

7 May 2021

The Securities and Futures Commission

54/F, One Island East
18 Westlands Road
Quarry Bay, Hong Kong

Email: ECM_DCM_consultation@sfc.hk

Dear Sir/Madam,

Re: 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

On behalf of the Asset Management Group (“**AAMG**”) of Asia Securities Industry & Financial Markets Association (“**ASIFMA**”) ¹, we would like to submit our response to the Securities and Futures Commission (the “**Commission**” or “**SFC**”)’s 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 “**Consultation Paper**”), specifically in regard to the DCM aspects which are not covered in the ASIFMA AAMG and Equities Capital Markets Committee (“**ECMC**” representing the views of CMI) response. However, AAMG will also take this opportunity to elaborate further on some of our views on the ECM aspects. Unless otherwise defined herein, the terms used in this response have the meaning assigned to them in the Consultation Paper.

AAMG would like to commend the SFC for its thorough review of ECM and DCM activities in Hong Kong and for your proposals to address the problems identified in this review. Our members welcome and agree that the SFC’s proposals would increase transparency, discourage undesirable intermediary conduct that may hamper proper price discovery and fair allocation, align incentives with responsibilities of the intermediaries, address issues arising from competitive pressures that may

¹ [ASIFMA](#) is an independent, regional trade association with over 145 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practice and standards to benefit the region.

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adversely affect the integrity of the market, protect the interests of investors, and ensure that Hong Kong is not only viewed as a leader in the world for capital raising but also for its regulatory standards.

Summary of AAMG's views

AAMG is supportive of most of the proposals in the Consultation Paper, in particular the following:

- Adding a new paragraph 21 in the Code of Conduct on ECM and DCM bookbuilding and placing activities;
- Defining the roles and responsibilities of different syndicate members (e.g. OCs and CMIs) and requiring their appointment (which we believe should also be limited in number, especially for OCs, to ensure accountability) and the fixing of their fee arrangement at an early stage of a transaction (i.e. before the A1 filing for ECM deals and before the public announcement for DCM deals);
- Coupling the role of an OC with that of a sponsor;
- Requiring the OC to advise the issuer and its directors, particularly on pricing and allocation for ECM IPOs;
- Prohibiting all forms of rebates (from the issuer or otherwise), regardless of whether or not such rebates are passed on to the ultimate investors;
- Expecting best practices from OCs and CMIs such as not knowingly accepting inflated orders, not putting in "X-orders", being transparent and up-to-date with the order book, prioritizing clients orders over proprietary orders, having an allocation policy and allocating securities fairly, etc.

AAMG is cognizant of the differences between ECM and DCM transactions which will likely require slightly different sets of rules for the two. We also recognize that certain proposals in the Consultation Paper need clarification such as which types of ECM and DCM transactions are to be covered, what is the definition of "omnibus", what is meant by "substantial interest", etc.

AAMG also notes that certain aspects of ECM transactions which our members are concerned about are not addressed in the Consultation Paper. They include, for example, cornerstone investors and who should be allowed to solicit them as well as double dipping, which we hope will also be addressed in the Code of Conduct.

AAMG wishes to thank the SFC for the opportunity to comment on the Consultation Paper. Please see our responses to the Questions in the following pages. If you have any further questions or would like to discuss further with us, please contact Eugenie Shen, Head of AAMG, at eshen@asifma.org.

Yours sincerely,



Eugenie Shen
Managing Director, Head of Asset Management Group
Asia Securities Industry & Financial Markets Association

Question 1:	Do you consider the definitions of “bookbuilding activities” and “placing activities” to be clear and sufficient to cover key capital raising activities? If not, please explain.
<p>Yes. AAMG members generally believe that the proposed definitions of “bookbuilding activities” and “placing activities” are clear and sufficient to cover key capital raising activities.</p>	
Question 2:	Do you agree with the proposed scope of coverage for both ECM and DCM activities?
<p>Due to differences between ECM and DCM transactions, it is easier to agree with the intermediaries on the scope of ECM activities to be covered by the Proposed Code than for DCM activities as the latter typically involves multi-jurisdictional offerings.</p> <p>For ECM transactions, AAMG members are generally fine with the proposed coverage set out in paragraphs 44-48 of the Consultation Paper except that we would like to make clear that the following types of transactions should be covered:</p> <ul style="list-style-type: none"> • Follow on share issuances • Primary and secondary block transactions • Secondary offerings • Private placements • Accelerated bookbuilds • Placements/offerings of SEHK-listed convertible/exchangeable bonds or bonds that are exchangeable/convertible to SEHK-listed shares (which may be viewed by some to be under DCM) <p>For DCM transactions, however, AAMG is of the view that limiting the coverage to placements/offerings of bonds listed or issued in Hong Kong would be far too narrow. We understand ICMA recommends that the coverage be extended to placements/offerings of bonds which issuer (or guarantor) is listed in Hong Kong and/or which issuer or parent entity is incorporated in Hong Kong. However, we believe that ICMA’s suggested scope is still too narrow given the typical types of bonds (USD “Asia-centric” bonds) being offered to Hong Kong investors, that issuers are often incorporated in Mainland China, the BVI or the Cayman Islands rather than Hong Kong, and that keepwell agreements are more prevalent than guarantees for example.</p> <p>Therefore, AAMG suggests that the proposed scope for DCM transactions to be expanded further to cover also offerings/placements of USD-denominated debt securities issued by companies which principal place of business, operations or headquarter are in Asia (excluding Japan) and/or convertible/exchangeable into shares of companies whose principal place of business, operations or headquarter are in Asia (excluding Japan) (“Asia-centric” bonds) as well as “tap” or “re-opening” issues of publicly issued tradeable Asia-centric bonds (including private tap available only to</p>	

selected investors where it is for a publicly issued Asia-centric bond) and even “club deals” involving publicly tradeable Asia-centric bonds.

While we recognize the possible unintended consequences and risks of regulatory arbitrage noted by ICMA in their response, AAMG members are less concerned with issuers and underwriters avoiding Hong Kong or Hong Kong investors due to new Code of Conduct requirements and more interested in the healthy development of Hong Kong’s DCM.

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

Yes. AAMG members are fully supportive of the role and appointment of an OC since they believe that many of the issues arising with ECM and DCM activities in Hong Kong (as noted in paragraph 4 of the Consultation Paper) stem from having too many banks involved in a deal but with little accountability attaching to any of them. In fact, our members believe that there should be a limit on the number of OCs, such as one or at most two of them, for each transaction so that it is clear who is responsible for the overall bookbuilding/placing process and the issuer does not receive differing advice from too many parties.

Regarding the last paragraph of paragraph 52 of the Consultation Paper, we take issue with the last sentence of that paragraph that issuers would still be free to award titles such as “JGC” to syndicate CMLs even if they do not carry out the activities of an OC as stipulated in the Proposed Code. Our members are of the view that the title granted to an intermediary should be commensurate with its role in the transaction. Otherwise, it may lead to investor confusion and detract from the accountability that both investors and the regulator are looking for.

Question 4: Do you agree that the appointments of OCs and other CMLs and the determination of their roles, responsibilities and fee arrangements, should all take place at an early stage? If not, please explain.

Yes. For ECM IPOs, the appointments of OCs and syndicate CMLs and the determination of their roles, responsibilities and fee arrangements (which should comprise the bulk of the total fees of a transaction) should be finalised by the time of the A1 filing to avoid the undesirable behaviours noted in the Consultation Paper. This is because marketing and investor solicitation for a deal usually commence immediately after the A1 filing.

While AAMG would prefer that there be no late joiners after the A1 filing, our members are prepared to accept some flexibility in the appointment of additional non-syndicate CMLs (but not OCs) post-A1 filing but we believe that there must be good reasons for such appointment and that these reasons should be provided by the issuer to the SFC beforehand. In addition, such appointment should be subject to the following conditions: (a) such appointment must be made in any case prior to the Listing Committee hearing, and (b) the fixed fees to be paid to such additional CMLs should come out of the unallocated portion of the fixed fee (which in AAMG’s view should only be a small percentage not to exceed 25%) of the total fixed fee. Please see our response to

Question 19 for our more detailed views on fees and the allocation thereof among the OCs and CMIs.

For DCM transactions, AAMG members are of the view that the appointment and determination of roles, responsibilities and fee arrangements of OCs and other CMIs must be done before the mandate is publicly announced.

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?
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Yes, AAMG agrees that an OC should be providing advice to the issuer, including explaining its concerns to the issuer where the issuer ignores the OC's advice or recommendations in relation to pricing or allocation or matters that may lead to a lack of open market or an inadequate spread of investors or the lack of post-IPO trading. However, AAMG recognizes that an OC has a potential conflict of interest in advising an issuer on syndicate membership and fee arrangements so an OC should not have to provide advice thereon.

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.
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AAMG opposes all forms of rebate, whether or not they are from the issuer or others, and whether or not they are passed on to ultimate investors because it is important to maintain a level playing field for all investors as well as CMIs.

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.
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Yes.

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.
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Yes. AAMG agrees in general that the identities of all investors should be disclosed in the order book except for orders placed on an omnibus basis. However, it would be helpful if the Code of Conduct defines what is "omnibus" as different parties may have different understandings of what it means.

For example, when orders are placed by a fund/asset/investment manager on an "omnibus" basis, they comprise of orders of the funds and/or client accounts over which such manager has

investment discretion. Typically, the disclosure of such funds and clients accounts is not required due to the possible voluminous nature of such information (especially if underlying investors were to go down to the investors of each fund) and because the investment decision resides with the fund/asset/investment manager and not the underlying investors. We are of the view the foregoing applies to other financial institutions, such as banks and insurance companies, which makes investment decisions on behalf of their clients. Therefore, we would like the Code of Conduct to make it clear that the identities of the underlying investors of this type of “omnibus” orders need not be provided to an OC.

However, “omnibus” orders placed by a bank may include orders from different parts of their business, such as from their proprietary desk, their treasury department and/or their asset management arm. AAMG believes that the underlying investors of these “omnibus” orders, at least for the first two sources of orders, should be disclosed to enhance transparency and minimize conflicts of interest.

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.
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Generally no. If the OC has knowledge of or access to all the investors in the book (including the underlying investors except for those that may be exempted per our response to Question 8 above), the OC should have little difficulty to remove duplicate orders in a large IPO or debt offering.

A ban on “X-orders” would certainly make it easier for OCs and CMIs to identify investors and avoid duplicate orders. Moreover, use of centralized order management systems and platforms can also help.

Question 10:	Do you agree that OCs and CMIs should not accept knowingly inflated orders? If not, please explain.
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Yes. AAMG notes that paragraph 93(a)(i) of the Consultation Paper provides only that a CMI should take reasonable steps to ensure that all orders placed in the order book “on behalf of its own investor clients, itself and its Group Companies” represent bona fide demand and not “knowingly” place inflated orders. We believe that this is a totally reasonable requirement and that is inappropriate to shift the focus to investors which we believe the SFC lacks the power to regulate unless it amounts to market misconduct.

Question 11:	Do you agree that OCs should ensure the transparency of the order book? If not, please explain.
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Yes. AAMG is of the view that not only should there be transparency of the order book to the issuer but there should be transparency of the bookbuilding process via regular book updates (particularly for DCM transactions) and disclosure of final statistics to investors and the public at the end of a

transaction. The release of book updates and final statistics can enhance transparency and improve the price discovery process for all parties involved in a transaction.

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

Yes.

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

Yes. AAMG members are supportive of the development of policies to address issues of conflict and fair allocation, and generally agree with the factors raised in the Consultation Paper in respect of the contents to be covered in the allocation policies.

One of our members would like to add another factor to be taken into account in an allocation policy (paragraph 21.4.5(c)(i) of the Code), which is “the integrity or past behaviour of targeted investors”. For example, whether there has been attempted multiple applications by the investor, a record of inflated demands or orders from the investor, hold-sell or flipping pattern of the investor, sophistication, reputation and contribution (to the price discovery process) of the investor.

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

Yes. We would include orders from the asset management arm of banks or syndicate members in the definition of client orders.

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

Yes.

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.

Yes. But it would be helpful if the SFC can clarify what is meant by “substantial interest”.

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 CMI to maintain records which evidence every change? If not, please explain.
Yes. AAMG believes that with technology, keeping orders updated in the order book is feasible and is important for both accuracy and transparency in the bookbuilding process.	
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.
Generally yes, except that we do not agree that OCs should advise issuers on syndicate membership and fee arrangements among syndicate members. Please see our response in Question 5.	
Question 19:	Would you envisage substantial practical difficulties in an issuer determining the syndicate membership, the ratio between the fixed and discretionary portions of the fees to be paid to all syndicate CMIs and fixed fees allocation four clear business days before the Listing Committee Hearing? If yes, please cite examples.
<p>No. However, for AAMG, the issue is not so much about the practical difficulties of an issuer disclosing four clear business days before the Listing Committee hearing the syndicate membership, the ratio between the fixed and discretionary portions of the fees to be paid to all syndicate CMIs and the fixed fee allocation to each syndicate member but the need to have issuers determine all of the foregoing at an early stage of the bookbuilding process, in order to avoid some of the issues noted in the Consultation Paper.</p> <p>AAMG has long been of the view that the problems with the IPO or bookbuilding process in Hong Kong stem from the fees and incentive structure of the deals, which is not established upfront, with too many banks chasing orders and not focusing on helping the market find the proper price equilibrium to ensure the success of the IPO. Hence, AAMG strongly advocates that the bulk of the underwriting fees for ECM IPO transactions (e.g. 75% of the total fees) be fixed (i.e. fixed portion) and allocated to the OC (which should have a substantial portion of the fees due to its role and corresponding responsibility as head of the syndicate) and syndicate CMIs appointed by the time of the A1 filing with a smaller portion of the total fees (e.g. 25%) to be discretionary and paid out based on performance and contribution to the bookbuilding. We suggest that the ratio of fixed to discretionary fees be fixed in the Code of Conduct which ratio is in line with international practice.</p> <p>If additional CMIs (but not OCs in our view) are to be allowed to be brought into a deal after the A1 filing (which AAMG generally discourages and should be limited to within two weeks after the A1 filing), they should only be entitled to that portion of the fixed fee that has not been allocated (“Unallocated portion”) by the time of the A1 filing and such Unallocated portion should only be a small percentage (not to exceed 25%) of the total fixed fee portion that is available not only to the</p>	

post-A1 CMI but also those OCs and CMIs appointed at or prior to the A1 filing (such as in the event no post-A1 CMIs are appointed).

AAMG members are of the view that all fees (fixed and discretionary) should be determined and paid promptly upon completion of the transactions.

Question 20: **Would you envisage substantial difficulties in issuers determining the allocation of discretionary fees and the fee payment schedule no later than listing? If yes, please cite examples.**

No and we believe ECMC and ICMA agree with us.

Question 21: **Do you agree that (i) the syndicate membership (including the names of OCs) should be disclosed at an early stage; (ii) the total fees to be paid to all syndicate CMIs participating in the offering for the international placing tranche should be disclosed in the prospectus; and (iii) the total monetary benefits paid to each syndicate CMI should be disclosed after listing? If not, please explain.**

Yes. AAMG members overwhelmingly support the proposal in (i) above for the reasons stated in our response to Question 4. Investors will be clear as to which entities are in fact mandated on a transaction. Our members recommend that disclosure of the syndicate membership could be made in the A1 filing in the case of an ECM IPO and in the public announcement in the case of a DCM mandate.

Our members understand that “total fees” in (ii) above refer to 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 CMIs participating in the offering and “total monetary benefits” in (iii) above would include brokerage fees and stabilization profits earned by syndicate CMIs in the deal. We agree that (ii) should be disclosed in the prospectus and (iii) should be disclosed after listing. With respect to (iii), It would be helpful if the Code of Conduct can specify how long after listing must such disclosure be made and how such disclosure is to be made (e.g. by public announcement or on the SEHK website).

Question 22: **Do you agree with the “sponsor coupling” proposal? If not, please explain.**

Yes. We note that this would only be applicable to ECM IPOs, where our members are of the view that an OC (whose role is to lead the syndicate) must also be a sponsor but that not all sponsors have to be an OC.

Question 23:	Do you think one Sponsor OC is adequate or should more OCs be required to act as sponsors? For example, should the majority of OCs be required to act as sponsors (i.e., if the issuer appoints three OCs, two must also act as sponsor)? Please explain.
<p>Yes. We think one sponsor is sufficient for most transactions, which is why we also believe that one OC is sufficient for most transactions. We think that having too many OCs would dilute accountability and the advice given to the issuer.</p>	
Question 24:	Do you have any comments on the proposed implementation timeline?
<p>No. AAMG agrees with the six-month implementation timeline as many deals are expected to come to market and the sooner the new paragraph of the Code comes into effect the better off it is for investors.</p>	