

October 15, 2018

AFME and Euro IRP Publish Guidance on New Rules Governing UK IPO Process

The Association for Financial Markets in Europe (“AFME”) and the European Association of Independent Research Providers (“Euro IRP”) recently published industry-wide guidance¹ (the “Guidance”) in respect of the rules adopted by the UK Financial Conduct Authority (the “FCA”) governing the availability of information in the initial public offering (“IPO”) process. AFME subsequently published a related record-keeping protocol² (the “Protocol”) with suggested approaches for complying with record-keeping requirements under the new rules.

The FCA rules reform the way in which information about an issuer becomes available during the period leading up to an IPO by, among other things, requiring the syndicate banks participating in the IPO to provide unconnected analysts with the opportunity to communicate with the issuer in order to facilitate the publication of unconnected analyst research and ensure a level playing field between connected and unconnected analysts. The rules provide two options for banks to grant access to unconnected analysts that depend on whether such access is provided simultaneously with, or separately from, connected analysts.

Background

On July 1, 2018, new Conduct of Business Sourcebook (“COBS”) rules (COBS 11A.1.4A to F) came into effect, with the aim of improving the quality and timeliness of key information made available to investors in advance of an IPO by making an approved prospectus or registration document³ rather than analyst research the basis on which investors make their investment decisions. Under the new rules, IPO

¹ A copy of the AFME/Euro IRP guidance entitled “UK Initial Public Offerings – Process in Relation to Providing Issuer Access for Unconnected Analysts” is available [here](#).

² A copy of the AFME protocol entitled “Suggested approach to record-keeping under COBS 11A.1.4BR(3)(c), COBS 11.A.1.4CR and COBS 11.A.1.4ER” is available [here](#).

³ The registration document is a component of a prospectus that contains information about the issuer. In effect, the registration document would include a description of the business, risk factors, the Operating and Financial Review, historical financial information and certain portions of the additional information section, but would exclude offering-related information. The balance of the prospectus would include information about the securities being offered, the particulars of the offering (including the price range) and the plan of distribution (all set forth in the securities note) and a summary of the offering. The final element is ultimately the price.

research is not permitted to be published until at least *one* or *seven* days after the publication of an approved prospectus or registration document. The exact timing of the publication of IPO research (both connected and unconnected) will depend on when unconnected analysts have been provided with an opportunity to be in communication with the issuer team.

The following two options are available for issuers and syndicate banks for scheduling the release date of the IPO research:

- *Option 1* - if unconnected analysts are provided with an opportunity to be in communication with the issuer team on equal terms with connected analysts, then the research will be permitted to be released beginning *one* day after an approved prospectus or registration statement is published (COBS 11A.1.4FR(2)(a)); or
- *Option 2* - if unconnected analysts are in communication with the issuer team at a later stage than connected issuers, then connected research will be permitted to be released beginning at least *seven* days after an approved prospectus or registration statement is published and after the issuer team's communication with unconnected analysts is substantially completed (COBS 11A.1.4FR(2)(b)).

An illustrative timeline for the two options can be found in Annex I.

The Guidance

The Guidance sets out (i) procedures for arranging the unconnected analysts' participation in the IPO process through the registration of their interest in the communication with the issuer team and (ii) the manner and form that such communication with the issuer team should take under each of the options.

In order to facilitate communication between the issuer team and interested unconnected analysts, Appendix II of the Guidance provides a list ("Unconnected Analysts List") of Euro IRP's member firms that meet the definition of unconnected analyst⁴ and that would be interested in writing research on IPOs. Representative organizations (such as Euro IRP) will have the opportunity to prepare a list of their member firms for inclusion in Appendix II. Each representative organization that submits a list of its member firms for inclusion in Appendix II will then be required to distribute the Guidance to its member firms and draw their attention to the fact that by agreeing to be included in the list they agree to keep IPOs that have not yet been announced confidential.

⁴ An unconnected analyst is defined in the Guidance as a research analyst not employed by one of the proposed members of the underwriting syndicate, who produces research, which is disseminated to one or more third party/ies that is/are also external clients of the research analysts' employers' group.

An unconnected analyst who is included in the Unconnected Analysts List and who wishes to be in communication with the issuer team will first be required to agree to, and comply with, the Market Standard Research Guidelines set forth in Appendix I to the Guidance. The research guidelines require the following:

- to keep the fact and details of the IPO confidential until the formal announcement of the transaction;
- to be bound by the same geographic restrictions relating to the distribution of research prior to completion of the IPO as connected analysts;
- not to publish their research until the date that connected analysts are permitted to publish their research under Options I and II, respectively;
- to use reasonable endeavors to publish research, wherever possible, prior to the publication of the price range prospectus or, in the case of a tripartite prospectus, the securities note and summary; and
- to acknowledge that there is an expectation that research will not be published in the seven calendar day period prior to pricing.

The Guidance sets out two separate processes for enabling unconnected analysts to join connected analysts in communication with the issuer team depending on which timing option is selected.

Option 1

Under Option 1, the issuer (with the assistance of the syndicate banks) will first notify by email all unconnected analysts who are included in the Unconnected Analysts List and who may be interested in receiving information about the issuer's IPO. Any unconnected analyst interested in communication with issuer team will then be required to agree to comply with the Guidance and to obtain a confirmation from the syndicate bank that he/she falls within the definition of unconnected analyst. Once the analyst's unconnected status is confirmed, he/she will be invited to attend the presentation. If, during the presentation, connected analysts are given an opportunity to ask questions, unconnected analysts will also be given an opportunity to ask questions. In the event that the issuer permits additional questions to be submitted by email after the date of the presentation (but only up to the date on which connected analysts are permitted to publish their research), a written transcript of any additional Q&As submitted by either the connected or unconnected analysts will be made available to unconnected analysts as well as the connected analysts.

Option 2

The process under Option 2 consists of two phases. During Phase 1, the issuer will make a statement⁵ on publication of the registration document in relation to how unconnected analysts will be able to be in communication with the issuer team. The issuer or the syndicate banks will then notify all unconnected analysts included in the Unconnected Analysts List of the publication of the registration document and inquire about their interest in receiving issuer information about the IPO. Similar to Option 1 above, any unconnected analyst interested in communication with the issuer team will need to agree to comply with the Guidance and to obtain a confirmation from the syndicate bank that he/she meets the definition of unconnected analyst. Once the analyst's unconnected status is confirmed, he/she will be permitted to communicate with the issuer team via the process set out in Phase 2 below.

Phase 2 will involve either an in-person meeting between the issuer and unconnected analysts or the issuer making certain written materials available to unconnected analysts. During the in-person meeting, the unconnected analysts may be given an opportunity to ask questions of the issuer. In the event that the issuer permits additional questions to be submitted by email after the date of the presentation (but only up to the date on which connected analysts are permitted to publish their research), a written transcript of any additional Q&As submitted by either the connected or unconnected analysts will be made available to unconnected analysts as well as the connected analysts. Alternatively, the issuer will arrange for certain written materials to be uploaded to its website, behind a click-through incorporating the Guidance and the syndicate banks' disclaimers of liability, for a period until the publication of the price range prospectus, during which period the unconnected analysts identified in the process set out in Phase 1 above will be able to access the materials. The materials will include:

- the slide deck used by the issuer team during its presentation to connected analysts;
- a written note of the Q&A session with the issuer team from the connected analyst presentation plus a written note of any other Q&As between the issuer team and connected analysts to date;
- a description of the process by which unconnected analysts can communicate with the issuer team and ask questions about the above items and the registration document, which may be done by means of email exchanges;
- a written transcript of any questions asked by and answers given to the unconnected analysts by the issuer team (including those which are asked after the presentation), which will be made available to

⁵ The Guidance states that the statement may provide, for example: "A presentation in person by [the issuer] for unconnected research analysts will be held / A presentation and related information in relation to [the Issuer] will be made available via a link to unconnected research analysts on DD, MM, YYYY. Please let [] know at [] if you would like to attend the presentation / receive access to the information."

all other unconnected analysts that have accessed the issuer information as well as to the connected analysts; and

- the registration document or prospectus (if that is the first document published).

The Protocol

In addition to the Guidance, the AFME has also published the Protocol as a suggested approach for meeting the record-keeping requirements under the new rules. The Protocol aims to provide practical ways to ensure syndicate banks' compliance with record-keeping requirements in connection with establishing an opinion on a range of unconnected analysts and providing them with equal access to the issuer team as connected analysts.

The Protocol provides suggested templates to be used to document compliance with the following record-keeping requirements:

- the syndicate bank's assessment to ensure that the selected range of unconnected analysts is one that, in the bank's reasonable opinion, has a reasonable prospect of enabling potential investors to undertake a better-informed assessment of the present or future value of the relevant securities based on a more diverse set of substantiated opinions, compared to a situation in which the only research available to potential investors would be that of connected analysts (CBOS 11A.1.4BR(3)(a));
- any restrictions that would be imposed on each unconnected analyst that accepts the invitation to participate in communications with the issuer team (CBOS 11A.1.4CR); and
- all information on the issuer and its securities given by the issuer team to the connected and unconnected analysts (CBOS 11A.1.4ER).

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This Client Memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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Annex I – Timeline for the new UK IPO process

Timeline for the new UK IPO process (effective July 1, 2018)

		Model 1	Model 2
Private phase of IPO process		Presentation to connected and unconnected analysts	Presentation to connected analysts only
		Publication of approved prospectus/ registration document ⁶ – no price information (followed by at least one day “blackout period” before ITF announcement and any analyst research can be published)	Publication of approved prospectus/registration document – no price information (followed by at least seven day “blackout period” before ITF announcement and any analyst research can be published)
		One-day blackout period	Seven-day blackout period
Public phase of IPO process	c. 14 days	ITF announcement and earliest publication of connected and unconnected analyst research	ITF announcement and presentation to unconnected analysts (must be before connected analyst research is published)
		Investor education and initial price discovery	Earliest publication of connected and unconnected analyst research
			Investor education and initial price discovery
	c. 14 days	Publication of price-range prospectus	Publication of price-range prospectus
		Management roadshow and book building	Management roadshow and book building
		Pricing statement	Pricing statement
		Start of trading	Start of trading

⁶ The issuer will need to publish an approved prospectus or a registration document before any connected/unconnected research can be published. Given the work involved in the preparation of an approved prospectus this early in the IPO process, a registration document will most likely be used that will contain information on the issuer, its business/management, risk factors, any expert reports and audited financial information, together with responsibility statements.