



New regulatory requirements for conducting bookbuilding and placing activities under the Securities and Futures Commission's revised Code of Conduct

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Introduction

Despite being one of the world's most active Equity Capital Market (“ECM”) and Debt Capital Market (“DCM”), there were no specific conduct requirements for intermediaries involved in bookbuilding and placing activities in Hong Kong. In this regard, the Securities and Futures Commission (“SFC”) has consulted the market in February 2021 and proposed to revise the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the “Code”) to include conduct requirements for bookbuilding and placing activities.

After a 3-month public consultation, the SFC issued its Consultation Conclusion announcing the addition of Section 17.1A and Section 21 in the revised Code in October 2021 in order to address intermediaries' conduct issues, tackle issues arising from competitive pressures and align incentives with the responsibilities of intermediaries. The revised Code has been released and came into effect on 5 August 2022.

This publication provides an overview of the new regulatory requirements stated in the revised Code, and outlines how our financial advisory service offerings can assist you in complying with the new rules.



Key takeaways

1. Scope of Coverage

Types of Activities

The revised Code applies to a licensed or registered person who engages in providing services to issuers, investors or both in respect of an offering of shares or debt securities and involves the following:

- A. **Bookbuilding activities:** which means collating investors' orders (including indications of interest) in an offering in order to facilitate:
 - i. the price determination and the allocation of shares or debt securities to investors; or
 - ii. the process of assessing demand and making allocations.
- B. **Placing activities:** which means marketing or distributing shares or debt securities to investors pursuant to those bookbuilding activities.
- C. Advising, guiding and assisting the issuer client in the abovementioned bookbuilding and placing activities.

Types of Offerings

The revised Code covers the following types of offerings that involve bookbuilding activities:

- **Share offering** which means an offering of shares listed or to be listed on The Stock Exchange of Hong Kong Limited (“SEHK”).
- **Debt offering** which means an offering of debt securities listed or unlisted, and offered in Hong Kong or otherwise.

For the avoidance of doubt, the SFC clarifies that the revised Code does not cover offerings which do not involve bookbuilding activities as follows:

- bilateral agreements or arrangements between the issuer and the investors;
- transactions where only one or several investors are involved and the terms of the offering are negotiated and agreed directly between the issuer and the investors;
- transactions where shares or debt securities are allocated to investors on a predetermined basis at a predetermined price;
- a share offering which has been subscribed by an intermediary as principal deploying its own balance sheet, for onward selling to investors or selling of listed shares by existing shareholders

2. Capital Market Intermediary

The SFC defines a licensed or registered person engaged in any of the in-scope capital market activities mentioned in Section 1 of this publication as a Capital Market Intermediary (“CMI”). In the revised Code, there are three types of CMIs defined:

- A. **Syndicate CMI:** A CMI which is engaged by the issuer of a share or debt offering;
- B. **Non-syndicate CMI:** A CMI which is not engaged by the issuer of a share or debt offering.
- C. **Overall Coordinator (“OC”):** A syndicate CMI which, solely or jointly, conducts any of the following activities:
 - i. overall management of the offering, coordinating the bookbuilding or placing activities conducted by other CMIs, exercising control over bookbuilding activities and making allocation recommendations to the issuer client;
 - ii. advising the issuer client of the offer price and being a party to the price determination agreement with the issuer client; or
 - iii. exercising the discretion to reallocate shares between the placing tranche and public subscription tranche, reduce the number of offer shares.

In the following sections, we will provide you with an overview of the obligations and expected standards of conducts of CMIs and additional obligations of OCs set out in the revised Code.

Key takeaways

3. Obligations and Expected Standards of Conduct of CMIs

A. Assessment of issuer client and offering

- develop an accurate understanding of the issuer client in regards of its history and background, financial conditions and prospects, and etc.
- establish a formal governance process to review and assess actual or potential conflicts of interest as well as the associated risks

B. Appointment of CMI

- a written agreement of formal appointment must be formed between the issuer client and CMIs before engaging in any offering
- CMIs' roles and responsibilities, the fee arrangement and fee payment schedule should be specified in the agreement

C. Assessment of investor clients

- assess whether its investor clients are those targeted by the agreed marketing and investor strategies, restricted by the law or associated with the issuers

D. Marketing

- only market the offerings to its targeted investor clients and allow all those interested investors to participate in the offering
- prevent over-concentration of securities holdings by a few investors

E. Order Book

- ensure that the order book reflect the genuine demand
- enquire with its investor clients when unusual orders occur
- disclose the identities of all non-omnibus-basis investors clients in the order book
- put in place policies and procedures for disclosing information about orders placed on an omnibus basis

F. Allocation

- establish and implement an allocation policy to ensure a fair allocation of shares of debt securities to its investor clients
- the order size and circumstances of the investor client, minimum allocation amounts indicated by investor clients etc. should be considered

G. Rebates and preferential treatment offered

- any rebates to an investor client or rebates provided by the issuer client passing on to an investor client is prohibited
- disclose any rebates offered to CMIs, or any other preferential treatment of any CMIs or targeted investors

Key takeaways

3. Obligations and Expected Standards of Conduct of CMI's (con't)

H. Disclosure of information to OC, non-syndicate CMI's and targeted investors

- disclose complete and accurate information in a timely manner on the status of the order book and other relevant information to the OC, non-syndicate CMI's it appoints and its targeted investors

I. Record Keeping

- document all the relevant records and information in regards of assessment, communication, disclosure, rebates and preferential treatment for at least 7 years
- audit trails from the receipt of orders and the placing of orders in the order book should be kept for at least 2 years

J. Conflict of Interest

- establish, implement and maintain policies and procedures to identify, manage and disclose actual and potential conflicts of interest
- govern the process for generating proprietary orders as well as making allocations to such orders

K. Resources, systems and controls

- maintain sufficient resources and effective systems and controls to ensure that it can discharge its obligations and responsibilities, for example, Chinese walls policy

L. Communication with the SFC and SEHK

- deal with the SFC and SEHK in an open and cooperative manner
- promptly provide all relevant information and explanations in accordance with applicable legal or regulatory requirements or upon request



Key takeaways

4. Additional Obligations and Expected Standards of Conduct of OCs

A. Terms of Appointment

- formal appointment under written agreement is required
- an OC of an Initial Public Offering (“IPO”) on the Main Board of SEHK should either ensure that it is appointed as a sponsor by or on behalf of the client, or obtain a written confirmation from the issuer clients that at least one sponsor has been appointed as an OC, i.e., sponsor coupling

B. Advice to issuer client

- act with due skill, care and diligence when providing advice, recommendations and guidance to the issuer client
- advise the issuer client on the information that should be provided to syndicate CMIs

C. Marketing, rebates and preferential treatment offered

- devise a marketing and investor targeting strategy for order generation with the issuer client and advise on adjustment to the strategy
- advise the issuer client of disclosure of any rebates and preferential treatment

D. Bookbuilding

- ensure credible and transparent price discovery process
- identify and eliminate duplicated orders, inconsistencies or error
- advise the issuer client on the pricing with reference to the results of the bookbuilding activities, the characteristics of the issuer client, prevailing market conditions and sentiment etc
- develop and maintain an allocation policy which sets out the criteria for making allocation recommendations to the issuer client

E. Assessment of investors

- ensure investors identified will only be allocated shares in accordance with applicable SEHK Requirements for IPO
- identify the association between the issuer clients and investor clients, CMIs and their group companies for a debt offering

F. Disclosure to syndicate CMIs and targeted investors

- inform other syndicate CMIs of the issuer client’s marketing and investor targeting strategy
- disseminate complete and accurate material information related to the offering in a timely manner to all syndicate CMIs

G. Record keeping

- maintain for a period of not less than 7 years records of relevant documents and information throughout the bookbuilding process, including all changes in the order book, key discussions with the issuer client, key advice or recommendations, etc.

H. Communication with the SFC

- report to the SFC in a timely manner on (i) any instances of material non-compliance with the SEHK requirements, (ii) any material changes to the information previously provided to the SFC and SEHK, (iii) the reasons for ceasing to act as an OC in a share offering transaction, and (iv) IPO fee and allocation information

How can Mazars help?

At Mazars, we have extensive experience working with the diversity of financial services players. We assist major financial institutions including brokerage houses, asset managers, investment and corporate banks, retail and private banks, central banks, insurance companies and regulators in dealing with business and regulatory issues with impacts, domestic and international.

Mazars is here to assist you in complying with the regulatory standards and requirements for your bookbuilding and placing activities. Depending on the scope, coverage and specifics of your needs, our services would typically involve one or more of the following:

A. Regulatory reviews and advice

- I. Review and provide compliance advisory on your firm's
 - policies and procedures;
 - processes and controls; and/or
 - governance and supervision.
- II. Provide observations and recommendations to assist you in complying with the regulatory requirements and expectations, as well as common industry practice.
- III. Provide pre-inspection advice or review.

B. Design and implementation of policies and procedures

- I. Provide advice on designing and implementing enhancements to the compliance manual, including governance framework, as well as your policies, procedures and controls of disclosure and allocation process.
- II. Provide advice on designing assessments on relevant parties required by the Code and establishing policies to deal with conflict of interest.
- III. Provide advice on designing and implementing policies to maintain sufficient resources and effective systems and controls to ensure that you can discharge your obligations and responsibilities.
- IV. Provide advice on designing and implementing policies to fulfil record keeping and reporting requirements.

C. Training and insights

- I. Provide training and education for staff, the board and senior management on the legal and regulatory framework (in particular the Code) on the new regulatory requirements and obligations.
- II. Provide ongoing insights into how peer firms are dealing with the regulatory requirements obligations of the bookbuilding and placing activities and any common challenges encountered along the way.

We also take on special projects and ad-hoc mandates. We are flexible in our approach and offerings. Please feel free to contact us with any enquiries.

Contacts

Mazars Consulting (HK) Limited

42nd Floor, Central Plaza
18 Harbour Road
Wanchai
Hong Kong

Ernest Yiu
Managing Director - financial services
(+852) 2909 5585
ernest.yiu@mazars.hk

Tel: (+852) 2909 5555
Fax: (+852) 2810 0032
Email: info@mazars.hk

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