Q16: We disagree since this seems to be inconsistent with HKEX-GL85-16.**

**Q17: Yes we believe it is feasible.**

**Q18: Before we respond to question 18, we would like to comment on the following paragraphs:**

**Paragraphs 127, 128 and 131 – Underwriting commission should reward advisory work (fixed fee portion) and motivate distribution (selling concession portion together with discretionary bonus). Non-GC/bookrunner CMIs typically do not receive a fixed fee as they provide no advice and the role in the syndicate is to distribute the securities. A structure comprising substantial fixed fees not tied to selling may introduce complacency and reduce incentive to sell, which is not in the interest of an issuer. Should the OC(s) act properly as**

**“gate keepers” as proposed, the allocation to price insensitive orders should be minimized/eliminated.**

**Therefore, in the interest of an issuer, the fixed fee should not be codified to be a larger portion of the total fees. Though we absolutely agree that there should be fixed fees in the total fees.**

**Paragraph 132 – The analysis entirely discount the judgement of investors. The participants of the placing tranche are sophisticated investors and should not be alleged to blindly believe overly-favorable research without conducting own analysis (for example, reviewing comparable companies multiples).**

**Paragraph 133 – Please clarify whether allocating zero fixed fees to non-GC CMIs is acceptable.**

**We agree with question 18.**

**Q19: We do not envisage substantial practical difficulties in determining the matters raised four clear business days before the Listing Hearing. However, modifications with reasons should be allowed (for example, the CMIs failing to distribute or expressed concern on success) to protect the interest of an issuer.**

**Q20: No we do not envisage substantial difficulties.**

**Q21(i): Agree, not before four clear business days before the Listing Hearing, though the OCs can be disclosed earlier. However, revisions in syndicate membership should be allowed in the prospectus.**

**Q21(ii): Agree but subject to caveats including (i) final allocation between public and placing tranche cannot be confirmed until allocation, (ii) exercise of green shoe, (iii) discretionary fee will not be known by the time of prospectus publication.**

**Q21(iii): The title of the CMI (that is, GC, bookrunner, lead manager, etc.) already depicts the role of the CMI in the offer. Market participants, especially longer term investors like investment funds, should primarily make their decision based on the merit of the issuer and much lesser on who to approach to place orders to enhance success rate and how they believe the final allocation and spread of shareholders will be. Fee disclosure will also create unfair competition among CMIs since if the logic in paragraph 139(c) is correct, investors will flood to the CMI with the highest fee allocation.**

**Since there are fees which are selling concessions, the fees disclosed only reflects the advisory portion which may not translate to influence in allocation and final book and allocation. In addition to the above, we disagree as this is private commercial information.**

**Q22: Before we respond to question 22, we would like to comment on the following paragraphs of the consultation paper:**

**Paragraph 140 – The statistic quoted in sub-paragraphs (b) and (d) do not necessarily support the assertion that “there appears to be increased interest on the part of CMI to be appointed as heads of syndicate for IPOs” and “an increasing proportion of the heads of syndicate did not act as sponsor”. In general, where a sponsor has distribution capability and can**

act as heads of syndicate, that sponsor would almost certainly requests to be appointed as a head of syndicate when securing the sponsor role. Securing the sponsor role is the easiest way for a firm to lock in a head of syndicate position and hence fighting to act as sponsor is the first phase of where competition begins. The second phase of competition is to fight for a head of syndicate position of non-sponsored deals (whether competed as a sponsor in the first place or not), especially targetted deals, and mostly face fierce opposition from the incumbent sponsor firm with Type 1 license. Accordingly, in our experience, a CMI would typically always want to secure the sponsorship role for transactions they want to be heads of syndicate.

A sponsor provides advisory work which is a fixed fee compensation business and an underwriter's value is in the selling of the stock which reward commensurate with the value of the stock sold. It is generally viewed that one sponsor firm can provide the same level of services as the next sponsor firm and hence the fees are competitive. While perceived distribution success is valued much more by an issuer and rewarded more handsomely. Therefore, we do not believe there is misalignment as discussed in sub-paragraph(e).

In addition, if the conclusion that sponsors not being appointed as heads of syndicate may compromise due diligence work to secure appointment is accurate/feared, then all sponsors without Type 1 license fall into this category. Sponsors is a proud profession and should not be viewed as such. Hence, we disagree with this assertion.

We agree that the issuer is best served with a Sponsor OC.

We note that a sponsor and a CMI have different roles and it is not the sponsor's role to distribute the shares. Although an issuer can appoint two sponsors, one being a Sponsor OC, the issuer will consider the costs involved and the potential additional workload and issues of working with two sponsors. Should the issuer decide to appoint a sole sponsor only, the firm without Sponsor OC ability will always lose out and this creates an uneven playing field and materially adversely impact on the competitiveness of the sponsor without Sponsor OC ability.

We therefore reserve our comment on this question.

Q23: Subject to our response to question 22, 1 sponsor OC is adequate.

Q24: We would propose a transition period of at least 12 months.

#### **RESPONSE TO 21.3 AND 21.4**

##### ***21.3 CMI – Obligations and expected standards of conduct***

21.3.3(a): Disagree. Please refer to our response to question 6.

21.3.4: Disagree. Please refer to our response to question 6.

21.3.5(b): 21.3.3(a) Disagree. Please refer to our response to question 8.

**21.3.6:** Disagree with the use of the words “fair” and “unfair treatment”. Please refer to our response to question 13.

***21.4 OC - Obligations and expected standards of conduct***

**21.4.1(b):** Subject to adoption of “Sponsor Coupling”.