

UK INITIAL PUBLIC OFFERINGS - PROCESS IN RELATION TO PROVIDING ISSUER ACCESS FOR UNCONNECTED ANALYSTS

Background

The UK Financial Conduct Authority's (**FCA**) new rules¹ in relation to the UK Initial Public Offering (**IPO**) process came into force on 1 July 2018. Amongst other things, the new rules require that, if connected research analysts wish to be in communication with the issuer team, the syndicate banks on an IPO (the **Firms**) must ensure that a range of unconnected analysts will have the opportunity to be in communication with the issuer team, with the objective of giving such analysts the opportunity to publish research relating to the IPO.

COBS 11A.1.4BR provides two options for Firms to provide such access, namely: (i) by arranging for unconnected analysts to join connected analysts in any communication with the issuer team prior to the dissemination of connected research² (**Option I**); or (ii) by 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), and that is relevant for the purposes of producing research on the issuer in question, prior to the dissemination of connected research, but subject to the requirement that the information that each of the unconnected analysts receives or can access must be identical as between the unconnected analysts³ (**Option II**).

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 Firms elect to implement Option I, or no earlier than seven days after such publication if they elect to implement Option II⁴.

This document sets out how unconnected analysts can participate in the IPO process and how issuers and Firms can implement either option above.

In particular, this document sets out:

- how unconnected analysts will be able to register their interest in order to be in communication with the issuer team under Options I and II; and
- the manner and form that such communication with the issuer team should take under Options I and II.

¹ COBS 11A.1.4A-F

² COBS 11A.1.4B(2)(a)

³ COBS 11A.1.4B(2)(b)

⁴ COBS 11A.1.4F

General

- A. This document has been prepared by the Association for Financial Markets in Europe (**AFME**) and the European Association of Independent Research Providers (**Euro IRP**). The FCA has engaged with AFME and Euro IRP during the development of this document. To the extent that there is any conflict between the terms of this document and the FCA's new COBS rules, the new COBS rules shall take precedence.
- B. For the purposes of this document, an unconnected analyst is defined as a research analyst not employed by one of the proposed members of the underwriting syndicate, who produces research, which is disseminated to one or more third party/ies that is/are also external clients of the research analyst's employer's group.
- C. In order to facilitate communication between the issuer teams and interested unconnected analysts on prospective IPOs, Euro IRP has compiled a list of its member firms interested in writing research on prospective IPOs. The list can be accessed via the link in Appendix II. It is envisaged that lists of unconnected analysts compiled by other representative organisations will be added to Appendix II in due course and such lists shall be defined for the purposes of this document as the Unconnected Analysts Lists. Each such representative organisation (including Euro IRP) will send its member firms this document and draw their attention to the fact that by including the firm's name on such a list the firm agrees to keep prospective IPOs that have not been publicly announced (as would be the case under Option I below) confidential. An unconnected analyst that is not part of a representative organisation listed in Appendix II should contact his/her representative organisation and request that it prepares a list to be added to the Unconnected Analysts Lists. Representative organisations should contact AFME at iporesearch@afme.eu and Euro IRP at preipo@euroirp.com if they wish to compile such a list for inclusion.
- D. In the context of the process set out in this document, unconnected analysts should note that IPO issuers are required to submit documents approved by the FCA to the National Storage Mechanism, which can be accessed via the following link:
<https://www.fca.org.uk/markets/ukla/regulatory-disclosures/national-storage-mechanism>

Section I

An unconnected analyst who wishes to be in communication with the issuer team pursuant to either Option I or II will be required to confirm that they agree to and will comply with the Market Standard Research Guidelines (the **Guidelines**) set out in Appendix I, which include the following:

- to keep the fact and details of the IPO confidential until the formal announcement of the transaction;

- to be bound by the same geographic restrictions relating to the distribution of research prior to completion of the IPO as connected analysts;
- not to publish their research until the dates that connected analysts are permitted to publish their research under Options I and II, respectively;
- to use reasonable endeavours to publish research, wherever possible, prior to the publication of the price range prospectus/in the case of a tripartite prospectus, the securities note and summary; and
- to acknowledge that there is an expectation that research will not be published in the seven calendar day period prior to pricing.

Section II

OPTION I

PROCESS FOR ENABLING UNCONNECTED ANALYSTS TO JOIN CONNECTED ANALYSTS IN COMMUNICATIONS WITH THE ISSUER TEAM

1. The issuer will (with the assistance of the Firms) notify by email unconnected analysts who may be interested in receiving information about the prospective IPO. Such notification shall be made at least to those analysts who are on the Unconnected Analysts Lists.
2. Any unconnected analyst registering their interest in attending the presentation will be required to undertake that their attendance is conditional on their agreement to comply with the Guidelines and confirmation by the Firm(s) that he/she is an unconnected analyst as defined in the General section, Paragraph B.
3. All requests which are confirmed as being from unconnected analysts will be approved so that the requester(s) will be notified of their ability to attend the presentation. A response to a request will be given as soon as reasonably practicable, which is expected to be within one business day.
4. If, during the presentation, connected analysts are given an opportunity to ask questions, unconnected analysts will also be given an opportunity to ask questions. In the event that the issuer permits additional questions to be submitted by email after the date of the presentation, a written transcript of any additional Q&As submitted by either the connected or unconnected analysts will be made available to unconnected analysts as well as the connected analysts.
5. Any opportunity there may be for unconnected analysts to ask additional questions by email as part of this process shall end on the date on which connected analysts are permitted to publish their research.

OPTION II

PROCESS FOR ENABLING UNCONNECTED ANALYSTS TO BE IN COMMUNICATION WITH THE ISSUER TEAM SEPARATELY FROM CONNECTED ANALYSTS

Phase 1

1. The issuer will make a statement on publication of the registration document in relation to how unconnected analysts will be able to be in communication with the issuer. The statement may provide, for example: “A presentation in person by [the issuer] for unconnected research analysts will be held / A presentation and related information in relation to [the Issuer] will be made available via a link to unconnected research analysts on DD, MM, YYYY. Please let [] know at [] if you would like to attend the presentation / receive access to the information”.
2. The issuer or the Firms will also notify the unconnected analysts (who conform to the definition set out in General section, paragraph B) on the Unconnected Analyst Lists of the publication of the registration document and ask whether he/she is interested in receiving issuer information about the prospective IPO.
3. Any unconnected analyst registering their interest for such access will be required to acknowledge that any communication with the issuer team (including access to the presentation and related information) is conditional on their agreement to comply with the Guidelines⁵ and confirmation by the Firm(s) that he/she is an unconnected analyst as defined in the Background section and Appendix I of this document.
4. All requests from unconnected analysts for access which are confirmed as meeting the requirements set out in paragraph 3 above will be approved so that the requester(s) will be permitted to communicate with the issuer team via the process set out in Phase 2 below. A response to a request will be given as promptly as reasonably practicable, which is expected to be within one business day.

Phase 2

EITHER – In-person meeting

1. The unconnected analyst may be given an opportunity to ask questions of the issuer during the in-person meeting.
2. In the event that the issuer has permitted connected analysts to submit additional questions by email after the connected analyst presentation, unconnected analysts will also be given an opportunity to ask additional questions. A written transcript of any additional Q&As between the

⁵ See COBS 11A.1.4.CR, which requires that any restrictions that would apply to unconnected analysts who register their interest for such access would not unreasonably prevent, limit or discourage those unconnected analysts from producing and disseminating research on the issuer client or the relevant securities.

issuer and individual unconnected analysts will be made available to unconnected analysts as well as connected analysts. Unconnected analysts will also receive a written transcript of any additional Q&As sent by email between the issuer and connected analysts.

3. Any opportunity there may be for unconnected analysts to ask additional questions by email via this process shall end on the date on which connected analysts are permitted to publish their research.

OR – Making available written materials

1. The following items will be uploaded to [the issuer’s website / NetRoadshow / other], behind a click through incorporating the Guidelines and the Firms’ disclaimers of liability, for a period until the publication of the price range prospectus⁶ during which the unconnected analysts identified in the process set out in Phase 1 above will be able to access:
 - i. the slide deck used by management during its presentation to connected analysts;
 - ii. a written note of the Q&A session with the issuer’s management from the connected analyst presentation plus a written note of any other Q&As between the issuer’s management and connected analysts to date;
 - iii. a process by which unconnected analysts can communicate with the issuer’s management team and ask questions about the above items and the registration document, which may be done by means of e-mail exchanges;
 - iv. a written transcript of any questions asked by and answers given to the unconnected analysts by the issuer’s management (including those which are asked after the presentation), which will be made available to all other unconnected analysts that have accessed the issuer information as well as to the connected analysts; and
 - v. the registration document or prospectus (if that is the first document published).
2. Any opportunity there may be for unconnected analysts to ask additional questions by email via this process shall end on the date on which connected analysts are permitted to publish their research.
3. In the event that unconnected analysts are required to disclose any non-public documents made available under 1 (i – iv) above to a third party in connection with a legal or regulatory enquiry, it is understood that the issuer will not unreasonably withhold or delay the disclosure of such documents. (Note: the registration document and prospectus will be available at all times following publication via the National Storage Mechanism).

⁶ Whilst it is still technically possible in the context of an institutional only offering to use a private pathfinder prospectus, the FCA does not expect this to be the standard approach following the introduction of these new rules for IPOs in the UK. In any event, this will be clarified ahead of unconnected analysts signing up to the guidelines, and then the references in this paragraph to “price range prospectus” will be deemed to be to “pathfinder prospectus”.

Disclaimer

This document is not intended to be and should not be relied on as being legal, financial, tax, regulatory, business or other professional advice. None of AFME or Euro IRP, their respective employees or consultants or their members or their respective firms represents or warrants that it is accurate, suitable or complete and none of them have any liability arising from, or relating to, the use of this document.

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Appendix I

[Issuer headed notepaper]⁷

[Date]

You are invited to attend a presentation in person / access information regarding [Issuer] (the “**Company**” and, together with its subsidiaries, the “**Group**”) which is being made available to connected and unconnected research analysts (the **Information**). For the purposes of this document, an unconnected research analyst is defined as a research analyst not employed by one of the proposed members of the underwriting syndicate, who produces research, which is disseminated to one or more third party/ies that is/are also external clients of the research analyst’s employer’s group.

The Information will be made available at a presentation in person / [link/site] on [DATE] for a period of []. There are certain regulatory considerations applicable to the Information and any research produced following access to the Information, which are reflected in the guidelines below. By receiving / accessing the Information, you are deemed to agree to comply with these guidelines and confirm that you are an unconnected research analyst as defined in the paragraph above.

These guidelines (including, in particular, the requirement to include a disclaimer in substantially the form set out in the Annex to them) apply to any research relating to the Company or the Group that you produce at any time between the time you attend the presentation / access the Information and the completion of the proposed Offer. You will be informed in writing if and when the Offer has: (1) been publicly announced; and (2) completed.

- 1. Confidentiality:** Unless and until the Offer has been publicly announced, you and your affiliates and your respective advisers will keep the fact and details of the potential Offer and the Information disclosed to you (the “**Confidential Information**”) secret and confidential and will not, without the prior written consent of the Company, disclose the Confidential Information to any other person. If you are compelled by law or a competent regulatory authority to disclose any Confidential Information, you will, so far as is permitted by applicable law or regulation, first notify the Company and comply with its reasonable requests as to the disclosure to be made.
- 2. Timing:** You undertake not to publish⁸ research on the Company until the date on which the connected analysts are permitted to publish their research (being either [one day after the publication of an issuer’s registration document (or prospectus if that is the first document to be published)], or [no earlier than seven days after the publication of an issuer’s registration document (or prospectus if that is the first document to be published)]).

⁷ These guidelines assume that no information passed to unconnected analysts is “inside information” for the purposes of the Market Abuse Regulation. Where such information could be inside information, for example in the context of a spin-off IPO or in relation to existing traded debt of the Company, further consideration will need to be given to whether wall crossing procedures are practical or whether all information proposed to be disclosed to unconnected analysts will need to be publicly announced in advance of such disclosure.

⁸ The word ‘publish’ in this context means to produce a new piece of research on the Company.

- 3. Responsibility for research:** You have sole responsibility for any research that you choose to publish on the Company or the Group, including any opinions, estimates and projections contained therein. Neither the Company, [the Selling Shareholders of the Company,] [*insert syndicate names*] (together, the “**Banks**”) nor any of their respective advisers undertakes to review, correct or verify any of the information contained in your research. As such, any such research should be clear that it is not attributable to the Company, its subsidiaries, subsidiary undertakings and associated undertakings, [the Selling Shareholders of the Company], [*insert syndicate names*] or any advisers to any such entity and that such entities do not accept any responsibility or liability for any loss arising from any research you produce.
- 4. Access to management:** The Company is under no obligation to provide analysts with an opportunity to ask questions of the issuer’s management, provided that if the Company has provided connected analysts with an opportunity to ask questions of the issuer’s management, it will provide unconnected analysts with such an opportunity, whether in person, via telephone or in writing.
- 5. Disclaimer:** Any research that you publish will contain a disclaimer in substantially the form set out in the Annex to this letter in prominent type on the front, inside front or inside back cover.
- 6. Geographical distribution restrictions:** You must ensure that any research that you publish and any Information or any other materials that are provided to you pursuant to these guidelines is not:

 - (a) distributed or transmitted externally, either directly or indirectly, either by you or on your behalf, in or into the [United States, Australia, Canada or Japan] [*include any additional restricted jurisdiction*], or
 - (b) distributed in the United Kingdom, except by or with the approval of a person who is authorised to carry on regulated activities in the United Kingdom for the purposes of the Financial Services and Markets Act 2000. The research reports must be distributed in the UK only to persons who are both (i) “qualified investors” within the meaning of Article (2)(i)(e) of the Prospectus Directive 2003/71/EC (the “**Prospectus Directive**”) and (ii) (a) high net worth entities falling within Article 49(2)(a) to (d) of the Order or (b) to “investment professionals”, being persons specified in Article 19(5) of the Order⁹; or
 - (c) in member states of the European Economic Area other than the United Kingdom, distributed to persons who are not “qualified investors” within the meaning of Article (2)(i)(e) of the Prospectus Directive.
- 7 Timing of Publication Pre-Pricing:** In addition to the undertaking in section 2, you will use reasonable endeavours to publish research, wherever possible, prior to the publication of the price range prospectus/in the case of a tripartite prospectus, the securities note and summary.¹⁰ To the

⁹ If appropriate, include “or to whom another relevant exemption under the Order applies”.

¹⁰ Whilst it is still technically possible in the context of an institutional only offering to use a private pathfinder prospectus, the FCA does not expect this to be the standard approach following the introduction of these new rules for IPOs in the UK. In any event, this will be clarified ahead of unconnected analysts signing up to the

extent you wish to provide a research update as a result of publication of that document or if other additional material information is disclosed by the Company on or after publication, you acknowledge that, subject to you having sufficient time to produce such research, there is an expectation that research will not be published in the seven calendar day period prior to pricing.

You should consult your compliance department as to the timing and content of any research to be published.

- 8 *Registration document:*** [A copy of the approved registration document can be found on the issuer’s website at *[insert website details]*].

If you have any questions on the above, please contact one of the below:

[•]

ACCEPT

DECLINE

guidelines, and then the references in this paragraph to “price range prospectus” will be deemed to be to “pathfinder prospectus”.

ANNEX

This document has been prepared by its authors independently of [Issuer] (the “**Company**”), its subsidiaries, subsidiary undertakings and associated undertakings (each, a “**Group Company**”) [the selling shareholders of the Company (the “**Selling Shareholders**”)] and any banks that may be underwriters and managers in any potential offering. [Name of Broker] has no authority whatsoever to give any information or make any representation or warranty on behalf of the Company, any Group Company, [the Selling Shareholder[s]] or any banks that may be underwriters and managers in any potential offering together, the “**Banks**”) or any advisors to the Company, any Group Company,[the Selling Shareholder[s],] the Banks or any other person in connection therewith. In particular, the opinions, estimates and projections expressed in this document are entirely those of the authors hereof and are not given as an agent of the Company, any Group Company,[the Selling Shareholder[s],] the Banks, any advisors to the Company, any Group Company,[any Selling Shareholder,] the Banks or any other person.

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¹¹ Insert any additional restricted jurisdictions and amend remainder appropriately (e.g. on Category 2 US deals)

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¹² If appropriate, include "(iii) otherwise persons to whom it may lawfully be communicated".

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Drafting Notes

1. This form has been drafted for use in the context of an Initial Public Offering where the issuer is seeking admission to listing on the premium and standard segments of the FCA's Official List and admission to trading on a UK regulated market.

However, it is recognised that, for an Initial Public Offering where the issuer has a listed parent and/ or listed debt, the issuer may need to consider additional factors.

Appendix II

Links to lists of unconnected analysts interested in participating in UK IPOs

Euro IRP

Member firms of Euro IRP interested in participating in UK IPOs can be found at:

<https://euroirp.com/directory/pre-ipo/>

Alternatively, please notify preipo@euroirp.com and member firms on the list will be notified.