

SFC Consultation on (i) the Proposed Code of Conduct on Bookbuilding and Placing Activities in ECM and DCM (ii) the “Sponsor Coupling”

Item	Proposed New Code reference	New requirements	SFC Consultation questions	Our responses
1	21.1 – Definition	<p>Definition of activities in respect of an offering of shares listed in SEHK (“share offering”) or offering an offering of debt securities listed or unlisted, and offered in Hong Kong or otherwise (“debt offering”) to issuers, investors or both:</p> <p>(a) collating investors’ orders (including indications of interest) in a share or debt offering in order to facilitate:</p> <ul style="list-style-type: none"> i. the price determination and the allocation of shares or debt securities to investors; or ii. the process of assessing demand and making allocations (“bookbuilding activities”); <p>(b) distributing shares or debt securities to investors pursuant to those bookbuilding activities (“placing activities”); or</p> <p>(c) advising, guiding and assisting the issuer client in those bookbuilding and placing activities.</p> <p>A licensed or registered person engaged in any of the above-mentioned capital market activities is referred to as a “capital market intermediary” (“CMI”).</p>	<p>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.</p>	
2	21.1 – Scope of application	<p>ECM: Proposed code would cover shares to be listed on SEHK via:</p> <ul style="list-style-type: none"> (a) IPO (including share offering in connection of a secondary listing) 	<p>Question 2: Do you agree with the proposed scope of coverage for both ECM and DCM activities?</p>	<p>For DMC offering that is commonly launched as global offering, will the said activities conducted</p>

		<p>(b) Offering of shares of a class new to listing; or</p> <p>(c) Offering of new shares of a class already listed under a general or special mandate</p> <p>(d) Top-up and new shares placement (where a shareholder places its existing listed shares to third-party investor followed by a top-up subscription of new shares by the shareholder)</p> <p>DCM: Debt offerings in Hong Kong include bonds with complex features, bonds issued by sovereigns or corporates, bonds targeting retail or professional investors, listed or unlisted bonds and, high yield issues. The Proposed Code would cover all types of debt offerings, provided that the offering involves bookbuilding or placing activities conducted by intermediaries in Hong Kong.</p>		<p>by the intermediary in Hong Kong exclusively to non-HK investors (e.g. investors in other Asia countries) be subject to the new Code?</p> <p>We would like to seek the further clarification from SFC if Certificate of Deposit issuance program is out of the DCM regime under the new Code.</p>
3	21.2	<p>Type of CMI</p> <p>Syndicate CMI - A CMI which is engaged by the issuer of a share or debt offering.</p> <p>Non-Syndicate CMI - A CMI which is not engaged by the issuer of a share or debt offering.</p> <p>ECM: an “Overall Coordinator” (“OC”) of the offering is a syndicate CMI which, solely or jointly, conducts any of the following activities:</p> <p>a) overall management of the offering, coordinating the bookbuilding or placing activities conducted by other CMIs, exercising control over</p>	<p>Question 3: Do you consider the role of an OC to be properly defined? If not, please explain.</p>	<p>We suggest that clarification should be incorporated in 21.2.5 to carve out a non-syndicate CMI (e.g. sub-placing agent) from the role as OC due to its limited participation in any activities set out in 21.2.3 and 21.2.4</p> <p>It is not uncommon that a third party intermediary (who is usually Type 1 licensed) would be involved as an introducer</p>

		<p>bookbuilding activities and making allocation recommendations to the issuer client;</p> <p>b) advising the issuer client of the offer price and being a party to the price determination agreement with the issuer client;</p> <p>c) exercising the discretion to reallocate shares between the placing tranche and public subscription tranche, reduce the number of offer shares, or exercise an upside option or over-allotment option; or</p> <p>d) acting as the stabilising manager.</p> <p>DCM: an OC of the offering is a syndicate CMI which, solely or jointly, conducts the overall management of the offering, coordinates the bookbuilding or placing activities conducted by other CMIs, exercises control over bookbuilding activities and makes pricing or allocation recommendations to the issuer client.</p>		<p>to refer the issuer or the senior syndicate to engage another non-syndicate CMI as sub-placing agent, for the entitlement of introduction fee to be received by the third party introducer. Will the third party introducer also be deemed as CMI under the new Code?</p>
4	21.3 – CMI Obligations and expected standards of conduct	<p>Baseline requirements applicable to all CMI</p> <p><u>Assessment of issuer client and offering</u></p> <p>A CMI should should conduct an adequate assessment of an issuer client before engaging in a share or debt offering for that issuer client, which includes:</p> <p>(a) taking reasonable steps to obtain an accurate understanding of the <i>history and background, business and performance, financial</i></p>		<p>We suggest SFC to provide further clarification that non syndicate CMI members are not subject to the same level of DD or assessment obligations on the issuer client, including the verification of assets, onsite visit and interview, etc.</p> <p>We are supportive to the proposed approach of the</p>

		<p><u>condition and prospects, operations and structure</u> of the issuer client, <u>except for a repeated issuer of debt offerings where a CMI acted as the CMI for previous offerings made by the same issuer. In this case, the CMI should ascertain whether there have been any material changes in the circumstances of the issuer client of relevance to its role as CMI.</u></p> <p>(b) establishing a formal governance process to review and assess the share or debt offering, including any actual or potential conflicts of interest between the CMI and the issuer client as well as the associated risks.</p>		<p>less stringent DD requirements for repeated debt offerings by the same issuer, to just consider any material changes on the issuer clients and the relevant debt offering.</p> <p>For completeness, we suggest that the expected assessment requirement on issuer by CMI (for a top-up subscription where shares are only offered to a limited number of investors and does not require a prospectus or offering documents) based on information in public domain or reliance on the information shared by OC or issuer as noted by the SFC in paragraph 60 to 62 shall be included in 21.3.1 under the new Code.</p>
5	21.3.2	<p><u>Appointment of CMI</u> Before a CMI (other than an OC) conducts any bookbuilding or placing activities, it should ensure that it has been formally appointed under a written agreement to conduct such activities by an issuer client in the case of a syndicate CMI or another CMI in the case of a non-syndicate CMI. The written agreement should clearly specify the roles and responsibilities of a CMI, the fee</p>	<p>Question 4: 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.</p>	<p>Does the fee paid to a third party introducer (as mentioned above) by the CMI or the issuer need to be included in the agreement?</p>

		arrangements (including fixed fees as a percentage of the total fees to be paid to all syndicate CMIs participating in the offering) and the fee payment schedule.		
6	21.3.3	<p>Assessment of investor clients</p> <p>(a) A CMI should take reasonable steps to assess whether its investor clients, based on their profiles, such as investment preferences and past investment histories, fall within the types of investors targeted in a marketing and investor targeting strategy ("targeted investors") as referred to under paragraph 21.4.4</p> <p>(b) In the case of a share offering, a CMI should take all reasonable steps to identify investor clients to whom the allocation of shares will be subject to restrictions or require prior consent from SEHK under the SEHK Requirements ("Restricted Investors") and inform the OC (whether directly or indirectly) before placing an order on behalf of such clients.</p> <p>(c) In the case of a debt offering, a CMI should take all reasonable steps to identify whether its investor clients may have any associations with the issuer client, the CMI or a company in the same group of companies as the CMI ("group company") and provide sufficient information to an OC to enable it to assess whether orders placed by these investor clients may negatively impact the price discovery process.</p>		It is common in the industry that the targeted clientele of the issuer via the distribution by some broker firms are limited to institutional professional investors (IPI) in addition to the selling restrictions in terms of the offering jurisdictions. This is not an industry practice for CMI to assess such IPI's investment preferences and past investment histories given that they are financially sophisticated in such offering, and may cause unnecessary compliance burden as IPI clients may not be willing to supply such information to CMI given that such KYC requirements are automatically exempted for IPI under the Code. We therefore suggest the assessment requirements in (a) should not apply to IPI.
7	21.3.4	<p>Marketing</p> <p>(a) A CMI should only market the shares or debt securities to its investor clients</p>		We are of the view that the target clients to be marketed for the shares or

		<p>which are targeted investors. In the case of a share offering, where the shares are only marketed to selected investor clients, the CMI should be satisfied that the shares have been marketed to a sufficient number of clients and the likelihood of undue concentration of holdings is reasonably low.</p> <p>(b) A CMI should allow all of its investor clients which are targeted investors and have indicated an interest in an offering to participate in that offering.</p>		<p>debt offering will depend on the size on the size of the deal / sector / deal mechanics, etc., and therefore impractical to apply all clients that fulfill the targeted investors categories.</p>
	21.3.5	<p>Order book</p> <p>(a) A CMI should take reasonable steps to ensure that all orders (including indications of interest) placed in an order book represent bona fide demand of its investor clients, itself and its group companies. A CMI should also make enquiries with its investor clients about orders which appear unusual, for example, an order which is not commensurate with the investor client's financial profile, before placing the order.</p> <p>(b) A CMI should ensure transparency in the bookbuilding process. It should disclose (whether directly or indirectly) the identities of all investor clients in an order book, except for orders placed on an omnibus basis. For orders placed on an omnibus basis, a CMI should provide information about the underlying investor clients (whether directly or indirectly) to the OC and the issuer when placing the orders.</p>	<p>Question 8: 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.</p> <p>Question 10: Do you agree that OCs and CMIs should not accept knowingly inflated orders? If not, please explain.</p>	
	21.3.6	<p>Allocation</p> <p>A CMI should establish and implement an allocation policy to ensure a fair allocation</p>	<p>Question 13: Do you agree that OCs and CMIs should be required to establish and</p>	

		<p>of shares or debt securities to its investor clients:</p> <p>(a) address or take into account the principles and requirements under paragraph 21.3.10 and the following factors:</p> <ol style="list-style-type: none"> i. the marketing and investor targeting strategy; ii. the order size and circumstances of the investor client; iii. the price limits for the investor client's orders; iv. any minimum allocation amounts indicated by investor clients; and v. any applicable legal and regulatory requirements; and <p>(b) prevent any practices which may result in the unfair treatment of investor clients or knowingly distort the demand for other share or debt offerings.</p>	<p>implement allocation policies? If not, please explain.</p>	
	21.3.7	<p><u>Rebates and preferential treatment offered</u></p> <p>(a) A CMI should not offer any rebates to an investor client or pass on any rebates provided by the issuer client. In addition:</p> <p>(i) in the case of an IPO, a CMI should not enable any of its investor clients to pay, for each of the shares allocated, less than the total consideration as disclosed in the listing documents (including the 1% brokerage fee); and</p> <p>(ii) in the case of a debt offering, a CMI should not enter into any arrangements which may result in investor clients paying different prices for the debt securities allocated.</p>	<p>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.</p>	<p>For DCM, offering various price to investors is commonly noted in the industry due to commercial reason, the new requirement of banning such rebate or discounted in price may affect the current model of debt issuance that CFHK participated in.</p> <p>Suggest to seek for SFC clarification if the proposed restriction is meant to also disallow the rebate from the CMI to the end investors via the way</p>

		<p>(b) A CMI should disclose (whether directly or indirectly) to the issuer client, OC, all of its targeted investors and the non-syndicate CMIs it appoints:</p> <p>(i) any rebates offered (such as those offered by the issuer client of a debt offering) to CMIs. The disclosure should specify, for example:</p> <ul style="list-style-type: none"> • the targeted recipients of the rebates; • the terms and conditions under which the targeted recipients may receive the rebates; and • the timing for the payment of the rebates; and <p>(ii) any other preferential treatment of any CMIs or targeted investors (such as guaranteed allocations)</p> <p>In the case of a share offering, a CMI should make the above disclosure upon becoming aware of any such rebates or preferential treatment. In the case of a debt offering, the disclosure should be made no later than the time of the dissemination of the deal “launch message” to targeted investors.</p>		<p>of offering a lower rate from the 1% brokerage fee.</p>
21.3.8		<p><u>Disclosure of information to OC, non-syndicate CMIs and targeted investors</u> A CMI should disclose complete and accurate information in a timely manner on the status of the order book and other relevant information it received to:</p>		<p>Suggest SFC to clarify the type of information with examples which a CMI will need to provide to investors.</p>

		<p>(i) the OC (whether directly or indirectly) and non-syndicate CMIs it appoints for them to carry out their duties; and</p> <p>(ii) its targeted investors for them to make an informed decision*</p> <p><i>*a sub-placing agent should disclose information received from syndicate CMIs or non-syndicate CMIs (such as a distributor) to targeted investors</i></p>		
	21.3.9	<p><u>Record Keeping</u></p> <p>A CMI should maintain books and records which are sufficient to demonstrate its compliance with all applicable requirements in this paragraph. In particular, a CMI should document:</p> <p>(i) assessments of the issuer client, share or debt offering and investor clients;</p> <p>(ii) audit trails from the receipt of orders (i.e. including indications of interest), the placing of orders in the order book (whether directly or indirectly) through to the final order allocation (including changes in the orders received, details of the rejected orders and the reasons thereof, order confirmations with each investor client or CMI prior to the final allocation decisions and records of the allocation decisions made with a special focus on large or unusual allocations);</p> <p>(iii) all key communications with, and information provided to, the OC, other CMIs or investor clients, including information about the status of the order book (such as the launch term sheet and book messages);</p>		

		<p>(iv) where a CMI's order is placed on an omnibus basis, the intended basis of allocation for all orders with justifications as well as any material deviations from its allocation policy as referred to in paragraph 21.3.6;</p> <p>(v) all key communications with the issuer client, such as disclosures made to the issuer client in relation to actual or potential conflicts of interest;</p> <p>(vi) rebates offered by the issuer client and the payment details;</p> <p>(vii) any other preferential treatment offered to itself, non-syndicate CMIs it appoints or its investor clients; and</p> <p>(viii) information forming the basis of all submissions made to SEHK and the SFC.</p> <p>Except for records mentioned in subparagraph (ii), which should be kept for a period of not less than two years, a CMI should maintain the above records for a period of not less than seven years.</p>		
	21.3.10	<p><u>Conflict of Interest</u></p> <p>(a) A CMI should establish, implement and maintain policies and procedures to:</p> <p>(i) identify, manage and disclose actual and potential conflicts of interest which may, for example, arise when a CMI:</p> <ul style="list-style-type: none"> • serves both the interests of its issuer client and investor clients; • serves the interests of its investor clients when having a proprietary 		<p>Suggest to seek SFC's clarification if the receiving of placing commission received by the sub-placing agent (from the syndicate CMI member or Issuer) and simultaneously the brokerage fee from the investor clients who the shares will be placed to, which is a common fee</p>

		<p>interest (including a proprietary interest of its group companies) in an offering; or</p> <ul style="list-style-type: none"> • has full discretion over allocations to investor clients or a proprietary order; and <p>(ii) govern the process for generating proprietary orders as well as making allocations to such orders.</p> <p>(b) A CMI should:</p> <ol style="list-style-type: none"> i. always give priority to satisfying investor clients' orders over its own proprietary orders and those of its group companies; ii. only be the price taker in relation to its proprietary orders and those of its group companies and ensure that these orders would not negatively impact the price discovery process; and iii. segregate and clearly identify its own proprietary orders and those of its group companies (whether directly or indirectly) in the order book and book messages. <p>(c) In relation to a debt offering, a CMI should take reasonable steps to disclose (whether directly or indirectly) to the issuer client how any risk management transactions it intends to carry out for itself, the issuer client or its investor clients will not affect the pricing of the debt securities.</p>		<p>arrangement in shares offering, will it be deemed as a conflict of interest? Or it could be mitigated as long as full disclosure are made to the relevant party on the existence of fee to be received by the sub-placing agent.</p>
	21.3.11	Resources, systems and controls		

		<p>Chinese Walls</p> <p>(a) Where a CMI is a company or is part of a group of companies undertaking multiple activities in relation to an offering, for example, it or its group company is involved in the preparation and issuance of research reports, sponsor work, bookbuilding activities, placing activities and other related business activities, the CMI should take adequate measures to prevent the flow of information which may be confidential or price sensitive between staff performing different activities and to prevent and manage any conflicts of interest which may arise. In particular, the CMI should establish and maintain:</p> <ol style="list-style-type: none"> i. an effective system of functional barriers (Chinese walls) which should include having physical separation between, and different staff employed for, the various business activities; and ii. appropriate policies and procedures which cover: <ul style="list-style-type: none"> • the procedures (including approval procedures) for bringing staff over the wall; • the standards of conduct expected of staff brought over the wall;and • the records to be kept on wall-crossing activities. 		
	21.3.11	Review and approval of orders and allocations		

		<p>(b) The placing of orders for, or the allocation of shares or debt securities to, any of the following types of account by a CMI should be subject to appropriate risk assessments (taking into consideration, for instance, a CMI's financial capability and exposure to associated risks) and management review and approval:</p> <ul style="list-style-type: none"> i. proprietary orders for the CMI and any of its group companies; ii. orders from its investor clients which may appear unusual, for example, orders which might appear to be related to the issuer client; and iii. in the case of a share offering, allocations which are subject to restrictions or require the prior consent of SEHK under the SEHK Requirements. 		
	21.3.11	<p>Appointment of non-syndicate CMIs (c) Where a CMI appoints a non-syndicate CMI to assist it in distributing shares or debt securities, it should exercise due skill, care and diligence in the selection and appointment.</p>		
	21.3.11	<p>Surveillance and monitoring (d) A CMI should conduct independent surveillance and monitoring on a regular basis to detect irregularities, conflicts of interest, leakage of price sensitive or confidential information about the issuer client and the offering, and potential non-compliance with applicable regulatory requirements or its own policies and procedures. For example, a CMI should:</p>		

		<p>(i) review the book messages it prepares and disseminates to ensure that there are no misleading messages;</p> <p>(ii) perform surveillance of electronic communications; and</p> <p>(iii) select debt or share offerings for post-deal reviews to ensure that the pricing or allocation is adequately justified.</p> <p>This should be supplemented by an effective incident management and reporting mechanism to ensure that any issues identified are reported to independent control functions for follow-up action and escalated to senior management as appropriate.</p>		
	21.4.1	<p>OC Obligations and expected standards of conduct</p> <p><i>(Extracted only the requirements that are relevant to affect CMI)</i></p> <p><u>Disclosures to syndicate CMIs and targeted investors</u></p> <p>An OC should:</p> <p>(a) share, or take reasonable steps to ensure the issuer client to provide, information about the issuer client to other syndicate CMIs which are involved in a share or debt offering for the conduct of the assessments of the issuer client required under paragraph 21.3.1 and identifying Restricted Investors in</p>	<p>Question 7: 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.</p>	<p>We are supportive to the proposed requirements.</p>

		<p>the case of an IPO and investor clients which have any associations with the issuer client in the case of a debt offering as required under paragraphs 21.3.3(b), 21.3.3(c) and 21.4.6;</p> <p>(b) inform other syndicate CMLs of the issuer client's marketing and investor targeting strategy; and</p> <p>(c) disseminate material information related to the offering (for example, information which may affect the prices, orders received per investor type, proprietary orders of CMLs and their group companies, and known preferential treatments and rebates) as included in, for example, the launch term sheet and book messages, in a timely manner to all syndicate CMLs and ensure that such information is complete, accurate and has a proper basis.</p>		
	<p>21.3.2 21.4.1 21.4.3 21.4.9</p>	<p><u>Fee Arrangement</u></p>	<p>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 CMLs and fixed fees allocation four clear business days before the Listing Committee Hearing? If yes, please cite examples.</p>	
			<p>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.</p>	
			<p>Question 21: Do you agree that (i) the syndicate membership (including the names of</p>	

			<p>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.</p>	
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