

A win for investors?

FCA consults on its proposals to improve the availability of information in the UK equity IPO process

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On 1 March 2017, the Financial Conduct Authority (FCA) published a [consultation paper: 'Reforming the availability of information in the UK equity IPO process'](#) (CP 17/5) which sets out various proposals to improve the timing, sequencing and quality of information being provided to market participants in the UK's IPO process (the IPO Reform Consultation Paper). Responses are requested to be submitted by 1 June 2017.

The proposals come in response to market feedback on the issues raised in the [FCA's discussion paper on the availability of information in the UK equity IPO process, published in April 2016 \(DP 16/3\)](#).

What are the key concerns?

DP 16/3 outlined key concerns, particularly amongst the investor community, that the primary source of information on an issuer, which is set out in the prospectus, was 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. Rather, it was 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. 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, including meetings with an issuer's management, in order to produce any unconnected research related to the offering.

What are the proposals?

The FCA proposes the following measures to address the key concerns noted from its engagement with stakeholders.

Restoring the primacy of the prospectus and involvement of unconnected analysts

The FCA proposes new rules to be set out in the Conduct of Business Sourcebook (COBS) which seek to ensure that an approved prospectus or registration document is published, and unconnected analysts have access to the issuer's management, before any connected research is published. Consequently, investors should have access to more quality information earlier in the IPO process and unconnected analysts are given more opportunity to participate in the IPO market.

Flexibility to manage each transaction

The FCA provides that the new rules should allow issuers and syndicate banks to retain flexibility on how to conduct their transactions on a case-by-case basis, so that:

- if unconnected analysts are granted access to the issuer's management on equal terms with connected analysts, the rules would allow connected research to be released from *one* day after a



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prospectus or registration document is published, and

- if issuers prefer to delay any communication with unconnected analysts until after its communication with connected analysts (perhaps due to their concerns around deal execution risk), they could do so, provided that:
 - the communication with unconnected analysts is substantially completed by the time that connected research is completed; and
 - connected research is not released until at least seven days after an approved prospectus or registration document is published. This is to allow unconnected analysts sufficient time to prepare and release their research simultaneously with the publication of connected research, so as to support investor education and price discovery. There is some debate, however, as to how realistic it is to expect unconnected analysts to digest the prospectus or registration document and produce a report in seven days.

Industry led research guidelines for unconnected analysts

The new rules require syndicate banks to provide a 'range' of unconnected analysts access to the issuer's management. Such range must, in the bank's opinion, create a reasonable prospect of enabling investors to make a better informed assessment of the issuer. Additionally, the engagement of unconnected analysts must be on 'reasonable terms', for example geographical restrictions on the distribution of research would be deemed 'reasonable'.

The FCA notes that it intends to work with trade associations representing investment banks and independent research providers to develop an industry standard set of research guidelines for unconnected analysts in order to provide guidance on the 'reasonable terms' and 'reasonable access' when an issuer engages with unconnected analysts.

Guidance on analysts' interactions with the issuer and its advisers

The FCA proposes new guidance clarifying its expectations on analysts' interactions with the issuer's management and their corporate finance advisers around the time an underwriting or placing mandate and subsequent syndicate positioning is being considered. The current guidance contained in COBS 12.2.9G 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 will clarify that the FCA will regard 'participating in pitches' to include the situation where an analyst 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 has been determined.

This guidance is intended to mitigate the risk of bias being imparted to connected research – a key objective of the proposed reforms.

Ensuring consistency with MAR's application

The FCA seeks feedback from issuers and their advisers on what they consider their obligations to be under the Market Abuse Regulation (MAR) during the IPO process. Specifically, the FCA is seeking feedback on how the disclosure of inside information in an analyst presentation is justified as being in compliance with MAR, or why issuers believe that the information disclosed does not amount to inside information. Based on the feedback received, the FCA will consider whether it is appropriate to give formal guidance on certain MAR obligations in the context of the IPO process and if so, it will consult on the draft guidance in due course.

Application of proposals to IPOs on MTFs

The FCA notes that the timing and sequencing of information for IPOs on multilateral trading facilities (MTFs), such as AIM and the NEX Exchange growth markets, is similar to that on regulated markets, although it notes certain differences, including that some stakeholders consider that connected research plays a less prominent role than it does in offerings on regulated markets. The FCA calls for feedback on the similarities and differences between the IPO processes for transactions on regulated markets and MTFs. It will then consider whether to consult separately on whether its proposals in the consultation paper should also apply to firms providing underwriting or placing services in the MTF space, or whether other measures are more appropriate.

Will we see significant changes to timing and process?

The proposals appear to address the key concerns raised by the investor community – an approved prospectus will be made available earlier to market participants and there is more opportunity for unconnected analysts to participate in the IPO process. Overall, there should not be a significant change to the timetable but there will be changes to the way in which IPOs are typically run.

Currently, the 'pathfinder' prospectus is typically distributed to institutional investors around two weeks after the 'intention to float' announcement (ITF) and publication of connected research. Whilst the pathfinder does not require the FCA's approval, it is usual practice for the pathfinder to be 'a close to final' version of the prospectus and for it to have gone a substantial way through the FCA's review process. The new process brings forward the distribution of the final prospectus (or registration document) which must be approved by the FCA. Consequently, it will be critical for issuers and their advisers to 'front-end' their IPO preparation and diligence so that the prospectus is ready for distribution prior to launching the IPO.

Additionally, in their pre-IPO due diligence investigations, issuers and advisers will need to ascertain whether there is demand for unconnected research and if so, they will need to engage appropriately with unconnected analysts to ensure that they are granted reasonable access to issuer information. Getting an appropriate 'range' of unconnected analysts on board will also take time which will need to be factored in to the pre-IPO phase. It will also be interesting to see whether there is an 'uptick' in demand for unconnected research - and whether the quality of the research, which will need to be prepared very quickly in order to coincide with the release of connected research, will be sufficient to address the concerns of investors looking for a balance of views prior to making their investment decisions.

If you have any queries on the IPO Reform Consultation Paper, please contact your usual contact at Hogan Lovells or one of the listed contacts.