

# Client Update

## UK Regulator Proposes Changes to IPO Process

### LONDON

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The UK financial services regulator, the Financial Conduct Authority (“FCA”), is considering significant changes to the IPO process designed to bring more transparency and give analysts independent of the syndicate the chance to publish research ahead of an IPO. The proposed changes, which were outlined in a consultation paper published on 1 March 2017 (the “Consultation Paper”), would apply to IPOs of any shares or depositary receipts.

In the United Kingdom, prior to a company announcing an intention to float, the issuer’s management typically presents information about the issuer to analysts within the syndicate banks. Once the intention to float is announced, these connected analysts use their research to provide select institutional investors with their views on the issuer, which is known as “investor education”. During this period, the syndicate banks, along with the issuer, determine the initial price range for the offer price, which is then circulated to certain institutional investors, along with a draft price range prospectus (the so-called “pathfinder”). A further period of active marketing then follows, during which the book-build takes place, and it is only at the close of the book-build that the final prospectus is published, containing the agreed offer price and size of the offer.

The FCA’s concern is that the pathfinder is made available relatively late in the process and only to a select group of potential institutional investors. The final prospectus becomes publicly available only once the offer has effectively closed. The FCA is concerned that this, coupled with a lack of access to the issuer’s management for analysts other than those connected to the syndicate banks, results in the connected research being “the only source of information available to investors during a crucial phase of investor education and initial price discovery”.

The FCA has put forward the following proposals in the Consultation Paper to address these concerns:

- A series of new rules which would ensure that an approved prospectus is published, and unconnected analysts have sufficient time to prepare their research, before any connected research is released. Under the proposed rules, so long as the unconnected analysts are given the same access to management as connected analysts, connected research can be released the day after publication of the approved prospectus; in all other cases, no connected research can be released until at least seven days after publication of the approved prospectus.
- New guidance on analysts' interactions with the issuer's management and their corporate finance advisers around the time an underwriting or placing mandate and subsequent determination of syndicate positioning is being considered. The FCA proposal is to "regard any interaction between analysts and issuers or their representatives to be participation in investment banking pitching efforts until: (i) the firm has accepted a mandate to carry out underwriting or placing services for the issuer; and (ii) the firm's position in the syndicate has been determined."

If adopted, the likely impact of these changes on issuers would be a lengthening of the public phase of the IPO process. This will bring the process in the United Kingdom more into line with how IPOs are conducted in the United States, where, subject to certain exceptions, a draft prospectus is made public at the beginning of the process, and any changes to the document are also made publicly.

In the Consultation Paper, the FCA also highlights concerns that current market practice in relation to the disclosure of information during the IPO process, in particular in connection with analyst presentations, may not align with the restrictions under the Market Abuse Regulation in relation to the disclosure of inside information and market soundings.

The consultation period closes on 1 June 2017 and the FCA has stated its intention to publish a Policy Statement outlining the resulting changes to the FCA Handbook later in 2017.

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Please do not hesitate to contact us with any questions.