

**Asia Securities Industry & Financial Markets Association**

# ***Hong Kong New Listing FINI Placee List Guidelines***

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# Hong Kong IPO FINI Placee list Guidelines

## 1. Introduction

- FINI (as defined below) was launched on 22 November 2023.
- This document provides a brief summary of the regulations relating to the requirements for submitting placee lists on FINI and provides guidance as to suggested compliance steps in connection with that process. The guidance is limited in scope to the new FINI requirements relating to placee lists and is not intended to cover all compliance steps in relation to the placing of shares in an equity offering.

## 2. Regulations relating to FINI and placee lists

### (a) FINI and documents in relation to placees

- FINI is the "Fast Interface for New Issuance", an online platform operated by HKSCC for all New Listings. New Listing is defined in the SEHK Listing Rules as meaning new listing of equity securities or interests (including equity securities, interests in a REIT, stapled securities and securities of an investment company (as defined in rule 21.01)) issued by a new applicant, irrespective of whether there is an offering of equity securities or interests, and includes a reverse takeover and a transfer of listing from GEM.<sup>1</sup>
- FINI must be adopted for admission to trading and, where applicable, the collection and processing of specified information on subscription and settlement for New Listings and offers for subscription.<sup>2</sup>
- For a placing involving bookbuilding in connection with a New Listing, the placing letter and marketing and independence statements in Form D must be completed and submitted on FINI and the placee lists must also be provided directly to SEHK on FINI.<sup>3</sup> The placee list requires the distributor to indicate whether each investor procured by it falls within a number of placee categories which comprise (i) existing or past employees of the issuer, (ii) customers or clients of the issuer, (iii) suppliers of the issuer, (iv) independent price setting investors (as defined in Chapter 18C of the Listing Rules), (v) discretionary managed portfolios (as defined in Appendix F1 to the Listing Rules), (vi) discretionary trusts, (vii) PRC governmental bodies (as defined in Chapter 19A of the Listing Rules), (viii) cornerstone investors, (ix) non-SFC authorised funds, (x) connected clients (as defined under Appendix F1 of the Listing Rules), (xi) existing shareholders/directors and their close associates (as defined in Chapter 1 of the Listing Rules) and (xii) sponsors, underwriters and/or distributors and their close associates (as defined in chapter 1 of the Listing Rules) (the "**placee categories**").
- Form D requires each distributor to confirm, among other things, that to their best knowledge and belief, [ , and save as disclosed in the listing document and/ or the application seeking for the Exchange's waiver from strict compliance with the requirements of rules 10.03 and 10.04 of the Exchange Listing Rules and its consent under paragraph 5(2) of Appendix F1 to the Exchange Listing Rules (*delete as appropriate*)]:
  - (ii) (a) the orders for the securities placed by the distributor originate from the placees procured by such distributor and their respective ultimate beneficial owners;
  - (b) the distributor and the placees procured by such distributor and their respective ultimate beneficial owners are third parties independent of the issuer; and
  - (c) the placees procured by the distributor and their respective ultimate beneficial owners have the financial capacity to meet all obligations arising from such orders, and are not financed directly or indirectly by, or accustomed to taking instructions from, the issuer, any of the directors, chief

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<sup>1</sup> Main Board Listing Rule 1.01

<sup>2</sup> Main Board Listing Rule 9.09A.

<sup>3</sup> Main Board Listing Rules 9.11(35)(a) and 9.11(35)(b)

executives, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the issuer or any of its subsidiaries, or a close associate of any of them.<sup>4</sup>

- An allotment results announcement eform must be duly completed and submitted on FINI by the designated sponsor on FINI.<sup>5</sup>
- In the case of an issue that includes a placing (in the case of a New Listing), the announcement must contain a brief generic description of the placees and must identify investors falling within certain specified categories (eg directors and their close associates, existing shareholders and their close associates, employees and other groups of placees which may be required by SEHK eg customers or suppliers of the issuer).<sup>6</sup>

### **3. ASIFMA template FINI Placee Investor Information Request**

- It is recommended that, depending on the circumstances, distributors use the industry forms ("**ASIFMA FINI templates**") or their respective own house forms based on the ASIFMA FINI templates referred to below to collect information from investor clients for the purposes of completing the placee list information in FINI. The choice and combination of forms used will depend on the specific circumstances of the transaction and the investor client, including the background to and identity of the investor and the level of information already known to the distributor:
  - FINI Placee Investor Information Request – Comprehensive form: This is a two-way form and should be sent to investor clients for completion and return by the time specified<sup>7</sup>.
  - FINI Placee Investor Information Request – Condensed form: This is a one-way form that should be pre-populated with known information and should be sent to the investor client requesting that any corrections be made by the time specified.
- Both of these templates include tabs that mirror the SEHK's Questionnaires for placees (for Funds, Corporates and Swaps) which have been prepared by SEHK to facilitate the collection of the required additional information relating to placees.

### **4. Confirmations regarding placees**

#### **(a) Confirmations from investors**

In addition to the Placee Investor Information Requests, distributors may consider obtaining confirmations from investors and including investors' representations in the offering circular, launch and allocation communication.

#### **Suggested representations**

In respect of FINI, distributors may consider representations similar to the following:

*We represent and warrant that we (and the ultimate beneficial owner(s) of the [shares in the Company] in the event we are not the ultimate beneficial owner(s)):*

- (a) are subscribing for shares in the Company for our own account and our order originates from us;*
- (b) [are third parties independent of, and not connected with, the Company]<sup>8</sup>;*

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<sup>4</sup> Main Board Listing Rules, Form D, Marketing and Independence Statement

<sup>5</sup> Main Board Listing Rules 9.11(39)

<sup>6</sup> Main Board Listing Rule 12.08A

<sup>7</sup> Individual distributors may put together their own forms leveraging the ASIFMA FINI templates (including but not limited to a hybrid form of the comprehensive form and the condensed form).

<sup>8</sup> Paragraph (b) should be deleted or amended for any investor(s) whose name(s) were disclosed in the listing document and/or the application seeking for SEHK's waiver from strict compliance with the requirements of rules 10.03 and 10.04 of the Listing Rules and its consent under paragraph 5(2) of Appendix F1 to the Listing Rules

- (c) *have the financial capacity to meet all obligations arising from our order for the [shares in the Company]; and*
- (d) *are not financed directly or indirectly by, or accustomed to taking instructions from, the Company, any of the directors, chief executives, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the Company or any of its subsidiaries, or a close associate of any of them (as such terms are defined in The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("SEHK") (the "Listing Rules"));*

*We represent and warrant that:*

- (a) *the information we have provided to you in the FINI Placee Investor Information Request and relevant SEHK Questionnaire for placees is accurate and complete;*
- (b) *[unless we have notified you otherwise,] we (and the ultimate beneficial owner(s) of the [shares in the Company] in the event we are not the ultimate beneficial owner(s)) do not fall within any of the placee categories (other than "Not Applicable") as set out in the SEHK's placee list template or as required to be disclosed by the SEHK's FINI interface in relation to placees or under the Listing Rules; and*
- (c) *[unless we have notified you otherwise,] we (and the ultimate beneficial owner(s) of the [shares in the Company] in the event we are not the ultimate beneficial owner(s)) do not fall within any of the groups of placees that would be required under Rule 12.08A of the Listing Rules to be identified in the allotment results announcement.*

*We (for ourselves and the ultimate beneficial owner(s) of the [shares in the Company], if any) acknowledge and authorise the collection, disclosure, use and transfer by you of the information we have provided in the FINI Placee Investor Information Request and relevant SEHK Questionnaire for placees to the Issuer, the overall coordinator(s), certain other CMIs, relevant regulators and/or any other third parties as may be required by the Listing Rules and/or Securities and Futures Commission's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission [on the basis that such information shall only be used in connection with the relevant offering] and to disclosure of such information in any announcement or other public document as is required under the Listing Rules or by any relevant regulators.*

#### **(b) Confirmation in the Underwriting Agreements**

**International Underwriting Agreement:** Parties should consider including in the International Underwriting Agreement confirmations from the warrantors (the issuer and any warranting shareholder) similar to the following in relation to the placee categories and placee groups to be included in the announcement under Rule 12.08A, and, as appropriate, may consider including equivalent language in the Hong Kong Underwriting Agreement:

*"....to notify the Joint Sponsors, the Joint Global Coordinators and the Overall Coordinators (for themselves and on behalf of the International Underwriters) immediately if it becomes aware that any person who has applied for or indicated an interest for Offer Shares (or their respective beneficial owners) (a) is not a third party independent of the Company; (b) falls within (i) any of the placee categories (other than "Not Applicable" or, unless requested, "Non-SFC authorised fund") as set out in the Stock Exchange's placee list template or required to be disclosed by the Stock Exchange's FINI (as defined in the Listing Rules) interface in relation to placees or under the Listing Rules or (ii) any of the groups of placees that would be required under the Listing Rules (including but not limited to Rule 12.08A) to be identified in the Company's allotment results announcement; or (c) is financed directly or indirectly by, or accustomed to taking instructions from, the Company, any of the directors, chief executive, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the Company or any of its subsidiaries or a close associate of any of them (as such terms are defined in the Listing Rules);"*

**Agreement Among Hong Kong and International Underwriters (ASIFMA templates):** Parties should also consider including in the Agreement Among Hong Kong Underwriters and the Agreement Among International Underwriters confirmations similar to the following to reflect the revised language in Form D:

In the section on (1) Hong Kong Public Offering Underwriting in the Agreement Among Hong Kong Underwriters and (2) Purchase and Sale of International Offer Shares in the Agreement Among International Underwriters:

*"Prohibited Applications: Each of the [Hong Kong/International] Underwriters agrees and undertakes that (except to the extent the SEHK's consent is not required under Appendix F1 to the Listing Rules (the "Placing Guidelines") or has been obtained pursuant to paragraph 5 of the Placing Guidelines): (1) it and the placees procured by it and their respective ultimate beneficial owners are third parties independent of the Company; (2) none of the securities in the Company placed by or through it have been or will be allocated to any: (a) "core connected persons" (as defined in the Listing Rules) of the Company, any directors or existing shareholders of the Company (or any of their respective "close associates") (as defined in the Listing Rules), whether in their own name or through nominees; or (b) "connected clients" of the Overall Coordinator, any syndicate member(s) (other than the Overall Coordinator) or any distributor(s) (other than syndicate member(s)); and (3) the placees procured by it and their respective ultimate beneficial owners have the financial capacity to meet all obligations arising from such orders, and are not financed directly or indirectly by, or accustomed to taking instructions from, the Company, any of the directors, chief executives, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the Company or any of its subsidiaries, or a close associate of any of them."*

In the section on Notification to Overall Coordinator in each of the Agreement Among Hong Kong Underwriters and the Agreement Among International Underwriters:

.....Each [Hong Kong/International] Underwriter undertakes [to the Overall Coordinator and each other] that it will give notice to the Overall Coordinator [and each other if]: ...

*"it becomes aware that any of the investors (or their beneficial owners) falls within (1) any of the placee categories (other than "Not Applicable" or, unless requested, "Non-SFC authorised fund") as set out in the SEHK's placee list template or which are required to be disclosed by the FINI interface in relation to the placees or under the Listing Rules or (2) any of the groups of placees that would be required under the Listing Rules (including but not limited to Rule 12.08A) to be identified in the Company's allotment results announcement;"*

In clause 9 on Representations, Warranties and Undertakings, add a new clause similar to the following:

*"it will take all reasonable steps to provide to the SEHK the information required to be submitted in the Stock Exchange's placee list template or by the FINI interface or under the Listing Rules in relation to the placees and will disclose in a timely manner to the Overall Coordinator and each other [Hong Kong/International] Underwriter as necessary any information that it becomes aware of in relation to any investors (or their beneficial owners) that would be relevant for compliance by the Overall Coordinator and each other [Hong Kong/International] Underwriter with their respective obligations to provide placee information to the SEHK under the Listing Rules."*

## **5. Internal Due Diligence Procedures**

As noted in paragraph 1 above, the purpose of this document is to provide guidance on the new FINI requirements in relation to the submission of placee lists. It does not cover general due diligence and compliance steps that may be required in respect of a placing of shares, for instance in respect of cornerstone investors, placing to connected clients or other restricted investors.

Each distributor is responsible for ensuring and confirming the accuracy and completeness of the information required by the SEHK to be input in FINI in relation to the placees it procures, and that it can certify the statements in the Form D in respect of the placees procured by it. Distributors should exercise their professional judgment in considering what due diligence steps are appropriate to confirm the accuracy of the placee list and the categorisation of the placees, including for instance obtaining direct confirmations from the placees concerned as discussed above. In addition, OCs are required under the Code of Conduct to take all reasonable steps to identify investors that are on the list of restricted investors and ensure that they will only be allocated shares in accordance the Listing Rules.<sup>9</sup>

Depending on the circumstances, here are some suggested steps for internal due diligence procedures in respect of FINI – some or all of the steps may be appropriate depending on the degree of familiarity with the investor:

**Step 1:** To use the ASIFMA FINI templates (or such other templates put together by the relevant distributor based on the ASIFMA FINI templates) to obtain/confirm information on investor clients. If information on the investor and the placee categories cannot be obtained or confirmed within the required timeframe (or any extension agreed pursuant to the distributor's internal policies and procedures), the distributor may decide no allocations should be made to such investors.

**Step 2:** To obtain a signed or send a one-way representation letter (which includes the confirmation in section 4(a) above) from the investor).

**Steps 3:** Where considered necessary and depending on the transaction, to conduct specific due diligence, such as:

- a. Review account opening documentation and any other information the distributor may have on record relating to the investor (i) to determine its beneficial ownership, (ii) to identify any known/obvious connections to the company, any of the directors, chief executive, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the company or any its subsidiaries or close associates of any of them, (iii) to assess the financial capacity of the investor and (iv) to identify whether the investor falls within any of the placee categories;
- b. Review the information in the prospectus to check for any connections, eg check against information on the shareholders, directors, senior management and employees of the company and its key suppliers and customers;
- c. Check the details of the investors against the list of restricted investors provided by the issuer; and
- d. Check any available third party source information (including by way of a basic internet search) to determine if the investor has any known/obvious connections to the company, any of the directors, chief executive, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the company or any its subsidiaries or close associates of any of them or may fall within any of the placee categories (e.g. if available, check against the information gathered from due diligence in its capacity as sponsor or underwriter on aspects such as customers, suppliers and employees).

**Step 4:** If there is any suspected connection to the company/selling shareholder after the initial enquiries and checks which might indicate that the investor may fall within one of the placee categories, conduct further due diligence. If further due diligence suggests that the investor is connected to the company/selling shareholder (or if in doubt) such that placing to such investor would be restricted under the Listing Rules without the consent of the SEHK which cannot or has not been obtained, or if the distributor determines the information it has gathered is not sufficient for the purpose of submitting the placee list or Form D, no allocations should be made to such investor.

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<sup>9</sup> Paragraph 21.4.5(a) (ii) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

**Step 5:** If there is any indication that an investor may not have sufficient financial capacity or that it may be financed by the company or any of the directors, chief executives, controlling shareholder(s), substantial shareholder(s) or existing shareholder(s) of the company or any of its subsidiaries or a close associate of any of them, conduct further due diligence. This may include requesting additional documentation from the investor to ascertain the source of funds and the independence of the investor. If concerns remain following due diligence, no allocations should be made to such investor.

These steps are supplemental to existing standard procedures for deal execution. For example:

- sending CMI / Investor Code Compliance Communication (“CICCC”) or Syndicate Sales Communications<sup>10</sup> to the relevant prospective investors and CMIs, and to send an Issuer Code Compliance Communication (“ICCC”) <sup>11</sup> to the issuer prior to the deal launch which reflect the FINI developments; and
- reviewing with the company the share allocations to investors, including carrying out bring down due diligence on the final allocations, to confirm that no allocations are proposed to be made to any investor that would be restricted under the Listing Rules without the consent of the SEHK which has not been obtained and that all relevant information in relation to placees has been or will be provided to the SEHK as required in the SEHK’s placee list template or required to be disclosed by the SEHK’s FINI interface in relation to placees or under the Listing Rules.

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<sup>10</sup> The CICCC is a notice containing relevant information to prospective investors and CMIs, which includes reminders such as shares may only be allocated to Restricted Investors in accordance with applicable SEHK requirements. The CICCC can be used as a rider for inclusion in prospectus/offering circular for deals that involve intermediaries that are subject to paragraph 21 of the Code of Conduct. Where such information is not included in the prospectus/offering circular or where no such disclosure document exists (e.g. for top-up placings), the OCs can send the CICCC to the relevant prospective investors and CMIs prior to the deal launch, and/ or the OCs may include the content of the Syndicate Sales Communications into the syndicate and/or sales teams’ communications of the transaction (e.g. deal launch messaging). ASIFMA has published templates for CICCC and Syndicate Sales Communications for ECM transactions in August 2022 with updates from time to time. Each CMI/OC may consider sending the information set out in the CICCC and/or the Syndicate Sales Communications in a way and at a time according to the circumstances, the house views and internal requirements.

<sup>11</sup> The ICCC is a communication from each CMI to the issuer client to be sent as soon as possible after kick-off and in any event prior to wall-crossing/deal launch. The ICCC includes reminders such as shares may only be allocated to Restricted Investors and that the issuer should confirm whether any investors are Restricted Investors. If the issuer does not inform the CMIs of any such investors, the issuer is deemed to have confirmed that none of the investors are Restricted Investors. ASIFMA has published a template for ICCC for ECM transactions in August 2022 with update from time to time. Each CMI may consider sending the information in the ICCC in a way and at a time according to the circumstances, the house views and internal requirements.