

# FCA Reforms UK IPO Process - Significant Implications for Deal Timetables

21 November 2017

On 26 October 2017, the Financial Conduct Authority (“FCA”) published new Conduct of Business Sourcebook (COBS) provisions (the “**New COBS Provisions**”) intended to:

- make the prospectus available to investors earlier in the UK IPO process;
- improve the quality of research reports through the competitive dynamics of the research process between connected and unconnected analysts; and
- allow prospective investors a more diverse range of views on the offering and the issuer’s prospects.

The New COBS Provisions will significantly change the sequence of milestones in a London-listed IPO deal by ensuring that:

- an approved registration document or prospectus is published before the publication of the analysts’ research; and
- unconnected analysts have the same access to the issuer’s management and the information relating to the offering as connected analysts, such that unconnected analysts can produce pre-deal unconnected research reports to be used for investors education.

In addition, the New COBS Provisions detach research analysts from investment banks’ pitching process with IPO candidates by prohibiting any contact between the prospective underwriter’s analysts and issuers until the appointment of the underwriters for the IPO is completely settled.

The New COBS Provisions relating to the information flows during the offering process apply only to initial offerings of equity securities (including GDRs) to be admitted to trading on a UK regulated market, and therefore do not apply to GDR IPOs on the Professional Securities Market, to debt offerings or to secondary offerings of listed securities. To avoid disruptions to existing or prospective IPOs, and to allow time for the market to develop guidelines relating to unconnected analysts’ access to issuer’s management, the New COBS Provisions will only apply to IPOs with analysts presentations that take place on or after 1 July 2018.

This memorandum provides a summary of the New COBS Provisions and their effect on the IPO process in the UK.

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## I. Effect on a typical IPO timeline

The New COBS Provisions will significantly impact a typical IPO deal timeline in two ways. First, contrary to the current market practice where research reports are published around two weeks before the publication of the prospectus, the new rules require that research reports are published only after the publication of an approved prospectus or registration document, which would later be followed by either an approved securities note and summary document (in case of a tripartite prospectus) or a single approved prospectus.

The second significant impact that the New COBS Provisions have on a typical IPO deal timeline relates to the minimum period between the publication of the approved registration document and the publication of research reports. The duration of this period will depend on the means by which unconnected analysts are given access to the issuer's management. Issuers can choose between two options with different implications on the deal timeline:

**Option A:** Unconnected analysts can be given access to the management later than connected analysts are; provided that unconnected analysts are given all relevant information that has been given to

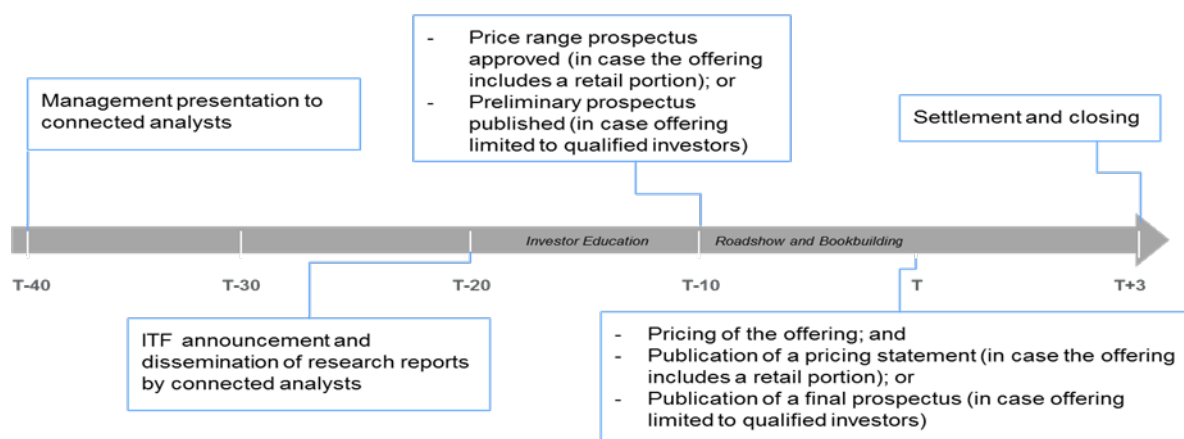
connected analysts. In this case, connected analysts can only disseminate their research seven days after the publication of the approved registration document.

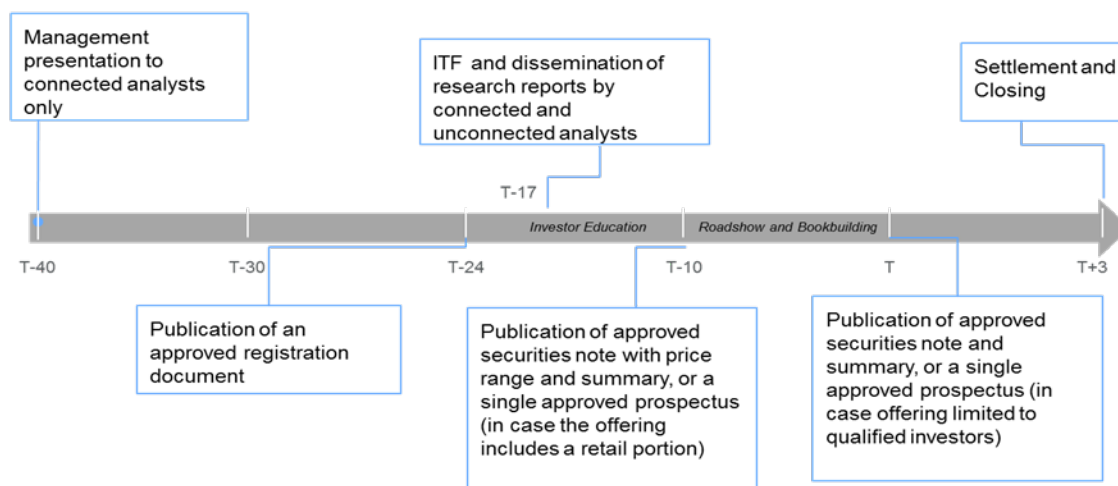
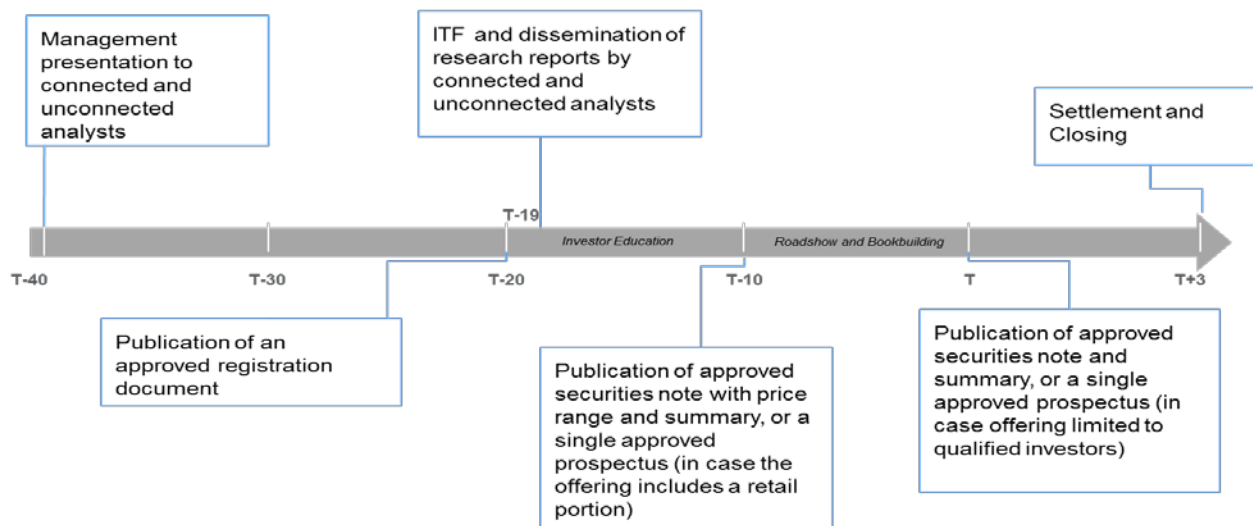
**Option B:** Alternatively, unconnected research analysts can be given access to management and the relevant issuer's information at the same time as connected analysts, in which case, connected analysts can disseminate their research reports as early as one day after the publication of the approved registration document.

Based on its consultation with various market participants, the FCA expects that ECM divisions in investment banks are likely to advise prospective issuers to follow "Option A" by granting separate management access to unconnected analysts to preserve the confidentiality of the IPO process up to the publication of the approved registration document. However, if there has been a leak about the IPO, it is conceivable that the working group would flip to "Option B".

The following timelines illustrate the changes to a typical IPO timeline from current market practice depending on which of the options above the IPO working group chooses.

**Figure 1: Current Typical IPO Timeline**



**Figure 2: Potential IPO Timeline Under the New Rules (Option A)****Figure 3: Potential IPO Timeline Under the New Rules (Option B)**

The new approach to UK IPO timetables could lead offering participants to focus on the development of a honed equity story in the prospectus or registration document earlier in the process than is sometimes currently the case, as is the case in France and the United States, given that the prospectus or registration document will need to be submitted to the regulator earlier in the IPO process. It has long been the practice in France for unconnected analysts to be invited to analyst presentations by an IPO candidate. Analyst presentations for both connected and unconnected analysts were historically held at the same time, after publication of a base document (equivalent to the

registration document in the UK) approved by the competent authority in France (the Autorité des marchés financiers, or AMF). More recently, the AMF has allowed the analyst presentation for connected analysts to be held in advance.

Unconnected analysts are invited to a later analyst presentation, generally with a few days' notice. Both connected and unconnected analysts are subject to, and required to sign as a condition to attending the analyst presentation, the same research guidelines in order to ensure any published research is not distributed in certain markets, such as the United States. It is

notable that the introduction of unconnected analysts to the IPO candidate has not necessarily led a large number of these analysts to attend the analyst presentation or to publish pre-IPO research.

In U.S.-listed IPOs, connected analysts are invited to attend the analyst presentation held by the IPO candidate, typically held a few weeks in advance of the first filing of the prospectus with the U.S. Securities and Exchange Commission (the "SEC").

The feedback from analysts on the business and "equity story" as presented at the analyst presentation is then incorporated into the prospectus prior to its submission with the SEC. In contrast to European-listed IPOs, however, due to legal and regulatory restrictions as well as liability considerations, analysts do not publish written pre-IPO research reports in connection with U.S.-listed IPOs. Instead, the "investor education" process between analysts and their investor clients consists entirely of oral communications. It is also notable that the SEC staff recently announced a new policy to allow all IPO candidates to submit draft

prospectuses confidentially for review by the SEC, so long as the issuer publicly files the initial confidential submission and all amendments no later than 15 days prior to the start of its roadshow (or in the absence of a roadshow, at least 15 days prior to the requested effective date of the registration statement containing the prospectus). This mirrors the confidential submission process available to IPO candidates that qualify as "emerging growth companies" under the JOBS Act and FAST Act. The staff's new policy significantly shortens the amount of time an IPO candidate is exposed to

the market during the IPO process in the United States, and brings the "public phase" of the U.S. IPO process, during which the prospectus is available, more in line with new rules applicable for the UK IPO process.

#### **Impact of new rules:**

- **Effectively an earlier announcement of the IPO**
- **Additional regulatory burden on underwriters**
- **Pressure on underwriters to form judgments on how much needs to be done to satisfy an investor's desire for balanced information from unconnected research reports over which they have no control**
- **Pressure on underwriters to determine when they have truly stopped being in pitch mode**
- **Potentially forces an earlier development of the equity story to ensure consistency between the prospectus and the analyst presentation**
- **Wider disclosure of information to connected and unconnected analysts requires closer assessment of compliance with MAR**

## II. Level playing field between connected and unconnected analysts

The New COBS Provisions aim to ensure a level playing field between connected and unconnected analysts in producing pre-deal research reports in an IPO. This is achieved by restricting connected analysts from disseminating their research reports until after unconnected analysts have been given access to the same information given to connected analysts, either in the same meeting or in a separate meeting, as discussed above. Furthermore, if the issuer decides to update connected analysts with potential revisions to the approved registration document (e.g. through a further analysts presentation), such communications must be made to both connected and unconnected analysts.

The determination of the range of unconnected analysts to be given management access lies with the syndicate members managing the offering, which would typically be decided in consultation with the issuer. The New COBS Provisions require syndicate members to select unconnected analysts that, in the syndicate's reasonable opinion, have "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 services of underwriting or placing for the issuer client".

Unconnected analysts' access to management may be subject to certain restrictions that would not unreasonably prevent, limit or discourage unconnected analysts from producing and disseminating research. In particular, the FCA endorses the view that geographical restrictions designed to manage legal liability risks (e.g. restrictions on dissemination of the research into the United States) would be considered reasonable as long as such restrictions are equally imposed on connected and unconnected analysts.

## III. Detaching research analysts from investment banks' pitching process

European market practice typically involves a prospective underwriter's research analyst playing a significant part in the pre-IPO process while the issuer is considering which underwriters to hire and what level of responsibility to give them in connection with the IPO – for example, whether they should have a position in the syndicate as a global coordinator, a bookrunner or merely an underwriter in the transaction.

With a view to eliminating any pressure that could be exercised by issuers on research analysts to produce favourable research reports, the New COBS Provisions restrict financial analysts in a given firm from interacting with an issuer to whom this firm is pitching to provide underwriting services until (a) the firm has agreed to carry on the underwriting services for the issuer and (b) the extent of the firm's underwriting obligation as compared to any other firm appointed by the issuer for the same offering has been agreed in writing.

## IV. MAR implications

As the New COBS Provisions will result in the disclosure of information relating to the issuer's business and prospects (e.g. existence of a prospective IPO) to a wider range of analysts before the publication of this information to the market, issuers should work closely with their legal advisors to ensure compliance with the rules of the Market Abuse Regulation ("**MAR**") with regard to the disclosure of inside information. Since the New COBS Provisions apply only to IPOs, MAR will apply, for example, to an issuer before requesting admission of its equity securities to trading if there are relevant securities listed on a regulated market or an MTF.<sup>1</sup> In case MAR is applicable, the issuer and its advisors should pay particular attention to the nature of information disclosed to analysts in the analysts presentations and the extent to which such information could constitute inside information under MAR.

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<sup>1</sup> For details on other aspects of MAR, please refer to our prior memoranda, available [here](#), [here](#) and [here](#).