FINANCIAL CONDUCT AUTHORITY

Reforming the availability of the information in the UK equity IPO process

Policy Statement
PS17/23

October 2017

This relates to

In this Policy Statement we report on the main issues arising from Consultation Paper 16/7 (Reforming the availability of information in the UK equity IPO process) and publish the final rules.

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1 Overview

Introduction

1.1 We are publishing new Conduct of Business Sourcebook (COBS) provisions intended to improve the range, quality and timeliness of information that is made available to market participants during the UK equity initial public offering (IPO) process. In particular, the provisions seek to restore the centrality of a prospectus or registration document and enhance overall standards of conduct in the process.

1.2 A series of new COBS rules is being introduced. These rules seek to ensure that, before any connected research[1] is released, an approved prospectus or registration document is published, and unconnected analysts[2] have access to the issuer's management. We are also introducing new COBS guidance to address the underlying conflicts of interest arising when analysts within prospective syndicate banks interact with the issuer's representatives when an underwriting or placing mandate and subsequent syndicate positioning are being considered.

1.3 These new COBS provisions are the outcome of a consultation launched on 1 March 2017 (CP17/5) following an earlier discussion paper (DP16/3) that was published alongside the market study of investment and corporate banking (ICB). The consultation also formed part of our wider programme of work on the effectiveness of primary markets. We are also publishing a further two documents as part of this programme. One is a Feedback Statement (FS17/3) that provides an overview of stakeholder responses to DP17/2, and the other is a Policy Statement (PS17/22) setting out enhancements to the listing regime.

Context

1.4 Having gathered evidence as part of the ICB market study, DP16/3 identified some areas of the current equity IPO process in the UK that called for improvement, namely the timing, sequencing and quality of information being provided to market participants.

1.5 The prospectus, which should be the primary source of information on the issuer, is currently made available late in the process. Arguably, investors do not have access to this key document sufficiently early for it to play its proper role in informing investment decisions. Investor education and initial price discovery are instead driven by connected research. Moreover, analysts from firms outside the book-running syndicate lack access to the necessary information to produce unconnected research on an offering.

1 That is, any research produced by analysts at banks which are part of the underwriting syndicate. As set out in Chapter 7 of PS17/14 on MiFID II implementation, connected research in the context of a primary market capital raising event should be acceptable as a minor non-monetary benefit under our inducements rules in COBS 2.3A, where it is clearly circulated to inform potential investors about that specific issuance prior to the deal being completed.

2 Those working at firms which are not part of the underwriting syndicate, e.g. independent research providers or non-syndicate banks, and who produce unconnected research on an offering.

1.6 This is particularly problematic given the conflicts of interest that can arise during the production of connected research. For example, it is common for analysts within prospective syndicate banks to meet with the issuer's management and advisers around the time that underwriting or placing mandates are being considered. During these meetings, analysts can come under pressure to produce favourable research on an offering to help their bank secure a mandate to manage the offering and its desired position in the syndicate.

1.7 The current market practice described above can harm users of the IPO process, notably investors and ultimately issuers, as well as the wider economy. This is because a lack of high quality, timely information can:

- hamper the efficiency and integrity of price formation,
- threaten confidence amongst investors, and
- impair the effectiveness of the UK IPO process as a route to support the funding of a large number of key participants in the broader economy, both domestically and globally.

1.8 The underlying market practices creating this harm are also inconsistent with our overarching strategic objective of making markets work well, as well as each of our operational objectives:

- Market integrity is jeopardised if investors and issuers lose confidence in the UK IPO process because price formation is largely driven by connected research, which is potentially biased or perceived as biased.
- Consumer protection is weakened when prospective investors cannot obtain timely access to the information they require and place significant reliance on connected research that is potentially biased or perceived as biased.
- Effective competition is inhibited because unconnected analysts face barriers to producing IPO research. This reduces competitive pressure that might otherwise enhance the quality of connected research, and makes it more difficult for investors to access competing views on the offering and the issuer's prospects.

1.9 A number of high-profile external reports have raised these concerns over existing market practice, but so far there has been no market-led reform, suggesting that a policy intervention is necessary.

1.10 To address the harm identified, in CP17/5 we proposed a package of policy measures aimed at:

- restoring the centrality of an approved prospectus or registration document in the IPO process
- enhancing standards of conduct throughout the process, in particular in the management of the conflicts of interest in the production and distribution of connected research, and
- creating the necessary conditions for unconnected IPO research to be produced.

1.11 This package included a series of new COBS 11A rules intended to ensure that, before any connected research is released, a prospectus or registration document is published, and unconnected analysts have access to the issuer's management. We also proposed new COBS 12 guidance to make clear that it is inconsistent with the maintenance of an analyst's objectivity for analysts within prospective syndicate banks to interact with the issuer's management, shareholders and advisers around the time that underwriting or placing mandates and subsequent syndicate positioning are being considered.

Summary of feedback and our response

1.12 In CP17/5 we asked stakeholders whether they agreed with our proposed policy measures summarised above. We received 30 written responses to CP17/5 from market participants including investment banks, institutional investors, independent research providers, corporate issuers, corporate finance advisers, law firms and operators of regulated markets and Multilateral Trading Facilities (MTFs). We also received a significant amount of feedback through bilateral meetings with these market participants during the consultation period.

1.13 There was broad consensus among respondents that the proposed COBS 11A rules are necessary to restore the centrality of a prospectus or registration document in the IPO process. There was, however, a greater range of views on our proposed COBS 11A rules to provide unconnected analysts with management access, including on the extent to which any unconnected IPO research would emerge.

1.14 We are introducing the new COBS 11A rules broadly as we proposed. Following the feedback, we are, however, making some technical amendments to ensure that the rules fully reflect our policy intent[3].

1.15 We also received broad support for the proposed new COBS 12 guidance. There was recognition among respondents of the conflict of interest that arises when analysts interact with the issuer's representatives around the time that a mandate and subsequent syndicate positioning is being considered. Following feedback, we are, however, amending the guidance to deal better with offerings where an issuer already has securities admitted to trading[4].

1.16 In CP17/5 we asked whether the proposed COBS 11A rules should also apply to IPOs on MTFs, eg the Alternative Investment Market (AIM). Feedback on this issue was mixed. Although some respondents noted that the timing and sequencing of information during an IPO on an MTF is broadly the same as on a regulated market, others argued that there are some idiosyncrasies which distinguish these markets, and that earlier publication of an official offering document would have the practical effect of lengthening the public phase of the IPO process. Some expressed concern that this could increase execution risk and potentially discourage early-stage companies from raising capital through an IPO on an MTF.

3 The final COBS 11A instrument does not significantly differ from the version consulted on in CP17/5.

4 The final COBS 12 instrument does not significantly differ from the version consulted on in CP17/5.

1.17 At this point we will not apply the proposed COBS 11A rules to IPOs on MTFs. However, given that there is some overlap between larger companies on MTFs and smaller companies on regulated markets, we encourage banks managing an offering on MTFs to consider adopting the reformed practice used on regulated markets.

Who does this affect?

1.18 The new COBS provisions will affect investment banks providing both underwriting and placing services during equity IPOs and research services alongside securities offerings, as well as issuers, institutional investors, independent research providers, corporate finance advisers, and operators of regulated markets.

Is this of interest to consumers?

1.19 The new COBS provisions will be of direct interest to institutional investors participating in securities offerings. They will also be relevant to individual retail investors directly participating in such offerings, or whose funds are being invested in these securities through institutional investors (eg through a pension fund).

Equality and diversity considerations

1.20 We have considered the equality and diversity issues that may arise from the Handbook changes set out in this Policy Statement.

1.21 Overall, we do not consider that these changes adversely impact any of the groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Next steps

1.22 As noted in CP17/5, to minimise potential disruption to existing or prospective IPOs, we recognise the need for an implementation period between now and the date at which the Handbook changes come into force. The new COBS provisions will therefore take effect on 1 July 2018. This will provide a window for us to work with relevant trade associations to develop industry guidelines to support firms following the new COBS 11A rules requiring syndicate banks to provide unconnected analysts with management access.

2 New COBS 11A rules governing the timing and sequencing of information during the equity IPO process

2.1 This chapter summarises the stakeholder feedback we received on the COBS 11A rules proposed in CP17/5, our responses to that feedback, and changes that we have made to our proposals.

2.2 Responses have been grouped by theme, rather than corresponding to the specific questions asked within CP17/5, since these represent the structure of the feedback raised by respondents.

Flexibility permitted under COBS rules and implications for the length of the IPO timetable

2.3 When designing the COBS rules proposed in CP17/5, we sought to address the harms identified while ensuring that issuers and syndicate banks have sufficient flexibility over how best to conduct transactions on a case-by-case basis. Where unconnected analysts are offered access to the issuer's management alongside connected analysts, the proposed rules would allow connected research to be released from one day after an approved prospectus or registration document is published. Otherwise, connected research could not be released until at least seven days after an approved prospectus or registration document.

2.4 The majority of respondents told us that syndicate banks are likely to encourage issuers to provide unconnected analysts with management access separately from connected analysts, triggering the seven-day gap between the publication of an approved prospectus or registration document and the release of connected research. ECM divisions within both large and small investment banks told us that they are likely to advise issuers on this basis. Some in the investment banking community thought that the involvement of unconnected analysts before the publication of a registration document might compromise the confidentiality of an IPO, notwithstanding the use of non-disclosure agreements. They expressed concern that they would have less oversight of what unconnected analysts said in their research.

2.5 Respondents within the investment banking community said that, under this route, the issuer is likely to publish a registration document seven days ahead of the Intention to Float (ITF) announcement and the release of connected research. Some firms told us that, in doing so, they would look to stage an unconnected analyst briefing shortly after the registration document is published, to allow sufficient time for follow-up questions before connected research is released.

Perceived additional execution risk

2.6 Under this scenario some smaller banks argued that the seven-day gap between a registration document and connected research would lengthen the IPO timetable. They told us that the registration document would signal that an IPO is on its way and effectively mark the beginning of the public phase of the process. Some of

these banks, together with some corporate finance advisory firms, were concerned that this could increase execution risk for the issuer, making an IPO a less attractive capital-raising option or make the UK IPO process less attractive than that in other jurisdictions. One bank told us that, to minimise execution risk, issuers might carry out more 'pilot fishing' to gauge investor interest at an earlier stage and provide them with greater certainty that an IPO would be successful. Other banks recognised that it may also be possible to reduce the investor education phase from two weeks to one week, given that investors would already have had a week to analyse the registration document.

2.7 However, concern about additional execution risk was not shared by a number of larger investment banking firms, some smaller banks, some within the corporate issuer community, or by a large corporate finance advisory firm. These firms emphasised that this change to the IPO process would not increase execution risk for the issuer, especially if over time market practice transitioned to a US-style model with a 'shelf' registration document. One corporate issuer told us that the proposed COBS rules should help move the UK towards this model, which would give issuers flexibility to take a decision on whether or not to pursue an IPO at short notice, and would make for a nimble process.

Our response

We note the feedback received from some smaller banks suggesting that the proposed COBS 11A rules could increase execution risk for the issuer. However, we consider the COBS rules proposed in CP17/5 will bring about benefits that outweigh any perceived increased execution risk. The rules will improve the range and quality of the information available to investors, helping them to provide more informed feedback on the issuer and make more informed investment decisions. This should, in turn, boost investor confidence, enhance the efficiency and integrity of price formation, and make the IPO process a more cost-effective route for issuers to raise capital.

In any case, the flexibility permitted under our proposed COBS rules would enable syndicate banks to avoid the seven-day gap between the publication of an approved registration document and the release of connected research, were unconnected analysts offered management access alongside connected analysts. To the extent that the issuer and syndicate banks are prepared to subject themselves to the seven-day gap, there are at least four alternative ways that banks can mitigate against any additional execution risk that may result. These are as follows:

- **Reducing the length of the investor education phase:** Given that prospective investors will already have had one week to digest the information within the registration document before any connected research is released, investors could begin to form a view on the company and its investment proposition. As noted by some respondents, one possible market response to the reforms is to reduce the investor education phase from two weeks to one week.

- **Carrying out additional meetings with prospective investors at an**

early stage: One investment bank told us that that any additional execution risk could be offset by placing greater emphasis on gauging investor interest in an IPO at an early stage before the publication of a registration document or an ITF announcement. For example, this may come through 'pilot fishing', which typically takes place after an issuer has determined that an IPO may happen (it can be either before or after the analyst presentation), and a syndicate has been formed. At an even earlier stage, 'early look' meetings are used to help the issuer decide whether an IPO is the most appropriate route to raise capital. If following this route, market participants should take any necessary measures to ensure compliance with the Market Abuse Regulation (MAR).

- **Not distributing connected research:** The new COBS 11A rules are contingent on syndicate banks distributing connected research. It appears that the main reason that syndicate banks want to publish a registration document seven days ahead of an ITF announcement and connected research is to leave the public phase of the IPO process unchanged at four weeks. However, if banks opt not to distribute connected research then they will not need to publish the registration document seven days before the ITF announcement. Instead, this document could be published at the same time as the ITF announcement, when banks will otherwise aim to release connected research.

- **Not providing connected analysts with management access:** If issuers and syndicate banks have a preference to distribute connected research, they will also have an option to manage any perceived additional execution risk by not providing connected analysts with management access. If banks pursue this option, there is no obligation to impose a gap between the registration document and connected research, though there would be a natural time lag whilst the connected analyst prepares research off the back of the publicly available approved prospectus or registration document.

Level playing field between connected and unconnected analysts

2.8 In CP17/5 we asked questions to understand whether our proposed COBS 11A rules sufficiently level the playing field between connected and unconnected analysts. In their responses some independent research providers stressed the importance of creating an entirely level playing field between connected and unconnected analysts, and expressed some concern that the proposals might not achieve this. We were told by some firms that a meeting alongside connected analysts in the private phase of the process is most likely to achieve a level playing field, but that connected analysts may still have access to additional information (eg a draft prospectus) through informal channels.

2.9 Several independent research providers told us that they would ideally prefer to see the registration document before meeting the issuer's management since it would allow them to ask more informed questions and make for a more productive meeting. In that sense these firms appeared to be comfortable with the sequencing envisaged

by the investment banking community and their ability to produce research within seven days in time to support investor education and initial price discovery. This view was shared by research divisions within some large investment banks, in relation to their possible role as unconnected analysts.

2.10 A view from within the corporate issuer community was that, where unconnected analysts meet the issuer's management separately from connected analysts, there should be at least one physical meeting, webcast or conference call (ie not email exchange), to ensure identical information is shared with all unconnected analysts. This would be to avoid selective disclosure to individual unconnected analysts or one-to-one engagement, which would be more costly for issuers.

2.11 Some large investment banks argued that there should no obligation for them to provide unconnected analysts with management access on an entirely level playing field to connected analysts. We were told that this could ignore the specialist internal due diligence advisory role of connected analysts on behalf of the overall investment bank (see discussion in Chapter 4 in relation to the proposed COBS 12 guidance). These respondents suggested that the rule should instead permit the avoidance of a seven-day gap between the registration document and connected research as long as unconnected analysts have been offered management access at least seven days before the registration document is published. These firms noted our comments in CP17/5 that unconnected analysts have previously signalled that they could produce research in seven days.

Our response

Under the new COBS 11A rules, syndicate banks may choose to provide unconnected analysts with access to management alongside connected analysts. The intention is to put unconnected analysts on a level playing field with connected analysts to enable them to produce research to an identical timetable. As noted in CP17/5, the reason that the rules permit unconnected analysts' involvement on a separate track is to take account of perceived practical concerns expressed by banks and issuers in relation to the need to maintain confidentiality before the transaction is announced to the market.

In this 'level playing field' route any communication between connected analysts and the issuer and/or its representatives outside the investment bank (eg shareholders, corporate finance advisers and lawyers) will need to be opened up to unconnected analysts. This would include any ad hoc sharing of information with connected analysts, which might exceed that provided in the presentation to analysts.

Feedback from stakeholders suggested that issuers are likely to be led down the route of providing unconnected analysts with management access after the publication of the registration document. Since several independent research providers told us that they would ideally prefer to see the registration document before meeting management, they appear to be comfortable with this order and that they could produce research within seven days, in time for investor education and initial price discovery.

We note the feedback received from the corporate issuer community in relation to avoiding selective disclosure to different unconnected analysts where such analysts access the issuer's management separately from connected analysts. We also note that this includes concerns that one-to-one engagement with different unconnected analysts would be more costly for issuers compared with a situation where all unconnected analysts were engaged as part of a single communication.

We have amended the new COBS 11A rules to make it clear that, where syndicate banks choose to provide unconnected and connected analysts with separate access to the issuer's management, the information that each unconnected analyst receives must be identical, and the same as that given to connected analysts. A firm will be able to use a single communication channel with those unconnected analysts in order to meet these requirements (eg by inviting them all to the same meetings with the issuer's management). To support our supervision of this new COBS 11A rule, we have also included a requirement for firms to make and retain a written record of the information shared with both connected and unconnected analysts. We expect this to create costs of only minimal significance, and do not expect it to materially affect the CBA set out in CP17/5.

Management access for unconnected analysts and the market for unconnected IPO research

Determining unconnected analysts to be offered management access

2.12 In response to our question in CP17/5 on the effectiveness of the proposed COBS 11A rules, a few stakeholders within the investment banking and legal communities told us that it would be difficult for syndicate banks to make a judgement on the appropriate range of unconnected analysts to be given management access. We were told by some respondents that, to avoid having to make this judgement, banks might end up inviting all unconnected analysts to a town-hall style meeting. These respondents noted that, to preserve the confidentiality of the transaction, this would only be possible where unconnected analysts are offered management access after the publication of a registration document.

2.13 Conversely, some independent research providers thought that the proposed rule would place too much power in the hands of syndicate banks, creating a risk that they would select unconnected analysts that are likely to have a positive view of the company.

2.14 More generally, some within the corporate finance advisory community thought that providing unconnected analysts with management access might cause the issuer to lose control of the messaging around the IPO, and that there is a risk that these analysts might have a negative view on the company. Others told us that, while they did not oppose the idea of unconnected analyst briefings, these should not be mandated and should be determined on a case-by-case basis. It might be appropriate that confidentiality is fully preserved on certain transactions. However others fully supported rules providing unconnected analysts with management access, and

advocated a single meeting with both connected and unconnected analysts to avoid selective disclosure.

2.15 A limited number of respondents from institutional investors stated that, in addition to analysts from non-syndicate banks and independent research providers, analysts employed by institutional investors should be allowed to attend unconnected analyst briefings.

Terms of access

2.16 The new COBS 11A rule proposed in CP17/5 also specified that syndicate banks would need to provide unconnected analysts with management access on 'reasonable terms', and suggested that geographical restrictions on the distribution of any resulting research would be deemed 'reasonable'. In response to Question 5 in CP17/5 some independent research providers stated that geographical restrictions might be reasonable, but only if they are also placed on connected analysts. Respondents within the investment banking community, on the other hand, agreed that a geographical restriction was a 'reasonable' term of access, noting that legal liability risks are likely to arise if research is distributed in some other jurisdictions, notably the US. In response to our question in CP17/5 on possible amendments to the proposed rules, these respondents suggested that a timing restriction (ie unconnected analysts cannot release their research before the release of connected research, which is subject to a timing restriction under the new COBS 11A rules) is also 'reasonable'.

Likelihood that unconnected research will emerge

2.17 Some respondents within the investment banking and corporate finance advisory communities were sceptical about the extent to which unconnected research will emerge, particularly on smaller IPOs. These respondents were unclear whether institutional investors are likely to demand a third-party view on the smallest transactions, and whether there would be a viable commercial case for providers of unconnected research on such transactions.

2.18 We were, however, told by some independent research providers that they frequently face demand for unconnected research, but have been unable to satisfy such demand due to a lack of available information. In fact, independent research providers said that they have been encouraged by their investor clients to capitalise on the opportunities created by the proposals in CP17/5. While some of these firms predict that the level of demand for unconnected research on smaller companies in an IPO context will be modest, all firms thought that we should at least intervene to remove any unnecessary barriers to its production. Feedback on this issue from institutional investors matches that of independent research providers.

Our response

The current market practice of (i) delaying the publication of an approved prospectus, and (ii) not providing unconnected analysts with an opportunity to communicate with the issuer's management, means that analysts from outside of the syndicate banks face very high barriers to producing IPO research. These barriers are reinforced if corporate finance firms and syndicate banks advising the issuer wish to control the messaging around the offering, which they may consider jeopardised by the involvement of unconnected analysts. This practice undermines the role of research and the core function of an analyst. It also prevents

competitive dynamics from enhancing the quality of connected research, and investors from accessing a diverse range of views on the offering and the issuer's prospects.

As set out in the cost-benefit analysis (CBA) in CP17/5, the COBS rule requiring syndicate banks to provide unconnected analysts with management access could be complied with at low cost. If access were given alongside connected analysts at the analyst presentation, banks or issuers would not face a material increase in variable costs by expanding that meeting. If, however, access were given separately from connected analysts, there would be additional costs from having to hire a venue. That said, the rules permit access to be offered through alternatives to a physical meeting, eg web-based, conference calls or email exchanges. If these alternative modes of communication were adopted, costs are likely to be reduced significantly.

Determining management access

The new COBS 11A rule has been designed to ensure that syndicate banks are rigorous in adhering to the rule's underlying rationale when deciding on the range of unconnected analysts to be given management access. We believe that firms should ultimately be able to make this judgement. The rule also requires firms to create a written record of the assessment underpinning the judgement they make, which will assist with our supervision of the rule.

Even so, to support firms following this rule, we envisage collaborating with relevant trade associations representing potential producers of unconnected research (eg those representing investment banks and independent research providers) to develop some industry guidelines that help make this judgement (and also to determine the 'reasonable' terms of access).

These trade associations could then provide all potential producers of unconnected research with an opportunity to sign up to these guidelines, with those that do so becoming eligible to be offered management access on any equity IPO. These guidelines would potentially be developed during the implementation window (see section 'Implementation timetable for new COBS 11A rules'). The involvement of independent research providers in the development of these guidelines would also ensure that the range is determined in a balanced way.

Terms of access

We note the feedback received on the 'reasonable' terms of access for unconnected analysts. To the extent that the purpose of any geographical restrictions on the distribution of research is to manage legal liability risk, they would apply to both connected and unconnected research. We therefore agree with the view that geographical restrictions imposed on the distribution of unconnected research would only be 'reasonable' if they are also imposed on connected research. On this basis, we have amended the new COBS 11A rule to remove reference to geographical restrictions.

The revised rule now specifies that restrictions imposed on unconnected analysts as a term of access must not be 'unreasonable'. Under a new evidential provision the rule recognises that a restriction would be unreasonable if it prevented an unconnected analyst from producing and disseminating research in circumstances in which connected analysts have been able to produce and disseminate research. In other words, unconnected analysts should not face terms of access that are any more restrictive than those imposed on connected analysts.

To support our supervision of this new COBS 11A rule, we have also included a new requirement for firms to make and retain a record of any restrictions placed on unconnected analysts as a condition of being offered management access. This record will need to be made at the time the offer of management access is communicated to those unconnected analysts. We expect this to create costs of only minimal significance and would not materially affect the CBA set out in CP17/5.

Tripartite prospectus model

2.19 In CP17/5 we explained that, under the proposed rules, we had envisaged an adoption of the tripartite prospectus model allowed under EU prospectus legislation if an issuer has decided to use this route. In other words, where an approved registration document rather than a single approved prospectus is published before connected research is released, the issuer would then publish a securities note and summary document at a later stage in the process.

2.20 We noted that the investment banking community had indicated that, once an approved registration document is published, they preferred to revert to a single approved prospectus containing a price range. They stated that this could be published at the beginning of the management roadshow and book-building. In light of the fact that this approach appeared to be different to the adoption of the tripartite model which we had envisaged, we asked respondents for feedback on the relative merits of each approach.

2.21 In their responses stakeholders from the investment banking and legal communities clarified that the single approved prospectus document mentioned above would, in fact, be a tripartite prospectus that is bound together. Some noted that, to manage legal liability risk, their preference would be to have all prospectus information in one place at the beginning of the management roadshow. One law firm told us that the reason for having all prospectus information in a single document would be to manage transaction risk rather than legal liability risk. Another respondent said that this approach would be preferable where there had been a significant delay between the publication of a stand-alone approved registration document and the ITF announcement because publishing a new consolidated document would be the most efficient way to reflect any updates to the registration document. These respondents asked us to clarify that an issuer can choose to adopt either of the models described above. Respondents also asked us to confirm at what point in time we would approve these documents under the two routes set out above.

2.22 All respondents advocating the reversion to a single tripartite prospectus told us that any revisions to the earlier registration document would be clearly presented as an update in the single prospectus. These respondents stated that updates were more likely if there were an eventual transition towards a US-style model with a 'shelf' registration document that was made available far in advance of any ITF announcement and connected research. These respondents also asked us to clarify what obligation exists to update a registration document after it is approved by the FCA. One respondent said that, where there is only a short period of time after the publication of the registration document and the ITF announcement, issuers should be able to publish any updates in a separate stand-alone section of the single prospectus setting out, or referring to any updates.

Our response

Where a registration document is approved by the FCA, issuers seeking admission may choose to follow this with either a securities note and summary document or a single prospectus. Under both routes, the documents following the standalone approved registration document would need to be approved by the FCA prior to their filing and publication.

There is an obligation to update an approved registration document when it is being used as a constituent part of a prospectus (PR2.2.5R in the FCA Handbook). PR2.2.5R applies where a person requesting admission has already had a registration document approved by the FCA and is now drawing up the securities note and summary. In this circumstance, according to PR2.2.5R, the securities note must provide information that would normally be provided in the registration document where there has been a material change or recent development which could affect an investor's assessment since the latest update registration document was approved, unless such information is provided in a supplementary prospectus. Where a single approved prospectus is being used, the integrated document would contain updates to the registration document.

It may be the case that issuers and their advisers wish to communicate any revisions to analysts (eg through a further analyst presentation) prior to including them in the official documentation following the original registration document. The COBS 11A rules require that any such communications are made to both connected and unconnected analysts. Indeed, these rules have been designed to ensure that unconnected analysts are provided with substantively the same information as connected analysts.

Practical implementation issues relating to the transaction review process

2.23 In CP17/5 we asked whether the proposed COBS 11A rules had any practical implications for the transaction review process.

Sponsor regime

2.24 Respondents within the legal, investment banking and accounting communities raised questions regarding the sponsor's role in the preparation of the registration document. They asked for clarification from the FCA on whether:

i. a registration document requires the appointment of a sponsor,

ii. a sponsor declaration is required for a registration document, and

iii. the preparatory work that the sponsor undertakes on the registration document constitutes a sponsor service under the Listing Rules.

2.25 Some respondents also asked us to confirm that sponsors' (or other advisers') names are not required in or on the registration document.

Eligibility review process

2.26 A number of respondents from the accountancy and sponsor communities asked us to clarify whether we will confirm the eligibility of a premium listing applicant at the time the registration document is approved. Some of the accountancy firms asked how we would assess eligibility for premium listing ahead of price discovery and fundraising when there is material uncertainty about a company's ability to continue as a going concern and the accountant's report is modified to highlight this uncertainty, or where the market capitalisation of the issuer[5] is required in order to assess the 75% representative financial history requirement. Some accountancy firms also asked us to clarify whether LR6.1.3R(1), requiring the latest balance sheet date to be no more than six months before the date of the prospectus, would apply to the registration document.

Other implementation issues

2.27 Some of the respondents from the accountancy community observed that the financial information and accountants' reports prepared for a registration document may require updating at the point the single prospectus is approved, in order to reflect events that have occurred since the publication of the registration document. These respondents queried whether the registration document should include an unmodified report taking into account the fundraising, or a second pro forma to illustrate the effects of the fundraising.

2.28 A number of respondents from the accountancy community queried the applicability of PR5.5.3R on prospectus responsibility to the registration document and asked us to clarify this.

2.29 One respondent asked for clarity on the applicability of the financial promotion regime under section 21 of FSMA and the Prospectus Directive advertisement rules to the registration document.

5 This is one of the factors in LR6.1.3CG(2).

2.30 One respondent asked us to confirm that disclosure of potential stabilisation in the approved registration document should not be required in order to enable the issuer to benefit from the relevant safe harbour in MAR.

2.31 Finally, respondents have asked us to clarify the filing and publication process for the approved registration document.

Our reponse

Sponsor regime

A company applying for a premium listing of its equity shares must appoint a sponsor when it is required by LR 8.4.3R(4) to submit an eligibility letter to the FCA (LR 8.2.1(8)R) and when a prospectus is required to be submitted to the FCA in connection with the application (LR8.2.1R(1)(a)). As a registration document can form a constituent part of a prospectus, it follows that, in this context, its preparation and the related application for premium listing requires a sponsor to be appointed. The sponsor principles set out in LR8.3 will apply to the preparation of the registration document in this scenario.

Where, however, a registration document is prepared as a standalone document and the issuer is not applying for a premium listing at that point in time, there is no requirement within LR8.2.1R for a sponsor to be appointed. Should an issuer publish a standalone registration document and subsequently decide to apply for premium listing, a sponsor will be required to be appointed for the purpose of that application for listing. Whether work on a registration document prepared as a standalone document could be regarded as 'preparatory work' and therefore potentially within the definition of 'sponsor services' will depend on the circumstances in which the registration document is prepared.

Under LR8.4.3R a sponsor must submit a Sponsor's Declaration on an application for listing to the FCA on the day the FCA is to consider the application for approval of the prospectus. It follows that a Sponsor's Declaration is not required in relation to the registration document alone.

Disclosing the names of sponsors and other advisers on the front page of a prospectus is a convention as opposed to a requirement under the Prospectus or Listing Rules. It is therefore for sponsors and advisers to decide whether to continue with this convention for the registration document.

Eligibility review process

We do not envisage the eligibility review process materially changing as a result of the new COBS 11A rules. The approved registration document is not designed to be proof of eligibility for listing. However, as is current practice with a draft prospectus, we would continue to provide a preliminary view on eligibility based on the information available to us at the date of the registration document. Any preliminary view will be conditional, and proportionate to the completeness and accuracy of information available to us at that date. We would expect a sponsor to highlight early in the eligibility review process whether there is a risk

that an eligibility rule may not be met. Our view on eligibility will only be confirmed after approval of the prospectus. Regarding the application of LR6.1.3R(1)(b), we would apply this rule from the date of the prospectus.

Other implementation issues

Where the accountant's reports or other information (for example historic or pro forma financial information) in a registration document have been superseded, we would expect updated reports to be included either in the securities note, or in the prospectus.

Prospectus responsibility under PR5.5.3R only attaches to a prospectus. Annex I of the Prospectus Regulation requires a declaration by persons responsible for the registration document to be included in the registration document. Since a standalone registration document does not constitute a prospectus, there is no prospectus responsibility that attaches to it. Persons responsible for a registration document should seek legal advice if they are unsure of their liability in relation to a registration document. Consistent with current practice in registration documents, we would expect the Annex 1 requirement for a responsibility statement to be met in the registration document by those responsible for the information contained in it.

Provided the registration document contains only the minimum disclosure requirements of Annex I of the Prospectus Regulation and does not communicate an invitation or inducement to engage in investment activity (as envisaged under section 21 of FSMA) and does not contain anything which can be objectively regarded as inciting a person to engage in investment activity, it will not constitute a financial promotion under that section. Once a registration document forms part of a prospectus, it does constitute a financial promotion, but it benefits from an exemption under article 70 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529).

Provided the registration document contains only the minimum disclosure requirements of Annex I of the Prospectus Regulation and does not:

- relate to a specific offer to the public of securities or to an admission to trading on a regulated market, or
- aim specifically to promote the potential subscription or acquisition of securities,

it will not constitute an advertisement as defined in article 2(9) of the Prospectus Regulation. Once the registration document forms part of an approved prospectus, it does not constitute an advertisement as it is a prospectus under section 85(1) of FSMA.

Not disclosing potential stabilisation in the registration document would not exclude the issuer from taking advantage of the relevant safe harbour provided under MAR. Annex III of the Prospectus Regulation sets out the minimum disclosure requirements for the securities note and item 6.5 sets out the minimum disclosure requirements for

stabilisation. Issuers seeking to take advantage of the stabilisation safe harbour will need to adhere to these requirements together with those in article 5 of MAR.

Currently approved prospectuses and registration documents are filed with the FCA and made available to the public in accordance with PR3.2, and we do not expect this to change.

Implementation timetable for new COBS 11A rules

2.32 In CP17/5 we stated that, to minimise potential disruption to existing or prospective IPO transactions, we would allow a sufficient period between the PS setting out any Handbook changes, and the date at which those changes come into force. We requested stakeholder feedback on the appropriate length of this implementation period.

2.33 Some respondents within the legal and investment banking communities stated that it would benefit market participants if the new COBS 11A rules were introduced gradually with an initial time period during which adherence to the new rules were optional. These respondents suggested that we introduce the new rules during a time of the year when IPO activity is typically lower, eg shortly before or after the Christmas break or in the summer during July and August. They thought that, ideally, the market would be given sufficient lead time for IPOs already in preparation to continue without modification, but IPOs due to launch (ie publish the ITF announcement) after a specified date must follow the new rules.

Our response

As noted in CP17/5, we recognise the need for an implementation period between now and the new COBS 11A rules coming into force. Besides minimising the potential disruption to existing or prospective IPOs, this also provides a window for us to work with relevant trade associations to develop industry guidelines to support firms following the new rules requiring syndicate banks to provide unconnected analysts with management access (see 'Management access for unconnected analysts and the market for unconnected IPO research').

The new COBS 11A rules will take effect on 1 July 2018. This means that the rules would only apply if all of the key events governed by the new rules (namely analyst presentations, the publication of a prospectus or registration document, or the release of connected research) take place from this date.

3 Application of new COBS 11A rules to IPOs on MTFs

3.1 In CP17/5 and based on initial evidence, we said that the timing and sequencing of information for IPOs on MTFs is similar to that on regulated markets which, on the face of it, suggests that the same types of harms and market failures could arise.

3.2 We asked a question to try to understand in greater detail the similarities and differences between IPO processes for transactions on regulated markets and MTFs, and whether it would be appropriate to extend the COBS 11A rules to IPOs on MTFs. We indicated that, if appropriate, we would launch a separate consultation alongside the PS for CP17/5.

Evidence of harms and market failure during IPOs on MTFs

3.3 Feedback from respondents from investment banks, institutional investors and independent research providers confirmed that the timing and sequencing of information during an IPO on a regulated market and one on an MTF are broadly the same.

3.4 In an IPO on an MTF, connected research plays a central role during investor education and initial price discovery, and a final official offering document[6] is only made public at the end of the process, once the book has been built. This suggests that unconnected analysts face barriers to producing IPO research.

3.5 Various respondents told us that there would typically only be one or two investment banks managing an IPO on an MTF, which means that there would be fewer pieces of connected research than in a regulated market context. A number of smaller investment banks stated that research would typically be labelled as 'non-independent' (ie a marketing communication) for the purposes of COBS 12, which is subject to less prescriptive conflicts of interest provisions than investment research.

3.6 Some respondents told us that, given the sequencing and timing of information and the barriers to unconnected research being produced, the COBS 11A rules proposed in CP17/5 should apply to IPOs on MTFs. These respondents included institutional investors and a small investment bank, all of which are frequently involved in these markets. An investment bank, for example, stated that it would be helpful for issuers to have a common process for IPOs in both regulated markets and MTFs, particularly where a company is of a size that could participate in either type of market. A number of other banks suggested that, given this overlap, we should draw a distinction between large and small companies rather than between regulated markets and MTFs.

3.7 A limited number of investment banks thought that a failure to extend the proposed COBS 11A rules to IPOs on MTFs could potentially encourage issuers to IPO on an MTF

6 An IPO on an MTF would not typically have a prospectus given that it does not involve an offer to the public, nor does it result in shares being admitted to trading on a regulated market.

rather than a regulated market, thereby creating a risk of regulatory arbitrage. Other firms, however, did not consider this to be a material risk, with one institutional investor noting that issuers would typically brand themselves as appropriate for either an MTF or a regulated market well in advance of an IPO being formally considered.

Perceived absence of any market failure

3.8 However other respondents including small investment banks and an MTF operator suggested that there are no significant asymmetries of information between the issuer and investment banks on the one hand, and investors on the other. They stated that the small number of large specialist institutional investors involved in these transactions means that they hold the balance of power over issuers and investment banks, partly because there are often only one or two smaller investment banks managing the transaction.

3.9 We were told that significant emphasis is placed on gauging interest in an IPO from institutional investors (eg through 'pilot fishing'), which means that these investors obtain information on the issuer at a very early stage of the transaction. This can include access to a draft offering document, as well as its various iterations, before a more finalised draft is circulated ahead of book-building. A small number of institutional investors active in IPOs on MTFs confirmed that information asymmetries appear to be less skewed in favour of issuers and syndicate banks than in a regulated market context.

3.10 A number of respondents within the investment banking community expressed scepticism over the extent to which unconnected research will emerge on the small issuers that seek to raise finance by IPOs on MTFs. This view was shared by a limited number of institutional investors and an MTF operator. These respondents argued that there is unlikely to be a viable commercial case for providers of unconnected research on these transactions.

Our response

Feedback suggests that the timing and sequencing of information during an IPO on a regulated market and on an MTF are broadly the same, perhaps with the exception of early informal access to a draft offering document in an MTF context. That is, a final official offering document is made publicly available at the end of the management roadshow and book-build, leaving connected research as the main source of the written information used for investor education and initial price discovery. The late availability of an official offering document, and lack of access to the issuer's management, means that unconnected analysts are unable to obtain the necessary information to produce unconnected research.

Despite the broad timing and sequencing of information being largely the same across both types of market, there are two key differences which bring into question the nature and scale of the market failure in an MTF context. These are as follows:

- During IPOs on MTFs there are a small number of large specialist institutional investors involved, and some respondents argued that they hold the balance of power over issuers and banks. This partly arises because there are often only one or two brokers managing the

transaction. Issuers appear to place greater emphasis on meeting investors in the private phase of the process through 'pilot fishing' exercises, to provide greater certainty that there is sufficient investor interest in an IPO. Interaction between the company and investors is more iterative as the transaction evolves and, during this process, investors can readily request additional information if they wish (including early iterations of the official offering document).

- Smaller companies seeking to raise capital through an IPO on an MTF might be less likely to attract unconnected research, owing largely to lower investor demand and the lack of a viable commercial case for providers of this research.

Despite the more iterative engagement between issuers and institutional investors during IPOs on MTFs, there still appear to be information asymmetries between the issuer and investment banks on the one hand, and institutional investors on the other. Investment banks advising the issuer delay the publication of a neutral, vetted official offering document until late in the process, and institutional investors are forced to rely largely on one or two pieces of connected research and informal engagement with the issuer's management. Indeed, the connected research on these IPOs is likely to be labelled as 'non-independent', which is subject to less prescriptive conflicts of interest provisions than investment research, and is likely to be at even greater risk of bias or being perceived as biased.

This could potentially harm investors who would be making less informed decisions with lower confidence and greater uncertainty. In turn this could also result in less efficient pricing and harm issuers by making the IPO process a less cost-effective route to raise capital.

In addition, the current practice of delaying the publication of an official offering document and not providing unconnected analysts with management access means that IPOs on MTFs lack competition in the production of IPO research. This reinforces the harm potentially arising from the information asymmetries outlined above.

In principle, the case for removing anti-competitive barriers for providers of unconnected research would apply regardless of size. Increasing the likelihood of unconnected research emerging is arguably more important on the smaller IPOs that are common on MTFs, given that there is likely to be less publicly available information on those companies to support investor education and price discovery. We accept, however, that in practice there may be less prospect of unconnected research being produced for smaller IPOs on MTFs.

Implications for the effectiveness of IPOs on MTFs

3.11 A number of brokers active in IPOs on MTFs, as well as an MTF operator, stated that the public phase of an IPO on an MTF is much shorter than it is on a regulated market. They confirmed that the earliest point at which an IPO is made public knowledge is at the beginning of the management roadshow, which suggests that the release of any connected research and subsequent investor education and initial price discovery would happen in the private phase. This is made possible because a small number of investors are heavily involved from a very early stage.

3.12 These stakeholders thought that the confidential nature of this IPO process is attractive to issuers since it minimises the risk of failure, which they argue is a significant reputational risk for early-stage companies seeking to raise capital through IPOs on MTFs. They thought that an earlier publicly available official offering document and any involvement of unconnected analysts might compromise the confidentiality of an IPO, thereby increasing execution risk.

3.13 We were also told that an earlier official offering document would imply a more final investment proposition, which would prevent issuers from iterating the document based on investor feedback as the transaction evolves.

Our response

We recognise that applying the new COBS 11A rules to IPOs on MTFs would lengthen the public phase of the process to become more in line with IPOs on regulated markets. This would make them more open, transparent and potentially inclusive of a wider range of institutional investors. Indeed, a wider range of higher quality information would help investors provide more informed feedback on the issuer and could lead to more informed investment decisions, boosting investor confidence, enhancing the efficiency and integrity of price formation, and making the IPO process a more cost-effective route for early-stage companies to raise capital.

This potential benefit needs to be carefully considered against the risk that a longer public phase could deter early-stage companies from pursuing an IPO on an MTF, which would bring into question the effectiveness of any reformed IPO process.

On balance we have decided not to apply the new COBS 11A rules to IPOs on MTFs, especially since the amount of unconnected research that is likely to emerge in this context is unclear. However, considering the overlap between the larger companies seeking admission to trading on an MTF and the smaller companies seeking admission to trading on a regulated market, we consider it best practice for larger IPOs on the former to adopt the same process as on the latter. In other words, we encourage firms providing underwriting or placing services to larger companies raising capital through an IPO on an MTF to consider following the new COBS 11A rules.

As part of our post-implementation evaluation of the effectiveness of the reforms, we will take stock of market practice underpinning IPOs on MTFs, and revisit the question of whether we should extend the new COBS rules to these types of transactions. We would allow at least one year from the date at which the new COBS provisions come into force before we conduct this assessment.

4 New COBS 12 guidance to address conflicts of interest in the production of connected research

4.1 Our current guidance in COBS 12[7] states that an analyst should not become involved in activities which might compromise their objectivity. The existing guidance then provides examples of activities which would ordinarily be inconsistent with an analyst's objectivity, including participation in investment banking activities such as corporate finance business and underwriting, and participation in pitches for new business.

4.2 The new guidance proposed in CP17/5 was intended to supplement the current guidance in COBS 12 mentioned above, to clarify that we would regard 'participating in pitches for new business' to include where an analyst interacts with the issuer's management, shareholders or corporate finance advisers 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 contractually agreed.

Conflicts of interest during the production of connected research

4.3 In response to our question in CP17/5 on the effectiveness of the proposed COBS 12 guidance, research and research compliance divisions within some investment banks told us that, in addition to producing connected research for the purposes of investor education, a connected analyst has the following two further roles during a typical IPO process:

- Vetting the issuer and using information gathered as part of this exercise to provide an internal-facing 'due diligence' advisory role to the overall investment bank, prior to underwriting or placing mandates being awarded.
- An internal-facing on-going due diligence advisory service to the overall investment bank, which is provided once an underwriting or placing mandate has been awarded.

Pre-mandate vetting of the issuer

4.4 We were told that the first additional role outlined above helps the firm to determine whether:

i. the ECM division should participate as an underwriter on the IPO,

ii. the proposed timing of the IPO is appropriate for the company (ie whether it is ready), and

7 See PS17/4: Markets in Financial Instrument Directive II Implementation - COBS 12.2.21EU is replacing previous guidance in COBS 12.2.9G following the MiFID II implementation exercise.

iii. there are any reputational risks for the firm or others relating to the issuer or the proposed transaction that need to be addressed when executing the transaction.

4.5 Respondents told us that an analyst's views on these issues might feed into the decision-making process through an internal review committee.

4.6 However, the majority of respondents agreed that during these pre-mandate vetting meetings analysts can come under significant pressure by the issuer or its representatives to produce favourable research. This majority supported the new COBS 12 guidance proposed in CP17/5 intended to address this risk. A large corporate finance advisory firm which strongly opposed the proposed COBS 12 guidance, thought that the issuer has a right to know that the analyst is going to support the IPO, and that it is the analyst's role to sell the deal to investors on behalf of the issuer. The same view was held by a large corporate issuer, which told us that, when considering which banks to appoint to the syndicate, issuers are effectively awarding mandates to analysts. Another corporate finance firm, on the other hand, supported our proposal, recognising the conflict of interest that arises during these meetings, and the potential for bias to be imparted to connected research.

4.7 A number of respondents from within the legal community also broadly supported our proposed COBS 12 guidance, noting that banks find existing market practice awkward given the pressure analysts come under to write positive research. One law firm stated that, given the powerful conflicts of interest that arise during the production of connected research, systems and controls within investment banks are coming under increasing strain. They also suggested that we should use this consultation to examine the broader conduct risks stemming from wider interaction between analysts and the issuer's representatives during the production of connected research. The firm did, however, caution against preventing legitimate communications, such as those during the analyst presentation and follow-up questioning of the company.

Post-mandate on-going due diligence role

4.8 We were told by some research and research compliance divisions that, in the context of an IPO, the post-mandate on-going due diligence advisory role (ie the second role outlined above) helps the investment bank to determine the extent to which any risks that emerge as the transaction evolves might make the issuer less suitable for an IPO.

Our response

The feedback we have received confirms the importance of introducing the new COBS 12 guidance proposed in CP17/5. It further supports our view that significant conflicts of interests arise when analysts within prospective syndicate banks interact with the issuer's management, shareholders and advisers around the time that underwriting or placing mandates are being considered (ie when the analyst is carrying out its pre-mandate vetting and internal-facing due diligence advisory role). Analysts can face significant pressure to produce favourable research to help their bank secure a position on the syndicate and to determine a bank's syndicate positioning. The nature of this engagement heightens the potential for bias to be systematically imparted to connected research. The majority of respondents supported the introduction of

additional guidance to supplement our current guidance in COBS 12[8]. This new guidance is intended to reinforce our existing framework in COBS 12 as well as the benefits introduced by the new COBS 11A rules.

The internal-facing on-going due diligence advisory service provided by analysts to the investment bank can also create a conflict of interest. For example, if as part of this role the analyst revealed their support for the ECM division's involvement in the IPO to protect their professional reputation, the analyst may then have an incentive to exaggerate the positive messaging in the connected research to ensure that the company is widely seen as being a good investment opportunity for prospective investors.

When a firm is considering allowing its analysts to provide an internal-facing due diligence advisory service, it must carefully consider its obligations under SYSC 10 which, among other things, require firms to have in place measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities. Under SYSC, a firm is also required to have in place measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where it may impair the proper management of conflicts of interest. This overarching SYSC framework underpins the principle of an analyst's objectivity in COBS 12, as well as our current guidance in COBS 12, which states that analysts should not participate in investment banking activities such as corporate finance business.

Moreover, firms should carefully consider the new provision COBS 12.2.21EU introduced under MiFID II which, in line with our existing regulatory expectations, explicitly requires firms to introduce a physical separation between analysts and other persons whose responsibilities or business interests may conflict with the interests of the recipients of the research. Physical separation should exist unless it is not considered appropriate for the size and organisation of the firm, as well as the nature, scale and complexity of its business. In these circumstances, the firm must establish and implement appropriate alternative information barriers.

Scope of the new COBS 12 guidance

Period over which a pitch lasts

4.9 In response to the possible amendments to the proposed COBS 12 guidance, respondents from the research and ECM divisions within the investment banking community argued that the guidance should not capture perceived legitimate interactions between analysts and private companies before formal pitching efforts begin. In particular, analysts often meet with companies well before any IPO is formally

8 See PS17/4: Markets in Financial Instrument Directive II Implementation - COBS 12.2.21EU is replacing previous guidance in COBS 12.2.9G following the MiFID II implementation exercise.

contemplated to form a view on sector trends and inform their coverage of existing listed companies.

4.10 We were told that, alongside these interactions and without the analysts' knowledge, ECM divisions also meet the private company to convince them to pursue an IPO as a capital-raising option. As currently drafted, respondents stated that the COBS 12 guidance proposed in CP17/5 might prevent these communications. They argued that the appropriate point in the process for the guidance to take effect would be when the analyst becomes aware that the issuer has determined to proceed with a transaction and the ECM division of the investment bank is formally pitching for a mandate to manage the securities offering. In practice this might be the point at which the company seeking an IPO issues a Request for Proposal.

4.11 In CP17/5 we stated that a pitch included any interaction between an analyst and the issuer's 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 contractually agreed. Some respondents within the investment banking and legal communities expressed concern with the term 'contractually agreed'. They told us that the precise syndicate positioning might not be contractually determined until quite late in the private phase of the process. For example, it is common for a firm to be appointed as a junior underwriter on the syndicate later in the IPO process, causing adjustment of the relative underwriting obligations of the syndicate banks initially selected to work on the transaction. These respondents stated that the proposal in CP17/5 is likely to result in lengthy and unnecessary delays to the analyst being given access to the issuer's management for due diligence purposes which, as outlined above, they believe to be an important part of the analyst's role. They also suggested that we amend the proposal from 'contractually agreed' to 'determined and communicated in writing by the issuer'.

4.12 We also received some queries on whether the new COBS guidance would apply to producers of non-independent research (ie research labelled as a marketing communication). Some smaller brokers told us that they produce this type of research during IPOs which, provided that it is clearly labelled as a marketing communication, is not subject to the more prescriptive conflicts of interest requirements that apply to investment research. Some of these firms stated that their analysts often attend pitches alongside staff from their ECM divisions and that they are subject to strict guidelines on what they are allowed to say at these meetings, including specific prohibitions on providing a view on valuation. A limited number of small investment banks stated that analysts' attendance at these meetings is necessary for them to fulfil their pre-mandate vetting and internal-facing due diligence role which helps the firm decide whether to accept any mandate to manage the securities offering. These respondents noted that analysts are often best placed to make these judgements within a small firm with insufficient resources to employ ECM staff with specific sector specialisms.

Application where an issuer already has securities admitted to trading

4.13 Research and research compliance divisions within some investment banks argued that the new COBS 12 guidance should only focus on IPOs. They said that it should not cover pitching for mandates to manage other forms of securities offerings where an issuer already has securities admitted to trading (eg secondary offerings, and an initial offering of a spin-off from an existing listed parent company). These respondents thought that the wider scope proposed in CP17/5 would prevent analysts communicating with a company with existing securities admitted to trading, which

they consider necessary for writing research as part of their on-going coverage of a company in a secondary market context. They told us that, where the analyst is unaware of the issuer's proposed transaction or of pitching efforts by the ECM division within its firm, they should be allowed to continue interacting with the issuer's management, shareholders and advisers. Some stated that prohibiting such interactions under these circumstances could risk tipping off the market that a transaction is being contemplated by the issuer. We were told that it is not common for analysts to meet with the issuer's management and its representatives in the context of a prospective securities offering unless it is an IPO.

Wider feedback on scope

4.14 A limited number of respondents from the investment banking community queried whether the new COBS 12 guidance would capture UK-based firms pitching for a mandate to manage a securities offering in another jurisdiction, when that jurisdiction allows analysts to interact with the issuer and its representatives around the time of those pitching efforts.

Our response

Period over which a pitch lasts

We note the feedback requesting clarification on the precise stage of the IPO process at which the new COBS 12 guidance would take effect. We recognise that, where the analyst is unaware of pitching efforts by the ECM division within their firm, the risk to their objectivity being impaired may, in limited circumstances, be reasonably low. We have amended the guidance to acknowledge this point.

However where a company is contemplating an IPO, analysts may also face pressure to produce favourable research during interactions at an earlier stage prior to becoming aware of the company's intentions. As such, we do not consider it always appropriate for these types of communications to take place, and firms should make judgements on a case-by-case basis. We have amended the guidance to reflect this.

We also note the concerns raised by some respondents in relation to the precise stage in the process that the new COBS 12 guidance should finish. On the basis that, under current market practice, syndicate positioning might not be 'contractually agreed' until late on in the private phase of a securities offering, we have amended the new guidance to 'determined and confirmed in writing by the issuer'.

Treatment of 'non-independent' research

We note the feedback on whether the new COBS 12 guidance applies to producers of non-independent research. Under current practice, firms whose analysts produce this type of research take their analysts to pitches alongside staff from the ECM division. During these meetings, analysts can face significant pressure to produce favourable research to help their bank secure a position on the syndicate and to determine its subsequent syndicate positioning. The nature of this engagement heightens the risk that bias is systematically imparted to connected research.

We can confirm that the new COBS guidance contemplates producers of investment research not non-independent research. Provided that it is clearly labelled as a marketing communication, producers of non-independent research are not prohibited from attending pitches for new business to manage a securities offering. Research labelled in this way is not subject to the more prescriptive conflicts of interest provisions currently in COBS 12 that sit alongside the overarching conflicts requirements in SYSC 10. However, producers of non-independent research cannot automatically assume that it is appropriate for analysts to participate in pitches. In line with their SYSC 10 obligations, producers of non-independent research must take all appropriate steps to identify and prevent or manage any conflicts of interest that arise during its production and distribution.

Application where an issuer already has securities admitted to trading

We also note the practical concerns raised by some respondents in relation to the application of the new COBS 12 guidance where a company already has securities admitted to trading. In response we have amended the new guidance to deal better with these situations by recognising that, in limited circumstances, it may be appropriate for analysts to communicate with the issuer and its representatives, and that firms should make judgements on a case-by-case basis. However, the guidance always applies in situations where an analyst becomes aware of the fact that ECM colleagues are pitching for new business from that issuer.

Wider issues

In relation to the limited feedback that we received on the jurisdictional scope of the new guidance, we remind firms that the general application of COBS has not changed as a result of our proposals in CP17/5, nor has the application of the current guidance in COBS 12.

We consider it appropriate for the date at which the new COBS 12 guidance takes effect to be 1 July 2018. This will provide firms with the same implementation phase as that for the new COBS 11 rules.

5 Consistency with the Market Abuse Regulation

5.1 In CP17/5 we reported initial evidence we had gathered on disclosure of information to market participants during a typical IPO process. We noted the consideration being given to MAR by law firms advising issuers.

5.2 We asked how persons handling information in the IPO process identify whether information they create, receive and disclose constitutes inside information. In particular we were looking for evidence on the whether analyst presentations contain inside information and if so, how the relevant MAR obligations are being met.

Scope of MAR and the Sounding Regime

5.3 Some respondents in the investment banking and legal communities provided feedback on the scope of the application of MAR. They said that for debut issuers with no securities admitted to trading, inside information concerning the issuer will, by definition, not be capable of being transmitted until a request for admission to trading is made. They noted that, for issuers that have debt financial instruments or are the subsidiary of a parent whose financial instruments are admitted to trading, MAR will apply in relation to the financial instruments admitted to trading. In a similar vein, these respondents also expressed the view that there are limited circumstances in which an IPO transaction would be in scope of the market soundings regime under MAR. Examples provided include situations where the price or value of new equity shares being issued through an IPO has an effect on the price or value of the issuer's debt financial instrument or a parent company's equity. They stated that there are sufficient safeguards in place to control confidential information prior to the announcement of a transaction.

Our response

The scope of MAR is set out in article 2 of that regulation. MAR applies to:

a. financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made,

b. financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made, and

c. financial instruments traded on an OTF.

In addition, 2(1)(d) covers "financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points..."

Article 2(1)(d) applies in relation to all financial instruments, not just debt instruments issued by the issuer. Firms should make upfront and on-going assessments on a case-by-case basis of the relationship between the price or value of the instruments subject to a potential IPO and any other financial instrument falling under article 2(1)(a)-(c) of MAR. It is good practice for firms to record the results of these assessments.

Debut issuers' financial instruments will only be within the scope of MAR if the value of their instrument depends on or has an effect on the price or value of a financial instrument in scope of MAR article 2(1)(a)-(c). Debut issuers should be aware that once they have requested admission of their financial instruments to trading, such financial instruments will come into the scope of MAR, and the provisions around inside information will therefore apply. This would include information held by the issuer and information shared with others outside the issuer.

The market soundings regime under MAR applies to possible transactions in financial instruments that are in scope of MAR. Circumstances where this may be the case include, but are not limited to, where an issuer with debt financial instruments admitted to trading or requesting admission to trading is pursuing an equity IPO.

There may be uncertainty as to whether there is a price or value relationship between the issuers' financial instruments and another financial instrument in scope of MAR. For example, if there is no data available regarding the issuer's instrument. To be certain of receiving the protection under article 11 of MAR for a market sounding, an appropriate approach would be for the disclosing market participant to apply the provisions of article 11 and the relevant delegated and implementing regulations.

Information shared in analyst presentations

5.4 In CP17/5 we asked whether information prepared for inclusion in analyst presentations constitutes inside information. If so, we asked whether that information is being disclosed in accordance with the carve-out from article 10 of MAR.

5.5 Some respondents within the investment banking and legal communities stated that information included within the analyst presentation that does not relate to the transaction (eg strategic and forward-looking information on the company) should be assessed against the relevant obligations under MAR before being shared with analysts. They acknowledged that the fact the IPO is under consideration may itself be inside information in relation to any securities that the issuer already has admitted to trading. This includes debt or equity of a parent company. They told us that the fact of the IPO would typically be disclosed through a short announcement ahead of the analyst presentation.

5.6 These respondents thought that remaining information in the analyst presentation relating to the transaction itself (ie the precise timetable, offer structure, pricing model etc) would typically be, at that stage, unlikely to constitute inside information in relation to existing financial instruments. Respondents noted that the analyst presentation should not contain any financial forecasts for the purposes of complying with the Prospectus Rules.

5.7 These respondents suggested that, in the unlikely event that inside information is disclosed to analysts, it should be limited to information on the transaction itself. In these exceptional circumstances, respondents thought that there should be legitimate reasons for delaying public disclosure until after the analyst presentation. We were told that for the purposes of article 10, the disclosure of this inside information to analysts would be assessed as being made in the normal exercise of employment, profession or duties. This is because it enables the analyst to prepare research and provide feedback to the issuer, allowing the issuer and its advisers to make decisions about the feasibility and terms of the proposed transaction.

Our response

It is not possible to say with certainty that the fact of the IPO is the only inside information that needs to be considered, or that it is always inside information. As stated in CP17/5, all information to be included within the analyst presentation should be assessed. Strategic and forward-looking information on the issuer should be especially carefully assessed to determine whether it constitutes inside information. We do not agree with the article 10 assessment provided by some respondents. In any case, respondents have indicated that it is possible for the analyst presentation to contain no inside information. 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. Our work assessing the implementation of MAR will consider these issues further.

Annex 1
List of non-confidential respondents

Association for Financial Markets Europe

Arete

Blackrock

British Bankers Association

Citigate

City of London Law Society

Deloitte

Edson

Euro IRP

Ernst & Young

Dr Gareth Campbell, Queens University Belfast

GC100

ICAEW

Independent Minds

Investec

Investment Association

Investor Relations Society

KPMG

Law Society

Legal & General Investment Management

Liberum

London Stock Exchange Group

Personal Investment Management & Financial Advice Association

PricewaterhouseCoopers

Quoted Companies Alliance

Schroeders

Smartkarma

Stockdale

TheCityUK

Virgin Money

Annex 2
Abbreviations used in this paper

AIM	Alternative investment market
COBS	Conduct of Business Sourcebook
CP	Consultation Paper
DP	Discussion Paper
ECM	Equity capital markets
ICB	Investment and corporate banking
IPO	Initial public offering
ITF	Intention to float
LR	Listing Rules
MAR	Market Abuse Regulation
MiFID II	Markets in Financial Instruments Directive II
MTF	Multilateral trading facility
OTF	Organised trading facility
PR	Prospectus Rules
PS	Policy Statement
SYSC	Senior Management Arrangements, Systems and Controls

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Appendix 1
Made rules (legal instrument)

CONDUCT OF BUSINESS (INITIAL PUBLIC OFFERING RESEARCH) INSTRUMENT 2017

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers);
(3) section 138C (Evidential provisions); and
(4) section 139A (Power of the FCA to give guidance).

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 July 2018.

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Conduct of Business (Initial Public Offering Research) Instrument 2017.

By order of the Board
19 October 2017

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

registration document	(in *Part 6 rules* and *COBS* 11A) a registration document referred to in *PR* 2.2.2R.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text unless otherwise stated.

11A Underwriting and placing

11A.1 Underwriting and placing

~~General requirements concerning underwriting and placing~~ General application

11A.1.1 R …

Requirements

11A.1.2 EU …

…

After COBS 11A.1.4EU insert the following new provisions. The text is not underlined.

Application of requirements for information flows during equity IPOs

11A.1.4A R *COBS* 11A.1.4BR to *COBS* 11A.1.4FR apply to a *firm* that:

(1) has *agreed to carry on regulated activities* for a *client* that is an *issuer* ("the *issuer client*") that include underwriting or placing of *financial instruments*, where:

(a) those *financial instruments* ("relevant securities") are either:

(i) *shares*; or

(ii) *certificates representing certain securities* where the certificate or other instrument confers rights in respect of *shares*;

(b) the relevant securities are intended to be *admitted to trading* in the *UK* for the first time;

(c) the trading under sub-paragraph (b) is intended to be effected by an *admission to trading* on a *regulated market*; and

(d) an approved *prospectus* will be required in accordance with section 85 of the *Act* for the relevant securities; and

(2) is intending to disseminate *investment research* or *non-independent research* on that *issuer client* or those relevant securities before the *admission to trading*.

Communications between the issuer and research analysts in equity IPOs

11A.1.4B R (1) Unless it complies with paragraphs (2) and (3) a *firm* must prevent its staff involved in the production of *investment research* or *non-independent research* ("the *firm's* analysts") from being in communication with the *issuer client* and/or the *issuer client's* representatives outside of the *firm* ("the *issuer* team").

(2) Prior to the *firm's* analysts being in communication with the *issuer* team, the *firm* must ensure that a range of unconnected analysts (as defined in paragraph (4)) will have the opportunity (subject to *COBS* 11A.1.4CR) either:

(a) to join the *firm's* analysts in any communication with the *issuer* team that is made or received before the *firm* disseminates any *investment research* or *non-independent research* about the *issuer client* or the relevant securities as described in *COBS* 11A.1.4AR(1); or

(b) to be in communication with the *issuer* team in a way that satisfies the following conditions:

(i) the communication results in those unconnected analysts receiving or being given access to all the information that is:

(A) given by the *issuer* team to the *firm's* analysts during the relevant period; and

(B) relevant for the purposes of the *firm* producing any *investment research* or *non-independent research* on the *issuer client* or the relevant securities;

(ii) the information that each of those unconnected analysts receives or can access is identical;

(iii) that communication is completed before the end of the relevant period; and

(iv) the relevant period for the purposes of sub-paragraphs (2)(b)(i) and (2)(b)(iii) starts from the time at which this *rule* applies and ends at the time at which the *firm* disseminates any *investment research* or *non-independent research* on the *issuer client* or the relevant securities.

(3) (a) To select the range of unconnected analysts under paragraph (2)

the *firm* must:

(i) undertake an assessment of the potential range of unconnected analysts for the purposes of paragraph (2); and

(ii) use that assessment to ensure that the range of unconnected analysts given the opportunity under paragraph (2) is one that, in the *firm'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 is that disseminated by *firms* providing the service of underwriting or placing to the *issuer client*.

(b) For its assessment and opinion under sub-paragraph (a) the *firm* may assume that an unconnected analyst that is given an opportunity to interact with the *issuer* team will publish an opinion on the *firm's issuer client* that will be available to potential investors.

(c) The *firm* must make a written record of its assessment and opinion under sub-paragraph (a) at the time at which it forms its opinion.

(d) The *firm's* record under sub-paragraph (c) must:

(i) set out the *firm's* process for conducting the assessment and forming the opinion under sub-paragraph (a);

(ii) identify the *firm's* staff that were involved in forming that opinion; and

(iii) explain the *firm's* consideration of the number and expertise of the unconnected analysts included in the range.

(e) The *firm* must retain the record made under sub-paragraph (c) for five years from the date on which it is made.

(4) An "unconnected analyst" means a *person* other than the *firm* or its staff:

(a) who does not provide the service of underwriting or placing of the same relevant securities to the same *issuer client*; and

(b) whose business or occupation may reasonably be expected to involve the production of research.

11A.1.4C R (1) If an opportunity communicated to the range of unconnected analysts under *COBS* 11A.1.4BR(2) is subject to any restrictions that would apply to any of the unconnected analysts that accept the opportunity, a *firm* must ensure that those restrictions would not unreasonably prevent, limit or discourage those unconnected analysts from producing and disseminating research on the *issuer client* or the relevant securities.

(2) The *firm* must also make and retain a written record of any such restrictions, regardless of whether the restrictions are subsequently applied to any unconnected analyst.

(3) The *firm* must make the record at the time the opportunity is communicated to the range of unconnected analysts.

(4) The *firm* must keep the record for a period of five years after the date it was made.

11A.1.4D E (1) A restriction is unreasonable under *COBS* 11A.1.4CR(1) if it prevents an unconnected analyst from producing and disseminating research in circumstances in which the *firm* that is subject to *COBS* 11A.1.4CR is itself able to produce and disseminate *investment research* or *non-independent research*.

(2) Contravention of (1) may be relied upon as tending to establish non-compliance with *COBS* 11A.1.4CR(1).

11A.1.4E R (1) Where a *firm* acts in accordance with *COBS* 11A.1.4BR(2)(b) then it must make and retain a written record of:

(a) the information on the *issuer* or the relevant securities that is given by the *issuer* team to the *firm's* analysts during the relevant period under *COBS* 11A.1.4BR(2)(b)(iv); and

(b) the information on the *issuer* or the relevant securities that is given by the *issuer* team to each of the relevant unconnected analysts during the same period.

(2) The *firm* must make the record at the end of that period.

(3) The *firm* must keep the record for a period of five years after the date it was made.

Timing restrictions for disseminating research on equity IPOs

11A.1.4F R (1) A *firm* must not disseminate *investment research* or *non-independent research* on the relevant *issuer client* or relevant securities as described in *COBS* 11A.1.4AR(1) until after the relevant time in paragraph (2).

(2) The relevant time is:

(a) where a *firm* acts in accordance with *COBS* 11A.1.4BR(2)(a), one *day* after the publication of the relevant document in paragraph (3); or

(b) otherwise, seven *days* after the publication of the relevant document in paragraph (3).

(3) The relevant document is:

(a) an approved *prospectus* regarding the relevant securities; or

(b) an approved *registration document* regarding the *issuer*.

(4) For this *rule*, publication of the relevant document means making the relevant document available to the public in any of the ways set out at *PR* 3.2.4R(1) to (4) (Method of publishing).

(5) This *rule* does not apply to a *firm* in circumstances where, as a result of the *firm's* analysts being prevented from being in communication with the *issuer* team, it has not needed to engage with any unconnected analysts for the purposes of *COBS* 11A.1.4BR.

Further requirements

…

12 Investment research

…

12.2 Investment research and non-independent research

…

After COBS 12.2.21EU insert the following new provisions. The text is not underlined.

12.2.21A G (1) The phrase "participating in 'pitches' for new business" in Recital 56 to the *MiFID Org Regulation* would generally include a *financial analyst* interacting with an *issuer* to whom the *firm* is proposing to provide underwriting or placing services (including the *issuer's* representatives outside of the *firm* and any *person* who has an ownership interest in the *issuer*), until both:

(a) the *firm* that employs the *financial analyst* has *agreed to carry on regulated activities* that amount to underwriting or placing services for the *issuer*; and

(b) the extent of the *firm's* obligations to provide underwriting or

placing services to the *issuer* as compared to the underwriting or placing services of any other *firm* that is appointed by the *issuer* for the same offering is confirmed in writing between the *firm* and *issuer*.

(2) (a) It may nevertheless be possible, in limited circumstances, for a *financial analyst's* interactions with any such *person* referred to under paragraph (1) to be entirely separate from the *firm's* 'pitches' such that the risk to their objectivity being impaired would be reasonably low.

(b) However, the *FCA* considers that 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'.

(3) In any case a *firm* should recognise that any situation in which there is a connection between its 'pitches' and a *person* with whom its *financial analyst* interacts can give rise to a conflict of interest (see *SYSC* 10 (Conflicts of interest) and the relevant provisions of the *MiFID Org Regulation*).

Amend the following as shown.

Sch 1 Record keeping requirements

…

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
COBS 11.7A.5EU	…	…	…	…
COBS 11A.1.4BR(3)(c)	The *firm's* assessment under *COBS* 11A.1.4BR(3)(a)	(1) The *firm's* process for conducting the assessment and reaching the opinion under *COBS* 11A.1.4BR (3)(a); (2) the *firm's* staff that were	Once the *firm* has formed its opinion under *COBS* 11A.1.4BR (3)(a)	5 years

		involved in reaching that opinion; and (3) an explanation of the *firm's* consideration of the number and expertise of the unconnected analysts included in the range.		
COBS 11A.1.4CR	Restrictions on unconnected analysts	Any restrictions that would be imposed on each unconnected analyst that accepts the opportunity under *COBS* 11A.1.4BR(2)	When the opportunity is communicated to the range of unconnected analysts	5 years
COBS 11A.1.4ER	Information given by the *issuer* team during the relevant period under *COBS* 11A.1.4BR(2)(b)(iv)	(1) The information on the *issuer* or the relevant securities that is given by the *issuer* team to the *firm's* analysts during the relevant period under *COBS* 11A.1.4BR(2)(b)(iv); and (2) the information on the *issuer* or the relevant securities that is given by the *issuer* team to each of the	At the end of the relevant period under *COBS* 11A.1.4BR(2)(b)(iv)	5 years

		range of unconnected analysts during the same period.		
COBS 11A.1.9EU	…	…	…	…

Pub ref: 005509

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