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Growing Asia's Markets

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The Securities and Futures Commission
54/F, One Island East
18 Westlands Road
Quarry Bay, Hong Kong

By Email to: ECM_DCM_consultation@sfc.hk

ASIFMA Response to the Consultation Paper on Bookbuilding/Placing and "Sponsor Coupling"

We refer to the 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**") issued by the Securities and Futures Commission (the "**SFC**") in February 2021. Unless otherwise defined in this letter, the terms used in the response will have the meaning given to them in the Consultation Paper.

This response has been prepared jointly by the Equity Capital Markets Committee ("**ECMC**") and the Asset Management Group ("**AAMG**") of the Asia Securities Industry & Financial Markets Association ("**ASIFMA**")[1] on behalf of our members. This response is primarily focused on transactions in the equity capital markets ("**ECM**").

The concerns which the SFC noted in the Consultation Paper generally resonate amongst ASIFMA's ECMC and AAMG members. They agree that the current bookbuilding process has given rise to some of the undesirable behaviour highlighted by the SFC, noting the potential for unhealthy competition amongst (and consequent sub-optimal behaviour by) institutions involved in the bookbuilding and placing activities. Our members generally agree that supervision and transparency of the bookbuilding process could be heightened in the interests of the market and the investing public.

The Proposed Code requires CMIs to take "reasonable steps" when discharging certain obligations, such as ensuring that all orders placed in an order book represent bona fide demand of investors (paragraph 21.3.5) and ensuring that the price discovery process is credible and transparent (paragraph 21.4.5). ECMC members welcome the opportunity to discuss with the SFC separately on what "reasonable steps" could comprise in these scenarios, to facilitate the operationalisation of the new requirements.

We confirm that the SFC may disclose our identity and publish a copy of this response on its website.

Lastly, ASIFMA would like to extend its thanks to the SFC for the opportunity to comment on the Consultation Paper. ASIFMA remains at the disposal of the SFC should the SFC wish to discuss any issues further. If we can contribute further to the thinking on the subject of this Consultation Paper or any related issues, please do not hesitate to contact Lyndon Chao, Managing Director, Equities and Post Trade at lchao@asifma.org on behalf of ECMC and Eugenie Shen, Head of Asset Management, at eshen@asifma.org, on behalf of AAMG.

[1] ASIFMA is an independent, regional trade association with over 135 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, competitive and efficient 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 practices and standards to benefit the region.

Sincerely,

Lyndon Chao
Managing Director, Head of Equities and Post Trade

Eugenie Shen
Managing Director, Head of Asset Management

Response to the questions in the Consultation Paper

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.

Our members (both AAMG and ECMC) believe that the proposed definitions of "bookbuilding activities" and "placing activities" are generally clear and sufficient to cover key capital raising activities.

There are however a few areas on which our ECMC members would like the SFC to clarify:

1. Is it the intention that operational activities involved in settlement of transactions arising from "bookbuilding activities" and "placing activities" should be covered by the Proposed Code? ECMC members do not believe that such activities should be covered by the Proposed Code.
2. Would private banks procuring or taking orders from their clients fall within the definition of "bookbuilding activities", noting that the Consultation Paper refers to private banks in various contexts (including rebates and preferential treatment in paragraphs 81 and 82)? ECMC members do not believe that private banks engaging in these activities should be treated as CMIs as in essence they are representing the investors in such a deal, not the issuer. For similar reasons, ECMC members do not believe that asset or wealth management functions within the CMI group should be considered as carrying out the role of a CMI.

On a separate but related point, in the context of IPO transactions, some AAMG members believe that solicitation of cornerstone investors by un-mandated intermediaries has been a commonly used method through which such institutions gain entry to the syndicate at a late stage. AAMG is therefore of the view that limiting the solicitation of cornerstone investors to OCs only would help avoid order book swarming. There is also broad agreement among ECMC members that there should be a restriction on who can solicit cornerstone investors, albeit that a large majority of them believe that this should include all syndicate CMIs and not just OCs as AAMG proposes. In addition, ECMC members are generally supportive that only mandated firms (whether syndicate or non-syndicate CMIs) may approach potential IPO placees.

For other types of ECM transactions where the timeline is more compressed and deal origination is less well defined than IPOs, the ECMC members would welcome guidance from, and an opportunity to discuss with, the SFC as to how intermediaries may approach investors within permitted exceptions from regulation under the Proposed Code. See item 3 under "other comments" at the back of this response for examples of these scenarios.

In addition, ECMC members wish to raise two further points;

a. These members note the SFC's intention to exclude from the Proposed Code financial advisers who provide advice to issuers but do not participate in any bookbuilding or placing activities. Even though financial advisers may not be involved in the actual bookbuilding or placing activities, to the extent the financial advisers are advising on in-scope activities and performing some (if not all) of the roles of a CMI, ECMC members broadly agree that the requirements in the Proposed Code (such as those relating to the provision of advice) should equally apply to financial advisers in order to create a level playing field.
b. ECMC members generally agree that un-mandated intermediaries should not solicit investors for deals where issuers have already appointed CMIs. However, given the broad definitions which have been assigned to bookbuilding activities in the Proposed Code (in particular, "*collating investors' orders (including indications of interest) …*" , ECMC members welcome guidance from the SFC on whether mere solicitation (e.g. reaching out to investors) in respect of a deal would also be construed

as "bookbuilding" activities. With regard to the foregoing, AAMG asks that it be made clear that there should be no solicitation of investors of any kind by any CMI prior to that CMI being formally appointed to the syndicate, which should be finalized no later than the A1 filing.

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

Our members (both AAMG and ECMC) generally agree with the geographical coverage of the Proposed Code (i.e. relevant activities conducted in Hong Kong in respect of an offering of shares listed or to be listed on the SEHK for share offerings), as provided in paragraph 21.1.1 of the Proposed Code. For the sake of clarity, ECMC members understand that, for example, a fundraising exercise by a dual primary or secondary listed issuer conducted in an overseas market with shares to be listed on the overseas market should fall outside the ambit of the Proposed Code.

However, ECMC members believe that the proposed coverage of ECM and DCM activities, as well as the specific ECM transactions contemplated by the SFC, may be too wide and may need to be narrowed, for the following reasons:

1. There should be differentiated regulatory expectations and standards imposed on ECM and DCM transactions, as there are fundamental differences between the way that these markets work and in their respective investor bases. The nature and dynamics of ECM transactions are very different from DCM transactions. In particular, while some ECM transactions can limit participation to institutional and professional investors (e.g. some block trades or offerings of equity-linked securities), they may also involve retail investors (in the case of IPOs, secondary listings and right issues). DCM transactions are however predominantly marketed to institutional and professional investors only. Therefore, ECMC members are strongly of the view that the same set of rules could not meaningfully apply to both ECM and DCM transactions, as the relative sophistication of the target investor bases is fundamentally different. This is already noted in the existing regulatory framework, in that, due to differences including the risk profile of the products involved, the Listing Rules requirements for ECM and DCM transactions are also different with less onerous requirements for DCM transactions. If the Proposed Code is to cover both ECM and DCM transactions, ECMC members believe that these differences should be expressly acknowledged in the drafting of the new Code, with clear guidance as to which rules apply to different markets (and transaction / security types). ECMC members urge that, given the very broad scope and anticipated impact of the Proposed Code, the scope of coverage for the two markets, and whether and how different rules apply to each of them, the requirements must be expressed in very clear terms with no ambiguity in the final code to facilitate the operationalisation of the new rules by industry members.
2. Further, ECMC members note that even within the ECM space, there is a very wide variety of transaction types, and not all give rise to the concerns identified by the SFC. The size of the syndicate and the deal dynamics vary greatly among different types of ECM transactions. ECMC members agree that the issues identified by the SFC are commonly seen in IPOs, but not necessarily in other types of ECM transaction, notably in primary and top-up private placements, accelerated bookbuilds, bought deals, and club deals. In particular, these types of deal are usually conducted in an extremely compressed timeframe and do not have the same milestones as, say, a typical IPO. There is no solicitation of retail and, largely, no (or limited) investor meetings or extended marketing campaign. As such, many of the undesirable conduct identified by the SFC would not arise in these contexts, and some of the obligations applicable to the OC would be of limited impact in these kinds of deals. By way of example, an accelerated bookbuild is frequently originated, launched and executed within the space of a few hours following close of the market and as such there would be practical difficulties in performing all of the actions contemplated for an OC (or CMI) in the Proposed Code in such context.

3. On this basis, there are largely two schools of thought within the ECMC membership:
    a. roughly half of the ECMC members strongly believe that only IPO transactions should be within the scope of the Proposed Code for ECM;
    b. slightly less than half of the ECMC members believe that in terms of ECM transactions, aside from IPOs (including secondary listings), the Proposed Code should also apply to follow-on primary issuances, provided that for the non-IPO transactions, only the generally applicable obligations and standards of CMIs (i.e. those contained in the proposed paragraph 21.3) should apply, and not any of the obligations or standards which apply to OCs. This is principally because the compressed timetable typical of such transactions will mean that it is impossible in practice for intermediaries to comply with the obligations that would be imposed on OCs. It is observed that a considerable amount of lead time would be required for full compliance with the OC-related rules; therefore, if compliance with any such rules was to be required then we would urge the SFC to provide clear guidance as to the specific time by which appointments of OC roles must be made in the context of such compressed deals. Further, some of the activities which define the role of an "OC" simply do not take place in non-IPO transactions.

Some ECMC members would like the SFC to clarify:

1. whether equity-linked convertible bonds and exchangeable bonds should be considered equities or debt securities for the purposes of the Proposed Code, and whether they will be subject to both rules applicable to share offering and debt offering under the Proposed Code (and whether the classification of such instruments may depend on whether the underlying instrument comprise equity securities listed on the SEHK) ECMC Members would request brightline guidance as to whether such bonds are caught by the new Code eg. only where the bond issuer and the underlying securities are HK listed (as bonds issued by a HK listed issuer convertible into US ADRs should not be caught);; and
2. the types of transaction which are specified to be out of scope in paragraph 44 of the Consultation Paper. For example, it is unclear what types of transaction are contemplated in paragraph 44(c) ("*transactions where shares or debt securities are allocated to investors on a pre-determined basis*").

Finally, our ECMC members strongly believe that the exclusions set out in the Consultation Paper (e.g. in paragraphs 44 and 48 therein) should be codified to avoid any confusion in the future, as well as exclusions and carve-outs on the application of specific rules. In general, where the Consultation Paper contains exemptions or out-of-scope activities or intermediaries, these should be set out clearly in the Proposed Code itself.

AAMG members, on the other hand, generally agree with the SFC that the Proposed Code should apply to all types of offerings which involve bookbuilding or placing activities except for club deals (as such term is used in equities only, but not for debt offerings due to this term having a different meaning in the debt context) which are entered into between the issuer and a few investors on a bilateral or individually negotiated basis. Therefore, AAMG believes that in addition to IPOs, primary and secondary block transactions (including follow-ons), secondary offerings, private placements, accelerated bookbuilds, placements and offerings of convertible or exchangeable bonds (including taps) should all be covered by the Proposed Code. AAMG believes that paragraphs 44 to 48 of the Consultation Paper make it clear what is in and out of scope but agrees with ECMC members that they should be set out clearly in the Proposed Code.

AAMG members appreciate the timing challenges for OCs on non-IPO transactions and are therefore prepared to accept (as proposed by some ECMC members in 3(b) in the response to this Question 2 above) that only the obligations and expected standards of conduct for non-OC CMIs (i.e. those set out

in the proposed paragraph 21.3) and not those for OCs (i.e. those set out in the proposed paragraph 21.4) should apply in such transactions.

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

Our members (both AAMG and ECMC) generally consider that the role of an OC as set out in the Proposed Code is clear.

AAMG wholeheartedly supports the appointment and role of an OC since AAMG members strongly believe that many of the problems 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. Therefore, AAMG members prefer to see ECM and DCM deals led, at most, by one OC and two to three other CMIs. AAMG members are also of the view that an OC must be a sponsor, but a sponsor does not necessarily have to be an OC.

ECMC members, on the other hand, do not believe that it is necessary to limit the number of OCs or other CMIs. ECMC members believe that, while the number of OCs may vary depending on the size of the transaction concerned, the measures in the Proposed Code (e.g. written appointment of OCs and CMIs specifying their roles, fixing of fees etc.) would serve to enhance transparency and accountability and to disincentivise market participants from swarming into the syndicate. In IPO transactions, some ECMC members are of the view that, in general, all sponsors (other than professional sponsors) should be appointed OCs.

Please see further details on both the AAMG's and ECMC's views on this issue in their responses to Question 23 below.

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.**

Our members (both AAMG and ECMC) generally welcome an earlier date of appointment for OCs and other CMIs.

AAMG members would prefer the appointments of OCs and other CMIs and the determination of their roles, responsibilities and fee arrangements to be finalised by the time of the A1 filing (with no late joiners) to avoid the behaviours highlighted in the Consultation Paper because marketing and investor solicitation for a deal usually commence immediately after the A1 filing, which is when undesirable intermediary conduct may start to occur. AAMG strongly opposes the appointment of OCs after the A1 filing.

As for ECMC members, there are two schools of thought within the ECMC membership on how this should be operationalised for IPO transactions:

1. Roughly half of the ECMC members suggest that the OCs be appointed by the time of the A1 filing as OCs play an important role in due diligence, offering recommendations on marketing strategy etc. These members would suggest removal of the proposed two-week buffer period (i.e. the proposed flexibility to appoint an OC no later than two weeks after A1) to enhance certainty on the composition of the OCs at A1. If an OC is appointed after A1 but solicitation or marketing activities take place immediately after A1 (which may be the case in practice), it may not have sufficient time or opportunity to assess the issuer and gain sufficient knowledge of the issuer to be able to market the deal to investors properly. This also ties in with the vast majority of ECMC members' suggestion in Question 19 that a significant portion of the total fixed fees (determined at A1) should be reserved for allocation to OCs and other pre-A1 syndicate CMIs for the reasons set out in that response. These

members do not object to non-OC syndicate CMI appointments after A1 but believe that the entire "issuer appointed" CMI syndicate should be formed by the time any investor solicitation commences.

2. The other half of the ECMC members are of the view that appointment of OCs and other syndicate CMIs any time after the filing of the A1 ("**Post-A1 Syndicate CMIs**") should still be allowed to provide for some flexibility, and some ECMC members are of the view that such appointments should not be restricted to the proposed two-week buffer period. This is because an OC's role is primarily marketing, pricing and allocation and, prior to A1, an issuer's main focus is on the sponsors' fulfilment of due diligence for an A1 submission which has little to do with the marketing work of an OC. In fact, there is very little work involved for an OC prior to A1 with respect to marketing. Analysts' presentations do not typically start until a few weeks after A1. Under current market practice, JGCs (equivalent to OCs under the proposed code) are often appointed after A1. These ECMC members believe that restricting appointment of OCs prior to A1 serves no real benefit to the issuer when an OC does not start any substantive marketing work until after A1. Further, it may even put unnecessary pressure on an issuer to finalize appointment of all OCs too early on when in practice an issuer may feel the need to appoint additional OCs after A1 for genuine marketing or commercial reasons. Additional OCs may add value to a transaction based on their client bases or knowledge of the market and industry. As such, these ECMC members believe that allowing late appointment of OCs can be beneficial to an issuer and the market in general. While these members appreciate that the SFC's intention to limit appointment of OCs early to avoid order swarming from unauthorised firms, they suggest that post-A1 appointments should (i) be led by issuer demand; (ii) be necessary taking into account the size of the deal; and (iii) require public notifications or filings with the SEHK. These protocols are suggested to maintain transparency of the composition of the syndicate such that investors are informed whether they are being approached by firms legitimately involved with a transaction and are able to reach out to engage with such firms in confidence.

In both cases, ECMC members would support a proposal that Post-A1 Syndicate CMIs be allocated fixed fees from the remainder of the fixed fee portion (which assumes that the fixed fee is not allocated fully at the time of A1 filing), i.e. the Unallocated Fixed Fee (as defined in the response to Question 19) to reflect the fact that pre-A1 appointed OCs and non-OC CMIs would be responsible for a larger portion of the work throughout the IPO process. ECMC members believe that this will resolve the concerns on uncertainty of the deal economics which is to be determined at A1; and in addition, the fact that late joiners may only have their share of fees from the remainder of the Unallocated Fixed Fee (as defined in the response to Question 19, which is expected to be substantially smaller in comparison with the Allocated Fixed Fee) should serve to discourage more speculative institutions from swarming into the syndicate post-A1.

AAMG members support some flexibility in the appointment of additional non-OC CMIs (but not OCs) post-A1 filing but believe that there must be good reasons for such appointment, and these reasons should be provided by the issuer to the SFC beforehand and subject to the following conditions: (a) such appointment must occur prior to the listing committee hearing in any event and (b) the fixed fees to be paid to such additional CMIs should come out of the Unallocated Fixed Fee (which in AAMG's view should only be a small percentage, not to exceed 25%) of the total fixed fee.

Please refer to our response to Question 19 for further details on the proposed fee arrangements. As the feedback from ECMC members above are focused on IPO transactions, should the new Code also apply to non-IPO transactions in the ECM context, ECMC members would like to have the opportunity to discuss with the SFC separately on the detailed proposals on the timing of appointment and fee arrangements applicable to other types of ECM transactions.

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?

Whilst ECMC members agree that an OC is in a position to provide advice to the issuer on marketing strategy (at (ii) above), they unanimously struggle with the concept of OCs being obliged to advise an issuer on syndicate membership and fee arrangements (item (i)) and pricing and allocation (item (iii)). This is because OCs are fundamentally counterparties to the issuers in securities/underwriting transactions, and hence there is inherent conflict of interest in them assuming an advisory role in respect of these items.

By way of example, an OC may struggle to manage the inherent conflict of interest between its own commercial position and an obligation to advise the issuer on whether other institutions should join (or be barred from) the syndicate, the fee arrangements for itself and other syndicate members and the pricing of the underwriting commitment. To impose a blanket obligation for the OCs to advise on these topics may be unfair and impractical to the issuer, other OCs or other CMIs in certain circumstances.

ECMC members noted further that in transactions with multiple OCs, the issuer will receive multiple allocation recommendations that may be different or even inconsistent. With all of this in mind, ECMC members strongly urge that the role of OCs on these two items should be to "discuss" these issues with the issuer and to "offer views" on them, as opposed to having an obligation to "advise", which would otherwise have major (and potentially unworkable) implications on the nature of duty owed by the OCs to the issuer. Consequential changes to paragraph 21.4.3 of the Proposed Code should therefore be made.

Separately, ECMC members understand that the proposed requirement to report to the SFC on the issuer's placing activities in paragraph 21.4.9(a) of the Proposed Code is limited to non-compliance with SEHK requirements contained in the Listing Rules and published guidance and is not intended to encompass all of the matters described in paragraph 75 of the Consultation Paper. The SFC's clarification is welcomed if this is not the case.

While AAMG members appreciate the conflict of interest an OC may have in advising the issuer on fee arrangements, because they view the OC as head of the syndicate and responsible for the success of an IPO, the OC should certainly be advising the issuer on pricing and allocation. AAMG notes that nothing in the SFC proposal suggests that the issuer has to accept the OC's advice; in fact, if the issuer does not, the OC is required to explain its concerns with the issuer's decision and document it (see paragraph 75 of the Consultation Paper).

AAMG also shares the concern raised by ECMC members that an issuer may receive multiple allocation recommendations from different OCs in a transaction that may be different or even inconsistent, but this is one of the reasons why AAMG members want the syndicate to be limited in size and for there to be one or at most two OCs who can provide the required advice to the issuer.

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.

Our members (both AAMG and ECMC) generally agree with the proposed restrictions on rebates for ECM transactions, irrespective of whether they are offered by the issuer or a CMI, in order to create a level playing field for CMIs and investors. Otherwise investors will not be treated fairly. In addition, AAMG members disagree with any rebates being paid at all regardless of whether these rebates are from an issuer or others and whether they are shared with or passed on to 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.

Our members (both AAMG and ECMC) agree that an OC should provide relevant information to non-OC CMIs to enable them to identify investor clients which are Restricted Investors in IPOs.

Some ECMC members would like to stress that imposing a specific obligation on an OC to provide information to CMIs to facilitate their assessment of which persons are Restricted Investors would be particularly difficult and inappropriate for share offering transactions with a compressed timetable, such as primary and top-up placements. This would impose an onerous burden on the OCs, considering that it is often extremely difficult, if not impossible in practice, for an OC to identify an exhaustive list of related/restricted investors, despite a detailed assessment and thorough due diligence having been conducted.

ECMC members therefore propose that the obligation on the OC should be to pass on information it has obtained from the issuer relating to Restricted Investors, and the Proposed Code should then oblige each CMI to make their own independent assessment on whether its investor clients are Restricted Investors. To address this issue fully, issuers should also be obliged (perhaps by way of amendment to the Listing Rules) to provide the relevant information to the OCs in a timely manner in the first place.

Separately, ECMC members wish to clarify one point in paragraph 21.4.7(a) of the Proposed Code, which requires OCs to share or take reasonable steps to ensure relevant information about the issuer client (as stipulated in paragraph 21.3.1) has been provided to CMIs for their assessment. ECMC members wish to confirm with the SFC if the relevant information is limited to that related to the offering (i.e. term sheet, book messages, etc.) or if it is intended also to include the issuer's history and background, business and performance, etc. If it is the latter, ECMC members would urge the SFC to provide clear guidance on what specific information is in scope, and to what extent the information could be shared among CMIs, especially for IPO transactions. For IPOs, there are documents which the market would classify as "sponsor only" documents, such as third-party due diligence notes, management due diligence, financial due diligence records, etc. and correspondence with the SEHK and it is currently market practice that such information would not be shared with CMIs. ECMC members understand that these documents are not required to be shared with non-sponsor CMIs but would welcome the SFC's confirmation on this point.

Separately, one ECMC member raised a concern that paragraph 21.3.1 in the Proposed Code may create a new layer of (and enhanced) responsibility for CMIs as they are required to conduct an adequate assessment of an issuer client which includes "*taking reasonable steps to obtain an accurate understanding of the history and background, business and performance … of the issuer client*". The ECMC members welcome the SFC to clarify whether CMIs are expected to proactively seek information if none is forthcoming from the OCs or the issuer client and whether CMIs are expected to "police" due diligence. Another ECMC member also urges the SFC to provide guidance on the steps that a CMI should take to reconcile or resolve differences of opinion, if there is disagreement between the issuer, OCs and non-OC CMIs.

Some ECMC members also suggest that the format and type of information should be standardized to facilitate the industry in formulating the sharing process and would welcome clarification on the timing and information to be shared regarding marketing and investor targeting strategy.

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.**

Our members (both AAMG and ECMC) generally agree that the OCs have an interest to know about the underlying investors of the CMI's orders, including those placed on an omnibus basis. Both groups also agree that there is a need to clarify what is meant by "omnibus" and the extent of the information on underlying investors to be provided for "omnibus" orders.

As such, "omnibus order" should be defined in the Proposed Code. In particular, both groups are generally of the view that:

- "omnibus order" should include orders placed under the name of a fund manager, asset manager or private bank on behalf of their multiple underlying fund / investors
- for these orders, disclosure of the manager / private bank ID should suffice, and the underlying investor IDs do not need to be disclosed; and
- swap orders from banks should not qualify for inclusion under the omnibus carve out and the order book should show the identity of the underlying investor.

This approach is largely driven by the fact that AAMG members and most of the ECMC members share the view that orders from asset/wealth management functions tend to be numerous and insignificant (individually) and it will be highly burdensome for them to provide granular details of all the underlying investors and their orders forming an omnibus order to their brokers (and consequently for CMIs to provide them to the OCs). In addition, even if such details are provided, they may not be meaningful for the reasons stated and may not assist in the identification of irregular or unusual orders.

However, some ECMC members have raised the following points for the SFC's consideration:

- One ECMC member suggested that where orders are made on behalf of investor clients of private banks and a separate placee list will be provided to the SEHK with the investor identities, such private bank orders should not be considered an "omnibus order"; and
- noting that OCs are required to make enquiries with CMIs if any orders appear to be unusual or irregular, some ECMC members query whether the OCs would have the basis to make such assessment if they are not provided with sufficient information on the investor clients of the CMIs. As such, these ECMC members maintain that the existing requirements contained in the The Placing Guidelines for Equity Securities in the Listing Rules is sufficient to address the underlying issue and regulate each intermediary.

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.**

Please see our response to Question 10. It is also worth noting that AAMG does not see difficulties removing duplicate orders given the bookbuilding systems generally used already contain such function.

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

In general, ECMC and AAMG members are supportive and agree that OCs and CMIs should not accept "knowingly" inflated orders.

However, to address the issue more fully, since inflated orders are ultimately led by investor behaviour, some ECMC members are of the view that the SFC should take a comprehensive approach and consider

introducing rules applicable to investors to effectively stem out this undesirable behaviour, for example, imposing an obligation against intentionally placing inflated orders.

AAMG disagrees with the above view because SFC's proposal in paragraph 93(a)(i) of the Consultation Paper (and paragraph 21.3.5 of the Proposed Code) provides that CMIs should take reasonable steps to ensure that all orders placed in the order book "*on behalf of its own investors clients, itself and its Group Companies*" represent bona fide demand and not knowingly place inflated orders. AAMG members are of the view that CMIs should know their clients, themselves and their Group Companies and therefore the proposal is not unreasonable. Moreover, Question 10 is about whether OCs and CMIs should accept "knowingly" inflated orders and not "investor behavior" which AAMG doubts the SFC has the power to regulate unless it involves market misconduct.

On this point, ECMC members would welcome guidance from the SFC on what actions and steps would be considered reasonable to "ensure" orders reflect bona fide demand of investor clients because knowing one's client does not automatically translate to being able to "ensure" that an order placed by that client is not inflated.

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

Our members (both AAMG and ECMC) agree that OCs should ensure the transparency of the order book to the issuer client.

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

AAMG members agree that "X-orders" should be prohibited. ECMC members generally believe that "X-orders" are less relevant in the ECM context. That said, a majority of ECMC members believe that prohibiting "X-orders" would be aligned with the objectives of enhancing transparency and clarity in the order book and facilitating the assessment of the independence of the underlying investors, whereas some ECMC members believe that it would be more appropriate to regulate "X-orders" instead of banning them altogether. Those members which favour regulating rather than banning "X-orders" suggest information on X-order placees should be disclosed to OCs for due diligence purposes to investigate inflated and disingenuous orders.

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

AAMG and a majority of the ECMC 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 in respect of the contents to be covered in the allocation policies.

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

ECMC members agree that as a matter of principle, all orders should be given fair and equal treatment, and believe that the issue of priority would be more effectively addressed by other means, such as through setting appropriate standards in intermediaries' conflicts of interest policies (and applying such policies consistently in practice) and record keeping, rather than imposing a blunt obligation that client orders must always be given priority. In this regard, there are circumstances where there is a genuine need for propriety orders to be given priority on par with other client orders (for example, orders originating from asset/liability management teams, treasury functions or hedging activity). Order books are open to audit by regulators who can challenge the legitimacy of allocation to proprietary orders.

In addition, CMIs have an information barrier between their proprietary desk and their capital market desk (as required by the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC, and also the Corporate Financial Advisor Code of Conduct, where applicable), so as to prevent any exchange of information between the two desks, and proprietary traders place orders based on their professional judgement, similar to other market investors. The Placing Guidelines for Equity Securities in the Listing Rules also contain requirements on placing and allocation to genuine public demand and not "being placed for their own account". The allocation policy required under paragraph 21.3.6 of the Proposed Code and the policy to address conflict of interest under paragraph 21.3.10 of the Proposed Code already require a CMI to identify and manage situations when a CMI serves both the interests of the issuer client and investor client.

In addition, one ECMC member is of the view that proprietary orders from syndicate CMIs' (including OCs') trading desks which come in relatively late in the process and are of *de minimis* value should be given priority similar to client orders because in such situations, the trading desks' participation is not to potentially profit in the secondary market of the securities but rather to help avoid any unfavourable trading in the secondary market.

AAMG agrees that client orders (which would include orders from the asset management arm of syndicate members) should be given priority over proprietary orders at all times.

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

Most of the ECMC members interpret the reference to "price takers" as meaning that proprietary orders placed by CMIs and their group companies cannot form part of the price discovery process, meaning that the price offered by such entities should be disregarded. If this interpretation is correct, ECMC members do not agree that proprietary orders can only be price takers. As mentioned in our response to Question 14, proprietary desks place orders according to their professional judgment and given the requirement for the Chinese wall, their orders are no different than market orders, hence it does not occur to ECMC members that the proprietary orders will deviate greatly from market-driven demand or would inappropriately influence the pricing of the offering.

On the other hand, AAMG members generally agree that proprietary orders can only be price takers.

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.**

AAMG and ECMC members' views on regulating proprietary orders are articulated in the response to Question 14. In addition, one ECMC member believes that this should not apply to private bank or asset managers and their Group Companies.

ECMC also takes "substantial interest" in this context to mean more than 50% of the economic interest. However, we would welcome the SFC's clarification on this point.

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.**

AAMG believes with technology, keeping orders updated in the order book is feasible and is important for both accuracy and transparency in the bookbuilding process.

However, some ECMC members consider the requirement in paragraph 21.4.8(a) of the Proposed Code too onerous. The keeping of records in addition to information inputted into the bookbuilding systems

used by banks is unnecessary because systems commonly used already have the functionality of recording all changes (such as upsize, downsize, price limit, changes, cancellations etc.) in any particular order for an offering throughout the bookbuilding process. One ECMC member considers that the requirement to document discussions relating to "actual or potential conflicts of interest" is too broad and suggests narrowing it down by including "with respect to allocations". This also corresponds with the requirements in relation to placing and underwriting under the Markets in Financial Instruments Directive 2014/65/EU (the "**MiFID II**") regime in which the record-keeping requirements focus more on allocation decisions and contain clearer and more granular guidance to the institutions on what has to be recorded, such as the content and timing of allocation requests received from the investors and justification for the final allocation. Conversely, the requirements in the Proposed Code appear to be a catch-all for deal-specific record-keeping, which seem to be more extensive than what is required under the MiFID II regime. On a related point, ECMC members feel that it is also very difficult to comply with the record-keeping requirements in the Proposed Code for deals with compressed timeframe or undocumented deals. In particular, ECMC members are concerned with the requirement in paragraph 21.4.8(c) of the Proposed Code on documenting the key advice or recommendations provided to the issuer client (including among others the allocation rationale, advantages and disadvantages etc.), which could be rather extensive. Some ECMC members suggest the record to be kept should only include key issues such as key matters discussed at key meetings and a summary of key views presented and the decision taken by the issuer (and not a line-by-line record of any discussions as such discussions have elements of subjectivity which interpretations may differ e.g. several CMIs are involved in a discussion and each party may have different interpretations of the subject matter). They believe that this level of detail can meet the policy objectives of recording keeping.	
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.**
Please see our response to 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.**
Our members (both AAMG and ECMC) note that the proposed wording of Schedule 11 requires (among other things) the ratio between fixed and discretionary portions of the fees to be paid to all syndicate CMIs (in percentage terms) to be notified to the SFC four clear business days prior to the Listing Committee Hearing. Against this backdrop, both AAMG and ECMC members are in agreement on two overarching principles. Firstly, both groups welcome the proposal of fixing the underwriting fees at an early stage of the transaction, and AAMG members and many of ECMC members (but not all) in fact believe that such decisions should be brought forward to a point even earlier than four clear business days before the Listing Committee hearing (for example, to the time of the A1 filing).[2] Secondly, both groups believe that a significant portion of the fees should be allocated to the syndicate CMIs appointed prior to the A1 filing, in particular, the OCs given that the OCs will have the most	

[2] The Consultation Paper mentioned a market norm for fees in share offerings to comprise 70-75% fixed fees and 25-30% discretionary fees. ECMC members confirm that this finding is in accordance with their experience.

substantial obligations under the Proposed Code. The two groups differ slightly in terms of their more detailed proposals on the allocation of the fees, as set out below.

AAMG's proposal

AAMG has long been of the view that the problems with the IPO process in Hong Kong stem from the fee 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 price equilibrium to ensure the continued success of the listed company post-IPO. Hence, AAMG strongly advocates that the bulk of the underwriting fees (e.g. 75% of the total fees) be fixed (i.e., fixed fee) and allocated to the OC and non-OC CMIs appointed by the time of the A1 filing, in particular, the lead banks (i.e. the limited number of OCs) to ensure that the compensation commensurate with their significant roles and responsibilities in the IPO process. AAMG also believes that such fees should be paid promptly upon completion of the deal, leaving a smaller portion (e.g. 25%) to be determined by the issuer on a discretionary basis later (i.e. the discretionary fee).

ECMC's proposal

Taking into account the concerns identified by the SFC, the ECMC members proposed the following approach to the fixing of fees on IPO transactions:

1. An overwhelming majority of ECMC members are of the view that a significant proportion of the **fixed** fee (for example, 70-75% of the fixed fee) should be allocated to the syndicate CMIs (including OCs and non-OC CMIs) appointed prior to the A1 filing (the "**Allocated Fixed Fee**"). The proportion of fixed fee allocated to each individual CMI (including OCs) appointed at A1, on a bank-by-bank basis, should be determined no later than A1.
2. The fixed fee for the Post-A1 Syndicate CMIs should be allocated solely from the unallocated portion of fixed fee (e.g. 25-30%) (the "**Unallocated Fixed Fee**"). The allocation of the whole fixed fee portion (including Allocated Fixed Fee and the Unallocated Fixed Fee) paid by the issuer to each syndicate CMI should be notified to the SEHK on a bank-by-bank basis four clear business days prior to the Listing Committee Hearing. In the event that no syndicate CMIs are appointed post-A1, the nominal Unallocated Fixed Fee would be available for the existing Syndicate CMIs.

   On (1) and (2) above, a few ECMC members also support the AAMG's view that the bulk of the fee should be reserved for the lead banks (i.e., the OCs only) and thus propose that a significant proportion of the Allocated Fixed Fees should be reserved for the syndicate OCs appointed prior to A1. This means that the Unallocated Fixed Fees are not then just for post-A1 joiners; non-OC syndicate CMIs appointed at or prior to A1 would also need to be paid their fixed fees from the Unallocated Fixed Fee pot.
3. The discretionary fee, representing the bonuses available to all syndicate CMIs (including OCs) based on performance on bookbuilding (which may or may not be paid by the issuer) (the "**Discretionary Fee**") should be determined four clear business days before the Listing Committee Hearing and notified to the SEHK as part of the 4-day documents.
4. The allocation of Discretionary Fee to each syndicate CMI (including OCs) should be determined no later than listing.
5. Finally, the total monetary benefits should be paid by the issuer to each syndicate CMI at listing, including the Discretionary Fee.

ECMC members who support the above proposals believe that it will help set expectations on the level of fees available for allocation among syndicate CMIs (in particular, OCs) appointed by the A1 submission which will enable them to better organise and dedicate resources for sponsor due diligence

work and marketing to investors. Mandating that a significant portion of the fixed fee be allocated to syndicate OCs (and sponsors – see our response to Question 22) and other syndicate CMIs will help align the rewards for sponsors/OCs with the amount of work they do and indeed their regulatory responsibilities.

ECMC members strongly believe that fixing the level of compensation for sponsors/OCs in the Proposed Code will play a fundamental part in resolving the concern of un-mandated brokers swarming order books at the last minute with orders of unknown quality and affecting the price discovery process. In the absence of having clear requirements on the expected breakdown of fees, issuers may revert back to the current unhealthy practice of allocating a relatively small portion of the total compensation to sponsor/OC firms whilst saving the bigger portion for allocation at a late stage of the transaction depending on the subjective view of the issuer as to how well intermediaries have performed, which can in our experience be linked predominantly to successful sales rather than to the extended and strategic work undertaken for the issuer client by the core syndicate members. ECMC members observed that some issuers do not fully settle fee payments until weeks (or in some cases months) after listings. There is no co-relation between the determination (and payment) of fees against the trading performance of the IPO shares post-listing. To require fees to be paid at listing would enhance market transparency and efficiency, while also ensuring that the obligations in the Proposed Code are complied with by all parties involved in a transaction (although to bind issuer clients, we would ask the SFC to consider working with the SEHK to make appropriate changes in the Listing Rules).

Finally, ECMC members wish to note two points for the avoidance of doubt:

- Fees to be disclosed pursuant to Schedule 11 include brokerage fees received from investors; and
- with regard to the proposed Schedule 11 on the timeframe for disclosure of the total monetary benefits (including fixed and discretionary fees and any bonuses), ECMC members note that this is limited to the fees which are paid by the issuer to each syndicate CMI and hence will not include stabilisation profits/losses**.**

Again, as the feedback from ECMC members above are focused on IPO transactions, should the new Code also apply to non-IPO transactions in the ECM context, ECMC members would like to have the opportunity to discuss with the SFC separately on the detailed proposal on the timing of appointment and fee arrangements applicable to the other types of ECM transactions.

With regard to the last two points raised by ECMC members above, AAMG would like to note that its members generally view brokerage fees and stabilization profits as part of the total fees of an IPO transaction that should be disclosed after the transaction.

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.**

Our members (both AAMG and ECMC) believe there should be no substantial difficulties for issuers to determine the allocation of the Discretionary Fee and pay all fees no later than the date of commencement of listing.

One ECMC member has proposed that there be a requirement for OCs and CMIs to report to the SFC if an issuer deviates from or breaches the payment schedule. This would help to ensure that at least the SFC would be aware if the actual economics of the transaction did not reflect that which had been made public.

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.

Our members (both AAMG and ECMC) overwhelmingly support the proposal in (i) above, for the reasons outlined in our response to Question 4. Investors will be clear as to which entities are in fact mandated on the transaction. Our members recommend that disclosure of the syndicate membership could be made in the A1 filing, by way of an announcement or through the SEHK website. Any syndicate CMIs who are appointed by the issuer post the A1 filing, if allowed, could be disclosed by way of a supplemental announcement through the SEHK website. This should help enhance market transparency at an earlier stage, and hopefully reduce the ability for non-mandated entities to claim a connection to the transaction.

In relation to the proposal in (ii) above, our members understand that "total fees" here 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 that "total fees" does not refer to an absolute dollar amount). Assuming so, our members are also generally supportive of this proposal.

As for the proposal in (iii) above, ECMC members are of the view that such disclosure will be unnecessarily onerous if the total monetary benefits paid to each and every syndicate CMI is required to be disclosed after listing (for example, if even the fees of a syndicate CMI which receives less than 1% of the total pool have to be disclosed) and that public disclosure is not necessary. As an alternative, ECMC members propose disclosure after listing of the respective fees received by the top five fee earners among the syndicate, or disclosure of the fees by roles, e.g. the fees received by the OCs as one combined amount and the other syndicate CMIs as another combined amount. The breakdown of fees received by individual CMIs is not relevant for the investing public. ECMC members propose that in any case, such disclosures would be made only to the SFC.

AAMG members, as investors, would like to see the fees being paid to each party to the deal to be disclosed when the deal is completed.

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

Our members (both AAMG and ECMC) generally agree with the "sponsor coupling" proposal, i.e. that there should be at least one sponsor who is an OC (and, hence, at least one OC who is a sponsor). In addition, however:

- AAMG believe that all OCs must be sponsors, but not all sponsors have to be OCs; and
- ECMC members, on the other hand, think that all sponsors should be appointed as OCs, save for professional sponsors who are not engaged in underwriting. ECMC members observe that it is very rare in practice that the sponsors would only be engaging in the sponsor business but not bookbuilding activities. In addition, ECMC members believe that an affiliate of the issuer should not 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.

Please refer to our responses to Questions 3 and 22.

As noted in our response to Question 3, AAMG would like to see a limited number of OCs and non-OC CMIs. So, AAMG members think that one sponsor OC is generally adequate. And, as noted in our response to Question 22, AAMG members think that given its role as head of the syndicate, the OCs should all have to act as sponsors but not all sponsors have to act as OCs. ECMC members, on the other hand, believe that it is more effective to require all sponsors (other than those sponsors who are affiliates of the issuer) to be OCs, instead of setting a minimum number for OCs to be required to act as sponsors. In addition, ECMC members agree that non-sponsors may still be appointed as OCs.	
Question 24:	**Do you have any comments on the proposed implementation timeline?**
AAMG agrees with the six-month implementation timeline as many deals are expected to come to market and the sooner the bookbuilding issues are addressed the better off for the investors. However, most of the ECMC members believe a six-month transition period from when the Proposed Code is gazetted is too short, given the significant uplift to systems and controls, the need to update and amend necessary policies (some of which may require global committee vetting and approval) and the need to train staff. ECMC members therefore request that the SFC gives intermediaries ample time to implement the Code, perhaps tying these new requirements in with the proposed rolling out of the Fast Interface for New Issuance ("**FINI**") given the FINI changes may also impact the bookbuilding and placing activities of CMIs in the context of IPOs, with a timeframe for implementation of no earlier than Q2 2022 or at the least allowing a one-year transition to facilitate proper implementation.	

Other Comments

1 Delineation of liability of CMIs

1.1 As a general comment, ECMC members would also like the SFC to shed light on the delineation of liability of CMIs in general. Essentially, ECMC members note that a CMI cannot control the actions taken by other CMIs, OCs and the Issuer client, and therefore should only be accountable for its own behavior. For this reason, ECMC members urge the SFC to make clear in the Proposed Code that the obligations and responsibilities of each OC (and CMI) are several and not joint and several, and that each CMI will not be responsible for any failure of other OCs or CMIs (unless complicit in the conduct).

1.2 Under the paragraph 21.3.11(c) of the Proposed Code, a CMI is required to exercise due skill, care and diligence in the selection and appointment of non-syndicate CMIs. In addition, they are expected to take reasonable steps to ensure that non-syndicate CMIs comply with the Proposed Code (see paragraph 123 of the Consultation Paper). ECMC members are concerned with how this can be achieved as non-syndicate CMIs are third-parties and not within CMIs' control. This obligation on CMIs to ensure non-CMI compliance is therefore too burdensome. Since it seems to be intended under the design of the new framework that the OCs and syndicate CMIs shall shoulder the duty to supervise the syndicate members (including non-syndicate CMIs) to different extents, more clarify is welcomed on how the SFC would expect intermediaries to discharge their duties in these regards.

2 Sharing of information among syndicate members

On a separate point, ECMC members observe that the Proposed Code requires an OC to share information about the issuer with other syndicate CMIs, or take reasonable steps to ensure that the

issuer provides this information (paragraph 62 of the Consultation Paper and Proposed Code 21.4.7(a)). ECMC members suggest that the SFC considers taking an extra step in working with the SEHK to ensure that issuers provide access to all syndicate members to conduct due diligence. A similar obligation is already placed on a new listing applicant and its directors as set out in rule 3A.05 of the Listing Rules which requires them "*to give each sponsor every assistance to meet its obligations and responsibilities under … the Code of Conduct…*". Short of such a direct obligation on the issuer, syndicate CMIs can only relying on information provided by the OCs which may cause difficulties in certain jurisdictions with respect to demonstrating that such syndicate CMI conducted reasonable due diligence when it is solely relying on the actions taken by another bank in the syndicate.

3 Permitted exceptions and carve-outs and "ancillary" communications

3.1 Pre-mandate advice

3.1.1 One of the ECMC members would welcome the SFC's clarification on whether the Proposed Code would capture market sounding activities undertaken by intermediaries before they are mandated. By way of example, an intermediary may originate an idea for a transaction and sound it out with various buy-side participants before then approaching the issuer if there is sufficient interest. As these activities are very early stage and speculative in nature, activities undertaken by intermediaries in this period should not be subject to the Proposed Code as they do not fall within the definition of booking building and placing activities as provided in paragraph 21.1.1.

3.1.2 In a similar vein, one of the ECMC members would welcome clarification on whether communications given by an intermediary to a prospective issuer client as part of pitching activity conducted by that intermediary would be in scope for the Proposed Code – in other words, if the intermediary is subsequently mandated, would the SFC regard the initial communications made as part of the pitching process as in-scope for the Proposed Code? We do not believe that such communications should be made subject retrospectively to the Proposed Code given that the communications are of the nature of business development and marketing, with a view to securing a formal mandate. However, ECMC members would welcome the SFC's confirmation on this point.

3.2 "Ancillary" communications

There are situations when non-OC CMIs are invited by the issuer clients to join discussions on pricing and allocation and are asked to give their views on such matters. ECMC members believe that provided that any such colour is provided solely in response to a specific request from an issuer client, the views are relatively limited in number and the non-OC CMI makes it clear to the issuer client when responding that while they are able to share their views, they are not acting as OCs or in an advisory role, engaging in these activities should not lead to the intermediaries being deemed to be OCs or becoming subject to obligations which apply to OCs only. ECMC members would welcome the SFC's confirmation on this or would otherwise request clear guidance from the SFC on how best such intermediaries should manage these sorts of request from issuer clients, which we understand are made in practice.