



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

## **Guidelines to capital market intermediaries involved in placing activities for GEM stocks**

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## Introduction

1. These Guidelines are published by the Securities and Futures Commission (SFC) under section 399 of the Securities and Futures Ordinance (SFO) for the purposes of supplementing the existing conduct requirements relating to equity capital market placing activities.
2. These Guidelines were first issued<sup>1</sup> together with the Joint Statement regarding the price volatility of GEM stocks issued by the SFC and The Stock Exchange of Hong Kong Limited (Exchange) (Joint Statement) on 20 January 2017 and were revised following the introduction of paragraph 21 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct). These Guidelines should be read in conjunction with the Joint Statement and paragraph 21 of the Code of Conduct. If there are any conflicts between these Guidelines and paragraph 21 of the Code of Conduct, the more stringent requirements shall prevail. Unless otherwise stated, the terms used in these Guidelines are as defined in paragraph 21 of the Code of Conduct.
3. These Guidelines apply to capital market intermediaries (CMIs) engaged in placing activities conducted in Hong Kong in respect of GEM initial public offerings (IPOs).
4. Any failure by a CMI to comply with any applicable provisions of these Guidelines:
  - (a) shall not by itself render a CMI liable to any judicial or other proceedings, but these Guidelines shall be admissible in evidence in any proceedings under the SFO before any court, and if any provisions set out in these Guidelines appear to the court to be relevant to any questions arising in the proceedings, they shall be taken into account in determining the questions; and
  - (b) may cause the SFC to consider whether such failure adversely reflects on the CMI's fitness and properness and the need for regulatory action.

## Guidance for overall coordinators (OCs)

5. OCs play an important role in the placing of GEM IPO shares. They should ensure the fair treatment of both the issuer client and investor clients and uphold the integrity of the market. Accordingly, they are expected to use their best efforts to assist their issuer clients in complying with the Rules Governing the Listing of Securities on GEM (GEM Listing Rules) (as supplemented by the Joint Statement) relevant to placing activities.
6. An OC is expected to use all reasonable efforts to advise the issuer client of the following in relation to placing activities:
  - (a) The relevant regulatory requirements, including relevant GEM Listing Rules (as supplemented by the Joint Statement) and potential consequences<sup>2</sup> for non-compliance;

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<sup>1</sup> These Guidelines were formerly known as the Guideline to sponsors, underwriters and placing agents involved in the listing and placing of GEM stocks.

<sup>2</sup> Please see paragraphs 21 and 22 of the Joint Statement.

- (b) The targeted investor type and placee mix (for example, the issuer client may indicate its preference for a percentage of shares to be allocated to long-term investors rather than short-term investors or to institutional investors rather than retail investors);
  - (c) The overall strategy and allocation basis with a view to achieving an open market and an adequate spread of shareholders, and to ensure that the percentage of shares in public hands meets the relevant requirements under the GEM Listing Rules (as supplemented by the Joint Statement). This will generally include selecting an appropriate number of syndicate CMIs, taking into account their investor client base, competence, resources, track record and allocation strategy; and
  - (d) The retention of proper documentation by the issuer client as required under the Joint Statement<sup>3</sup>.
7. An OC is also expected to retain proper documentation to demonstrate that it has used all reasonable efforts to discharge all of its obligations.

#### **Guidance for CMIs when placing shares to their investor clients**

8. The following guidance is provided to assist CMIs (including syndicate CMIs and non-syndicate CMIs) to comply with relevant regulatory principles and requirements as well as to fulfil their responsibilities to the issuer client<sup>4</sup> (where applicable) when placing shares to their investor clients.
- In particular:
- (a) Placings should be conducted with sufficient senior management oversight by the CMI's senior management.
  - (b) CMIs should put in place appropriate policies and procedures to avoid any undue concentration of shareholdings and to maximise the likelihood of an open market and a fair and orderly trading of shares in the secondary market, which should include a marketing programme directed to a wide range of investor clients. For example:
    - (i) CMIs should notify<sup>5</sup> their investor clients<sup>6</sup> as part of their marketing programmes that they have been appointed as a CMI for a GEM IPO<sup>7</sup> and provide a brief description of the issuer client and a cautionary statement<sup>8</sup>;

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<sup>3</sup> Please see paragraph 18 of the Joint Statement.

<sup>4</sup> Given that a non-syndicate CMI is not engaged by the issuer, the issuer is not its client and hence not an "issuer client". Notwithstanding this, references to "issuer client" in these Guidelines include references to "issuer" in the case of a non-syndicate CMI.

<sup>5</sup> This notification should provide factual, fair and balanced information about the GEM IPO. It does not need to recommend that GEM IPO to investor clients.

<sup>6</sup> A CMI is generally expected to notify all of its active investor clients of each GEM IPO to the extent that these clients fall within the targeted investor types specified in the marketing and investor targeting strategy (targeted investors). However, where a CMI opts to notify only selected investor clients when also meeting its suitability obligations (for details, please refer to footnote 7), based, for example, on investor clients' risk appetites and past investment preferences, this would be acceptable provided that senior management of the CMI is satisfied that a sufficient number of investor clients are offered the opportunity and the likelihood of undue concentration of shareholdings is reasonably low.

- (ii) CMIs should allocate a reasonable number of account executives to each GEM IPO and allow all of its investor clients which are targeted investors and have indicated an interest in a GEM IPO to participate in it;
  - (iii) CMIs should endeavour to respond to enquiries from prospective investor clients<sup>9</sup> who are interested in participating in a GEM IPO and to open accounts for these investor clients in good time for them to participate in the GEM IPO; and
  - (iv) CMIs should not afford any preferential treatment<sup>10</sup> to investor clients unless this has already been properly disclosed in the listing document. Practices which may result in the unfair treatment of investor clients and potentially manipulate the demand for other share offerings are prohibited. This includes the following types of preferential treatment:
    - offering rebates by CMIs to investor clients or passing on any rebates provided by the issuer to investor clients; and
    - making any arrangements which would result in investor clients paying, for each of the shares allocated, less than the total consideration as disclosed in the listing document.
- (c) “Know-your-client” procedures must be conducted properly. CMIs are required to take reasonable steps to establish the identity of an investor client and to confirm whether a person intending to subscribe is the beneficial owner of an investor client’s account (i.e. not a nominee of some other person) and is independent of the issuer client, its controlling shareholders and directors. For the avoidance of doubt, CMIs should exercise caution when relying on an investor client’s declaration of its independence and should make further enquiries (for example, by way of an internet search). CMIs are generally expected to pay special attention to the following “red flags”:
- (i) investor clients subscribing for the GEM IPO shares are procured or introduced by the issuer client, its controlling shareholders or directors;
  - (ii) investor clients subscribing for the GEM IPO shares have known business, financial or other relationships (e.g. as employees, suppliers or customers) with the issuer client or any of its controlling shareholders or directors;

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<sup>7</sup> CMIs are also required to observe the suitability obligations under paragraph 5.2 of the Code of Conduct (as supplemented by the Circular to Intermediaries - Frequently Asked Questions on Triggering of Suitability Obligations dated 23 December 2016 and Circular to Intermediaries - Frequently Asked Questions on Compliance with Suitability Obligations dated 23 December 2016) when placing shares with their investor clients.

<sup>8</sup> Please refer to the cautionary statement included in the Joint Statement as a reminder to the public about the higher investment risks and susceptibility to high market volatility of GEM stocks.

<sup>9</sup> To the extent that these investor clients are targeted investors.

<sup>10</sup> Preferential terms or treatment may include guaranteed allocation, unusually large allocation, put options or offers to repurchase placing shares after listing.

- (iii) investor clients subscribing for the GEM IPO shares have familial relationships or share the same address with other placees; and
- (iv) the accounts of investor clients subscribing for the GEM IPO shares are operated by the same person.
- (d) The sources of funding for the subscription of GEM IPO shares should be established using a risk-based approach before any acceptance of an investor client's subscription. CMIs are expected to ensure that the subscriptions are commensurate with an investor client's financial position.
- (e) Save for nominee companies<sup>11</sup>, subscriptions should be rejected where there are any suspicions that an investor client may be a nominee of some other person whose identity the CMI is unable to ascertain or the acceptance of subscriptions would result in an inadequate spread of shareholders.
- (f) Proper records must be kept so that CMIs can demonstrate their compliance with these Guidelines throughout the entire placing process. Sufficient details should be available, covering, for example: (i) all notifications to investor clients; (ii) all orders received; (iii) the rationale for the allocation of shares as well as the reasons for the rejection of orders; and (iv) the list of placees submitted to the Exchange.

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<sup>11</sup> Rule 10.12(1A) of the GEM Listing Rules allows allocation to nominee companies with the written consent of the Exchange.