

Client Update

FCA Introduces Reforms to the UK IPO Process

The UK Financial Conduct Authority (the “FCA”) has published changes to the Conduct of Business sourcebook (“COBS”) to boost the transparency of the IPO process and tackle conflicts of interest that may arise from the interaction between an issuer and analysts of the syndicate banks. The changes, published in the FCA’s Policy Statement PS17/23 (the “Policy Statement”) on 26 October 2017, broadly crystallise the FCA’s proposals that were outlined in its consultation paper launched on 1 March 2017 (see our client update, “*UK Regulator Proposes Changes to IPO Process*”, dated 16 March 2017). The primary goal of the new rules is to enable prospective investors to have access to the prospectus earlier than under the current IPO process, where in the marketing phase of an IPO, prospective investors typically have access only to research prepared by analysts connected to the underwriting syndicate.

The changes apply to IPOs of any shares or depositary receipts that are carried out on a regulated exchange in the United Kingdom. In order to give issuers and their advisors time to adapt to the new requirements, they will enter into force on 1 July 2018.

RULES GOVERNING THE PUBLIC PHASE OF THE IPO TIMETABLE

Under current UK practice, approved prospectuses are typically not published until the end of the offering process, after marketing has taken place. This marketing phase is usually split between a two-week “investor education” period, during which analysts connected with underwriting syndicate members provide potential investors with their views on the issuer using research based in part on information provided by the issuer, and a more formal marketing period involving meetings with management, using a preliminary “path finder” prospectus that is shared privately with the roadshow participants. In the FCA’s view, this structure undermines the importance of the approved prospectus in the marketing process, and weakens the ability of analysts unconnected with the underwriting syndicate to have meaningful access to the company. As stated in the Policy Statement, the rules seek to ensure that, before any connected research is released, an approved prospectus or registration document is published, and unconnected analysts have access to the issuer’s management.

Under the new COBS 11A rules, syndicate banks must not disseminate analyst research until after a prospectus or registration document (a component of the prospectus containing information about the issuer) is approved and published. They must also ensure that analysts independent of the syndicate are given the same access to the issuer’s management as the

connected analysts, so that the unconnected analysts can produce research on the proposed IPO on an identical timetable as connected analysts. This can be achieved in one of two ways:

- unconnected analysts can join connected analysts in any communication with the issuer's management (for example, the syndicate can invite unconnected analysts to all of its meetings with management) prior to the release of any connected research; or
- unconnected analysts can be provided with a separate line of communication with the issuer's management, provided that each unconnected analyst receives information that is identical to that given to connected analysts.

If a single communication channel is used for both connected and unconnected analysts, the analysts' research (whether connected or unconnected) can be released the day after publication of the approved prospectus. In all other cases, no research can be released until at least seven days after publication of the approved prospectus.

Based on the responses to the FCA's consultation, it is expected that the majority of syndicate banks will encourage issuers to provide management access to unconnected analysts separately from connected analysts. If this transpires, connected analyst research will not be distributed until seven days after the publication of a prospectus or registration document, leading to a delay in the commencement of the "investor education" period and extension of the overall timetable by at least a week.

While these changes will likely result in a lengthening of the public phase of the IPO process, it is possible that issuers and their advisors may opt instead to reduce the investor education phase from two weeks to one week since such investors will already have had at least one week to consider the information disclosed in the registration document before any connected research is released.

To help the FCA supervise the application of the reforms, syndicate banks will be required to create a record of the information that was shared to both connected and unconnected analysts in the event that separate communications are carried out, and to maintain that record for a period of five years.

GUIDANCE ADDRESSING CONFLICTS OF INTEREST IN THE PRODUCTION OF CONNECTED RESEARCH

Under Recital 56 to Commission Delegated Regulation (EU) 2017/565) (the "MiFID Org Regulation"), financial analysts should not engage in activities, including participating in "pitches" for new business, when preparing investment research where engaging in such activities could impair the analyst's objectivity. Despite the MiFID Org Regulation, the FCA's consultation strengthened the FCA's view that under current market practice, significant conflicts may arise when analysts within prospective syndicate banks interact with the issuer's

management, shareholders and advisers around the time that an underwriting or placing mandate and subsequent determination of syndicate positioning is being considered.

The new COBS 12 guidance, which supplements the existing COBS 12 guidance, is designed to address this by, among other things, clarifying that the FCA regards “participating in pitches for new business” as including where an analyst interacts with the issuer’s management, shareholders or corporate finance advisers until: (i) the firm has accepted a mandate to carry out underwriting or placing services for the issuer and (ii) the firm’s position in the syndicate has been confirmed in writing by the issuer.

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Please do not hesitate to contact us with any questions.

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