A. Scope of coverage

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.

The definition of "placing activities" as "distributing…securities to investors pursuant to bookbuilding activities" could be interpreted narrowly to only cover the settlement of securities (i.e. the delivery of securities to investors on closing of a transaction), which is the responsibility of the sole billing and delivery (B&D) bank. We believe that the SFC's intention here is to capture all intermediaries that are engaged by an issuer to "market" or "sell" securities to investors, even if they are not involved in bookbuilding activities, to be subject to the Proposed Code. A definition of "placing activities" that has the potential of being narrowly interpreted may result in certain intermediaries taking an aggressive interpretation in order to place themselves out of scope, which would hinder the objectives that the SFC is seeking to achieve in the Consultation Paper. We would therefore recommend clarifying that by "distributing" the SFC is referring to the marketing and selling of securities.

However, if "placing activities" included "marketing" or "selling" activities in Hong Kong, this would have the effect of capturing potentially every international debt offering where sales are made in Hong Kong, since a Hong Kong based salesperson would likely be involved. This could occur even if the transaction was originated, managed and run entirely outside Hong Kong. Therefore, thought should be given to excluding transactions with only a tangential nexus to Hong Kong from the scope of the Proposed Code. This is further discussed in our response to Question 2 below.

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

Paragraph 49 of the Consultation Paper states that, "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."

There has been much debate by market participants as to whether the SFC's intention is (i) for each intermediary to determine *individually* whether they are in scope or out of scope of the Proposed Code based on whether they are engaging in bookbuilding or placing activities in Hong Kong, or (ii) whether the question of scope is to be determined at a *transactional* level (i.e. any "offering" that involves bookbuilding or placing activities in Hong Kong is in scope for all intermediaries involved on that transaction). We believe that in order to achieve the objectives of the Consultation Paper, that the determination of scope should be done at a transactional level, for the following reasons:

- If determined individually, intermediaries may (and may be encouraged by issuers to) staff a transaction such that bookbuilding or placing activities occur outside Hong Kong to avoid being in scope of the Proposed Code, for example, engaging syndicate teams based in Singapore to conduct bookbuilding for, what would otherwise be, an in-scope transaction. In discussions with other industry members, many are concerned about this "arbitrage risk";

- Many of the requirements of the Proposed Code cannot be practically and effectively implemented if some intermediaries are in scope while others are out of scope. For example:

    - out of scope intermediaries could continue to place X orders;
    - out of scope intermediaries could be mandated by issuers without needing to agree fees in advance which would hinder the objective of fee transparency among the entire syndicate; and
    - out of scope intermediaries would not need to be classified as an OC or syndicate/non-syndicate CMIs leaving gaps as to the classification of these intermediaries.

There must be a level playing field among all intermediaries in an in-scope transaction for the Proposed Code to be effective.

On the other hand, there is a concern that the scope of the Proposed Code would be too wide, for example capturing transactions that only have a tangential nexus to Hong Kong, including:

1. a transaction that is originated, managed and run entirely outside Hong Kong but there are sales in Hong Kong (which is captured by virtue of there being "placing activities in Hong Kong). This would therefore capture virtually *every* international debt capital market transaction given Hong Kong is a global financial centre with many investors based here; or
2. a transaction where the majority of intermediaries are conducting bookbuilding activities outside Hong Kong, but one intermediary happens to have their syndicate desk in Hong Kong (in this situation, the HK intermediary could find that its efforts to comply with the Proposed Code would largely be ignored by the other syndicate members and the issuer).

Therefore, one potential proposal would be to define an in-scope transaction as having ***one or more*** of the following features:

- A majority of CMIs engaged in the offering are conducting bookbuilding activities in Hong Kong or by Hong Kong licensed entities;[1]
- The debt securities offered are listed on the Stock Exchange of Hong Kong; or
- The issuer has equity listed on the Stock Exchange of Hong Kong.

Categorizing an in-scope transaction using the above criteria should capture substantially all of the transactions that are impacted by the "undesirable intermediary conduct" described in the Consultation Paper. At the same time, the above criteria will help exclude transactions that only have a tangential nexus to Hong Kong, since the criteria focuses on bookbuilding activities instead of placing activities. At the same time, setting the criteria by reference to a "majority",

[1] It is worth emphasizing that even though "placing activities" is not mentioned in this criteria, the CMIs that are not engaging in bookbuilding activities and may only be involved in "placing activities" must still comply with the Proposed Code, as the transaction will be an in-scope transaction, and hence all CMIs would need to comply with the Proposed Code.

and emphasizing that one or more of the criteria will trigger an in-scope transaction, reduces the risk of arbitrage.

Adopting the above approach will still capture transactions that historically have not been problematic, as many syndicate desks for Asian deals are located in Hong Kong and hence bookbuilding activities are conducted in Hong Kong for issuers based in, and transactions originated from, India, Korea, Singapore, Indonesia and other South-East Asian countries. In general, the issues that the buyside seek to rectify are not experienced in deals originated in these countries/regions, so consideration should be given to potentially excluding transactions from these countries/regions as well. This is further elaborated in our response to Question 4. In particular, we envision it will be more difficult to educate issuers outside China/Hong Kong about these new requirements as they relate to OC/CMI designation and compulsory written agreement on fees, and to get their cooperation to comply. We do not believe their implementation will have any corresponding benefit to investors on those transactions.

Lastly, it is worth mentioning that "club deals" can mean different things to different intermediaries. Many club deals do in fact involve bookbuilding activities and involve a public announcement on Bloomberg. It may be worth avoiding using this term to minimize misinterpretation and misapplication. To the extent this term is retained, it should be made clear that club deals that involve bookbuilding activities would be in-scope.

The question of scope is a difficult one in the DCM context and has been subject to significant debate within industry forums. For it to be effective, it should capture all potential debt offerings with bookbuilding activities in Hong Kong while avoiding arbitrage risk. At the same time, it must not be overly broad as to impose new standards extraterritorially which will be difficult for intermediaries outside Hong Kong to comply with. There continues to be debate as to where to draw the line as the risk of over-inclusion as well as under-inclusion are problematic. We would recommend that under-inclusion (in the same way that only HK IPOs in the ECM context are captured by the proposed changes) be adopted as an initial matter with further stringency to be explored should there be a need in the future.

B. Type of CMIs

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

Paragraph 21.2.4 of the Proposed Code lists the following activities of an OC:

A. Conducts the overall management of the offering
B. Coordinates the bookbuilding or placing activities conducted by other CMIs
C. Exercises control over bookbuilding activities; and
D. Makes pricing or allocation recommendations to the issuer client.

We believe that whether an OC will be responsible for items A-D above will vary from deal to deal and the number of OCs appointed. In some deals, all OCs will be mandated at one time and hence would be involved in items A-D above. For other deals, we expect that one or two OCs will be appointed at the time of a "kick-off" meeting or call and responsible for A, while the remaining OCs are appointed at a later point in time and collectively they are responsible for items B-D. Hence, OCs who are appointed at a later stage will not be responsible for the overall management of the offering. Therefore, it must be recognized that not all OCs will necessarily be engaged in all the activities listed above and it will vary from one transaction to the next.

As a general rule of thumb, Joint Global Coordinators (JGCs) will be responsible for items A-D above while Joint Bookrunners (JBRs) and Joint Lead Managers (JLMs) typically do not have access to the order book and therefore are not involved in, and do not coordinate or control, bookbuilding activities, and hence are not involved in the allocation process or give allocation recommendations. However, they can and will still market and sell the securities and place orders into the order book via the JGCs. Moreover, JBRs may still make pricing recommendations to the issuer client (particularly if asked to do so). Therefore, we do not believe it should be the case, as stated in paragraph 68 of the Consultation Paper, that "only CMIs appointed as OCs should advise the issuer on issues related to pricing" and hence we would recommend that it should be made clear that syndicate CMIs should not be classified as OCs simply because they are giving, or have been asked to give, pricing recommendations, if they are not engaged in any of the other activities listed in A-D.

Furthermore, Paragraph 21.2.5 suggest that a CMI that engages in "any" activity listed in A-D above would be considered an OC, in which case, "and" should be changed to "or" in Paragraph 21.2.4.

It should be noted that in DCM, syndicate CMIs do not engage other third parties to facilitate distribution in DCM transactions. Therefore, the concept of a non-syndicate CMI should not apply in DCM transactions. Moreover, it is worth clarifying that private banks are treated the same as any third-party investor and are not engaged by syndicate CMIs and therefore should not be considered a non-syndicate CMI. The definition of non-syndicate CMI in Paragraph 50(c) of the Consultation Paper would suggest that a private bank could be a non-syndicate CMI (i.e. they are "brokers which only collate orders received from their investor clients, place them with the syndicate CMIs and distribute the securities to their clients if they receive allocations from the syndicate CMIs"), which should not be the case because (i) they are not engaged by syndicate CMIs and therefore there is no outsourcing arrangement and (ii) the private bank is an agent of their private bank clients and are not acting as an agent/representative of the CMIs. This is an important distinction to make given the obligations imposed on syndicate CMIs as they related to non-syndicate CMIs they appoint as described in paragraph 123 of the Consultation Paper. We believe the definition of non-syndicate CMIs must make clear that they must be engaged by a syndicate CMI (i.e. "brokers which are engaged by syndicate CMIs and only collate orders received from their investor clients...").

C. Assessment of the issuer and the offering

Paragraph 62 of the Consultation Paper indicates that an OC is responsible for sharing information about the issuer with syndicate CMIs or take reasonable steps to ensure that the issuer provides this information to them. In the DCM context, we do not believe it should be the OCs' responsibility to share information about the issuer with syndicate CMIs. In practice, when syndicate CMIs are engaged by the issuer, external counsel representing all the intermediaries will send out a "care pack" containing all documentation and information relevant to the offering to newly joining CMIs. This is to ensure that CMIs are getting the same information and are on a level playing field. The only information that an OC would share with the other syndicate CMIs is the Bloomberg message, roadshow presentations and investor call invitations (but this would be the responsibility of the individual OC that was tasked with this duty and not all OCs).

The more relevant point is that OCs should not discourage the issuer or external counsel from sharing information about the issuer with newly appointed CMIs, or attempt to delay the sharing of this information with the objective that newly appointed CMIs have insufficient time to review and clear internal processes and hence are unable to join the deal. We would support explicitly including guidance in the Proposed Code that requires OCs to cooperate and authorize and instruct external counsel representing the syndicate to release necessary documentation and information to all newly appointed CMIs at least 48 hours prior to deal announcement, which is consistent with ICMA guidance. Implicit in this is that issuers should appoint and fix their syndicate at least 48 hours prior to deal announcement.

In short, no intermediary (including OCs) should be responsible for any other intermediary as it relates to compliance with the Proposed Code. Each intermediary should remain responsible exclusively for its own appointment and ensuring it has obtained the information it believes is necessary for it to make an assessment of the issuer and the offering.

Paragraph 64 of the Consultation Paper mentions members of senior management being involved in assessing the CMI's involvement in the offering. We understand this term to include "Responsible Officers" licensed under the Securities and Futures Ordinance or Managers-in-charge filed with the SFC or HKMA equivalents.

D. Appointment of CMIs and OCs

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.

We agree that the appointment of OCs and other CMIs and the determination of their roles, responsibilities and fee arrangement should take place at an early stage. We would take it one step further and recommend that CMIs be appointed at least 48 hours prior to deal announcement (as mentioned in Section C above) so there is sufficient clarity on what "early stage" means. This is particularly important in DCM where timelines are often measured in weeks or even days, as compared with ECM where it would take months for the working group to prepare for an A1 filing. We would also recommend to make explicit that CMIs should not be appointed after a deal has been announced, to avoid intermediaries who are not appointed on a transaction from trying to join a transaction post-announcement, which oftentimes is disruptive to deal execution (i.e. the problem of intermediaries "swarming" the order book as described in paragraph 127 of the Consultation Paper).

Because the timetable of DCM transactions vary greatly and operate on significantly more compressed timelines as compared to ECM transactions, we believe the format of any such "written agreement" will need to be flexible. As a practical matter, we envision that standardized industry templates will need to be prepared to facilitate appointments on short-notice and for such appointments to be communicated via email. One reason formal mandate letters are usually not signed is the complexity of agreeing these letters among a large syndicate given each intermediary will have its own template.

We are supportive and agree that fee arrangements should be determined at an early stage of an offering. We believe it is important for the SFC to understand why the market practice in this region has evolved such that fees are often determined at a late stage, oftentimes post-pricing or even months after closing. This is not driven by intermediaries, as most intermediaries do not benefit from fees being determined at a late stage, particularly when they are determined unilaterally by the issuer client many months after the services have been provided and the transaction has closed. As paragraph 90 of the Consultation Paper states, CMIs are often rewarded based on the volume of the orders they bring to a deal. This approach of rewarding CMIs based on orders they bring in originates from onshore Chinese market practice, as the domestic Chinese debt capital markets operate more like a lending market, where underwriters use their balance sheet to place orders to support a particular issuer/transaction and are compensated accordingly. Therefore, Chinese issuers who are accustomed to domestic Chinese market practice, are also accustomed to remunerating underwriters on this basis.

This has not always been the case. Intermediaries used to be remunerated based on the value they provide in getting an issuer prepared to access the international capital markets (i.e. working to prepare the offering document, transaction documentation, marketing strategy, due diligence, deal execution, ratings work, roadshow preparation etc.) and hence fees were determined at the outset of a transaction to compensate for this work which is consistent with international market practice. However, in the last 10 years, with an increase in the number of Chinese issuers accessing the global debt capital markets and Chinese intermediaries advising them, domestic capital markets practice has emigrated to Hong Kong and converged with international market practice. We are now operating in an environment where the tension between domestic and international market practices is at the root of what the buy-side views as undesirable intermediary behavior. However, to Chinese issuers and Chinese intermediaries, these domestic market practices are normal and may not be perceived as being problematic from their point of view. The unintended consequence of this is the devaluation of the work that CMIs do in preparing an issuer to come to market, with many CMIs shifting their focus to allocation, marketing and distribution capabilities, and in particular, securing orders that are exclusive to them, as that is what is rewarded by issuer clients.

While we are supportive of the changes to the Proposed Code to mandate that fees be determined at an early stage of the offering, it should be understood that regulating the behavior of intermediaries is only one side of the coin and we believe it will not correct this problem entirely. The desire to reach an agreement on fees requires cooperation between two parties: the issuer client and the intermediaries it engages. In the absence of rule changes that apply to an issuer client, we expect that issuers will strongly resist agreeing to fees in advance, even if the Proposed Code requires intermediaries to do so, as they have enjoyed the benefit of the leverage that withholding fee agreements gives them for so long that it has now become an entrenched part of how they approach capital markets transactions. For example, for many Chinese state-owned enterprises, their internal policies and procedures may stipulate that fees be determined by a committee after the offering has priced or closed and hence fees cannot be determined in advance. Moreover, requests for proposals (RfPs) that are sent to intermediaries by issuer clients before any intermediaries are engaged often contain provisions that make clear that fees will be determined after the deal is completed; the terms in these RfPs are unilateral in nature and cannot be negotiated.

Rectifying the issuer client's mindset is beyond the scope of what the Proposed Code can achieve. One possibility may be to amend the Hong Kong Stock Exchange listing rules as they relate to debt securities and as they apply to issuers. However, Chinese issuers may simply list their bonds outside Hong Kong to avoid compliance. There is no simple solution.

Putting aside the issue of issuer client motivations, in order for an agreement on fee arrangements to have a meaningful impact to curb undesirable intermediary behavior, we believe that the Proposed Code needs to be more prescriptive in the guidance provided on fee arrangements. Otherwise, we envision that market participants may exploit any uncertainty in the Proposed Code to avoid compliance, which would hinder the potential benefits of agreeing fees in advance.

- We believe the Proposed Code should explicitly set out that the fixed fee should be 70-75% of total fees with the discretionary fees at 25-30%. While this is mentioned in paragraph 131 of the Consultation Paper with reference to IPO transactions, if this is not explicitly included in the Proposed Code, issuers will simply set discretionary fees as the majority or substantially all of the fees in order to maintain their leverage and flexibility in determining fees.

- We believe that the Proposed Code should require not only the pool of fixed fees to be determined in advance by written agreement, but also (i) the distribution of the fixed fee pool as between OCs and syndicate CMIs and (ii) by extension, each individual CMI's share of those fees.

- Fixed and discretionary fees should be withheld from proceeds so they can be paid on closing or at the very least, paid within a set number of days after closing (i.e. 30 days). Currently, the Proposed Code only requires that a fee payment schedule is agreed.

The Consultation Paper and the Proposed Code is silent regarding the need to disclose which intermediaries are OCs vs. syndicate CMIs and where such disclosure should appear. We believe that the Proposed Code should make clear that this information should be publicly disclosed and included in the public (Bloomberg) announcement and/or the offering circular or prospectus (the "offering document") for the benefit of investors, given the buy-side has expressed a desire to know who the OCs are on a transaction and this categorization does not align with existing marketing titles.

E. Advice to 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?

We believe it is appropriate for OCs to provide advice on marketing strategy but it would not be appropriate for OCs to provide advice on syndicate membership and fee arrangements as there are inherent conflicts of interest and potential anti-competition concerns with doing so. While OCs can discuss market practice and reference comparable transactions, there should not be an obligation to "advise" issuers on these topics. Discussions regarding pricing and allocation should be characterized as recommendations (which is consistent with Paragraph 21.2.4 of the Proposed Code) rather than advice.

F. Marketing

Paragraph 21.4.7(b) of the Proposed Code and paragraphs 79 and 80 of the Consultation Paper states that OCs should inform other syndicate CMIs of the issuer client's marketing and investor targeting strategy. To the extent that "marketing and investor targeting strategy" is intended to refer to the issuer client's preference as to the types of investors to target, to the extent that the issuer client has such a preference (not all issuers do), OCs can be responsible for requesting or reminding the issuer client to communicate this directly to all CMIs prior to the public announcement of a transaction. This is preferred and more effective than having the OCs responsible for informing the CMIs directly given there will likely be multiple OCs on a transaction, the issuer client's preferences may change over the course of a transaction, the issuer client's communication of their preferences may happen bilaterally with each OC and may occur at different times, all of which could result in inconsistent messaging and potential confusion.

G. Rebates and preferential treatment

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.

Yes, we agree that a private bank should not pass on to their investor clients any rebates provided by the issuer as that would cause investors in the offering to pay different prices for the debt securities allocated. However, it should be noted that a private bank is not a CMI and hence the Proposed Code would not capture the conduct of private banks. Moreover, CMIs will not be in a position to police the conduct of private banks to ensure that private banks do not pass onto their investor client any rebates offered.

In DCM, CMIs do not offer rebates to investor clients and we agree that this should not happen so as to ensure that all investor clients are paying the same price for the securities offered.

If the issuer is offering rebates on a transaction, the existence and amount of such rebates will be disclosed to the market in the Bloomberg price guidance messages and known to all investors. Therefore, we do not believe there should be a requirement for a CMI to disclose *to the issuer* rebates offered by the issuer, as that is something that issuer would already be aware of, as it is the one offering the rebate. Hence, we believe that paragraph 21.3.7 of the Proposed Code should be amended to only require disclosure by CMIs to its targeted investors only.

It is unclear if the SFC's intention is to prohibit rebates to be paid by an issuer client completely, or only permit it in limited circumstances (i.e. rebates are permitted if paid to private banks, and not passed on to end investors). If rebates are permitted to be paid to private banks on the understanding that private banks will not pass these rebates to their clients who are purchasing the debt securities, under current practices, the CMI who is acting as B&D bank and responsible for settlement *will be* passing on such rebate provided by the issuer to the private bank. Therefore, the language in Paragraph 21.3.7 which states "A CMI should not...pass on any rebates provided by the issuer client" would prohibit the B&D bank from settling the rebate according to current market practices. It is not clear whether the SFC's intention is that issuer clients who do offering private bank rebates, will therefore need to pay these rebates directly to the private bank, without the involvement of the CMI, which would require a change to currently settlement practices. It would be helpful if the SFC can clarify its position on this and what the prohibition of passing on rebates provided by the issuer client is intended to cover.

If the SFC believes that all rebates should be prohibited, this should be clearly stated in the Proposed Code and if rebates are prohibited, it would resolve the issue of how to ensure that rebates are not passed by private banks to their investor clients.

H. Assessment of investor clients

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.

No. Each CMI should be responsible for obtaining any information it requires in order to comply with laws and regulations applicable to it. See our response to Section C above.

We believe that ECM and DCM should be treated differently as it relates to assessment of investors that are potentially related to the issuer. In DCM, unlike ECM, there are no restrictions on investors who have associations with the issuer ("Associated Investors") from participating in a debt offering. Current practice is for CMIs together with the issuer to identify any investors that are known to be Associated Investors (i.e. the controlling shareholder) and disclose to investors that allocations of the bonds may be made to such Associated Investors *only to the extent such allocations are material* and are believed to have an impact on the price discovery process and present a material conflict of interest.

This is in contrast to ECM where we understand issuers would be asked to provide a list of connected persons so that syndicate members can use this list to cross-check against the order book to identify whether any investors are Restricted Investors. OCs can then pass that list of connected persons to other CMIs to assist them in identifying Restricted Investors.

Moreover, if a restriction on sales to investors associated with the issuer were to be introduced, a clear definition as to what would constitute "associations" would be required in order to identify which investors should be excluded from allocation (i.e. a definition of "Associated Investor" to correspond with the definition of "Restricted Investors" in the ECM context).

Whether an investor is an Associated Investor is a question of fact and is based on the relationship between the issuer and the investor. CMIs are not best placed to identify if such a relationship exists. We do not believe the onus should be on OCs to provide "sufficient information" to CMIs to make such a determination, nor should the onus be on OCs and CMIs to identify Associated Investors, as ultimately the issuer is in the best position to do this. Moreover, this often cannot be done in advance, as the potential investors are not known until after bookbuilding has occurred. Even if OCs or CMIs have conducted standard "Know Your Client" procedures on the issuer and their investor clients, these are not updated for purposes of each transaction and hence information they have may not be recent. If there is a desire to identify (or exclude) Associated Investors, the most appropriate thing that a CMI can do is to request the issuer to review the orderbook to identify investors that the issuer believes are Associated Investors. We do not think it would be practicable to seek a confirmation from each investor as to whether they are Associated Investors at the time of each transaction.

In general, we do not believe that allocations to Associated Investors has been a significant issue in the DCM context that has had an unfavourable impact on investors or the bookbuilding process. To the extent such orders from Associated Investors have occurred in prior transactions, they represent only a small percentage of the entire order book and have not had a material impact on the price discovery process.

I. Bookbuilding and order books

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.

"Omnibus basis" is not terminology that DCM syndicate members and the industry uses or is generally familiar with. In the context of how this term is used in the Consultation Paper, it appears that an order placed on an omnibus basis would allow a CMI to place an order *in its own name* without disclosing who the underlying investor(s) is/are under that order. If so, we view placing orders on an "omnibus basis" as being equivalent to placing an X-order. We believe both practices should be prohibited as they would hinder order book transparency. Otherwise, permitting "omnibus" orders could be a potential way to bypass a prohibition on X-orders.

If by "omnibus" orders, the SFC is referring to a CMI placing an *internal* order it its own name, but on behalf of multiple divisions, departments or desks of that CMI, we believe these should be separated to identify the different entities placing the order and/or the specific division, department or desk that is placing the order, so there is greater transparency in the order book, given the source of an internal order has a bearing on allocation as well. However, if omnibus order is used in this way, it should be clear a CMI placing such an order should not be commingling *external* orders together with internal orders and presenting it as one CMI order. See further below discussion on proprietary orders in Section K.

Alternatively, if by "omnibus" orders, the SFC is referring to third-party investors who place orders on behalf of underlying investors, this is common practice for orders placed by private banks (on behalf of their private bank clients) and institutional asset managers and funds (who may allocate their order internally among different funds). However, the requirement for a CMI to provide information about the underlying investor clients to the OC and the issuer will not be possible as CMIs would not be able to ascertain the identity of the underlying investors, and we believe, in the case of the private banks, they would not disclose the identity of their investor clients to the CMIs due to confidentiality concerns.

We believe it is essential that omnibus orders are clearly defined, that if they are distinguishable from X-orders that such distinction is clearly explained and guidance is provided as to what limited circumstances they are permitted or can be used because it is currently unclear under the Proposed Code and could conflict with any proposal to prohibit X-orders.

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.

We do not believe there should be difficulties for intermediaries who have access to the order book to take reasonable steps to remove duplicate, irregular or unusual orders from the order book as long as there is order book transparency, hence the need to prohibit/minimize X-orders and omnibus orders. However, determining what is an irregular or unusual order involves an element of subjectivity and hence should be subject to each intermediary's reasonable assessment.

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

We agree that OCs and CMIs should not accept knowingly inflated orders. However, it is very difficult to know for sure if an order is inflated or not. An investor's order and decision can change several times during the bookbuilding day and they may increase or decrease their order size based on market developments. To the extent an order is only *suspected* of being inflated, intermediaries may inquire with such investor clients to confirm the size of their order. However, if such investor client re-confirms that the size of their order is correct, it would be difficult to speculate whether the order is in fact inflated and CMIs would not adjust the order based on such suspicion.

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

We agree that OCs should ensure transparency of the order book with the issuer client and with each other (other than with respect to legitimate X-orders if they continue to be permitted (see response to Question 12 below)). For the avoidance of doubt, order books are not, and should not be, transparent to all investors or to the public and would not be transparent to CMIs in the syndicate that have not been given access to the order book and are not involved in pricing and allocation.

We do not believe that the existence and frequency of order book updates should be mandated.

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

We agree that X-orders should be discouraged to ensure the transparency of the order book. However, there are limited circumstances where specific types of investors wish to remain anonymous and request that their identity not be disclosed to all syndicate members (i.e. sovereign wealth funds and central bank investors).

We understand that a bright line prohibition on X-orders would be easier to implement in facilitating order book transparency. To the extent X-orders are permitted in the very limited circumstances described above, such circumstances should be made clear in the Proposed Code. If X-orders are permitted in the limited circumstances described above, CMIs placing such orders should disclose the identity of the underlying investor to the issuer but would not be able to disclose this to the OCs as that would contradict the instructions of the investor to keep their identity confidential as the investor does not want to be contacted by multiple intermediaries.

J. Pricing and allocation

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

We generally agree that OCs should be required to establish and implement their own allocation policies as they are involved in allocation. For the avoidance of doubt, CMIs who are not OCs may have allocation policies in place (given they may act as an OC on other transactions), however, if they are not involved in allocation activities and do not have access to the order book, such allocation policies would not apply to them on that transaction. We do not believe the circumstances described in paragraph 102 of the Consultation Paper (allocations received by a CMI to distribute to their investor clients) applies, or should apply, to DCM, as we do not believe CMIs should be permitted to place omnibus orders in their own name. Moreover, CMIs who are not OCs are not expected to have order book access and therefore would not be involved in allocations and hence we do not think a CMI who is not an OC would need to allocate to their investor clients. If the division of responsibility between OCs and syndicate CMIs is as we understand it to be, compliance with one's allocation policy should apply to OCs only, given they control the order book and are involved in allocation, not syndicate CMIs.

K. Conflicts of interest and proprietary orders of CMIs and their Group Companies

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

It is important that what constitutes "proprietary orders" is clearly defined. Internal orders placed by CMIs can be separated into two categories, those that go into an "investment book" or those that go into a "trading book". Investment book orders include those that are placed by a treasury desk, an asset liability management or balance sheet management department, or a structuring desk that is packaging the securities into a derivative product for other clients. Note that orders placed by an affiliated asset management arm or an affiliated private bank should not be considered "internal" orders or proprietary orders. A trading book order is placed by a CMI's trading desk to enable it to act as a market maker for the securities and are expected to be traded on the secondary market with a view to distribution. Investment book orders are placed on an arm's length basis, are considered by the industry as equivalent to third party investor client orders (and hence are *pari passu* with third party investor client orders) and should be continued to be treated as such. Moreover, investment book orders are placed by other departments of a CMI which are separated by information walls and designed to manage conflicts of interest. Therefore, we believe that for the sake of clarity, "proprietary orders" should be defined to only cover trading book orders. Not all internal orders placed by CMIs or their Group Companies should be considered "proprietary orders".

If proprietary orders constitute trading book orders only, we agree the client orders should have priority over such orders.

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

Both investment book orders and trading book orders are placed in an order book with a price indication. After final price guidance is set, all investors will in effect be price takers. If by "price taker" the SFC means that such orders should not impact or determine the ultimate pricing of a transaction, we agree that if proprietary orders are defined to only include trading book orders, then generally such trading book orders would not impact or determine the ultimate pricing of a transaction.

Our response to this question will ultimately depend on the definition of "proprietary orders".

It is worth mentioning that in certain deals, orders placed by CMIs using their investment book may be substantial and hence they would not be price takers. For example, club deals are often marketed as public offerings, with a Bloomberg announcement and bookbuilding involvement, but have been substantially "anchored" by a large number of orders that have been placed by CMIs. In these cases, the orders placed by the CMIs do impact or determine the ultimate pricing of the transaction, as allocation to third party investors make up a minority of the order book. We believe that in these types of transactions, disclosure should be made to investors that the order book consists of a significant amount of CMI orders.

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.

As discussed in Question 14 above, we believe that such orders are investment book orders, are placed on an arm's length basis and therefore should be treated no different than an order placed by a third-party investor.

We note that Paragraph 21.3.10(c) of the Proposed Code would require a CMI to take reasonable steps to disclose to the issuer client how any risk management transactions it intends to carry out for itself, the issuer client or its investor client will not affect the pricing of the debt securities. We do not believe CMIs would be able to give an assurance that risk management transactions would not affect the pricing of the debt securities. Instead we believe the requirement should be for CMIs to communicate the risk of such transactions to issuer clients.

L. Communications with issuers, other CMIs and targeted investors

As mentioned in the response to Question 7 above, whether an investor is associated with the issuer is not something that a CMI would definitively know, so CMIs may not be able to provide information about investors associated with the issuer to the OC. The issuer will have an opportunity to review the order book to identify investors it believes to be associated with it.

Non-syndicate CMIs are not engaged in DCM transactions, so the requirement to disseminate the marketing and investor targeting strategy to non-syndicate CMIs should not be relevant for DCM.

M. Keeping of records

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 CMIs to maintain records which evidence every change? If not, please explain.

In practice, changes in the order book are recorded by a bookbuilding system and changes to investors orders, price and size are captured by such systems and can be extracted from such system for review purposes. Therefore, we do not believe there needs to be separate records maintained by intermediaries, as long as such information can be extracted from such bookbuilding system. We believe it would be too onerous for CMIs to document key communications with issuer, investors and CMIs and the basis for *all* allocation decisions with justifications for each and every investor in an orderbook. Given the speed at which deals launch and price, the multiple discussions between all parties, the number of investors in an order book, the number of OCs working on allocation prior to pricing, it would not be practicable to document all key discussions, conversations and decisions made. We believe that adherence to a CMI's allocation policy should be sufficient. To the extent that documentation is necessary, we believe this should be limited to documenting justifications for material deviations from the CMI's allocation policy.

N. Resources, systems and controls

We believe the requirements for CMIs to take reasonable steps to ensure that non-syndicate CMIs are able to comply with the Proposed Code is not applicable, and therefore should not be applied, to DCM. Alternatively, should such requirements be retained, it should be made clear that this should only apply to CMIs who engage non-syndicate CMIs (i.e. the definition of non-syndicate CMIs should be revised to make clear that there must be a direct contractual relationship between the syndicate CMI and the non-syndicate CMI). See response to Question 3.

O. Fee arrangements

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 supportive and agree that fee arrangements should be determined at an early stage of an offering. See response to Question 4. However, for the reasons discussed in the response to Question 5, we do not believe this should be characterized as "fee-related advice" that the OC is providing to an issuer and do not agree that OCs should be "advising" the issuer per the scope summarized in paragraph 134 of the Consultation Paper. The issuer and the OCs may engage in "discussions" related to fees to further the objective that all CMIs involved on the transaction should have their fees agreed in advance (and ideally at the time they are mandated).

We have not provided a response to Questions 19-23 as they do not relate to DCM.

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

We believe a six-month transition period from when the Proposed Code is gazetted is not a sufficient period of time to allow the industry to implement the necessary changes to their systems and controls to address the expected changes. We also believe that there should be sufficient time to allow for FAQs to be addressed by the SFC as there will likely be further clarification necessary.

Lastly, we believe that in order for the Proposed Code to achieve its intended objectives, compliance by all intermediaries as well as limiting the possibility of regulatory circumvention or arbitrage will be crucial. Otherwise, we will continue to see what the buy-side is currently experiencing, compliance with market standards by most intermediaries with certain intermediaries ignoring such market standards. This then puts pressure on all market participants. The ability for the SFC to enforce the Proposed Code changes has been a frequent topic of discussion in industry forums. We encourage the SFC to consider introducing a mechanism by which intermediaries would be able to report non-compliance, or seek waivers or clarifications, such that the changes to the Proposed Code are effective and can be enforced.