

**CONDUCT OF BUSINESS (INITIAL PUBLIC OFFERING RESEARCH)
INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 138C (Evidential provisions); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 July 2018.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business (Initial Public Offering Research) Instrument 2017.

By order of the Board
19 October 2017

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

registration document (in *Part 6 rules* and COBS 11A) a registration document referred to in *PR 2.2.2R*.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text unless otherwise stated.

11A Underwriting and placing

11A.1 Underwriting and placing

~~General requirements concerning underwriting and placing~~ General application

11A.1.1 R ...

Requirements

11A.1.2 EU ...

...

After COBS 11A.1.4EU insert the following new provisions. The text is not underlined.

Application of requirements for information flows during equity IPOs

11A.1.4A R *COBS 11A.1.4BR to COBS 11A.1.4FR apply to a firm that:*

- (1) *has agreed to carry on regulated activities for a client that is an issuer (“the issuer client”) that include underwriting or placing of financial instruments, where:*
 - (a) *those financial instruments (“relevant securities”) are either:*
 - (i) *shares; or*
 - (ii) *certificates representing certain securities where the certificate or other instrument confers rights in respect of shares;*
 - (b) *the relevant securities are intended to be admitted to trading in the UK for the first time;*
 - (c) *the trading under sub-paragraph (b) is intended to be effected by an admission to trading on a regulated market; and*
 - (d) *an approved prospectus will be required in accordance with section 85 of the Act for the relevant securities; and*

- (2) is intending to disseminate *investment research* or *non-independent research* on that *issuer client* or those relevant securities before the *admission to trading*.

Communications between the issuer and research analysts in equity IPOs

- 11A.1.4B R (1) Unless it complies with paragraphs (2) and (3) a *firm* must prevent its staff involved in the production of *investment research* or *non-independent research* (“the *firm’s* analysts”) from being in communication with the *issuer client* and/or the *issuer client’s* representatives outside of the *firm* (“the *issuer* team”).
- (2) Prior to the *firm’s* analysts being in communication with the *issuer* team, the *firm* must ensure that a range of unconnected analysts (as defined in paragraph (4)) will have the opportunity (subject to *COBS* 11A.1.4CR) either:
- (a) to join the *firm’s* analysts in any communication with the *issuer* team that is made or received before the *firm* disseminates any *investment research* or *non-independent research* about the *issuer client* or the relevant securities as described in *COBS* 11A.1.4AR(1); or
- (b) to be in communication with the *issuer* team in a way that satisfies the following conditions:
- (i) the communication results in those unconnected analysts receiving or being given access to all the information that is:
- (A) given by the *issuer* team to the *firm’s* analysts during the relevant period; and
- (B) relevant for the purposes of the *firm* producing any *investment research* or *non-independent research* on the *issuer client* or the relevant securities;
- (ii) the information that each of those unconnected analysts receives or can access is identical;
- (iii) that communication is completed before the end of the relevant period; and
- (iv) the relevant period for the purposes of sub-paragraphs (2)(b)(i) and (2)(b)(iii) starts from the time at which this *rule* applies and ends at the time at which the *firm* disseminates any *investment research* or *non-independent research* on the *issuer client* or the relevant securities.
- (3) (a) To select the range of unconnected analysts under paragraph (2)

the *firm* must:

- (i) undertake an assessment of the potential range of unconnected analysts for the purposes of paragraph (2); and
 - (ii) use that assessment to ensure that the range of unconnected analysts given the opportunity under paragraph (2) is one that, in the *firm's* reasonable opinion, has 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 service of underwriting or placing to the *issuer client*.
- (b) For its assessment and opinion under sub-paragraph (a) the *firm* may assume that an unconnected analyst that is given an opportunity to interact with the *issuer* team will publish an opinion on the *firm's issuer client* that will be available to potential investors.
- (c) The *firm* must make a written record of its assessment and opinion under sub-paragraph (a) at the time at which it forms its opinion.
- (d) The *firm's* record under sub-paragraph (c) must:
- (i) set out the *firm's* process for conducting the assessment and forming the opinion under sub-paragraph (a);
 - (ii) identify the *firm's* staff that were involved in forming that opinion; and
 - (iii) explain the *firm's* consideration of the number and expertise of the unconnected analysts included in the range.
- (e) The *firm* must retain the record made under sub-paragraph (c) for five years from the date on which it is made.
- (4) An “unconnected analyst” means a *person* other than the *firm* or its staff:
- (a) who does not provide the service of underwriting or placing of the same relevant securities to the same *issuer client*; and
 - (b) whose business or occupation may reasonably be expected to involve the production of research.

- 11A.1.4C R (1) If an opportunity communicated to the range of unconnected analysts under *COBS* 11A.1.4BR(2) is subject to any restrictions that would apply to any of the unconnected analysts that accept the opportunity, a *firm* must ensure that those restrictions would not unreasonably prevent, limit or discourage those unconnected analysts from producing and disseminating research on the *issuer client* or the relevant securities.
- (2) The *firm* must also make and retain a written record of any such restrictions, regardless of whether the restrictions are subsequently applied to any unconnected analyst.
- (3) The *firm* must make the record at the time the opportunity is communicated to the range of unconnected analysts.
- (4) The *firm* must keep the record for a period of five years after the date it was made.
- 11A.1.4D E (1) A restriction is unreasonable under *COBS* 11A.1.4CR(1) if it prevents an unconnected analyst from producing and disseminating research in circumstances in which the *firm* that is subject to *COBS* 11A.1.4CR is itself able to produce and disseminate *investment research* or *non-independent research*.
- (2) Contravention of (1) may be relied upon as tending to establish non-compliance with *COBS* 11A.1.4CR(1).
- 11A.1.4E R (1) Where a *firm* acts in accordance with *COBS* 11A.1.4BR(2)(b) then it must make and retain a written record of:
- (a) the information on the *issuer* or the relevant securities that is given by the *issuer* team to the *firm's* analysts during the relevant period under *COBS* 11A.1.4BR(2)(b)(iv); and
- (b) the information on the *issuer* or the relevant securities that is given by the *issuer* team to each of the relevant unconnected analysts during the same period.
- (2) The *firm* must make the record at the end of that period.
- (3) The *firm* must keep the record for a period of five years after the date it was made.

Timing restrictions for disseminating research on equity IPOs

- 11A.1.4F R (1) A *firm* must not disseminate *investment research* or *non-independent research* on the relevant *issuer client* or relevant securities as described in *COBS* 11A.1.4AR(1) until after the relevant time in paragraph (2).
- (2) The relevant time is:

- (a) where a *firm* acts in accordance with COBS 11A.1.4BR(2)(a), one *day* after the publication of the relevant document in paragraph (3); or
 - (b) otherwise, seven *days* after the publication of the relevant document in paragraph (3).
- (3) The relevant document is:
- (a) an approved *prospectus* regarding the relevant securities; or
 - (b) an approved *registration document* regarding the *issuer*.
- (4) For this *rule*, publication of the relevant document means making the relevant document available to the public in any of the ways set out at PR 3.2.4R(1) to (4) (Method of publishing).
- (5) This *rule* does not apply to a *firm* in circumstances where, as a result of the *firm's* analysts being prevented from being in communication with the *issuer* team, it has not needed to engage with any unconnected analysts for the purposes of COBS 11A.1.4BR.

Further requirements

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12 Investment research

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12.2 Investment research and non-independent research

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After COBS 12.2.21EU insert the following new provisions. The text is not underlined.

- 12.2.21A G (1) The phrase “participating in ‘pitches’ for new business” in Recital 56 to the *MiFID Org Regulation* would generally include a *financial analyst* interacting with an *issuer* to whom the *firm* is proposing to provide underwriting or placing services (including the *issuer's* representatives outside of the *firm* and any *person* who has an ownership interest in the *issuer*), until both:
- (a) the *firm* that employs the *financial analyst* has *agreed to carry on regulated activities* that amount to underwriting or placing services for the *issuer*; and
 - (b) the extent of the *firm's* obligations to provide underwriting or

placing services to the *issuer* as compared to the underwriting or placing services of any other *firm* that is appointed by the *issuer* for the same offering is confirmed in writing between the *firm* and *issuer*.

- (2) (a) It may nevertheless be possible, in limited circumstances, for a *financial analyst's* interactions with any such *person* referred to under paragraph (1) to be entirely separate from the *firm's* 'pitches' such that the risk to their objectivity being impaired would be reasonably low.
- (b) However, the *FCA* considers that would not be the case where the analyst is aware of the 'pitches', or may have reason to believe that the *firm* is conducting the 'pitches'.
- (3) In any case a *firm* should recognise that any situation in which there is a connection between its 'pitches' and a *person* with whom its *financial analyst* interacts can give rise to a conflict of interest (see *SYSC 10* (Conflicts of interest) and the relevant provisions of the *MiFID Org Regulation*).

Amend the following as shown.

Sch 1 Record keeping requirements

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1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>COBS</i> 11.7A.5EU
<u><i>COBS</i> 11A.1.4BR(3)(c)</u>	<u>The <i>firm's</i> assessment under <i>COBS</i> 11A.1.4BR(3)(a)</u>	(1) <u>The <i>firm's</i> process for conducting the assessment and reaching the opinion under <i>COBS</i> 11A.1.4BR (3)(a);</u> (2) <u>the <i>firm's</i> staff that were</u>	Once the <u><i>firm</i> has formed its opinion under <i>COBS</i> 11A.1.4BR (3)(a)</u>	<u>5 years</u>

		<p><u>involved in reaching that opinion; and</u></p> <p><u>(3) an explanation of the <i>firm's</i> consideration of the number and expertise of the unconnected analysts included in the range.</u></p>		
<u>COBS 11A.1.4CR</u>	<u>Restrictions on unconnected analysts</u>	<u>Any restrictions that would be imposed on each unconnected analyst that accepts the opportunity under COBS 11A.1.4BR(2)</u>	<u>When the opportunity is communicated to the range of unconnected analysts</u>	<u>5 years</u>
<u>COBS 11A.1.4ER</u>	<u>Information given by the issuer team during the relevant period under COBS 11A.1.4BR(2)(b)(iv)</u>	<p><u>(1) The information on the issuer or the relevant securities that is given by the issuer team to the <i>firm's</i> analysts during the relevant period under COBS 11A.1.4BR(2)(b)(iv); and</u></p> <p><u>(2) the information on the issuer or the relevant securities that is given by the issuer team to each of the</u></p>	<u>At the end of the relevant period under COBS 11A.1.4BR(2)(b)(iv)</u>	<u>5 years</u>

		<u>range of unconnected analysts during the same period.</u>		
<i>COBS</i> 11A.1.9EU