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**SFC BOOKBUILDING
CONDUCT REQUIREMENTS**

Webinar
October 2024



BACKGROUND

Overview of 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 skyscrapers.
- 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 had found “undesirable intermediary conduct”
 - 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
 - October 2021** ● SFC Consultation Conclusion
 - April 2022** ● HKEX Information Paper and related FAQs
 - August 2022** ● Bookbuilding Conduct Requirements and Listing Rule amendments effective
 - January 2024** ● HKEx’s Guide for New Applicants
Includes an outline of the composition of the syndicate structure in an IPO, relevant LRs and related FAQs

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 ("CMIs")
- updates to the SFC guidelines to intermediaries 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 bookbuilding activities

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

Capital market intermediary (CMI) is an SFC-licensed/registered entity engaged in any of the above

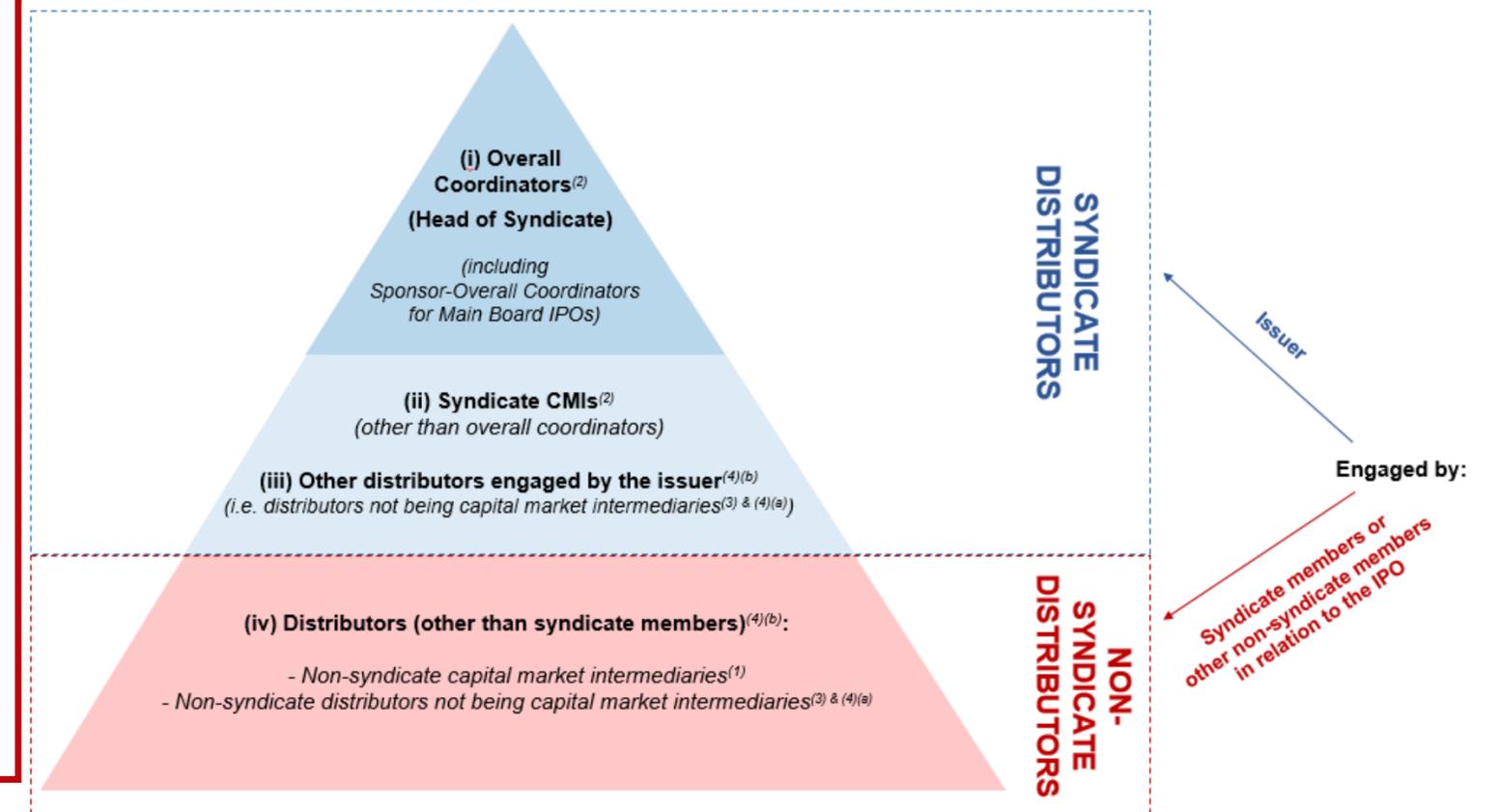
BOOKBUILDING CONDUCT REQUIREMENTS

Types of CMIs

CMI	OC
<p>A CMI is 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"> • Syndicate CMI — a CMI which is engaged by the issuer of a share or debt offering • Non-Syndicate CMI — a CMI which is not engaged by the issuer of a share or debt offering 	<p>OC is a syndicate CMI which, solely or jointly with other OCs:</p> <ul style="list-style-type: none"> • 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; • advises the issuer client of the offer price and is a party to the price determination agreement with the issuer client; OR • exercises discretion: to reallocate shares between the placing tranche and public subscription tranche; to reduce the number of offer shares; or to exercise an upsize or over-allotment option (Para. 21.2.3)

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) *under paragraph 21.3 of the SFC Code of Conduct*

- Assessment of the issuer and the offering
- Appointments of CMI
- Assessment of investor clients
- Marketing
- Order book
- Allocation
- Rebates and preferential treatment offered
- Disclosure of information to OC, non-syndicate CMIs and targeted investors
- Record keeping
- Conflicts of interest
- Resources, systems and controls
- Communication with the SFC and HKEX

Additional requirements for OCs *under paragraph 21.4 of the SFC Code of Conduct*

- Terms of appointment
- Advice to issuer client
- Marketing, rebates and preferential treatment offered
- Bookbuilding
- Allocation
- Assessment of investors
- Disclosures to syndicate CMIs and targeted investors
- Record keeping
- Communication with the SFC

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 must have been formally appointed under a written agreement to conduct such activities. The written agreement must clearly specify the roles and responsibilities of a CMI, the fee arrangement (including fixed fee payable to CMI as % of total fees (fixed & discretionary) 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 months prior to A1 filing
- An independent sponsor's group company can act as OC
- "Sponsor coupling" only required for IPOs on the Main Board of the HKEx

Time of appointment

- Other OCs who are not sponsors and OCs of GEM IPOs must be appointed no later than 2 weeks after listing application submission

FEE ARRANGEMENTS

Engagement letter with each CMI (including OCs) must specify fixed fees payable to that CMI as % of the total fees (fixed & discretionary) to be paid to all syndicate CMIs (i.e. fee split ratio)

- "Fixed fees": minimum amount of fees payable to the CMI not subject to the issuer's discretion (except due to change in offer size or offer price)
- "Discretionary fees": any other fees payable as total fees

Before 1st CMI appointment, issuer must determine total fixed and discretionary fees payable to CMIs

OC of IPO must guide issuer on market practice on ratio of fixed and discretionary fees payable to syndicate CMIs - i.e. 75% fixed: 25% discretionary

FEE ARRANGEMENTS

If a syndicate CMI's fixed fee entitlement is expressed as:

- “no less than [x]%” of total fees: CMI's fixed fees will be taken as [x]% and other fees above [x]% will be discretionary fees
- “no more than [x]%” of total fees: NOT ALLOWED because there's no certainty as to CMI's minimum fee and entire fee will be considered discretionary
- a percentage range of total fees: minimum fee prescribed by range will be regarded as CMI's fixed fee; additional fees within the range regarded as discretionary fees

If fee arrangement expressed in form of tiered commission structure where higher commission will apply if the deal is priced higher: CMI's fixed fee will be taken as the minimum fee prescribed; fees above that will be regarded as discretionary fees. This type of fee arrangement must be clearly disclosed in listing document

(FAQ. 16, Annex B.10 to HKEX Guide for New Listing Applicants)



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

OCs which participate in share offerings must advise and guide issuer 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 they understand and meet these responsibilities

OCs are required to explain potential concerns and advise issuer against any decision contrary to OC's advice/recommendations re. pricing or allocation and for share offerings, against decisions that could result in lack of open market, an inadequate spread of investors or negatively effect secondary market trading

- OC should document issuer's final decisions that deviate materially from its advice/recommendations

Assessment of investor clients and marketing (paras. 21.3.3, 21.3.4, 21.4.3 and 21.4.5 of SFC Code of Conduct)

- OCs should devise and inform syndicate CMI of issuer's marketing and investor targeting strategy
- CMIs required to assess whether their investor clients are within the types of investors targeted in that strategy, and to only market to investor clients that are targeted investors
- CMIs required to identify Restricted Investors (incl. connected clients and issuer's core connected clients) to whom share allocations restricted or subject to HKEX consent under HKEX Listing Rules
- OCs required to advise issuer to provide all syndicate CMIs with a list of its directors, existing shareholders, close associates and nominees engaged by them to acquire shares
- OCs required to take reasonable steps to identify investors on the list to ensure allocation to them in accordance with HKEX requirements

BOOKBUILDING CONDUCT REQUIREMENTS

BOOKBUILDING CONDUCT REQUIREMENTS

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 of their investor clients, themselves and their group companies
- CMIs must disclose identities of all investor clients in an order book except for omnibus orders: for omnibus orders, underlying investors' names and ID nos must be provided to OC and issuer
- 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 their 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 or passing on any rebates to investor clients

On IPOs, CMIs must not allow investor clients to pay less than the consideration disclosed in the listing document

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

A CMI must disclose to the issuer, the OC, all its targeted investors and the non-syndicate CMI it appoints, any rebates offered to CMI and any other preferential treatment of any CMI or targeted investors (e.g. guaranteed allocations)

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
- on a debt offering, the investor clients would pay different prices for the debt securities

OCs are 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 CMI, OCs will be required to disseminate information on rebates and preferential treatment to all syndicate CMI

Disclosure of information to OC / CMI 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 CMI 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 CMI 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 7 years (this requirement reduced to only 2 years for audit trails)
- OCs required to document various matters, including, among others, all changes in the order book during 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 7 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 re. proprietary orders; and
- segregate and clearly identify its own and its group's proprietary orders in the order book and book messages

For a debt offering, CMIs are 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 they can discharge their 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 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;
- any material changes to the information it previously provided to the SFC and the HKEx;
- reasons for ceasing to act as OC on a share offering

OCs required to provide the following information to the SFC by no later than 4 clear business days before 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 RULES

Key Listing Rules to Bookbuilding Conduct Requirements

Overview

An overview of the composition of the syndicate structure in a typical IPO, relevant LRs for defined intermediaries and FAQs are set out in Annex B.10 of HKEx's Guide for New Listing Applicants

No specific Listing Rules relating to the placing of debt securities, but intermediaries expected to comply with Bookbuilding Conduct Requirements when engaged in debt security placings

<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 advice	21.4.2(b)	MBLR 3A.34 / GEM LR 6A.43
"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 RULES

Key Listing Rules reflecting Bookbuilding Conduct Requirements

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

HKEX LISTING RULES

Key Listing Rules reflecting Bookbuilding Conduct Requirements (cont'd)

	<u>SFC Code of Conduct</u>	<u>Listing Rules</u>
<ul style="list-style-type: none"> engagement agreement to require listing applicant to provide list of connected persons & associates to syndicate CMIs at least <u>4 clear business days</u> before Listing Committee hearing 	21.4.2(v), 21.4.5(a)	MBLR 3A.46(1) / GEM LR 6A.48(1)
<ul style="list-style-type: none"> listing applicant to document rationale for its decision on pricing and allocation 	21.4.2(c)	Para 19 of App F1 MBLR / GEM LR 10.16B
<ul style="list-style-type: none"> prohibition of rebates and preferential treatment 	21.3.7	Note 2 to MBLR 12.08 / Note 3 to GEM LR 16.13
<ul style="list-style-type: none"> new applicants to publish announcement of name(s) of OC(s) on same date as their listing application; further announcement on changes to OCs 	-	MBLR 3A.37, 3A.41 / GEM LR 6A.44, 6A.46(2)
<ul style="list-style-type: none"> OC to submit information <u>four clear days</u> before the Listing Committee hearing 	21.4.8	Note 2 to MBLR 9.11(23a) / Note 2 to GEM LR 12.23AA

HKEX LISTING RULES

Key Listing Rules reflecting Bookbuilding Conduct Requirements (cont'd)

	<u>SFC Code of Conduct</u>	<u>Listing Rules</u>
<ul style="list-style-type: none"> disclose total fees and the ratio of fixed and discretionary fees in the listing document 	21.4.2(b)	Para 3B of App D1A
<ul style="list-style-type: none"> listing applicant to confirm allocation of discretionary fees (in absolute amount) and payment schedule before submitting Issuer's Declaration (i.e. after listing document is issued but before grant of listing approval) 	21.4.2(b)	Para 13 of Form F (published in Regulatory Forms) (both MBLR and GEM LR)
<ul style="list-style-type: none"> already listed issuer conducting share placing to report to HKEX any change of OC 		MBLR 3A.41(1), 9.10B / GEM LR 6A.46(1), 12.08