

Bird & Bird & Capital Markets Group: PLC Update

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AFME and Euro IRP issue guidance on new FCA rules requiring issuer access for unconnected analysts

Following the proposals made in its policy paper PS 17/23, the Financial Conduct Authority's ("FCA") rules concerning research by unconnected analysts in relation to an Initial Public Offering ("IPO") on a regulated market came into force on 1 July 2018. This article considers these rules in light of new guidance from the Association for Financial Markets in Europe ("AFME") and Independent Research Providers ("Euro IRP"). The guidance is particularly useful for the corporate finance industry given the FCA's involvement in the drafting of the guidance.

The New Rules in COBS 11A

The rationale behind the FCA's new rules is twofold - firstly, it attempts to place unconnected analysts on an equal footing with connected analysts so as to achieve a more balanced assessment of the IPO and, secondly, it aims to restore the prospectus as the primary document in an IPO. The FCA believes that, in recent times, this has not always been the case due to the prominence of research published by connected analysts. Unconnected analysts are those analysts who are not employed by the underwriter/investment bank acting for the company seeking to IPO.

The first objective is achieved by requiring the underwriter to ensure that a range of unconnected analysts are given equal access to IPO-related information in respect of the issuer. This can be done in one of two ways under COBS 11A.1.4B:

- Firstly, unconnected analysts can be given access to IPO-related information at the same time as connected analysts; or
- Secondly, unconnected analysts can be given access to IPO-related information separately. They must be given all relevant information which the issuer provides to connected analysts and each unconnected analyst must be given exactly the same information.

The second objective is achieved by imposing a minimum period of time between the publication of the prospectus and the release of any connected research. For the first option, the minimum period is one day whilst for the second option, the minimum period is seven days.

Unconnected Analysts List

In paragraph 2.18 of PS17/23, a number of respondents expressed concern as to how the range of unconnected analysts (to whom the IPO-related information must be passed) would be selected. Although rule 11A.1.4B of the FCA's Conduct of Business Sourcebook sets some criteria for their selection (in essence that the analysts are likely to allow potential investors to make a more informed decision), these are fairly generic and likely to be difficult to apply in practice. Fortunately, AFME and Euro IRP have produced guidance in this respect.

This guidance proposes the creation of an "Unconnected Analysts List" whereby representative bodies of analysts (such as Euro IRP) can list those of its member analysts who have elected to receive IPO-related information. As a starting point, the guidance suggests that it is these analysts who should be provided with the IPO-related information, under either of the options outlined above. It is intended that the Unconnected Analysts List is updated as and when other representative bodies compile their own lists of interested analysts.

Timings relating to IPO process

The guidance also addresses a number of procedural points relating to each of the options outlined above for ensuring a range of unconnected analysts are given equal access to IPO information relating to the issuer. For both options, the guidance states that it will be a requirement for unconnected analysts to confirm that they will comply with the Market Standard Research Guidelines, which are set out in an appendix to the guidance note. These are requirements relating to confidentiality, timing and geographical restrictions on the publication of the research by the unconnected analysts.

For the first option, in general, the process shall be as follows:

- 1 The issuer will notify unconnected analysts (including those on the Unconnected Analysts List) of the prospective IPO. Those unconnected analysts who are interested in attending the presentation will be asked to comply with the Market Standard Research Guidelines.
- 2 To the extent that connected analysts are given an opportunity to ask questions during the presentation, unconnected analysts must be given the same opportunity. In the FCA's 17/5 Consultation Paper, it was suggested that this presentation would occur shortly before publication of the prospectus.
- 3 If the issuer permits follow-on questions to be submitted by email, a transcript of any such questions, whether by connected or unconnected analysts, will be circulated to all parties who attended the presentation.

For the second option, in general, the process shall be as follows:

- 1 The unconnected analysts are notified as in (1) above.
- 2 The guidance proposes that unconnected analysts will be given access to the IPO-related information either in the form of:
 - a an in-person meeting at which unconnected analysts are present and which is similar to (2) and (3) for the first option outlined above; or
 - b the materials used by the issuer during the presentation to connected analysts (such as the slide deck, note of the Q&A session) are made available to unconnected analysts on, for example, the issuer's website.

3 The FCA's rules require unconnected analysts to be given access (under either (a) or (b)) before research by the connected analysts is published. Following industry feedback, the expectation is that access will be given to unconnected analysts shortly after publication of the prospectus.

This guidance from AFME and Euro IRP provides helpful further detail on the FCA's new rules but it remains to be seen how firms in the corporate finance industry implement this process in practice.

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