



## HKEx Listing Rule Amendments reflect New SFC Code of Conduct Provisions for Issuers and Intermediaries involved in Bookbuilding and Placing Activities

On 22 April 2022, the Stock Exchange of Hong Kong (**HKEx**) published an [Information Paper](#) (**Information Paper**) outlining the amendments to the Main Board and GEM Listing Rules (together, the **HKEx Listing Rules**) being introduced to complement the new conduct requirements for issuers and intermediaries involved in bookbuilding and placing activities under the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC (the **SFC Code of Conduct**).<sup>1</sup>

The HKEx Listing Rule amendments comprise:

- (1) amendments consequential to the new SFC Code of Conduct provisions (**Consequential Rule Amendments**); and
- (2) housekeeping amendments not involving a change in policy direction (**Housekeeping Rule Amendments**).

The HKEx Listing Rule amendments are set out in full at Schedules A and B to the HKEx [Information Paper](#). The requirements under the revised HKEx Listing Rules will apply to listing applications filed on or after 5 August 2022 for specified types of placings.<sup>2</sup> The new obligations for intermediaries involved in bookbuilding and placing activities under the SFC Code of Conduct will also take effect on 5 August 2022. The new SFC Code of Conduct obligations were the subject of a public consultation for which the SFC published its [Consultation Conclusions](#) on 29 October 2021. For further information regarding the consultation proposals and conclusions, please see [Charltons' newsletters of February 2021](#) and [December 2021](#), respectively.

## HKEx Listing Rule amendments consequential to New SFC Code of Conduct Provisions

### Affected Placings

Under new Main Board Listing Rule 3A.32 (GEM Rule 6A.39) the new requirements will apply to the following types of offering involving bookbuilding activities (as defined under the new SFC Code of Conduct provisions):

- (a) a placing of equity securities or interests to be listed on the HKEx, including:
  - (i) a placing in connection with a new listing (whether by way of a primary listing or secondary listing), including, without limitation, a reverse takeover of a listed issuer which is deemed a new listing under Main Board Listing Rule 14.54 (GEM Listing Rule 19.54) and a transfer of equity interest from GEM to the Main Board under Chapter 9A; and

(ii) a placing of equity securities or interests of a class new to listing or new equity securities or interests of a class already listed under a general or specific mandate in accordance with Main Board Listing Rule 7.12A (GEM Listing Rule 10.13) or other relevant codes and guidelines; and

(b) a placing of listed equity securities or interests by an existing holder of equity securities or interests if it is accompanied by a top-up subscription by the existing holder of equity securities or interests for new equity securities or interests in the issuer.

The Consequential Rule Amendments apply to the same types of offerings as the new SFC Code of Conduct provisions.<sup>3</sup> No specific amendments will be made to the HKEx Listing Rules relating to the placing of debt securities, although intermediaries will be expected to comply with the new SFC Code of Conduct's expected standards of conduct for debt capital market transactions.

The new SFC Code of Conduct provisions will set out a timeline for the listing process for initial public offerings (IPOs) of equity securities or interests where the syndicate structure and fee arrangements are to be determined at an early stage. The SFC Code of Conduct provisions will also impose additional obligations and responsibilities on capital market intermediaries participating in IPOs, including reporting, publication, and disclosure obligations. To reflect these provisions, the new requirements under the HKEx Listing Rules will apply only to placings involving bookbuilding activities in connection with new listings on the HKEx.

### **Written agreement requirement for appointing capital market intermediaries**

The new SFC Code of Conduct provisions will require a capital market intermediary (a 'CMI') involved in bookbuilding and/or placing activities in Hong Kong to be appointed under a written agreement before it conducts any specified activities. The written agreement should specify, *inter alia*, the roles and responsibilities of the capital market intermediary, the fee arrangements and the fee payment schedule.<sup>4</sup>

To reflect the above requirements of the revised SFC Code of Conduct, the HKEx Listing Rules will be amended to include these requirements in Main Board Listing Rules 3A.33 and 3A.34 (GEM Listing Rules 6A.40 and 6A.41).

### **Requirement for appointment of overall coordinator**

The amendments to the SFC Code of Conduct will require any overall coordinator (or 'OC') to be appointed at an early stage in an IPO that involves a placing.<sup>5</sup> The overall coordinator acts as the head of syndicate. The aim of the amendment is to enhance the regulation of conduct of the intermediaries involved in Hong Kong bookbuilding and/or placing activities.

In the case of an IPO, the SFC Code of Conduct will require the overall coordinator to be appointed no later than two weeks after the submission (or re-filing) of the listing application and before the overall coordinator conducts any specified activities,<sup>6</sup> subject to the additional requirements in relation to the appointment of at least one sponsor-overall coordinator for Main Board IPOs (under the new "sponsor coupling" requirement).

For other types of placing involving Hong Kong bookbuilding activities that take place after an IPO, the SFC Code of Conduct will require a listed issuer to appoint any overall coordinator(s) under a written agreement before it conducts any specified activities.<sup>7</sup> It will also require the appointment of an overall coordinator to be made in writing and the inclusion of specified minimum terms in the written agreement.<sup>8</sup> The HKEx Listing Rule amendments will introduce corresponding requirements in new Main Board Listing Rules 3A.35 to 3A.37 (GEM Listing Rules 6A.42 to 6A.43).

### **HKEx IPO overall coordinator's declaration**

Under the revised SFC Code of Conduct, an overall coordinator's responsibilities will include advising and guiding the company and its directors as to their responsibilities under the HKEx Listing Rules and other regulatory requirements and HKEx guidance relating to placing activities and taking reasonable steps to ensure that they understand those responsibilities.<sup>9</sup> In particular, an overall coordinator is required to ensure that directors, existing shareholders, their close associates and nominees will only be allocated equity interests in accordance with the applicable HKEx Listing Rules' requirements. The overall coordinator will also be required to take all reasonable steps to ensure that the price discovery process is credible and transparent, the order book has been properly managed and the allocation recommendations made to the company and the final allocation have a proper basis.<sup>10</sup>

New Main Board Listing Rule 3A.40 (GEM Listing Rule 6A.45) will require overall coordinators engaged in connection with an IPO to provide a declaration in the form of new Form E in Appendix 5 (Form I in Appendix 7 for GEM) in respect of the issuer's compliance with Main Board Listing Rules 8.08, 10.03 and 10.04 (GEM Listing Rules 11.23 and 13.02(1)) relating to placing and allocations, which is currently provided by the sponsor prior to the commencement of dealings.

## Appointment of sponsor-overall coordinator in Main Board IPOs ('sponsor coupling')

The revised SFC Code of Conduct will require, in the case of Main Board IPOs only, that at least one overall coordinator must either be the same legal entity as the independent sponsor or a member of the same group of companies.<sup>11</sup> This was referred to as "sponsor coupling" in the SFC consultation documents. The appointment of both these roles (i.e. overall coordinator and sponsor) must be made at the same time and at least two months before the submission (or re-filing) of the listing application.

To reflect the above requirements for "sponsor coupling", the HKEx Listing Rule Amendments will introduce corresponding requirements in the Main Board Listing Rules in new Listing Rules 3A.02 and 3A.43. Such an overall coordinator is referred to as a "sponsor-overall coordinator" in the HKEx Listing Rule amendments and a "sponsor OC" in the SFC Code of Conduct.

The aim of sponsor coupling is to ensure that at least one sponsor-overall coordinator remains appointed throughout the listing process for new listing applications on the Main Board. If a sponsor-overall coordinator has its engagement terminated (regardless of whether it remains as a sponsor), the listing applicant must file a new listing application not less than two months from the date of the formal appointment of a replacement sponsor-overall coordinator that has been appointed at least two months before submission of the listing application.

## Obligations of HKEx listing applicants and their directors

For the purposes of an IPO, in order to enable the capital market intermediaries to identify investors to whom the allocation of equity securities or interests would be subject to restrictions under the HKEx Listing Rules (or require the HKEx's prior consent), the revised SFC Code of Conduct will require the overall coordinator to advise the new applicant to provide all syndicate capital market intermediaries with a list of: (i) the directors and existing shareholders of the listing applicant and their respective close associates; and (ii) any nominees engaged by any of the foregoing persons for the subscription or purchase of equity securities or interests.<sup>12</sup>

To assist capital market intermediaries in discharging their relevant obligations under the revised SFC Code of Conduct and the HKEx Listing Rule amendments, the HKEx Listing Rules will be amended to require the written engagement entered into by a listing applicant with each syndicate member to specify the obligations of the listing applicant and its directors to provide the relevant information as soon as practicable and in any event at least four clear business days before the date of the listing applicant's Listing Committee hearing.<sup>13</sup>

## Documenting rationale for pricing and allocation decisions

Despite being ultimately responsible for making pricing and allocation decisions, the overall coordinator is responsible under the revised SFC Code of Conduct for explaining to the company any potential concerns if, in the case of a share offering, the company's decision may potentially lead to a lack of open market, an inadequate spread of shareholders or may negatively affect the orderly and fair trading of the equity interests in the secondary market.<sup>14</sup> A company is generally expected to make these decisions in accordance with the overall coordinator's advice and recommendations.

The HKEx Listing Rules will be amended to include a new requirement under Paragraph 19 of Appendix 6 to the Main Board Listing Rules (GEM Listing Rule 10.16B) for the company to document the rationale for its decision on pricing and allocation, particularly where the decision is contrary to the advice or recommendations of the overall coordinator. The HKEx Listing Rules will also require the overall coordinator to inform the SFC and the HKEx if any decision made by the company amounts to non-compliance with the HKEx Listing Rules related to, *inter alia*, the placing activities conducted by it or the company.

## Bar on investor rebates and preferential treatment

Under the revised SFC Code of Conduct, capital market intermediaries will be prohibited from offering rebates to their investor clients or passing on rebates provided by the company to their investor clients in order to prevent investors from paying different prices for the same equity interests offered in a placing.<sup>15</sup> In the case of an IPO, capital market intermediaries will also not be allowed to enable any of their investor clients to pay for each of the shares allocated, less than the total consideration disclosed in the listing documents, which effectively is the final offer price determined by the company.<sup>16</sup>

Rebates to investor clients through reduction of brokerage commissions are already prohibited under the current provisions of the HKEx Listing Rules. The amendments to the HKEx Listing Rules will introduce new requirements to enhance the current measures in the HKEx Listing Rules and align the HKEx Listing Rules with the requirements of the revised SFC Code of Conduct. The HKEx Listing Rule amendments will require:

- (a) each new applicant to confirm that no rebate has been provided by it, its controlling shareholder(s) and directors and the syndicate members to any places or the public, in the announcement of the final offer price and the allotment results of the IPO;<sup>17</sup> and

(b) all overall coordinators, any other syndicate members and any other distributors involved in the IPO to certify in writing to the HKEx that the consideration payable by each placee for the equity interests subscribed in an IPO equals the final offer price determined by the company (plus any brokerage, FRC transaction levy, SFC transaction levy and trading fee payable).<sup>18</sup>

## **New HKEx reporting, publication, and disclosure requirements**

The HKEx Listing Rule amendments will also introduce new reporting, publication and disclosure requirements for listing applicants and already listed companies.

### **(i) New applicants**

The amendments will introduce the requirements set out below for IPO listing applicants.

#### *(a) Announcement of the name(s) of the overall coordinator(s)*

Listing applicants will have to publish an announcement on the HKEx's website setting out the name(s) of their overall coordinator(s) on the same date as they file their listing application and publish the Application Proof (or, where applicable, on the same date as it files an authorisation application with the SFC and publishes the Application Proof in accordance with Rule 20.25 of the HKEx Listing Rules). A further announcement must be published on the appointment of an additional overall coordinator or termination of the engagement of an existing overall coordinator.<sup>19</sup> Listing applicants permitted to make a confidential filing with the HKEx will not be required to announce the name of their overall coordinator when they file their listing application, but will be required to publish an announcement naming their overall coordinator on the same date as they publish their post hearing information packs on the HKEx's website;<sup>20</sup>

#### *(b) Submission of information four clear days before the Listing Committee hearing*

A sponsor overall-coordinator (for a Main Board IPO) or an overall coordinator (for a GEM IPO) must submit the following information to the SFC no less than four clear business days prior to the Listing Committee Hearing:

- (i) the name of each overall coordinator;
- (ii) the fixed fees to be paid by the issuer to each overall coordinator;
- (iii) the total 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 capital market intermediaries, and
- (iv) the ratio of fixed and discretionary fees to be paid to the syndicate capital market intermediaries (in percentage terms).

If there are any material changes to the above information, the overall coordinator must notify the HKEx together with reasons for the changes as soon as practicable.<sup>21</sup>

This requirement mirrors the corresponding requirement under the revised SFC Code of Conduct;<sup>22</sup>

(c) new applicants must disclose in the listing document 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 the syndicate members;<sup>23</sup> and

(d) before dealings commence, listing applicants must confirm the determination of the allocation of discretionary fees (in absolute amount) and the payment schedule for the total fees payable to syndicate capital market intermediaries no later than listing.<sup>24</sup>

### **(ii) Already listed companies**

For already listed companies, a new requirement will be introduced which will require any change in the overall coordinators to be reported to the HKEx as soon as practicable.<sup>25</sup> According to current provisions in the HKEx Listing Rules, separate marketing statements must also be submitted to the HKEx before commencement of dealings of the relevant equity interests.<sup>26</sup>

## Amendments to the HKEx Listing Rules not involving a change in policy direction (Housekeeping Rule Amendments)

The Housekeeping Rule Amendments, which do not involve any changes in policy direction, are mainly amendments to reflect the HKEx's current unification of the Main Board and GEM websites. There are also some amendments relating to other housekeeping matters.

### Main Board and GEM websites unification

Currently, the Main Board and GEM have separate websites with certain information only accessible on their respective websites (for example, historical market statistics for GEM listed companies are only available on the GEM website). The HKEx has already made most of the information for both Main Board and GEM listed companies available on the HKEx corporate website and/or the HKEXnews website.

To streamline access to market information, the HKEx is currently unifying the Main Board and GEM websites and the technical infrastructure is being updated. The HKEx hopes that unification will align the HKEx's corporate branding and reduce redundant technical infrastructure cost.

It is currently expected that all the material information on the GEM website will be migrated and merged with the HKEx corporate website and/or the HKEXnews website on 28 May 2022, except for information which is outdated or is duplicated. A separate section will be dedicated to GEM on the HKEx corporate website and/or the HKEXnews website.

To complement the HKEx's unification of the Main Board and GEM websites, all references to "GEM website" in the GEM Listing Rules will be changed to "Exchange's website".

### Other Housekeeping Amendments

The remaining Housekeeping Rule Amendments to the HKEx Listing Rules relate to:

- (i) adding electronic bank transfer as an additional means of payment of listing fees;<sup>27</sup>
- (ii) introducing a new headline category to facilitate search of company information sheets published by issuers on the HKEx's website;<sup>28</sup> and
- (iii) rectifying clerical errors and simplifying certain provisions by using plain language where appropriate.

## Timeline and implementation

### Consequential Rule Amendments

To align with the implementation timeline for the revisions to the SFC Code of Conduct, the new requirements under the Consequential Rule Amendments will apply to listing applications submitted on or after 5 August 2022. The HKEx has published Frequently Asked Questions No. 077-2022 which provides details of the transitional arrangements that will apply. In summary, the transitional arrangements provide that:

(a) for a listing application submitted by a Main Board listing applicant before 5 August 2022 that will be re-filed on or after 5 August 2022, the HKEx would accept an existing sponsor or its group company as discharging the role of a sponsor-overall coordinator provided that the following conditions are met:<sup>29</sup>

- (i) the existing independent sponsor has been appointed before 5 August 2022 and at least two months before the re-filing, the HKEx has been notified of the sponsor engagement before 5 August 2022;
- (ii) the independent sponsor or its group company has also been appointed as an overall coordinator before 5 August 2022 and at least two months before the re-filing;
- (iii) the engagements of the sponsor and overall coordinator remain valid and effective as at the time of the re-filing; and
- (iv) the re-filing is made within three months from the lapse of the last listing application.

(b) for listing applicants which anticipate the need to re-file their application on or after 4 August 2022, they should consider making the relevant overall coordinator appointment no later than 5 June 2022, in order to take advantage of the above transitional arrangements.

## Housekeeping Rule Amendments

The Housekeeping Rule Amendments will come into effect on 5 August 2022, except for those reflecting unification of the Main Board and GEM websites, which are expected to be effective on or around 28 May 2022, subject to further announcement by the HKEx.

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- [1] The current version of the SFC Code of Conduct can be found [here](#), dated 27 October 2020
- [2] Except for certain Housekeeping Rule Amendments relating to the unification of the Main Board and GEM website which are currently expected to be effective on or around 28 May 2022
- [3] Paragraph 21.1.2(a) of the SFC Code of Conduct
- [4] Paragraph 21.3.2 of the SFC Code of Conduct
- [5] Paragraph 21.4.1(b) and (c) of the SFC Code of Conduct
- [6] Paragraphs 21.4.1(b) and (c) and 21.2.3 of the SFC Code of Conduct
- [7] Paragraph 21.4.1(a) and 21.2.3 of the SFC Code of Conduct
- [8] Paragraph 21.4.1(a) of the SFC Code of Conduct
- [9] Paragraph 21.4.2(b) of the SFC Code of Conduct
- [10] Paragraph 21.4.4 of the SFC Code of Conduct
- [11] Paragraphs 17.1A and 21.4.1(b) of the SFC Code of Conduct
- [12] Paragraph 21.4.5 of the SFC Code of Conduct
- [13] Rule 3A.46(1) (GEM Rule 6A.48(1))
- [14] Paragraph 21.4.2(c) of the SFC Code of Conduct
- [15] Paragraph 21.3.7(a) of the SFC Code of Conduct
- [16] Paragraph 21.3.7(a)(i) of the SFC Code of Conduct
- [17] Note 2 to Rule 12.08 (Note 3 to GEM Rule 16.13)
- [18] Marketing statement Form D in Appendix 5 (Form D in Appendix 5 to the GEM Listing Rules)
- [19] Rules 3A.37 and 3A.41(2) and Paragraph 17A of Practice Note 22 (GEM Rule 6A.44 and 6A.46(2) and Paragraph 16A in Practice Note 5 of the GEM Listing Rules)
- [20] Paragraph 18 of Practice Note 22 (Paragraph 17 of Practice Note 5 of the GEM Listing Rules)
- [21] Note 2 to Rule 9.11(23a) (Note 2 to GEM Rule 12.23AA)
- [22] Paragraph 21.4.8 of the SFC Code of Conduct
- [23] Paragraph 3B of Appendices 1A and 1E (Paragraph 3B of Appendix 1A to the GEM Listing Rules)
- [24] The confirmation will be in its declaration in Paragraph 10A of Form F in Appendix 5 (Paragraph 10A of Form E in Appendix 5 to the GEM Listing Rules)
- [25] Rules 3A.41(1) and 9.10B (GEM Rules 6A.46(1) and 12.08)
- [26] Rules 9.23 and 13.28(7) and Paragraph 16 of Appendix 6 (GEM Rules 10.12(4), 12.27(6) and 17.30(7))
- [27] Appendix 5 (Form A1, Form A2) (Appendix 5 (Form A, Form B, Form C) to the GEM Listing Rules)
- [28] Appendix 24 (Appendix 17 to the GEM Listing Rules)
- [29] No. 22 of the Frequently Asked Questions No. 077-2022

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