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Hong Kong's Listing Rules Amendments Relating to Bookbuilding and Placing Activities in ECM Transactions

Intermediaries in bookbuilding and placing activities should prepare for the new rules, which will take effect on 5 August 2022.

The Securities and Futures Commission of Hong Kong (SFC) published the “Consultation Conclusions on (i) the Proposed Code of Conduct on Bookbuilding and Placing Activities in Equity Capital Market and Debt Capital Market Transactions and (ii) the ‘Sponsor Coupling’ Proposal” on 29 October 2021. The Code of Conduct provisions (New Code Provisions) will come into effect on 5 August 2022.

On 22 April 2022, The Stock Exchange of Hong Kong Limited (Exchange) published an [information paper](#) (Information Paper) outlining the consequential amendments to the Rules Governing the Listing of Securities on the Exchange (Rule Amendments), to complement requirements of the New Code Provisions regarding the conduct of issuers and intermediaries in bookbuilding and placing activities in ECM transactions.

This Client Alert discusses the scope of the Rule Amendments, the requirements they introduce, and what issuers and intermediaries should do to prepare for compliance.

What Type of Transactions Are Affected?

The Rule Amendments will apply to the following types of equity offerings involving bookbuilding activities:

- A placing of Equity Interests¹ to be listed on the Exchange, including
 - a placing of in connection with a New Listing (whether by way of a primary listing or secondary listing, including, without limitation, a reverse takeover; and
 - a placing of Equity Interests of a class new to listing, or new Equity Interests of a class already listed under a general or specific mandate
- A “top-up placing” of listed Equity Interests

New Roles — Capital Market Intermediary and Overall Coordinator

One of the key features of the New Code Provisions is the introduction of the roles of capital market intermediary (CMI) for the intermediaries involved in in-scope capital market activities and overall coordinator (OC) as the head of syndicate.

Syndicate members may continue to be awarded titles such as “global coordinator”, “book runner”, “lead manager”, etc. The definitions of “capital market intermediary”, “overall coordinator”, and “sponsor-overall coordinator” are provided for the purpose of identifying them based on the specified activities they engage in as stipulated in the New Code Provisions. However, as these roles relate directly to the specified activities performed, intermediaries should approach with caution being awarded titles that appear to be inconsistent with how their roles are defined under the New Code Provisions.²

Appointment of a CMI

Key points related to the appointment of a CMI include:

Timing	The appointment must be made before the CMI conducts any specified activities. ³
Requisite contents of engagement letter	<p>The written engagement letter must specify:</p> <ul style="list-style-type: none"> • the roles and responsibilities of the CMI; • the fee arrangement (including the fixed fees to be paid to the CMI as a percentage of the total fees to be paid to all syndicate CMIs); • the payment schedule; and • (for placing in connection with a New Listing) the obligations of the new applicant and its directors to provide the assistance specified in Rule 3A.46 (the obligations of the applicant and its directors under the Rule Amendments will be discussed below).

Sponsor-coupling — Appointment of an OC

For Main Board IPOs, the New Code Provisions require sponsor coupling, i.e., at least one OC must should be an independent sponsor or affiliated with an independent sponsor. To facilitate this requirement, the Rule Amendments require a Main Board new applicant to ensure that at least one OC engaged fulfils the above sponsor coupling requirement, with the appointment as an OC and a sponsor being made at the same time and at least two months before the submission (or re-filing, as the case may be) of the listing application and remaining appointed throughout the listing process.

Key points related to the appointment of an OC (including a sponsor-OC) include:

Timing	<p>In addition to the general requirement that the appointment of an OC must be made before the OC conducts any specified activities as mentioned above:</p> <ul style="list-style-type: none"> • For a sponsor-OC, the appointment must be made at least two months before the submission of the listing application. • For a non-sponsor OC, the appointment must be made no later than two weeks following the submission (or re-filing) of the listing application.
Number of OCs	At least one sponsor-OC must be appointed.

	If a new applicant has appointed more than one OC or sponsor-OC, a designated OC or sponsor-OC will provide the required information to the Exchange. ⁴
Requisite contents of engagement letter	<p>The written engagement letter must specify:</p> <ul style="list-style-type: none"> • the roles and responsibilities of the OC; • the fee arrangement (including the fixed fees to be paid to the OC as a percentage of the total fees to be paid to all syndicate CMLs); • the payment schedule; • (for a sponsor-OC only) the obligation of the new applicant and its directors to provide the information in Rule 9.11(23a) to the sponsor-OC for its submission to the Exchange within the required timeframe; and • (for placing in connection with a New Listing) the obligations of the new applicant and its directors to provide the assistance specified in Rule 3A.46.

Is a Sponsor-OC Required to Complete the Independence Check Before Entering Into the Engagement Letter?

Under the new Note to Rule 3A.02, a sponsor should, before accepting an appointment by a new applicant as sponsor, (a) be independent of the new applicant and fulfill all other criteria in Rule 3A.43, or (b) obtain a written confirmation from the new applicant that at least one sponsor-OC has been appointed in accordance with Rule 3A.43. Therefore, a question arises as to whether a sponsor and/or a sponsor-OC is required to complete the independence check before entering into the engagement letter.

In the answer to Question 9 of the [Frequently Asked Questions \(FAQ077-2022\)](#), the Exchange clarified that it does not expect the current practice to change with regard to the independence confirmation of sponsors under Rule 3A.03 (i.e., a sponsor must provide an undertaking and statement of independence to the Exchange at the same time as a listing application) and confirmation of independence is done subject to the outcome of the due diligence exercise to be performed by the sponsor(s) in connection with the listing application. Therefore, if a sponsor accepts an appointment by a new applicant as a sponsor-OC on a preliminary basis subject to completion of the due diligence check, another sponsor (or an entity within its group of companies) who is independent will need to be appointed as a sponsor-OC in accordance with Rule 3A.43⁵ if the sponsor is found to be not independent of the new applicant.

Therefore, although the sponsor-OC is not required to provide the independence confirmation of sponsors under Rule 3A.03 before its appointment under current practice, the sponsor-OC would be well-advised to conduct due diligence on its independence to the extent it is comfortable that at least one sponsor-OC will be independent at the time of listing application.

Reporting, Publication, and Disclosure Requirements

OC Announcements

Under the Rule Amendments, the applicant is required to make the following OC announcements:

OC Announcements	Contents	Timing
First OC announcement	Name(s) of all OC(s) appointed by the new applicant as of the date of the announcement	Same date as the publication of the application proof A new applicant that is allowed to make a confidential filing is required to publish an OC announcement at the time of publication of its PHIP instead.
Further OC announcement on appointment of additional OC	The appointment and name(s) of all OC(s) appointed by the new applicant as of the date of the announcement	Each time an additional OC is appointed after the A1, an OC announcement should be published as soon as practicable and in any event no later than the first business day after the date of the appointment (which shall be no later than the 14th day after the date of the A1).
Further OC announcement on termination of OC	The termination and the name(s) of all remaining OC(s) as of the date of the announcement	Each time the appointment of an OC is terminated after the A1 (or after the publication of the first OC announcement for applicants allowed to make a confidential filing). The OC announcement shall be published as soon as practicable after the termination takes place, and no later than the first business day after the date of the termination of the appointment.

Submission of Four-Day Documents

A sponsor-OC (in the case of a Main Board IPO) is required to submit the following information to the SFC and the Exchange no less than four clear business days prior to the Listing Committee Hearing:

- the name of each OC;
- the fixed fees to be paid by the issuer to each OC;
- the total fees⁶ (including both fixed and discretionary fees) (as a percentage of the gross proceeds to be raised from the IPO) in respect of both the public subscription and the placing tranches to be paid to all syndicate CMIs; and
- the ratio of fixed and discretionary fees to be paid to the syndicate CMIs (in percentage terms).

Disclosure in the Listing Document

A new applicant is required to disclose the total fees (as a percentage of the gross amount of funds proposed to be raised in the subscription tranche and/or the placing tranche) and the ratio of fixed and discretionary fees paid or payable to all syndicate members in the listing document.

Before Dealings Commence

The Rule Amendments require additional reporting to be carried out as soon as practicable after the issue of the listing document but before dealings commence:

- **Submission of Form F by applicant:** The new applicant is required to submit the Form F to the Exchange to confirm the determination of the allocation of discretionary fees (in absolute amount) and the payment schedule for the total fees payable to syndicate CMI.
- **Submission of Form E by OC:** Under the New Code Provisions, an OC should advise and guide the issuer and its directors as to their responsibilities under the Listing Rules and other regulatory requirements or guidance issued by the Exchange relating to placing activities, and take reasonable steps to ensure that they understand and meet these responsibilities. In that connection, the Rule Amendments require that each OC submit to the Exchange the declaration substantially as in Form E in Appendix 5, in respect of the issuer's compliance with Listing Rules 8.08, 10.03, and 10.04 relating to the placing and allocations, which is currently only provided by the sponsor.

Associated Obligations of Issuers and Their Directors

Under the New Code Provisions and the Rule Amendments, issuers and their directors are required to:

- enter into an engagement letter with each CMI;
- publish an OC announcement;
- provide all syndicate CMIs with a list of the directors and existing shareholders of the new applicant, their respective close associates, and any nominees engaged by any of the foregoing persons (Restricted Investors) for the subscription or purchase shares in connection with a new listing at least four clear business days before the hearing. This obligation also applies to an applicant seeking a secondary listing or dual primary listing. However, given there may be material changes in the Restricted Investors during the listing process of an applicant seeking a secondary listing or dual primary listing on the Exchange, it may apply for the Exchange's consent to allow certain existing shareholders of the new applicant to subscribe for equity securities or interests in its IPO; and
- submit Form F.

Transitional Arrangements

The New Code Provisions and the Rule Amendments will come into effect on 5 August 2022 (Effective Date). Generally, they will apply to listing applications submitted on or after that date and will not apply to listing applications submitted before the Effective Date (the Pre-existing Listing Applications), subject to the following:

A. Re-filing of Pre-existing Listing Applications on or after the Effective Date: If a Pre-existing Listing Application lapses and is re-filed on or after the Effective Date, the Exchange would accept the OC referred to in condition 2 below as being duly appointed as a sponsor-OC even though its appointment as an OC was not made at the same time as it or its group company was appointed as a sponsor — provided that the following conditions are satisfied:

1. the existing independent sponsor has been appointed as such before the Effective Date and at least two months before the submission of the re-filing, and the notification of the sponsor engagement has been submitted to the Exchange before the Effective Date;
2. the independent sponsor referred to in condition 1 or its group company has also been appointed as an OC **before the Effective Date** and at least two months before the submission of the re-filing;
3. the engagements of such sponsor and OC remain valid and effective as of the time of the re-filing; and
4. the re-filing is submitted within three months from the lapse of the last listing application.

B. Listing applications submitted on or after the Effective Date, with sponsors appointed before 22 April 2022: If a sponsor mandate has been entered into before 22 April 2022, the publication of the Rule Amendments (Publication Date) but the listing application is only ready for submission on or after the Effective Date, the Exchange would accept the OC referred to in condition 2 below as being duly appointed as a sponsor-OC, even though its appointment as OC is after its appointment as sponsor — provided that the following conditions are satisfied:

1. the new applicant has already appointed an independent sponsor before the Publication Date, and the notification of the sponsor engagement has been submitted to the Exchange before the Publication Date;
2. the independent sponsor referred to in condition 1 or its group company has also been appointed as an OC **before the Effective Date** and at least two months before the submission of the initial application or re-filing (when applicable);
3. the engagements of such sponsor and OC remain valid and effective as of the time of the submission of the initial application or re-filing (when applicable); and
4. when applicable, the re-filing is submitted within three months from the lapse of the last listing application.

If a new applicant intends to make use of the transitional arrangements in Part A or B above, the sponsor of the new applicant shall notify the Exchange in writing of the appointment of the OC as soon as practicable after such appointment is made.

Preparing for Compliance

Issuers and sponsors should follow the guidance below with respect to existing IPO projects to ensure compliance with the New Code Provisions and the Rule Amendments:

	Status	Application of New Code Provisions and Rule Amendments	Appointment of Sponsor-OC
Pre-existing Listing Applications	With no re-filing on or after the Effective Date	The New Code Provisions and Rule Amendments will not apply.	N/A

	Status	Application of New Code Provisions and Rule Amendments	Appointment of Sponsor-OC
	With re-filing on or after the Effective Date	The New Code Provisions and Rule Amendments will apply to the re-filed application.	<p>Follow guidance in Part A of the Transitional Arrangements, i.e., the Exchange would accept a sponsor-OC being duly appointed even though the OC's appointment was not made at the same time as it or its group company was appointed as a sponsor, provided that (i) the independent sponsor duly appointed or its group company has also been appointed as an OC before the Effective Date and at least two months before the submission of the re-filing; and (ii) the re-filing is submitted within three months from the lapse of the last listing application.</p> <p>If unable to make use of Part A of the Transitional Arrangements as set forth above (for example, the re-filing will not be submitted within three months from the lapse of the Pre-existing Listing Application), then an independent sponsor must be appointed as the sponsor-OC under Rule 3A.43 at least two months before the re-filing.</p>
Listing Applications to Be Made on or After the Effective Date	With an independent sponsor appointed before the Publication Date (22 April 2022)	The New Code Provisions and Rule Amendments will apply.	Follow guidance in Part B of the Transitional Arrangements, i.e., the Exchange would accept a sponsor-OC being duly appointed even though the OC's appointment was not made at the same time as it or its group company was appointed as a sponsor, provided that (i) the independent sponsor appointed or its group

	Status	Application of New Code Provisions and Rule Amendments	Appointment of Sponsor-OC
			company has also been appointed as an OC before the Effective Date and at least two months before the A1 or re-filing (as the case maybe); and (ii) when applicable, the re-filing is submitted within three months from the lapse of the last listing application.
	With an independent sponsor appointed or to be appointed after the Publication Date (22 April 2022)	The New Code Provisions and Rule Amendments will apply.	Arrange re-appointment or appointment of the independent sponsor as sponsor-OC (as the case may be)

Issuers and sponsors should also take note of the followings:

Negotiate and decide fee arrangements early in the process: The Rule Amendments require that the engagement letter of a CMI specifies the fixed fees payable to the relevant CMI as a percentage of the total fees to be paid to all syndicate CMIs. Therefore, the fee arrangements will need to be determined early in the process. This differs from the current market practice that the allocation of total fees among syndicate members will only be determined around the listing.

Consider the timing and requisite contents of engagement letters with all CMIs: Under the current regulatory regime, the issuer is only required to enter into an engagement letter with the sponsor. Under the New Code Provisions and Rule Amendments, however, all CMIs should be appointed by the issuer by way of written engagement letters. The issuer and the sponsor(s) should take into consideration the timing for negotiating and executing engagement letters with various CMIs when designing the project timetable. They should also ensure that the engagement letters of CMIs and OCs contain the requisite information as discussed above, especially the issuer's obligations under Rule 3A.46.

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Endnotes

¹ Under the Rule Amendments, "Equity Interests" refer to equity securities, interests in a REIT, stapled securities, and securities of an investment company.

² See answer to Question 2 of [Frequently Asked Questions \(FAQ077-2022\)](#) (Released on 22 April 2022).

³ See Rule 3A.33 of the Rule Amendments.

⁴ See Rules 3A.39 and 3A.44 of the Rule Amendments.

⁵ See answer to Question 9 of [Frequently Asked Questions \(FAQ077-2022\)](#) (Released on 22 April 2022).

⁶ The total fees in this paragraph, commonly referred to as "underwriting fees", include fixed and discretionary fees for providing one or more of the following services to the issuer: providing advice, marketing, bookbuilding, making pricing and allocation recommendations, and placing the Equity Interests with the investors.