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**2022 SFC BOOKBUILDING  
CONDUCT REQUIREMENTS  
- HKEX LISTING RULES &  
TRANSITIONAL  
ARRANGEMENTS**

Webinar



# BACKGROUND

## Overview of concerns leading to the new Bookbuilding Conduct Requirements

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- A vertical timeline with a red line and circular markers. The background is a faded image of a city skyline with a prominent skyscraper.
- 8 February 2021** ● SFC Consultation Proposal  
The SFC initiated consultation on the proposed Code of Conduct on Bookbuilding and Placing Activities in ECM and DCM transactions, and the “Sponsor Coupling” proposal  
SFC's thematic review found “undesirable intermediary conduct”
  - 20 May 2021** ● SFC & HKEX “Joint Statement on IPO-related misconduct”  
Concerns over Hong Kong “ramp-and-dump” schemes and unusually high underwriting commissions in IPOs
  - 29 October 2021** ● SFC Consultation Conclusion
  - 22 April 2022** ● HKEX Information Paper and related FAQs
  - 5 August 2022** ● Bookbuilding Conduct Requirements and Listing Rule Amendments effective

# BOOKBUILDING CONDUCT REQUIREMENTS

## Key features

### Conduct requirements for Hong Kong bookbuilding and placing activities

- introduction of a new paragraph 21 of the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC ("SFC Code of Conduct") for capital market intermediaries ("CMI's")
- updates to the SFC guideline to sponsors, underwriters and placing agents involved in the listing and placing of GEM stocks issued in January 2017
- for Main Board IPOs, requirement that at least one overall coordinator ("OC") must be appointed as a sponsor and this sponsor must be independent of the issuer (i.e. "Sponsor Coupling")
- effective on 5 August 2022

# BOOKBUILDING CONDUCT REQUIREMENTS

## Scope of coverage

### (A) Bookbuilding activities

Collating investors' orders (including indications of interest) in an offering in order to facilitate:

- (i) the price determination and the allocation of shares or debt securities to investors; or
- (ii) the process of assessing demand and making allocations

### (B) Placing activities

Marketing or distributing shares or debt securities to investors pursuant to those bookbuilding activities

### (C) Advising, guiding and assisting the issuer client in those bookbuilding and placing activities

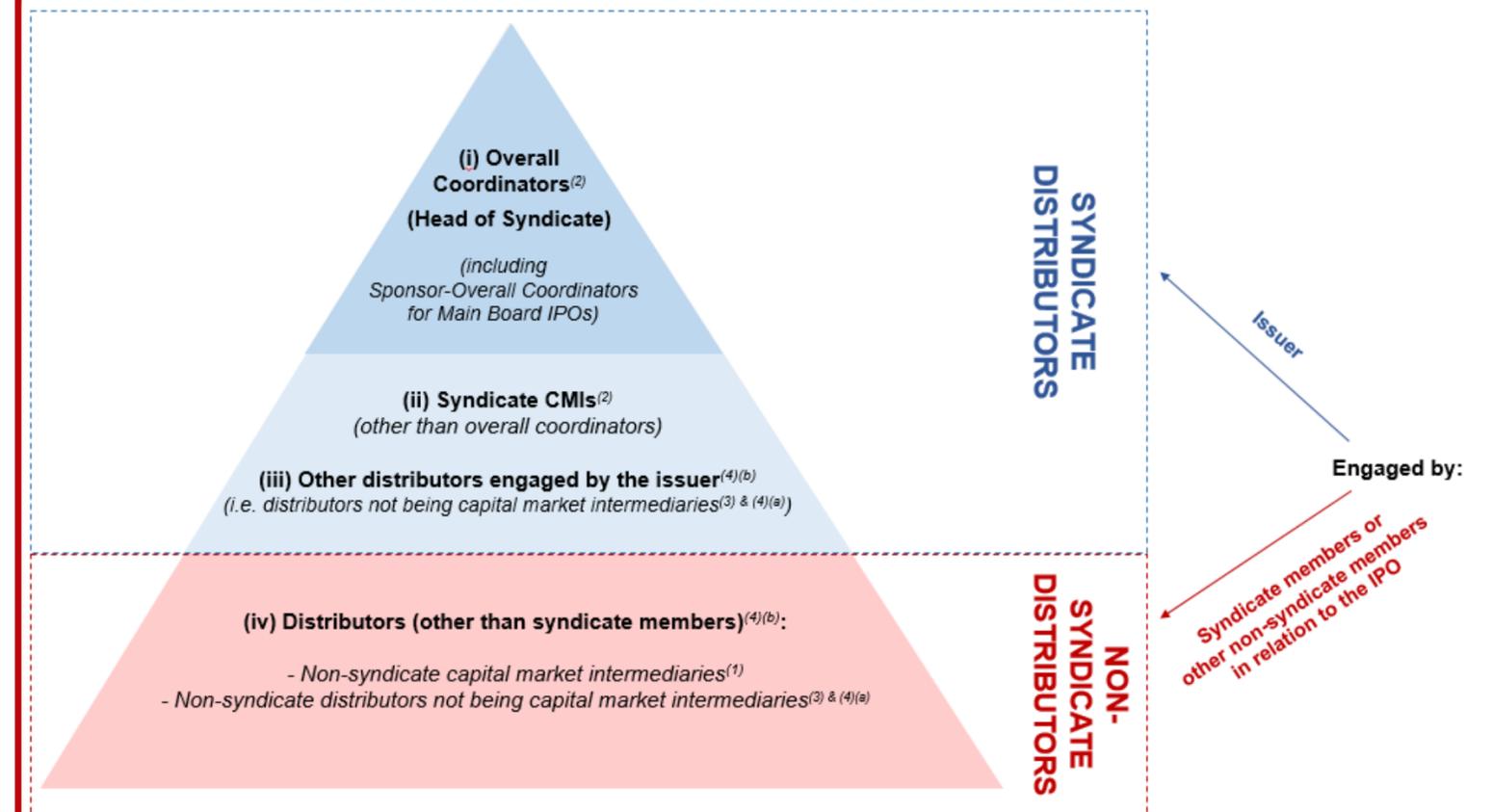
# BOOKBUILDING CONDUCT REQUIREMENTS

## Type of CMIs

CMI	OC
<p>A CMI will be classified as either a syndicate CMI or a non-syndicate CMI, depending on whether it has a mandate and a direct relationship with the issuer</p> <ul style="list-style-type: none"> <li>• <b>Syndicate CMI</b> — a CMI which is engaged by the issuer of a share or debt offering</li> <li>• <b>Non-Syndicate CMI</b> — a CMI which is not engaged by the issuer of a share or debt offering</li> </ul>	<p>OC is a syndicate CMI which, solely or jointly with other OCs:</p> <ul style="list-style-type: none"> <li>• is responsible for the overall management of the offering, coordinating the bookbuilding or placing activities conducted by other CMIs, exercising control over bookbuilding activities and making allocation recommendations to the issuer client;</li> <li>• advises the issuer client of the offer price and being a party to the price determination agreement with the issuer client; and</li> <li>• exercises discretion in respect of reallocate shares between the placing tranche and public subscription tranche or in respect of any reduction the number of offer shares, or in the exercise of an upsize or over-allotment option.</li> </ul>

## Type of offerings

- Equity Capital Markets - share offerings
- Debt Capital Markets - debt offerings



# BOOKBUILDING CONDUCT REQUIREMENTS

## Obligations and requirements under SFC Code of Conduct

Key requirements for all CMI (including OCs) <i>under paragraph 21.3 of the SFC Code of Conduct</i>	Additional requirements for OCs <i>under paragraph 21.4 of the SFC Code of Conduct</i>
<ul style="list-style-type: none"><li>• Assessment of the issuer and the offering</li><li>• Appointments of CMI and OCs</li><li>• Marketing</li><li>• Order book</li><li>• Allocation</li><li>• Rebates and preferential treatment offered</li><li>• Disclosure of information to OC, other CMIs and targeted investors</li><li>• Record keeping</li><li>• Conflicts of interest</li><li>• Resources, systems and controls</li><li>• Communication with the SFC and HKEX</li></ul>	<ul style="list-style-type: none"><li>• Terms of appointment</li><li>• Advice to issuer</li><li>• Marketing, rebates and preferential treatment offered</li><li>• Bookbuilding</li><li>• Assessment of investors</li><li>• Disclosures to CMIs and targeted investors</li><li>• Record keeping</li><li>• Communication with the SFC</li></ul>

# BOOKBUILDING CONDUCT REQUIREMENTS

## Assessment of the issuer and the offering (para. 21.3.1 of SFC Code of Conduct)

CMIs required to conduct an adequate assessment of an issuer client before engaging in an offering for that issuer client. This will include:

- taking reasonable steps to obtain an accurate understanding of the issuer client's history, background, business and performance, financial conditions and prospects, operations and structure;
- where the CMI for a debt offering had been the CMI for a previous debt offering made by the same issuer, the CMI will instead be required to ascertain whether there have been any material changes in the issuer client's circumstances of relevance to its role as CMI; and
- establishing a formal governance process for the review and assessment of the offering, including any (actual or potential) conflicts of interest between the CMI and the issuer client and the associated risks

# BOOKBUILDING CONDUCT REQUIREMENTS

## Appointment of CMIs and OCs (paras. 21.3.2 and 21.4.1 of SFC Code of Conduct)

Before a CMI conducts any bookbuilding or placing activities and before an OC conducts activities, it should ensure that it has been formally appointed under a written agreement to conduct such activities. The written agreement should clearly specify the roles and responsibilities of a CMI, the fee 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

### Sponsor coupling

- At least one independent sponsor must be appointed as Sponsor and OC ("Sponsor OC") at the same time at least two month prior to A1 filing
- "Sponsor coupling" only required for IPOs on the Main Board of the HKEx

### Time of appointment

- For other OCs who are not sponsors and OCs of GEM IPOs, their appointments must be no later than two weeks after listing application submission

# FEE ARRANGEMENTS

Fee arrangements in engagement letter must include fixed fees as a percentage of the total fees to be paid to all syndicate CMI's (i.e. fee split ratio)

- "Fixed fees": the minimum amount of fees payable to the CMI which is not subject to the discretion of the issuer (other than due to change in offer size or offer price)
  - "no less than [x]%" of the total fees
  - a percentage range of the total fees
- "Discretionary fees": any other fees which are payable as part of the total fees
  - "up to"
  - "no less than"

SFC's says market practice is 75% fixed and 25% discretionary

Fee split ratio must be reported to the SFC by no later than four clear business days prior to the Listing Committee hearing

# BOOKBUILDING CONDUCT REQUIREMENTS

## Advice to the issuer by OCs

(para. 21.4.2 of SFC Code of Conduct)

OCs should act with due skill, care and diligence when providing advice, recommendations and guidance to the issuer client, and should, *inter alia*, do the following:

- ensure that its advice and recommendations are balanced;
- engage the issuer client to understand its preferences and objectives;
- explain the basis of its advice and recommendations to the issuer client; and
- provide advice to the issuer client in a timely fashion.

For a share offering, OCs should provide guidance to the issuer client on the market's practice on the ratio of fixed and discretionary fees to be paid to syndicate CMI's participating in an IPO

OCs which participate in share offerings are required to advise and guide the issuer client and its directors as to their responsibilities under the HKEx Listing Rules and other regulatory requirements or guidance issued by the HKEx ("HKEx Requirements") which apply to placing activities and take reasonable steps to ensure that they understand and meet these responsibilities

OCs will be required to timely report various information to the SFC, including:

- any instances of material non-compliance with the HKEx Requirements related to, for example, the placing activities conducted by itself or the issuer client; and
- any material changes to the information it previously provided to the SFC and the HKEx.

## Assessment of investor clients and marketing (paras. 21.3.3, 21.3.4 and 21.4.5 of SFC Code of Conduct)

- OCs should devise a marketing and investor targeting strategy for order generation
- CMIs required to assess whether their investor clients fall within the types of investors targeted in the marketing strategy formulated, and should only market to investor clients which are targeted investors
- OCs required to provide all syndicate CMIs of an IPO with a list of issuer's directors, existing shareholders, close associates and nominees engaged by them concerning the offering
- OCs required to take reasonable steps to identify investors who are such persons to ensure allocation to them in accordance with requirements of the Stock Exchange

# BOOKBUILDING CONDUCT REQUIREMENTS

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## Management of the order book

(paras. 21.3.5 and 21.4.4 of SFC Code of Conduct)

- CMIs required to take reasonable steps to ensure that all orders in the order book represent bona fide demand on behalf of its investor clients, itself and its group companies
- CMIs required to ensure transparency in the bookbuilding process and disclose the identities of all investor clients in an order book
- OCs required to take reasonable steps to properly manage an order book and ensure the book's transparency, including:
  - ensuring that the identities of all investor clients are disclosed in the order book, apart from orders placed on an omnibus basis;
  - properly consolidating orders in the order book by taking reasonable steps to identify and eliminate duplicated orders, inconsistencies or errors;
  - segregating and clearly identifying in the order book and book messages any proprietary orders of CMI and their group companies; and
  - making enquiries with CMI which have placed orders on behalf of their investor clients, themselves or their group companies which appear unusual or irregular, such as orders which appear to be related to the issuer client

# BOOKBUILDING CONDUCT REQUIREMENTS

## Pricing and allocation

(paras. 21.3.6 and 21.4.4 of SFC Code of Conduct)

- CMIs required to establish and implement an allocation policy to ensure a fair allocation of shares or debt securities to its investor clients
- The CMI allocation policy should take into account the principles of the Bookbuilding Conduct Requirements
- OCs required to take all reasonable steps to ensure that the price discovery process is credible and transparent and that the allocation recommendations made to the issuer client as well as the final allocation have a proper basis
- OCs required to advise the issuer client on the pricing and ensure that the proprietary orders of CMI or their group companies will not negatively impact the price discovery process
- OCs required to develop and maintain an allocation policy which specifies the criteria for making allocation recommendations to the issuer client;

# BOOKBUILDING CONDUCT REQUIREMENTS

## Rebates and preferential treatment (paras. 21.3.7, 21.4.3(c) and 21.4.4(b)(ii) of SFC Code of Conduct)

CMIs prohibited from offering any rebates to investor clients or from enabling any investor clients to pay at a price lower than that offered to other investors

For IPOs, CMIs should not enable investor clients to pay, for each of the shares allocated, less than the total consideration as disclosed in the listing document

For debt offerings, CMIs should not enter into any arrangements which may result in investor clients paying different prices for the debt securities allocated

CMIs required to disclose to the issuer client, the OC, all of its targeted investors and the non-syndicate CMIs it appoints, any rebates offered to CMIs and any other preferential treatment of any CMIs or targeted investors

OCs required to advise the issuer client against providing any arrangements whereby:

- in the case of an IPO, the investor clients would pay less than the total consideration as disclosed in the listing documents
- for a debt offering, the investor clients would pay different prices for the debt securities allocated

OCs will be required to advise the issuer of the disclosure of any rebates and preferential treatment

In accordance with the general requirement to disseminate material information related to the offering to all syndicate CMIs, OCs will be required to disseminate information on rebates and preferential treatment to all syndicate CMIs

## **Disclosure of information to OC / CMIs and targeted investors (paras. 21.3.8 and 21.4.6 of SFC Code of Conduct)**

CMIs will be required to disclose complete and accurate information in a timely fashion on the status of the order book and other relevant information it receives to:

- the OC (whether directly or indirectly) and non-syndicate CMIs it appoints so that they can perform their duties; and
- its targeted investors so that they can make an informed decision

OCs required to inform other syndicate CMIs of the issuer client's marketing and investor targeting strategy, disseminate material information related to the offering and ensure that the disseminated information is complete and accurate and has a proper basis

# **BOOKBUILDING CONDUCT REQUIREMENTS**

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## Record keeping

(paras. 21.3.9 and 21.4.7 of SFC Code of Conduct)

- CMIs required to maintain books and records sufficient to demonstrate compliance with all applicable requirements of the Bookbuilding Conduct Requirements
- CMIs must maintain records of the documented information for at least seven years (this requirement reduced to only two years for audit trails)
- OCs required to document various matters, including, among others, all changes in the order book throughout the bookbuilding process and all key discussions with, and key advice or recommendations provided to, the issuer client
- OCs must maintain records of the documented information for at least seven years

# BOOKBUILDING CONDUCT REQUIREMENTS

## Conflicts of interest and proprietary orders of CMIs (para. 21.3.10 of SFC Code of Conduct)

CMIs required to establish, implement and maintain policies and procedures to identify, manage and disclose actual and potential conflicts of interest

CMIs also required to:

- always give priority to fulfilling investor clients' orders over its own proprietary orders;
- only be the price taker; and
- segregate and clearly identify its own proprietary orders in the order book and book messages

For a debt offering, CMIs will be required to take reasonable steps to disclose to the issuer client how any risk management transactions it intends to conduct for itself, the issuer client or its investor clients will not impact the debt securities' pricing

# BOOKBUILDING CONDUCT REQUIREMENTS

## Resources, systems and controls (para. 21.3.11 of SFC Code of Conduct)

CMI should maintain sufficient resources and effective systems and controls to ensure that it can discharge its obligations and responsibilities

Chinese walls

Review and approval of orders and allocations

Appointment of non-syndicate CMIs

Surveillance & monitoring

# BOOKBUILDING CONDUCT REQUIREMENTS

Communication with regulators by OCs  
(para. 21.3.12 and 21.4.8 of SFC Code of Conduct)

OCs required to report and provide certain information to the SFC in a timely manner

OCs required to provide the following information to the SFC by no later than four clear business days prior to the Listing Committee Hearing for an IPO:

- the name of each OC participating in the IPO;
- the allocation of the fixed portion of the fees paid by the issuer to each OC;
- the total fees (as a percentage of the gross amount of funds raised) of both the public offer and the international tranche to be paid to all syndicate CMLs; and
- the fee split ratio – the ratio between the fixed and discretionary portions of the total fees to be paid to all syndicate CMLs (in percentage terms)

CMLs required to deal with SFC and HKEx in an open and cooperate manner

# HKEX LISTING RULE AMENDMENTS

## Summary of key amendments

### Overview

The Listing Rule amendments apply to listing applications submitted (or re-filed) on or after 5 August 2022 for the same types of offerings of equity securities or interests as those covered in the Bookbuilding Conduct Requirements (*MBLR 3A.32 / GEM LR 6A.39*).

No specific amendments made to the Listing Rules relating to the placing of debt securities.

<u>Main areas</u>	<u>SFC Code of Conduct</u>	<u>Listing Rules</u>
Appointment of OC/CMI	21.3.2, 21.4.1(a))	MBLR 3A.33-36 / GEM LR 6A.40-43
OC's advise to issuer	21.4.2(b)	MBLR 3A.40 / GEM LR 64.45
"Sponsor coupling"	17.1A, 21.4.1(b)	MBLR 3A.02, 3A.43 (Main Board only)
Obligations of listing applicant and directors	21.4.5, 21.4.2(c), 21.3.7(a)	MBLR 3A.46 / GEM LR 6A.48
Reporting, publication and disclosure	21.4.8	Note 2 to MBLR 9.11(23a) / Note 2 to GEM LR 12.23AA

# HKEX LISTING RULE AMENDMENTS

## Key amendments to reflect the Bookbuilding Conduct Requirements

	<u>SFC Code of Conduct</u>	<u>Listing Rules</u>
<ul style="list-style-type: none"> <li>• appointment before conducting bookbuilding and/or placing activities</li> </ul>	21.3.2, 21.4.1(a)	MBLR 3A.33, 35 / GEM LR 6A.40, 42
<ul style="list-style-type: none"> <li>• contents of written engagement agreements</li> </ul>	21.3.2, 21.4.1(a)	MBLR 3A.34, 36 / GEM LR 6A.41, 43
<ul style="list-style-type: none"> <li>• OCs to be appointed no later than <u>2 weeks</u> following date of the submission (or re-filing)</li> </ul>	21.4.1(b)(ii) and (c)	MBLR 3A.37 / GEM LR 6A.44
<ul style="list-style-type: none"> <li>• OCs to advise listing applicant and its director and provide HKEx delcaration</li> </ul>	21.4.2(b), 21.4.4	MBLR 3A.40 and Form E in App 5 / GEM LR 6A.45 and Form I in App 7
<ul style="list-style-type: none"> <li>• "sponsor coupling"</li> </ul>	17.1A, 21.4.1(b)	MBLR 3A.02, 3A.43

# HKEX LISTING RULE AMENDMENTS

## Key amendments to reflect the Bookbuilding Conduct Requirements (cont'd)

- listing applicant to provide relevant information to syndicate members at least 4 clear business days before Listing Committee
- listing applicant to document rationale for its decision on pricing and allocation
- prohibition of rebates and preferential treatment
- new applicants to publish announcement of name(s) of OC(s) on same date as their listing application; further announcement on changes to OCs
- OC to submit information four clear days before the Listing Committee hearing

### SFC Code of Conduct

### Listing Rules

21.4.2(v), 21.4.5(a)

MBLR 3A.46(1) /  
GEM LR 6A.48(1)

21.4.2(c)

Para 19 of App 6 MBLR /  
GEM LR 10.16B

21.3.7

Note 2 to MBLR 12.08 /  
Note 3 to GEM LR 16.13

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MBLR 3A.37, 3A.41 /  
GEM LR 6A.44, 6A.46(2)

21.4.8

Note 2 to MBLR 9.11(23a) /  
Note 2 to GEM LR 12.23AA

# HKEX LISTING RULE AMENDMENTS

## Key amendments to reflect the Bookbuilding Conduct Requirements (cont'd)

	<u>SFC Code of Conduct</u>	<u>Listing Rules</u>
<ul style="list-style-type: none"> <li>disclose total fees and the ratio of fixed and discretionary fees in the listing document</li> </ul>	21.4.2(b)	Para 3B of App 1A and 1E MB / Para 3B of App 1A GEM
<ul style="list-style-type: none"> <li>listing applicant to confirm allocation of discretionary fees (in absolute amount) and payment schedule no later than listing</li> </ul>	21.4.2(b)	Para 10A of Form F in App 5 MB / Para 10A of Form E in App 5 GEM
<ul style="list-style-type: none"> <li>already listed issuer to report to HKEX any change of OC</li> </ul>		MBLR 3A.41(1), 9.10B / GEM LR 6A.46(1), 12.08

# OTHER HKEX LISTING RULE AMENDMENTS

## Main Board and GEM website unification

- All material information on GEM website migrated / merged with HKEX's corporate website and/or the HKEXnews website
- Separate section now dedicated to GEM on websites
- All references to "GEM website" changed to "Exchange's website" in the GEM Listing Rules
- Effective 28 May 2022

## Housekeeping amendments

- Electronic bank transfer as means of payment
- New headline category for company information sheets
- Rectifying errors and simplifying language
- Effective 5 August 2022