Fidelity INTERNATIONAL

SFC Consultation

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

RE: Fidelity's response to SFC's 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

May 14, 2021

Dear Sirs,

FIL Investment Management (Hong Kong) Limited ("Fidelity") welcomes the opportunity to engage on this topic of importance to ourselves and to the continued success of Hong Kong's capital market. We broadly agree with the proposals made and believe the intention of increasing the structural integrity and improving the conduct and governance within the market will be achieved upon commencement of many of the proposals raised.

Fidelity is a long time active participant in this segment of the market and as such are familiar with the behavioural issues noted by the SFC. We set out below our own observations and views on how the updated requirements and responsibilities that are envisioned can fulfil the policy objective of benefitting Hong Kong investors, whilst noting certain areas to further enhance the proposals and also add clarity.

Fidelity remains open to discussing, both as a member of the industry and individually with the SFC, any related or supplementary points that may help to contribute to the success of the consultation.

Yours sincerely,

Our responses to the questions are as follows:

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.

Yes, the definition of "bookbuilding activities" and "placing activities" is clear and sufficiently covers key capital raising activities.

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

Yes, we agree with the proposed scope of coverage as a key basis on which to define the scope more wholly. We also agree with the exclusion of club deals and private placement deals which are entered into between an issuer and a few select investors on a bilateral or individually negotiated basis. In addition to IPOs, primary and secondary block transactions (including follow-ons), secondary offerings, accelerated bookbuilds, convertible or exchangeable bond offerings should all be covered by the Proposed Code. These types of offerings can also form part of key ECM and DCM activities and so warrant the level of transparency trying to be achieved by the proposals

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

Yes, the role of OC is properly defined. We support the appointment and role of an OC. We are also of the view that an OC must be a sponsor, but a sponsor does not necessarily have to be an OC.

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.

Yes, we agree that the appointment of OCs and CMIs should be determined early, preferably finalised by the time of the A1 filing. We support some flexibility in the appointment of additional non-OC CMIs post-A1 filing but subject to the following conditions: (a) such appointment must occur prior to the listing committee hearing and (b) the fixed fees to be paid to such additional CMIs should come out of the Unallocated Fixed Fee. Not only will this contribute to transparency with regards to the institutions involved and their roles, it will also help ensure only those mandated to discuss the transaction(s) with investors do so.

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?

We agree that an OC should provide advice to the issuer on i) marketing strategy and ii) pricing and allocation in order to ensure the success of a transaction. There may be a potential conflict of interest for an OC to advise an issuer on syndicate membership and fee arrangement but the OC as the head of the syndicate must advise with the best interest of the issuer in mind. For instance, if the arrangement is such that the OC may need

assistance from other CMIs, those CMIs should be sufficiently incentivized and so the OC as the adviser will also need to ensure this. As the discretion on fees is ultimately with the issuer however, we don't believe the prospect of a conflict of interest will preclude an OC from advising on those matters. The SFC notes that it is of "paramount importance for the OC to explain the basis of its advice" and this should be of sufficient detail to allow the issuer to assess if there is appropriate balance between incentivization of the OC and the additional CMIs.

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.

Yes, we agree. We think there should not be any rebates being paid by the issuer to any participants in the transaction at all, including to private banks, regardless of whether such rebates received from an issuer is intended to be passed on to investor clients or others. We believe it is an important precondition to the fairness of the arrangement to the investor community that no segment of it should receive additional benefits.

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.

Yes, we agree that an OC should provide relevant information to non-OC CMIs to enable them to identify investor clients which are Restricted Investors in IPOs. This helps improve governance and facilitates the integrity of the participating investors.

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.

Yes, we agree that information about underlying investors should be provided to an OC by CMIs.

However, "omnibus order" should be defined in the Proposed Code. We are of the view that:

- "omnibus order" should include orders placed under the name of a fund manager, asset manager or private bank on behalf of their multiple underlying fund /
- for such orders, disclosure of the manager / private bank ID should suffice
- swap orders from banks should not qualify for inclusion under the omnibus carve out and the order book should show the identity of the underlying investor

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.

No, there is no difficulties in removing duplicate orders. This is commonly done for ECM transactions already.

Q10. Do you agree that OCs and CMIs should not accept knowingly inflated orders? If not, please explain.

Yes, we agree that OCs and CMIs should not accept "knowingly" inflated orders.

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

Yes, we agree that OCs should ensure the transparency of the order book.

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

Yes, we agree that "X-orders" should be prohibited.

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

Yes, we agree.

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

Yes, we agree that client orders should have priority over trading or proprietary desk orders. Whenever there are both client and proprietary orders originating from the same Group institution, client orders from that institution should take precedent over any proprietary orders.

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

Yes, we agree that proprietary orders should only be price takers, otherwise we see a potential for proprietary orders to be used to inflate or contribute to the mispricing of a transaction. The orders, in totality, should be a true reflection of the market sentiment for the transaction.

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.

Please refer to the answer for question 14.

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, we think an audited trail is achievable. Banks often use third party vendor technology platforms such as 'Dealogic' or 'Ipreo' for bookbuilding and the changes should be able to be tracked in those systems.

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

Please refer to the answer for question 5

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.

Ideally, the majority of the fee needs to be fixed upfront in order to avoid banks pursuing orders with a view to hastily being included in deals at the 'last minute'. We believe that the majority of the underwriting fees (e.g. 75% of the total fees) should be fixed and allocated to the OC and non-OC CMIs appointed by the time of the A1 filing. Fees should be paid promptly upon completion of the deal, leaving a smaller portion (e.g. 25%) to be determined by the issuer on a discretionary basis later (i.e. the discretionary fee) but no later than listing day

Q20. 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.

No, there should be no substantial difficulties for issuers to determine the allocation of the Discretionary Fee and pay all fees no later than the date of commencement of listing and would further note this is key in avoiding undue delay caused by issuers potentially wanting to observe how the listing performed on a longer term basis prior to fee payment.

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 CMIs 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.

Yes, we agree. The disclosure of the syndicate membership could be made in the A1 filing or, by way of an announcement or through the SEHK website. Any syndicate CMIs who are appointed by the issuer post the A1 filing, if allowed, could be disclosed by way of a supplemental announcement through the SEHK website. This should help enhance market transparency and reduce the ability for non-mandated entities to claim a connection to the transaction.

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

Yes, we agree. We think all OCs must be sponsors, but not all sponsors have to be OCs. Given a sponsor has to conduct robust due diligence on the issuer, the OC should be a sponsor as to align its duties with the knowledge and details of the company gained. However, additional sponsors should be able to become involved in the arrangement where it may be deemed necessary as long as they can successfully fulfill sponsorship duties; these additional sponsors may not be in the position to act as OC, such as if they do not possess an underwriting license.

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.

We think one sponsor OC is generally adequate, but some flexibility should be retained in case of larger deals. As head of the syndicate, the OCs should all have to act as sponsors but not all sponsors have to act as OCs.

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

We propose a six months implementation timeline.