BLACKROCK

7 May 2021

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

Submitted online via email to: ECM_DCM_consultation@sfc.hk

RE: Consultation Paper on (i) the Proposed Code of Conduct on Bookbuilding and Placing Activities in Equity Capital Market and Debt Capital Market Transactions and (ii) the "Sponsor Coupling" Proposal (the "SFC Consultation")

Dear Sirs,

BlackRock, Inc. (BlackRock)[1] is pleased to have the opportunity to respond to the SFC Consultation, issued by the Securities and Futures Commission (SFC).

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We agree with the SFC that certain prevailing market practices and phenomena in the capital market activities in Hong Kong have encouraged undesirable intermediary behaviors that prevent a functional price discovery and a fair and transparent allocation process. This in turn hurts investor confidence in the Hong Kong capital market. We therefore are generally supportive of the SFC Consultation to codify requirements on intermediaries' behavior and good industry practices, with a view to improving the overall professionalism of Hong Kong market intermediaries and ensuring Hong Kong maintain its competitiveness among other prominent financial centers in the world.

We welcome further discussion on any of the points that we have raised.

Yours faithfully,

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(*Notes: (1) this submission is prepared by Ropes & Gray on behalf of BlackRock.*
(2) capitalized term used in this response submission shall have the same meanings as those defined in the SFC Consultation unless otherwise defined herein or the context requires otherwise)

[1] BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

Responses to questions

1. ***Do you consider the definitions of "bookbuilding activities" and "placing activities" to be clear and sufficient to cover key capital raising activities? If no, please explain.***

   Yes. The definitions of "bookbuilding activities" and "placing activities" as set out in paragraph 21.1 of the Proposed Code are clear. However, we think the Proposed Code should, to certain extent, expand beyond bookbuilding and placing activities as we further explain in our response to QUE 2 below.

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

   We have no comment on the proposed scope of coverage for ECM activities.

   In respect of DCM activities, however, we would propose that the scope should not be restricted by whether or not there are bookbuilding activities involved. Rather, we strongly suggest to set the scope of applicability to DCM activities to cover all capital market activities arranged by the intermediaries that involve:

   (a) Asia-centric[2] and publicly tradeable[3] debt securities; and/or
   (b) debt securities convertible/exchangeable to SEHK-listed shares.

   We consider it crucial that both (a) and (b) offerings are captured within the scope.

   The rationale for our suggestion is that we believe the tradeable nature of the securities necessitates a fair price discovery and allocation process which would in turn support an orderly secondary market of such securities, and this is precisely one of the main drivers for the current consultation process leading to the Proposed Code.

   Accordingly, other than the activities listed in paragraphs 49 of the SFC Consultation Paper, the following activities should also be covered so long as they are arranged by intermediaries (whether involving a bookbuilding process or not):

   - placements/offerings of SEHK-listed convertible/exchangeable bonds
   - placements/offerings of convertible/exchangeable bonds that are convertible/ exchangeable for SEHK-listed shares
   - "tap" or "reopening" issues of publicly tradeable Asia-centric bonds (including private tap available only to several selected investors)
   - "club deals" involving publicly tradeable Asia-centric bonds

[2] For the purpose of this submission, a bond is "**Asia-centric**" if it is US$-denominated and either (i) issued by companies whose principal place of operations or headquarters are in Asia (excluding Japan), or (ii) convertible/exchangeable into shares of companies whose principal place or operations or headquarters are in Asia (excluding Japan).

[3] For the purpose of this submission, securities which have or will acquire an ISIN or a CUSIP code are considered publicly tradeable.

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

We are of the view that all (to the extent applicable) but not some only of the activities listed out in paragraphs 21.2.3 and 21.2.4 of the Proposed Code should be carried out by the OC of a share offering and debt offering respectively[4].

We disagree with the last sub-paragraph of paragraph 52 of the SFC Consultation which states that issuers should be free to award titles such as "JGC" to syndicate CMIs even if they do not carry out the activities of an OC as stipulated in the Proposed Code. We think the title granted to an intermediary should be commensurate to its overall role in a security transaction. From time to time, we encounter or are approached by intermediaries (some of whom with seemingly "inflated" roles) but who appear to lack thorough understanding of the book colour and/or the issuer. This potentially leads to lack of accountability of the overall bookbuilding/placing process and in extreme cases, casts doubt on the quality of the securities of the issuer that are brought to the investing public. Therefore, for the sake of clarity, we think the title awarded to an intermediary should correlate to its role in the overall deal process and, should be streamlined to one of (a) OC CMI, (b) Syndicate CMI, and (c) Non-Syndicate CMI.

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.

Yes. For equity IPOs, OCs and Syndicate CMIs must be formally appointed before A1 filing and the proportion of the fixed fees out of the total fee (which should in any event comprise the majority of the total fee in a transaction) must also be set before A1 filing. Non-syndicate CMIs must be formally appointed no later than the Listing Committee Hearing date. Please see our response to QUE 19 below on our view on the allocation of fees among the OCs and CMIs.

As for debt deals, all of the OCs, Syndicate CMIs and Non-Syndicate CMIs must be appointed before the mandate is publicly announced.

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?

We agree with point (ii) that an OC is responsible for providing advice to the issuer on marketing strategy.

We do not agree with point (i) that an OC should advise issuers on syndicate membership and fee arrangements among syndicates, because intermediaries are, in principle, in competition with one another and there is likely to be potential or

[4] In respect of ECM activities, we think the concept of OC is only applicable to IPOs (including for the avoidance of doubt, share offerings in connection with a secondary listing), and hence would exclude follow-on issuances by listed issuers.

perceived, if not actual or apparent, conflict of interest and/or bias over the recommendation or advice that an OC may make in respect of another intermediary. Any recommendation or advice may not achieve the intended results.

As regards point (iii), we think the Proposed Code should make clear that whilst the OCs would lead the pricing and allocation process with the issuer, the OCs must ensure that they maintain an open communication with the CMIs to ensure comments from the CMI's investor clients are properly considered and fed through to the issuer in the overall pricing and allocation process.

We would like to take this opportunity to express our view that the Proposed Code should cap the total number of OCs in a transaction to 3. This is to ensure that the OCs have meaningful coordination and discussion with each other in the transaction management, and provide cohesive advice to the issuer.

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.***

At the outset, we think rebates to private banks by issuers are not necessary and no investor clients of the private banks should receive any rebates because all investors should be treated fairly and be subject to the same transactional cost of investment. For the same reason, CMIs should not give any rebate out of (which in effect reduces) the 1% brokerage fee for IPO transactions to investor clients. If rebates are not prohibited, different investor clients are bound to receive rebates at different rates from different CMIs, and this will incentivize rebate shopping and flipping activities, which would create disorder in the bookbuilding process.

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.***

Agreed.

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.***

Agreed. Additionally, the Proposed Code should provide a definition for (a) the term "omnibus basis", and (b) the term "underlying investors" to mean persons or entities who make the relevant investment decision. Examples for (b) are investment managers in the cases of discretionary investment funds, and ultimate beneficial owners in the cases of non-discretionary trusts or nominee arrangements.

The Proposed Code should further require CMIs to provide information of underlying investors to the OC, both in the context of an omnibus order and a named order, in order to achieve the intended transparency.

We would like to mention our observation that CMIs in a debt deal may from time to time themselves participate in the transaction through different parts of the business (for example, through their proprietary desk, treasury function and/or asset

management business) and may place large orders on an omnibus basis (in an extreme case we have seen a JLM's omnibus order accounting for circa. 80% of the total offering size). To enhance transparency and manage conflicts of interest, we consider that a CMI in a debt deal should be required to reveal the underlying investor of each ticket behind such CMI's omnibus order and in particular orders coming from different parts of a CMI group's business should not be aggregated but required to be separately identified. For example, if Bank A is a CMI of XYZ's debt offering, and Bank A's proprietary desk, Bank A's treasury function and Bank A's asset management arm has each entered a ticket for the XYZ bond, then each of Bank A's proprietary desk, Bank A's treasury function and Bank A's asset management arm should be disclosed as an underlying investor to the OC (and not bucketed under Bank A, as a single underlying investor, as a whole).

In contrast, institutions that make investment decisions on behalf of end-investors (including but not limited to asset managers and insurance companies) should be permitted to place orders on an omnibus basis without having to further identify the end-investors to the OC. To extend the example in the preceding paragraph, an order for XYZ bond by Asset Manager B on behalf of the portfolios under its management would be placed on an omnibus basis and "Asset Manager B" would be disclosed as the underlying investor to the OC, and no further look-through to end-investors is required.

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.***

We think any such difficulty can be overcome if the OCs possess knowledge of or have access to the investor profiles (such as investor identity, controller of the investor, investment experience and pattern) of all investors in the book (including the underlying investors whose investment is made through CMIs on an omnibus basis as discussed in QUE 8 above). As set out in the Proposed Code, a key role of the OCs is to manage and control the bookbuilding process (which we think ought to include removal of duplicated orders which are disallowed under the prevailing securities regulations and identification and rejection of irregular/unusual order) and OC can only achieve this if it has visibility to the investor profiles.

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

Agreed.

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

Agreed.

Not only should OCs ensure the transparency of the order book, but OCs should also provide transparency of the bookbuilding process via book updates and disclosure of final statistics to investors and the public. We think the release of book updates and

final statistics can enhance transparency and improve the price discovery process for all parties involved in the transaction due to the following reasons:

(a) in APAC DCM, key deal parameters such as pricing and deal size can be changed well beyond book close which further emphasizes the importance of book transparency throughout the bookbuild in order to achieve a clean, fair and functional price discovery process; and

(b) book coverage and shape of the order book are important datapoints that represent the demand/supply dynamics of the transaction; it is a key component for price discovery and critical to trading performance of the securities in secondary market.

As such, we encourage compulsory book update throughout the bookbuilding process.

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

Agreed.

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

Agreed. In addition, we would also like to expand on the third bullet point of paragraph 21.4.5(c)(i) of the Proposed Code, which provides that "the types and characteristics as well as the circumstances of targeted investors" is one of the factors an OC should take into account when formulating the allocation policy. We think it is important to have consideration of a particular investor's integrity (e.g. any incidence of attempted multiple applications, track record of inflating demand, order size that is disproportionate to the investor's profile and the hold-sell or flipping pattern), indicated interests, sophistication and reputation and contribution in the price discovery process (e.g. any constructive recommendations in helping to formulate a "fair valuation" of the company and hence the offer price).

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

Agreed.

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

Agreed.

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.

Agreed. Further, we think paragraph 21.3.10(b)(i) of the Proposed Code should be expanded to specify that CMIs cannot prioritize funds/portfolios managed by any CMI and its Group Companies ("**Related Investors**") and that the same allocation policy should be consistently applied when considering allocation to Related Investors and other investors.

In addition, the Proposed Code should provide guidance as to what constitutes "substantial interest" as referred to in the Note to paragraph 21.3.10(b).

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.

Yes. In fact, it is OCs and CMIs' responsibility to keep good and sufficient records for the sake of governance and control.

18. Do you agree with the scope of fee-related advice to be provided by an OC to an issuer? If not, please explain.

Generally agreed, except that as we have set out in our response to QUE 5 above, we do not agree that OCs should advise issuers on syndicate membership and fee arrangements among syndicates. Please see the response to QUE 5 for further detail.

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.

No, we do not consider there are substantial practical difficulties for the issuer to determine on the stated matters by 4 clear business days before the Listing Committee Hearing.

It is stated in paragraph 131 of the SFC Consultation that the market norm for fees in share offerings is around 70-75% fixed fees and 25-30% discretionary fees. We think the fixed to discretionary fee split should be set out in the Proposed Code at the ratio of 75:25, which is in line with major international markets like New York. In addition, the allocation of the fixed fees among the OCs and CMIs should be determined before A1, whereas the allocation of the discretionary fees among the OCs and CMIs should be determined no later than listing.

We think the Proposed Code should also stipulate that the OCs shall collectively receive a majority of the total fees as well as fixed fees due to their substantial involvement throughout the transaction process. As regards what would constitute total fees, we think all income and fees (however they are named) should be included in the calculation because these are revenue generated to the OCs/CMIs for their

participation in the transaction. Accordingly, stabilization profits should also be included as part of the total fees.

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

No, we do not consider there are substantial practical difficulties.

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.

Agreed. In addition, in relation to point (iii), we think the Proposed Code should specify (a) the latest point of time where the disclosure has to be made, and (b) the format of such disclosure (e.g. by way of a public announcement by the issuer on the SEHK website).

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

Agreed. We think in the context of an IPO, an OC must have the sponsor role, but a sponsor may or may not be an OC.

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.

We think 1 Sponsor OC is sufficient for most transactions. More opinions or voices do not necessarily translate into better or more suitable advice. As we stated in our response to QUE 22, our view is that all OCs should be sponsors in the context of an IPO.

A sponsor, by the nature of its role, should be close to and have a deep understanding of the issuer, and this relationship has to be established over time. With more Sponsor OCs involved, the relationship between the issuer and each Sponsor OC may be diluted (and there may be instances where the Sponsor OCs "compete" with each other for a closer relationship with the issuer) and the advice given to the issuer may be less effective.

24. Do you have any comments on the proposed implementation timeline?

We agree with the proposed implementation timeline.

As a closing remark, on a point separate from the SFC Consultation but relating to bookbuilding, we respectfully ask that the SFC to relax the "double-dipping" rules and allow a pre-IPO investor of a listing candidate or its close associates (collectively, "**Existing Shareholder**") to participate in the IPO process of such candidate,

particularly where the pre-IPO investor is a sophisticated institutional investor. A key reason that an Existing Shareholder would wish to participate further in the IPO process is because it has confidence in the long term potential of the listing candidate. Allowing Existing Shareholders to participate will not only enrich the quality of the company's shareholder base but also raise market perception of the company, which are in the best interests of the listing candidate and its stakeholders as a whole. Further, listing rules and principles of stock exchanges having comparable standing as the SEHK (such as the SEC rules applicable to companies listed on NYSE and NASDAQ) do not prohibit investments in a listing applicant by an existing investor or their affiliates. Consistent and less restrictive participation by global fund houses in the Hong Kong capital markets will help maintain and strengthen the international standing of the SEHK as a truly global market.

Conclusion

We appreciate the opportunity to address and comment on the issues raised by the SFC Consultation and will continue to work with the SFC on any specific issues which may assist in the discussion of the Proposed Code.