

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 Institute of Securities Dealers (ISD) expresses its understanding to the rationale of the captioned Proposal by SFC that some good practices should be codified to enhance the quality of intermediary conduct and ensure a level playing field. Having said that, ISD have some comments set out as follows:-

Burden to Small/Medium Regulatory Intermediaries

The proposed implementation of capital market intermediaries (“CMIs”) and overall coordinator (“OC”) would give a heavy burden on small/medium Regulatory Intermediaries in Hong Kong. When compared the workload with the situation without such proposed implementation, it would inevitably increase workload but it is understandable.

However, for “Sponsor Coupling”, the proposal requires that, for IPOs, at least one sponsor which is independent of the listing applicant who should also be appointed as an OC for the IPO or have a group company which is also appointed as a sponsor. In this case, it is no exaggeration to say that those small/medium Regulatory Intermediaries that does not have Type 6 license would be deterred from the offering exercise as they basically cannot be the sole sponsor. The proposed “Sponsor Coupling” would seriously harm the growth of small/medium Regulatory Intermediaries in Hong Kong, especially when their ability to compete with large Regulatory Intermediaries would seriously be undermined.

Additionally, the prospective listing companies will likely look for larger financial group with all the relevant licenses. In this connection, it will also restrict the choice of the Issuers of service providers.

Appointment of OC

In the Proposal, in the case of an IPO, an OC should, before accepting an appointment, ensure that it (or one of its group companies) is also appointed as a sponsor, which is independent of the Issuer client, and that both appointments are made at the same time and at least two months before the submission of the listing application.

The fact is a change of sponsor/OC is not uncommon during the process. Hence, in case if there is a change of sponsor/OC, is it the whole process would have to be extended for two more months? This would increase complexity and uncertainty as longer pending of the listing application. Therefore, it is expected that further guidelines or clarification would be given by SFC in this respect.

Assessment of Investors

In the captioned Proposal, a CMI should take reasonable steps to assess each investor client's profile, including investment preferences and past investment history. ISD is of the view that the Regulatory Intermediaries would face difficulties to fulfill the said assessment.

In the Proposal, there are certain factors that the SFC expects the Regulatory Intermediaries to look into before the allocation of shares. To gather and assess such information, it would definitely cost time. In this connection, it is not difficult to infer that the whole offering process would be delayed.

Further, under the said Proposal, the Regulatory Intermediaries have to request such information to conduct the assessment before the allotment of shares. If the aforesaid measure is really put in place, it would certainly cause adverse impact on the relationship between the Regulatory Intermediaries and the clients in case the allotment results turn out that no share is allocated to such clients.

Additionally, considering the current market, more and more clients are sensitive on data privacy issues. If the Regulatory Intermediaries have to obtain certain personal information, it would significantly raise the chance of misunderstanding between the Regulatory Intermediaries and clients. Not only would it ruin the strong bonding with clients built by Regulatory Intermediaries over the years, but it would also stifle the investor's desire to continue investing due to the complicating procedures. Therefore, to implement such measures, it would inevitably affect the Hong Kong securities market performance.

Rebate and Preferential Treatment

The SFC proposed that a CMI should not offer any rebates to its investors clients or pass on any rebates provided by the Issuer.

First, it would cause adverse impact on some small/medium Regulatory Intermediaries in Hong Kong. If the Regulatory Intermediaries are not allowed to offer any rebates to its investors clients, it would seriously undermine competitiveness of the same. To compete with the giant Regulatory Intermediaries, rebate / preferential treatment is of paramount importance for small/medium Regulatory Intermediaries to attract investors in order to sustain in the market. If SFC insists to implement the same, it is simply the same as taking the bread out of the mouth of those small/medium Regulatory Intermediaries.

Further, if the rebates provided by the Issuers cannot be passed on, some small/medium Issuers may be deprived the chance of getting listed. Applying the same logic in the above paragraph, rebate / preferential treatment provided by the Issuer is one of the vital aspects for them to wrestle with the large and glamorous Issuers.

Additionally, when the market sentiment is not good like the recent times, by giving out rebates will be the only feasible incentive for investor clients. ISD is of the view that it will affect the marketability of smaller sized IPOs. We believe that the SFC will also care about the survivorship of those smaller sized Issuers.

Therefore, if such proposal would really be put in place, not only does it harm the existing small/medium Regulatory Intermediaries from surviving in the market, but it would also deter the formation of promising new businesses.

In this connection, ISD proposes to ease SFC's concern by disclosure. ISD suggests that after the completion of the IPO, final underwriting fees and monetary benefits, including fixed and discretionary fees and any bonuses paid, could be specified in Allotment Results and annual report respectively in addition to reporting to SFC. This would enhance transparency and credibility.

Other Recommendations

Clients should be entitled to place orders with the underwriters through any brokers, instead of a must for them to place orders directly through placing agents / sub-underwriters. Underwriters should not be allowed to convey a message, expressly or impliedly, that the clients must place orders through them in order to be allotted.

Implementation Timeline

ISD has some reservations about the Proposal and if the SFC decides to implement

any of the proposed measures, ISD would urge the SFC to suspend the Proposal for the benefit of Hong Kong economy as a whole especially when it is still experiencing a difficult time amid the pandemic and the extremely gloomy economic outlook ahead.

In view of the current situation, the difficulties caused by the coronavirus pandemic are expected to continue into 2021 and potentially beyond. It indicates strongly that now is not the right time to implement the Proposal. If the Proposal has to be put in place, it should be delayed until there is reasonable certainty that the most affected sectors of the economy are well into a recovery to the levels seen before COVID-19. In this regard, we view that the appropriate time for such Proposal to be implemented would be after 2024.

At the end of the day, ISD understands that good market practice has to be upheld. However, sufficient flexibility has to be allowed for the market participants to sustain and grow.