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UK IPO Reforms: One Year On

On July 1, 2018, the revised Financial Conduct Authority (“FCA”) rules on the availability of information in the UK IPO process became effective. The rules were introduced with a goal of improving the quality and timeliness of information, relating to the issuer and the securities to be issued, available to investors ahead of an IPO. One year later, given the limited number of IPOs on the London Stock Exchange, market practice on the format and timing of the key disclosure documents for UK IPOs continues to evolve, with market participants primarily relying on the FCA policy statement and the guidance published by the Association for Financial Markets in Europe (“AFME”).

We provide below an overview of the latest guidance issued by AFME as well as the market practice that has evolved to date in relation to the IPO process reforms.

Summary of the rules

The principle underlying the IPO reforms is that the IPO prospectus or registration document, as opposed to analyst research, should form the basis on which investors decide whether or not to participate in an IPO. To reinforce this, analyst research is not permitted to be published until at least *one* or *seven* days after the publication of an FCA-approved prospectus or registration document. The exact timing of the publication of analyst research depends on when unconnected analysts are provided with the access to the issuer’s team. Analyst research (whether connected or unconnected) can be published *one* day after the publication of an approved prospectus or a registration document but only if unconnected analysts are given access to the issuer’s team simultaneously with connected analysts. If unconnected analysts are provided with access to the issuer’s team at a later time than connected analysts, the publication of analyst research needs to be delayed by at least *seven* days after the publication of an approved prospectus or a registration document. In any case, no analyst research can be published until unconnected analysts are given opportunity to communicate with the issuer’s team and are provided with identical information as that received by connected analysts.

Our prior client alert entitled “FCA Adopts Changes to Rules Governing Availability of Information for IPOs” (available [here](#)) discusses in more detail the then new rules and the related guidance contained in the related FCA policy statement.

AFME Guidance

Since July 2018, AFME has published two industry guides aimed at assisting market participants with interpretation and application of the rules. The first guidance, published jointly by AMFE and the European Association of Independent Research Providers in September 2018, sets out procedures for arranging unconnected analysts' participation in the IPO process through the registration of their interest in communication with an issuer's team. The guidance also specifies the manner and form that such communication should take, depending on when unconnected analysts are afforded access to the issuer's team. Our prior client memorandum (available [here](#)) discusses this guidance in more detail.

The second guidance¹ presented in the form of questions and answers (the "AFME Q&A") was published by AFME in December 2018, following extensive discussions with the FCA as to how some of the new rules should be interpreted. The AFME Q&A addresses certain commonly asked questions in relation to the practical implementation of the rules, in particular as to the format and content of documents to be delivered in the IPO process and the timing of the FCA's review and approval of such documents.

Below is a brief summary of the questions addressed in the AFME Q&A.

- *Required documents format* - COBS 11A.1.4FR(1) specifies that no analyst research (whether connected or unconnected) is permitted to be published in connection with an IPO until either one or seven days after the publication of the "relevant document." The relevant document would be either an approved prospectus regarding the relevant securities or an approved registration document regarding an issuer. The rules do not specify, however, what the next approved document to be published should be.

In an IPO involving a retail offer, market participants generally agree that an approved price range prospectus would be the next approved document to be published at the start of a management roadshow. In an IPO directed to institutional investors only, the AFME Q&A clarifies that while legally an unapproved draft pathfinder could be used in an institutional only offer and provided to potential investors at the roadshow, the FCA expects that when an issuer publishes an FCA-approved registration document ahead of the release of any connected research, it should then publish either an FCA-approved price range prospectus or an FCA-approved securities note and summary as opposed to an unapproved pathfinder.

- *FCA's review of required documents* - the FCA is able to review a registration document and a consolidated prospectus/discrete securities note and a summary in parallel and, if considered appropriate, give the issuer a clear for comments confirmation in relation to a prospectus/discrete securities note and summary before the registration document is published.

¹ UK IPO Reform Q&A in Relation to COBS 11A (AFME, December 2018), available [here](#).

- *Timing of the FCA's review* - if a prospectus/discrete securities note and a summary is submitted to the FCA at the same time as a registration document, the FCA is likely to provide the issuer with its initial comments within 10 working days. If a prospectus/discrete securities note and a summary is submitted to the FCA after the registration document has been submitted, a shorter review period of five working days may be possible, although the FCA reserves the right to take 10 working days to review and revert with initial comments.

The FCA recognizes that certain information (*e.g.*, identity of all directors or the precise nature of any pre-IPO reorganization) may not yet be available at the time of the first submission of a prospectus/discrete securities note and a summary for comment. As a result, the FCA provides its "cleared for comments" confirmation based only on the information provided to it at the time. Any subsequent information that comes to light or any changes to information previously provided would be subject to the FCA's review and comment.

- *Content of the required documents* - in order to obtain the FCA's approval, a registration document must accurately reflect all of the required Annex I information as of the date of approval and publication. The FCA will accept forward-looking information in the registration document if an issuer needs to make clear that certain information in the document will have become out-of-date or will have changed by the time a prospectus is published. For example, if the issuer's board of directors or its corporate governance framework will change later in the IPO process this can be noted in the registration document. The FCA will expect any material changes from the registration document to be made clear in any subsequent prospectus. There is no proscribed format or positioning that the disclosure of changes to the registration document must take and different approaches have been used by issuers (*i.e.*, a schedule of changes can be included as a stand-alone section at the back of the prospectus or towards the front of the prospectus in Presentation of Information section). Inclusion of a blackline against the original registration document while not mandatory would be helpful in making the FCA's review process more efficient and timely.

The rules require the registration document to disclose the reason for its publication. The FCA has no prescribed form for this but has suggested the following formulation for issuers to use:

"This Registration Document may be combined with a securities note and summary to form a prospectus in accordance with the Prospectus Rules. A prospectus is required before an issuer can offer transferable securities to the public or request the admission of transferable securities to trading on a regulated market. However, this Registration Document, where not combined with the securities note and summary to form a prospectus, does not constitute an offer or invitation to sell or issue, or a solicitation or an offer or invitation to purchase or subscribe for, any securities in the Company in any jurisdiction, nor shall this Registration Document alone (or any part of it), or the fact of its distribution, form the basis

of, or be relied up[on] in connection with, or act as any inducement to enter into, any contract or commitment whatsoever with respect to any offer or otherwise.”

- *Sponsor-related issues* - the AFME Q&A clarifies that while it is possible for an issuer’s sponsor to submit to the FCA a pre-eligibility letter (that would include information about the issuer and IPO timetable but not necessarily a formal analysis of all eligibility requirements) at the time the registration document is initially submitted for review, it is only on the basis of the issuer providing all key information and full analysis relating to eligibility that the FCA can provide substantive comments and highlight any specific early stage eligibility issues. The FCA will not formally confirm eligibility until the prospectus/securities note and summary are approved.

The issuer is not required to appoint a sponsor at the time of publication of the registration document. The sponsor can be appointed later in the process, once the issuer decides to pursue a premium listing. The sponsor elected after the submission of the registration document will not have any obligations or liability with respect to the previously filed registration document although the FCA will expect such sponsor to familiarize himself with the contents of the registration document and to engage with the FCA going forward, including with respect to any disclosure in the registration document that needs to change given the passage of time and the confirmation of transaction details or other sponsor-related issues.

- *Financial promotion/advertisement* - an issuer may refer to a possible future offer in a standalone registration document or announcement regarding its publication without the registration document being considered a financial promotion or advertisement as long as the registration document contains only the minimum requirements of Annex I and does not communicate an invitation or inducement to engage in investment activity and does not relate to a specific offer to the public of securities or an admission to trading on a regulated market, or aim specifically to promote the potential subscription or acquisition of securities.
- *Supplements* - following the publication of a price range prospectus, the FCA will expect a supplementary prospectus to be published where there is a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus during the relevant period.
- *Unconnected analysts’ access to the issuer’s team* - COBS 11A.1.4BR(2) requires an issuer to ensure that when unconnected analysts are not given access to the issuer’s team at the same time as connected analysts, analyst research is not published until at least *seven* days after the publication of the registration document. Additionally, a range of unconnected analysts must be given the opportunity to be in communication with the issuer’s team in such way that would result in unconnected analysts receiving or being given access to all the information that was given by the issuer team to the connected analyst and relevant for the purposes of producing research on the issuer.

The AFME Q&A clarifies that the FCA would consider these requirements satisfied if the slides used for the connected analysts' presentation and a written transcript of any questions asked by the connected analysts as well as the answers given were made available to the unconnected analysts. A physical meeting of the unconnected analysts with the issuer's team is not required as the rules permit alternative ways of ensuring the unconnected analysts' communication with issuer. If the unconnected analysts have any follow-up questions after their review of the slides and the questions and answers, they may be asked to submit those questions and receive answers by email if the issuer's team wishes to take such approach.

Practical Approach

The limited number of IPOs in the past year generally have followed a similar practice, with these being the main features:

- *Format and timing of relevant documents* – a registration document is published at the outset of the process along with a potential intention to float announcement (pre-ITF announcement) containing a summary description of the issuer, its preliminary intention to undertake an IPO and an invitation to unconnected analysts to register their interest in receiving information relating to the IPO. The issuer will issue an announcement of the publication of the registration document (which will have been approved by the FCA). The registration document (without the securities note and the summary) does not constitute a prospectus and does not constitute an offer to purchase securities in the IPO. An intention to float notice (ITF announcement) follows on the date that connected research is published, anywhere from 7 to 12 days after the publication of the registration document. In each IPO, issuers have opted to publish a single, FCA-approved price range prospectus (as opposed to a compilation of three separate documents, comprising a summary, a registration document and a securities note) at the onset of the management roadshow, 2-5 weeks after the publication of the registration document. The foregoing documents are all available on the issuer's website, though behind a website filter to restrict access for U.S. securities law purposes.
- *Treatment of unconnected analysts* - unconnected analysts are offered access to the issuer's team separately from the connected analysts, resulting in a waiting period of at least *seven* days before any research could be published. Market participants have reported that while unconnected analysts have covered these early IPOs, the take-up has been relatively low and it remains to be seen whether the rules will prompt the publication of more unconnected research in the future.

Conclusion

As discussed among participants at the 2019 Practising Law Institute conference on Securities Regulation in Europe, syndicate banks have worked hard over the last few months to come to grips with the new rules relating to unconnected analysts, with the following areas proving to be the most challenging: (i) the

identification and assessment of the potential range of unconnected analysts interested in producing research on the IPO, (ii) the vetting of such analysts and (iii) ensuring that the unconnected analysts are provided with identical information as the connected analysts without unreasonable restrictions.

To date it appears that a majority of IPO issuers have followed the AFME guidance in applying the new rules. As more IPOs come to market and the trends and practice evolve, it will be interesting to see whether different practices emerge.

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This 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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