
Allowing unconnected analysts to participate in the IPO process: AFME / Euro IRP publishes guidance

Summary

AFME and the European Association for Independent Research Providers (Euro IRP) have published guidance on how unconnected analysts can participate in the IPO process and access information on prospective issuers.

Background

On 1 July 2018 the FCA's Conduct of Business Sourcebook (COBS) was amended to impose new requirements on investment banks that publish research in connection with a Main Market IPO. In summary, the new rules:

- Prohibit contact between the issuer and connected research analysts before the bank is formally appointed by the issuer (so contact is prohibited when the bank is pitching for a role on the IPO).
- Require either an approved registration document or a whole prospectus to have been published before any connected research is published.
- Require unconnected research analysts (i.e. research analysts outside the underwriting syndicate on an IPO) to be given an opportunity to cover the issuer on an equal footing to connected analysts (i.e. analysts in the research divisions of syndicate members).

Access for unconnected analysts: options

The new rules are in COBS 11A.1.4A to F. (For context, see the summary of COBS at the end of this note.) They apply where:

- shares or depositary receipts (DRs) will be admitted to trading on a regulated market in the UK for the first time (i.e. it is a Main Market IPO); and
- a firm (i.e. investment bank) is:
 - providing services to an issuer that include underwriting or placing of the shares or DRs; and
 - intending to disseminate investment research or non-independent research on that issuer before the shares or DRs are admitted to trading.

The rules allow firms two options for providing access for unconnected analysts:

- **Option I:** Simultaneous access with connected analysts – i.e. arranging for unconnected analysts to join connected analysts in any communication with the issuer team prior to the dissemination of connected research.
- **Option II:** Providing identical information but via separate channels – i.e. separately giving unconnected analysts the opportunity to be in communication with the issuer team in a manner that

results in unconnected analysts being given access to all the information that the issuer has provided to connected analysts (including, where provided to connected analysts, an opportunity to ask the issuer questions), prior to the dissemination of connected research.

The option which is chosen has an impact on the permitted timing of publication of connected research. Publication is permitted one day after publication of an issuer's registration document (or prospectus if that is the first published document) if the issuer and the bank(s) elect to implement Option I, or no earlier than seven days after such publication if they elect to implement Option II.

We expect Option II to be used more commonly. Access is likely to be via analysts attending a presentation by issuer management, which may also include a Q&A session and, sometimes, the opportunity to submit further questions in writing afterwards.

Practical implications for the IPO process

Questions remain about how exactly issuers and banks will ensure that unconnected analysts receive the same information as the connected analysts (although some guidance has been published: see below), as well as the effect the new rules will have on IPO timetables. In particular, it is no longer possible for members of a syndicate to publish research and carry out "investor education" roadshows prior to the publication of the registration document (or whole prospectus).

AFME / Euro IRP Guidance

In August 2018 AFME and the European Association for Independent Research Providers (Euro IRP) published [guidance](#) on how unconnected analysts can participate in the IPO process and access information on prospective issuers (Guidance).

Unconnected analysts wishing to communicate with the issuer team must agree to comply with the Market Standard Research Guidelines set out in Appendix I to the Guidance. In summary, these require unconnected analysts to:

- keep details of the IPO confidential until it is formally announced
- not publish their research until the dates that connected analysts are permitted to publish their research under the applicable process
- use reasonable endeavours to publish research, wherever possible, prior to the publication of the price range prospectus or, in the case of a tripartite prospectus, the securities note and summary
- not distribute their research to investors in the US and other prohibited jurisdictions
- include a disclaimer in their research note that is substantially in the form of the disclaimer in the Annex to the Guidance.

The new rules in COBS 11A.1.4A to F include an obligation on syndicate members to decide how many unconnected analysts should be given the opportunity to write research on the issuer. The aim is to ensure that potential investors have access to a wider range of analysts' opinions than they would if the only research were published by the bank(s) acting on the IPO, so that investors are better placed to make an informed assessment of the present and future value of the issuer. Helpfully the Guidance has a link to a list of unconnected analysts that issuers should notify in each case and offer the opportunity to receive issuer information about the prospective IPO. The list currently comprises Euro IRP member firms who are interested in writing research on prospective IPOs. Additionally, the Guidance includes a template letter, which includes references to the Guidance and obligations on the unconnected analysts, for issuers to use when inviting unconnected analysts to participate.

Summary of COBS

COBS applies to an authorised person (firm) that is carrying on designated investment business (which includes dealing in investments as principal or as agent and arranging deals in investments) and certain other financial services activities. Certain rules in COBS are modified for certain types of activities, including corporate finance activities. COBS includes obligations relating to acting honestly, fairly and professionally; inducements and paying for research; categorising clients into retail clients, professional clients or eligible counterparties; communicating with clients, including financial promotions; record-keeping; providing clients with information about remuneration and charges; suitability and appropriateness of investments; dealing and managing investments; and writing and distributing investment research.

The rules in COBS 11A were introduced in January 2018 to implement MiFID II. COBS 11A.1.1 to 4 deal with underwriting and placing and include obligations on a firm to (i) provide specified information to an issuer client before accepting a mandate to provide certain corporate finance services; (ii) manage any potential conflicts of interest, especially in relation to the pricing of an issue.

COBS 11A.1.5 requires an investment bank to provide its issuer client with information about how it came to its recommendation on the price and timing of the offer, and to engage with the issuer about any hedging or stabilisation strategies the bank intends to adopt on the offer.

COBS 11A.2 broadly prohibits a firm from including in its engagement letter any provision that forces the client to use the firm for future primary market or M&A services.



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