**Enhancing the UK's Listing Regime: New rules for UK IPOs**

**November 2017**


**Contacts**

**Daniel Simons**
Partner

**Richard Ufland**
Partner

**Danette Antao**
Senior Professional Support Lawyer

Visit us at
www.hoganlovells.com


On 26 October 2017, the Financial Conduct Authority (FCA) published its Policy Statement (PS 17/23) relating to its consultation paper (CP 17/5): Reforming the availability of the information in the UK equity IPO process .

In PS 17/23, the FCA provides an overview of the feedback received during the consultation and also publishes new Conduct of Business Sourcebook (COBS) rules and guidance to come into force in 2018 which have been designed to improve the range, quality and sequencing of information for investors in the UK's equity IPO process. The new rules come into force on 1 July 2018.

**Why reform the current IPO process?**

The FCA has identified key concerns, particularly amongst the investor community, that the primary source of information on an issuer which is set out in the prospectus is made available at too late a stage in the IPO process and, consequently, the prospectus does not have a proper role in informing investment decisions. Instead, it is perceived that investor education is driven by 'connected research' published by analysts of the syndicate banks which are responsible for managing and running the IPO and, consequently, there may be an increased risk of conflict of interests arising for the syndicate banks and perceived bias in respect of the research which they produce on the issuer. There is also concern that there is little, and often, no availability of 'unconnected research' during the IPO process, as analysts within non-syndicate banks and independent research providers lack access to sufficient information and lack the opportunity to hold meetings with an issuer's management, in order to produce any unconnected research related to the offering.

To address these concerns, in CP 17/5, the FCA consulted on changes to the COBS rules. Click here to read our article for more information on the proposals in CP 17/5.

**What are the key changes?**

The FCA is proceeding with its proposals to amend COBS broadly in line with what was proposed in CP 17/5. Changes to COBS rule 11A will apply to firms that have agreed to provide underwriting or placing services in respect of an admission of shares, or GDRs, for the first time to a regulated market (which includes the premium and standard segments of the Main Market) *and* who intend to distribute connected research in respect of the issuer or its securities before the admission.

The effect of the changes will be that:

- before any connected research is released, an approved prospectus or registration document must be published;
- the firm must ensure that a suitable range of unconnected analysts will have 'reasonable access' to management and that details of its assessment of what is a 'suitable range' and the relevant terms of access to management granted to unconnected analysts are recorded. The FCA intends to work with

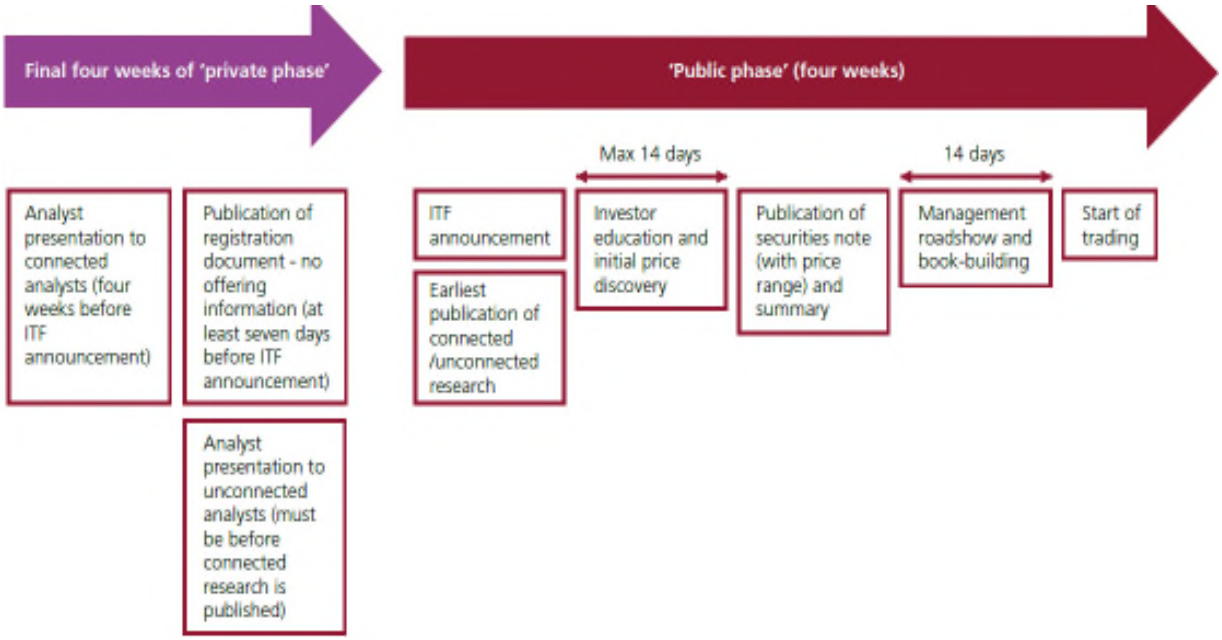
trade associations representing independent research providers to develop industry guidelines to help firms make this assessment and determine what reasonable terms of access are. Note that the FCA clarifies in the guidance that firms cannot place terms of access on unconnected analysts that are any more restrictive than those placed on connected analysts;

- research may not be released until at least seven days after the publication of an approved prospectus or registration document - unless unconnected analysts are offered access to the issuer's management alongside connected analysts, in which case connected research may be released from one day after the publication of the prospectus or registration document; and

- firms must create a level playing field between connected and unconnected analysts to enable all analysts to produce research in an identical timetable – so, if a firm decides to provide unconnected analysts and connected analysts with separate access to the issuer's management, the information that each unconnected analyst receives must be identical to that given to connected analysts. Firms are required to make and retain a record of all information given to all analysts.

*New timetable*

The FCA has received feedback that suggests that firms may encourage issuers to adopt the route of providing unconnected analysts with separate access to management due to concerns around the confidentiality of the IPO. If so, research must not be published until at least seven days after the publication of the registration document or approved prospectus. See below for an indicative timetable for the process where separate access to management is granted to unconnected analysts:[1]




**Will the new COBS rules apply to AIM IPOs?**

No. The new rules will not apply to IPOs on multi-lateral trading facilities (MTFs), such as AIM. However, given the potential overlap between larger companies seeking admission to trading on an MTF and smaller companies seeking admission to trading on a regulated market, the FCA encourages firms providing underwriting and placing services to larger companies which are pursuing an IPO on an MTF to consider following the new rules. Additionally, the FCA will wait at least one year to assess the impact of the new rules and will then consider whether to extend the new COBS rules to IPOs on MTFs.

[1] (source: page 25, FCA Consultation Paper 17/5, March 2017).

**New COBS 12 guidance - Conflicts of interest**

In CP 17/5, the FCA proposed new guidance clarifying its expectations on analysts' interactions with the issuer's management and their corporate finance advisers around the time when an underwriting or placing mandate and subsequent syndicate positioning are being considered. The current COBS guidance states that an analyst should not become involved in activities which are inconsistent with the maintenance of his or her objectivity. The guidance provides examples of these activities which include participation in investment banking activities, such as underwriting, and participation in pitches for new business. The new guidance is intended to mitigate the risk of bias affecting connected research by clarifying that the FCA will regard 'participating in pitches' to include the situation where a firm is proposing to provide underwriting or placing services to a firm and an analyst from that firm interacts with the issuer or its representatives until:

- the firm has accepted a mandate to carry out underwriting or placing services for the issuer; and
- the firm's position in the syndicate is confirmed in writing between the firm and the issuer.

The FCA recognises that, where the analyst is unaware of pitching efforts by the ECM division in the firm, then in limited circumstances, the risk of any impairment to their objectivity would be reasonably low – however, this would not be the case where the analyst is aware of the pitches or may have reason to believe that the firm is conducting the pitches. The FCA reminds firms that any situation in which there is a connection between pitches and a person with whom the analyst interacts can give rise to conflicts of interest and firms must follow their regulatory requirements (that is, requirements under SYSC 10 (Conflicts of interest) and the relevant provisions of MiFID Org Regulation).

**Consistency with MAR**

The FCA had called for views on how MAR applies to the IPO process with a particular focus on whether analyst presentations contain inside information and, if so, how the relevant MAR obligations are being met. The FCA notes that some respondents suggested that, if inside information is disclosed to analysts during a presentation, it should be limited to information on the transaction itself. However, the FCA states that it is not possible to say with certainty that the fact of the IPO itself is the only inside information that needs to be considered, or that it is always inside information. Instead, all information to be included in the analyst presentation, particularly strategic and forward-looking information, should be carefully assessed to see whether it constitutes inside information.

Additionally, the respondents thought that there should be legitimate reasons for delaying public disclosure until after the analyst presentation and that, for the purposes of Article 10 of MAR (unlawful disclosure of inside information), the disclosure of this inside information to analysts would be assessed as being made in the normal exercise of employment, profession or duties (as it enables the analyst to prepare research and allow the issuer and its advisers to decide whether to pursue the transaction). The FCA's response is to state that it does not agree with this Article 10 assessment and that market participants should carefully consider how any disclosure of inside information to analysts is in the normal exercise of the issuer's employment, profession or duties. It also states that the work which it is doing in assessing the implementation of MAR will consider these issues further.

**Practical implementation issues**

In its paper, the FCA also outlines how the implementation of the new IPO process will impact on the transaction review process, in particular on how appointing sponsors, reviewing eligibility and preparing financial information will apply if issuers produce a registration document, rather than a full prospectus, prior to the publication of connected research.

**Next steps**

The new rules and guidance will come into force on 1 July 2018 in order to allow the FCA to meet and finalise the industry guidelines regarding the new COBS 11A rules and to allow issuers and advisers to structure their transactions for next year. Whilst the process is unlikely to have a significant impact on the overall IPO timetable, issuers and advisers may wish to spend more time in the pre-launch stages of the IPO holding more

'early look' or 'pilot-fishing' meetings to gauge investor appetite for a potential IPO. The FCA has also suggested that there may be other ways to reduce the overall timetable where separate access is granted to unconnected analysts and connected analysts in order to mitigate the seven day gap between the publication of the prospectus and research – such as, reducing the period of the investor roadshow from two weeks to one. Investors will have received the final prospectus earlier and may also have had the opportunity to meet management during any pilot fishing activities. Earlier engagement with investors, however, will mean that issuers and advisers will need to take extra caution regarding their regulatory requirements under MAR in respect of any inside information that may arise.

If you have any queries on PS 17/23, please contact your usual contact at Hogan Lovells or one of the listed contacts.