FCA Discussion Paper: Availability of information in the UK Equity IPO process (DP 16/3)

Response by The Association for Financial Markets in Europe ("AFME") and the British Bankers' Association ("BBA")

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

The BBA is the leading association for the United Kingdom banking and financial services sector, representing over 200 banks which are headquartered in 50 countries and have operations in 180 countries worldwide. Our members manage more than €10 trillion in banking assets, employ nearly half a million individuals, contribute some €100 billion to the economy each year and lend some €200 billion to businesses.

Introduction

AFME and the BBA were pleased to have a preliminary exchange of views with the FCA at a meeting on 16 June 2016 on the topics raised in Discussion Paper 16/3. Prior to that meeting AFME/BBA provided the FCA with a preliminary response dated 10 June 2016 (the "Preliminary Response") for discussion at that meeting. The Preliminary Response described our Proposed Model for the sequencing and provision of information in UK IPOs. We hope that the FCA found the meeting useful in formulating its position.

We understand that the FCA will consider the views of all market participants following receipt of responses to DP 16/3 prior to 13 July 2016, after which the FCA will put forward a recommended model for the UK IPO process for further bilateral discussions with market participants. AFME and the BBA look forward to taking part in these further discussions.

With this in mind and in light of the discussions at the meeting on 16 June, AFME and the BBA do not propose in this formal response to DP 16/3 to make any further substantive comments or proposals to those already set out in the Preliminary Response. The majority of questions in DP16/3 are already addressed in broad terms in the Preliminary Response and so, unless otherwise indicated, the responses given here should be read in conjunction with the Preliminary Response. Accordingly, we will give brief responses to questions 1-15 and 17, some of which relate to the topics covered by the Preliminary Response and, where relevant, we will refer to the Preliminary Response and the Key Principles identified therein (attached). Our

response to question 16, which is not covered by the Preliminary Response, contains a more detailed explanation of our view and a proposed course of action (see below).

Q1: Having regard to the typical UK IPO timetable, do you agree that it is in principle a cause for concern that in most cases a draft prospectus is available two weeks after the ITF and a final prospectus is only available after pricing? Please state reasons.

We recognise that market participants, particularly on the buy-side, have been increasingly expressing interest in being provided access to issuer information at an earlier stage of the IPO process. As stated in the first Key Principle of the Preliminary Response, whilst we believe that the current timetable generally provides adequate time and information to investors to consider their investment decisions, we agree that it would be beneficial to the IPO process to publish detailed information concerning the issuer earlier in the process than is currently the case. As noted in the Preliminary Response, we are proposing that, in most cases, the first document to be published would be a registration document that would include (subject to further discussion on a small number of points) the information required by Annex I of the Prospectus Rules. Please see the Preliminary Response for more detail on the benefits of earlier publication.

Q2: Do you have concerns about connected research? If so, please describe those concerns.

As noted in the Preliminary Response, we believe connected research offers a number of benefits to the UK IPO process, and that the current systems and controls in relation to connected research are appropriate and fit for purpose. Accordingly, we do not have fundamental concerns. As noted in the first Key Principle in the Preliminary Response, the publication of issuer information in the form of a registration document earlier in the process should provide additional, more comprehensive information about an issuer earlier than the distribution of connected research, which may result in some reduction in the perceived over-reliance on such research. We refer also to our response to question 16, below, where we address the comments made about the possible heightened risk of pressure being placed on connected analysts to provide favourable research coverage on a company.

Q3: What is the basis on which you consider legal liability may attach to the publication of research in close proximity to the publication of an approved prospectus?
Please explain, by reference to the current legal framework. It would be helpful if you could consider the question from the perspective of both issuers and research publishers.

Please refer to the second Key Principle in the Preliminary Response for our detailed comments. It is also important to note that we do not consider that the blackout period is the reason for the late publication of the prospectus in the current system, rather that traditionally a single integrated pathfinder or prospectus containing both company and offering information has been published only at the time that issuers commit to the IPO and begin their management

roadshow. In the Proposed Model the issuer information would be separate from the offering-related information, which would facilitate publishing the issuer information at an earlier point in the IPO process. With the earlier publication of company information, issuers and shareholders will still be able to delay committing to moving ahead with the IPO until later in the timetable, but company information will be available to market participants earlier than under the current system.

Q4: Do you have any comments on regulatory or other possible drivers of the existing blackout period?

Please see the second and third Key Principles in the Preliminary Response. We are also of the view that the FCA should modify COBS 12.2.12G and distinguish the reference to blackout periods in UKLA / TN / 604.1 in the context of whether or not connected research triggers the PD advertisement regime.

Some length of "blackout period" or "quiet period" between the publication of pre-deal research and the publication of an issuer's offering documents is, we think, important, in order to: (1) reduce, from a practical perspective, the risk of investors confusing pre-deal research (an independent view of the company authored by a research analyst) with an offering document of the company; (2) reinforce, from a perception perspective, to the extent possible, the belief by the market in the independence of the connected research analyst's educational function from the company's marketing efforts; and (3) provide some practical protection for the connected research analysts from investors claiming (whether or not such claims would eventually be found by a court to have merit and be substantiated in law) the pre-deal research should be treated as part of the company's offering materials.

In our view, the determination of whether and how long a "quiet period" or "blackout period" should be applied in any particular situation should be determined by the banks and the issuer at their discretion rather than being specifically mandated by law or regulation.

Q5: What do you think are the main barriers to more unconnected research on IPOs? Do you think fostering the conditions for more unconnected research is a suitable objective to improve further the UK process?

We agree with the FCA's statement in section 3.19 about the principal barrier to the production of unconnected analyst research in UK IPOs. We also note the comment made in section 3.20, but believe that the earlier availability of company information is the most significant factor in the facilitation of unconnected analyst research.

We agree that it should be an objective of any reform to enable conditions to exist, where practicable, such that unconnected analysts are able to publish pre-offering research. Our views of how unconnected analysts would become involved, were they to choose to do so, are set out in Key Principle 6 of the Preliminary Response. However, please note that, as set out in our

response to question 12, below, we do not believe that issuers should be required to provide access to management for unconnected analysts.

In particular, we consider that any response should take into account certain legitimate concerns of the issuer, its shareholders and the underwriting banks, including:

(a) the potential loss of flexibility provided by the pre-announcement 'private' phase of the IPO process and in particular in the context of a dual track process; and

(b) the inability of an issuer to enforce recommended blackout periods and distribution and confidentiality restrictions.

As part of its preparation for the submission of this response, AFME has collated information from its member firms about the publication of research by unconnected analysts for IPO conducted in the last 2-3 years. Although the information received is not comprehensive, it shows that in general, and even in European jurisdictions where it is common to hold briefings for unconnected analysts during the IPO process, it is rare for unconnected analysts to commence publishing research coverage prior to pricing or the start of trading. Based on this information, it is our view that unconnected analysts will still be inclined to wait for the start of trading prior to initiating research coverage.

Q6: Do you agree with the concerns that we have set out in Chapter 3?

We do not agree that current market practices in relation to IPOs creates risks to the FCA's operational objectives but we share the central views expressed in DP 16/3 regarding the desirability of publishing detailed information concerning the issuer earlier in the IPO process than is currently the case. The Proposed Model put forward in the Preliminary Response is our attempt to address these concerns in a balanced way that is consistent with a well-functioning IPO market.

Q7: Do you agree with our conclusion that a regulatory intervention is required to achieve reform? If not when and how do you believe a market-led solution could be secured?

In our view, some regulatory intervention would be useful in order to achieve the publication of the registration document earlier in the process. As indicated at our meeting on 16 June, we recommend that the FCA endorses a best practice model for use by market participants, except in circumstances where it is not appropriate (which could be determined in consultation with the FCA), that allows for the flexibility we have suggested in the Proposed Model. We also believe it would be useful for the FCA to issue guidance addressing, among other things, the questions we have set out at the end of the Preliminary Response together with a clarification in relation to COBS 12.2.12G and UKLA / TN / 604.1 as indicated in our answer to question 4.

Q8: Do you support these high level aims for reform of the UK IPO process? If not, please set out concerns and/or alternatives.

We agree that the IPO process could be enhanced in some respects and support the high level aims of the FCA. Please see the Preliminary Response setting out our views and the Proposed Model.

Q9: Do you agree that a ban on (i) all research and (ii) only connected research in the IPO process would not be a suitable option for reform? If not, why not?

We agree that any such ban on research in the IPO process would be a disproportionate response to any concerns about current practice. We also note the feedback from buy-side investors that they view IPO research as generally helpful in the process. Please see the Preliminary Response for our thoughts on this topic.

Q10: Do you agree that simultaneous publication does not represent a suitable or practical basis for reformed market practice?

For the reasons given in the Preliminary Response, we agree.

Q11: Do you agree that requiring publication of the registration document component of the prospectus prior to the publication of research would improve the IPO process? If not, why not?

As set out in the Preliminary Response, we agree that there is potential benefit in publishing issuer information in the form of a registration document earlier in the IPO process than when it currently becomes available (i.e. at the time the price range prospectus or pathfinder document is published). See the Preliminary Response for our detailed analysis of the potential benefits. As noted in the Preliminary Response, we are of the view that requiring publication of the registration document concurrent with or prior to the analyst meeting would add market risk (i.e. lengthen the public phase of the IPO).

Q12: Do you agree that requiring issuers to open the presentation to analysts to unconnected research analysts would improve the IPO process? If not, why not?

As set out in the Preliminary Response, in our view any modification to the IPO process should not include a requirement that unconnected analysts be provided with a management presentation at any particular stage of the process. It is important, we believe, to balance the need to maintain flexibility and optionality in the IPO process and the additional commitment of time and resources required by management to facilitate the involvement of unconnected

analysts against the very limited practical evidence that this access leads to publication of unconnected research alongside the connected research. Any model referencing the involvement of unconnected research analysts should focus primarily on their being able to review the registration document earlier in the process and allow for flexibility on whether they have access to management or to presentations, to reflect issuer preferences and the nature of the transaction. Please see Key Principle 6 in the Preliminary Response for our detailed comments.

Q13: Which of models 1 to 3 do you think would provide the best basis for reformed market practice?

The principles and themes set out in the Preliminary Response have led us, for the reasons set out in the paper, to conclude that the Proposed Model would be the best basis for reformed market practice for all market participants. The Proposed Model does not neatly fall into model 1, 2 or 3 but, we believe, addresses the key topics raised in DP 16/3.

Q14: For each model (1 to 3), please consider
• Are there any practical issues that we need to consider?
• Would it lead to an increase in the length of the IPO process?
• Would it create conditions for unconnected research to be produced?
• Would it lead to any increase in costs or risks for the issuer, investors or intermediary firms?

Please see the Preliminary Response for the considerations that led us to suggest the Proposed Model.

Q15: Are there any other options you think we should consider?

We believe the Preliminary Response makes the case for the Proposed Model.

Q16: Do stakeholders have concerns with how conflicts of interest are managed when investment banks' analysts meet an issuer and/or their advisers as part of pre mandate IPO pitching process? If so, do stakeholders have suggestions on how this could be improved, for example by firms establishing best practices or clarification of our regulatory expectations in this area?

We note the comments made in section 3.7 of the DP and acknowledge that potential conflicts of interest could arise as a result of pre-mandate interactions between issuers, owners and their advisors and research analysts. Members believe that, in general, current policies and procedures in place at their firms help to maintain research independence throughout the IPO process, beginning with any pre-mandate interaction, and including the distribution of pre-deal research and post-IPO coverage. We agree that the proposed reform of the IPO process would

not remove the potential for conflicts entirely and that clarification for market participants would be helpful.

We are of course also aware of the US case arising out of the 2010 proposed IPO of Toys 'R' Us cited in the Discussion Paper. We also note the more recent guidance issued by FINRA on this topic. Following the publication of this guidance, and recognizing that there is risk that, in pre-mandate meetings, the circumstances of those meetings may cause research analysts to appear to be soliciting investment banking business, AFME was asked by its members to form a working group to discuss the possible issuance of industry guidance/best practice for the European IPO/capital markets. This AFME-led project was completed in June 2016 and AFME issued to market participants the resulting *Practices and Principles with Respect to Research Meetings/Material Prior to the Award of a Capital Markets Mandate* (the "AFME Guidance") in early July (see attached).

We believe that use of the AFME Guidance by market participants would help to further address these conflict of interest concerns and enable any perceived current ambiguities to be clarified. As to whether the FCA should issue any regulatory clarification, our view is that it would be preferable for the FCA to review the AFME Guidance as a first step. To the extent that the FCA has comments on how this guidance could be improved, AFME could issue a revised version of the AFME Guidance.

Q17: Would the models of reforms considered [in DP 16/3] also be appropriate as the basis for reformed practice in IPOs on non-regulated markets?

In considering the proposals for reform we have only considered the practice on regulated markets. This is because our members typically do not act as Nomad for AIM transactions and accordingly we do not feel that we are in a position to comment.

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Attachments:

- Preliminary Response dated 10 June 2016
- Practices and Principles with respect to Research Meetings/Material Prior to the Award of a Capital Markets Mandate dated July 2016

DP16/3 – AVAILABILITY OF INFORMATION IN THE UK EQUITY IPO PROCESS

PRELIMINARY RESPONSE

Background

In DP16/3 the FCA has noted that, in considering reform of the IPO process in the UK, it is aiming for a process where:

- an approved prospectus is the central document in the IPO process and is made available to investors when they need it;
- firms foster high standards of conduct, in particular in the management of any conflicts of interest that may arise during the preparation and distribution of connected research; and
- conditions exist for unconnected research to be distributed during the IPO process, where there is demand for it.

The FCA is also mindful of the need to avoid unwarranted lengthening of the IPO timetable, any increase in execution risk or any other unnecessary disruption of the established market practice. The ECM Board of The Association for Financial Markets in Europe (***AFME***) agrees with these policy objectives and, in this paper, sets out its thoughts on the proposals contained in DP16/3 and how these aims might be achieved. AFME has consulted with the British Bankers' Association (the ***BBA***) and its membership and the BBA is supportive of the conclusions reached in this paper.

In preparing this paper, AFME and the BBA have had regard to the interests of the key stakeholders in the IPO process, including issuers, shareholders, buy-side investors and investment banks as well as the FCA itself, recognising that if the IPO process in the UK is to be modified, it needs to be in a way that is broadly acceptable to all constituencies and that maintains the attractiveness of London as a listing venue. This is particularly important given that the current IPO process, while having areas that could be improved as noted in DP16/3 and various other reports over the past few years, fundamentally remains fit for purpose and has not hindered a robust and successful IPO market in the UK in recent years.

It is proposed that the modified IPO process (the ***Proposed Model***) described later in this paper would become the standard approach to the UK IPO process although issuers and underwriters would need to retain the ability to flex the process according to the circumstances (for example, the ability to conduct accelerated or 'club' IPOs, re-IPOs and processes where there is no distribution of connected research).

In this paper, the following definitions have been adopted for some of the key terms used:

- "*Registration document*": a document comprising the company disclosure, including business description, risk factors, OFR and historical financial statements as well as much of the additional information section, but omitting offer-related information. At the time of its publication, it would have been reviewed by the UKLA, who would have approved it formally or informally.
- "*Securities note*": information relating to the securities being offered, the specifics of the offer and the plan of distribution. It is anticipated that a draft of the securities note and the summary would be reviewed by the UKLA in parallel with its review of

the registration document but that it would not be published until the price range was set immediately prior to the management roadshow.

- "*Prospectus*": an integrated document that would comprise the registration document (updated as necessary for changes to existing, or availability of new, company information), the securities note and a summary. It would contain a price range and would be formally approved by the UKLA, with publication taking place before the management roadshow started. At the conclusion of the bookbuilding process, the final price would be disseminated.

Key principles

In considering any modification to the IPO process, AFME and the BBA believe that there are certain key principles of the current process that should be preserved and also additional ones that emerge from the FCA's discussion paper. They are set out below together with an explanation of the background to each.

1. <u>There is potential benefit to all involved in the IPO process in publishing a registration document earlier in the IPO process than at the time the price range prospectus or pathfinder document currently becomes available</u>

For issuers, it would mean a longer period of time for potential investors to familiarise themselves with the issuer's business and so be better informed and would provide issuers and advisers additional time to build upon earlier interactions with investors that may have already taken place. It would also mean that the issuer and its advisers would focus on the disclosure earlier in the process, which is likely to mean that the registration document disclosure rather than the research analyst presentation will lead the disclosure preparation process.

For investors, it should enable better preparation for the management roadshow and allow them to give more detailed and incisive feedback on the issuer and its equity story and the expected valuation range before a price range is set and allow investors to make better informed investment decisions. This should also improve the price discovery process for issuers and banks.

For banks, having issuer information available earlier in the IPO process should mean that less emphasis is placed by investors on connected research, which may result in some reduction in the risk associated with the distribution of such research. In addition, the change would also greatly reduce the risk of pre-deal research referencing factual company information that is inconsistent with the company's finalised business description. In addition, the earlier publication of issuer information should assist with the identification of any issues with the issuer's business in good time before internal committee approvals are sought or research reports are distributed. Verification would be complete and the comfort package for the bank(s), including those related to sponsor obligations, would be agreed by the time of publication of the registration document. As noted above, the registration document would have been submitted for review to the UKLA and either formally or informally approved by it.

It is worth noting that some issuers or their shareholders may initially be reluctant to provide a registration document earlier in the process than is usual in current IPO market practice. Reluctance would be based on a perception of an increase in the market risk. This should be addressed by a shorter time period between publication of the registration document and distribution of connected analysts' research. In addition, as discussed further below, it is not

anticipated that every registration document filing will result in the publication of an intention to float announcement, which over time should help to change market perception regarding the significance of the registration document and mitigate any such concerns.

2. Issuers and banks may have potential liability if investors base their investment decision on analyst research. Therefore there should be some separation between publication of the registration document and the distribution of the research and between distribution of the research and the publication of the prospectus.

As noted by the ABI in its 2013 report entitled 'Encouraging equity investment', the separation between research and offering documents in order to manage legal risk has been required based on legal advice going back to the 1980s. The legal risk arises where investors base their investment decision on analyst research, treating it as part of the offering materials or attributing the information in it, including the forecasts, to the issuer. Because it is likely to be impossible to exclude any legal risk, issuers and banks are reluctant to forego the protection offered by the market practice of there being a period of time (which currently is usually in the region of seven to 14 days rather than the two to three months that was the normal period at the time of the privatisations that took place in the 1980s) between distribution of research and the publication of the prospectus.

Even if the IPO process is altered and there is regulatory intervention by the FCA, it is unlikely to be possible to conclude that there is no legal risk. Moreover, any change to UK law and regulation alone would not eliminate the risk given the cross-border nature of deals and distribution of research reports (although it is envisaged that research reports would generally continue not to be distributed into the US or, in the case of other jurisdictions, where it is believed that there is an increased risk of liability). Banks will of course continue to implement procedures and controls designed to preserve analyst independence and research reports will continue to have appropriate legends making it clear that they are not part of the offering documentation; however the overall risk of liability in certain jurisdictions will remain, as will the potential for claims based on misrepresentation, misleading statements and negligent misstatement for example.

Consequently, it is considered preferable for the development and timing of the separation of the phases described below to be driven by market participants.

3. It would be preferable to have two distinct periods where research is not distributed in the IPO process: the first a "quiet" period and the second a more formal "blackout" period

If the registration document is published before the research, in addition to the points made above, there is the possibility that analysts will use its content to form part of / inform their research, which is likely to have a positive impact on the quality of the factual information in the research. For that reason and the ones given above, it is likely to be desirable to have a "quiet" period following publication of the registration document and before the research is distributed to allow analysts to finalise their reports. Unless the analyst presentation is four weeks or more ahead of registration document publication, there is likely to be a gap as a practical matter given that the analysts are likely still to be finalising their reports.

The second, more formal "blackout" period would be between distribution of the connected research and publication of the prospectus, with the full purpose of the blackout being to distinguish the research from the price range prospectus, as is the case under the current IPO process.

It may be the case that the "quiet" and "blackout" periods would in aggregate not be any longer than the "blackout" period in the existing IPO process and may indeed be shorter.

4. Any modification to the IPO process should not increase potential legal liability or market / execution risk for issuers, shareholders, banks or any other participants in the process

As mentioned above, it is considered important that any modified process does not increase liability for any participant relative to the current position. On the legal side, this partly informs the comments in relation to the "quiet" period and the "blackout" period above but applies more generally as well.

In addition, as the FCA has noted, any alternative process should not increase the market risk for the issuer or the banks, including through lengthening the "public" element of the IPO timetable (i.e. from announcement of the IPO through to admission to listing and trading).

In considering modifications to the IPO process, it will also be important to maintain the "private", confidential stage of an IPO for as long as possible as this helps create additional flexibility for the process, particularly in the context of so-called dual track processes (where an M&A sale may be explored in parallel with IPO preparations or vice versa), as transactions can be delayed, aborted and restarted without fanfare if required.

5. A pre-deal investor education phase should be retained

The pre-deal investor education (PDIE) phase of an IPO is a central part of effective price discovery and the feasibility assessment of the transaction. This is the process by which the connected analysts use their distributed research as a basis for discussing the company contemplating the IPO with potential investors and to answer questions on the issuer and its potential valuation drivers ahead of the setting of the price range and management commencing the roadshow. By comparison, the management roadshow involves the issuer's management marketing the transaction through roadshows to potential investors with the aim of securing orders from those investors to subscribe for or purchase shares in the offer and facilitate the bookbuild. The PDIE process is separate from the marketing and roadshow of the IPO process given that, as mentioned above, the former assists with assessment of the feasibility of the transaction as well as the price discovery process that is then used for the latter.

As connected analysts are members of the syndicate banks (although of course independent within their bank as is required) it also means that the issuer can expect as a matter of usual market practice - unlike with unconnected analysts, as discussed further below - that research will be distributed. PDIE can therefore be carried out in a more extensive and organised manner and so ensure that effective price discovery and IPO feasibility assessment takes place. Connected analysts, as a small and discreet group with industry expertise, attending an analyst presentation ahead of publication of the registration document, will also be valuable to the due diligence and disclosure process, during the preparatory phase of the IPO and before it is made public. The questions posed by the connected analysts may lead to the company and its advisers undertaking further due diligence and / or amending disclosure before the company publishes its registration document.

6. Any proposed involvement of unconnected analysts should neither decrease flexibility for the issuer nor increase execution risk and should, accordingly, be flexible in case

there is no appetite for it in any particular case (i.e. there should be no mandatory involvement of unconnected analysts)

In addition to ensuring the earlier availability of information during the IPO process through the publication of the registration document, issuers and their advisers may choose to invite unconnected analysts to a management presentation. This presentation, if held, should take place at the earliest on the date that the registration document is published. If unconnected analysts are brought into the process before it is made public, it may jeopardise confidentiality and increase the execution risk of the transaction – the importance of the "private" phase has been mentioned above – given that by definition they would be unconnected to the transaction and so no controls would be able to be imposed over them with any certainty, including as to confidentiality of information and timing of distribution, if at all.

In addition, the additional resource and time required from an issuer's management / wider IPO team in facilitating an unconnected analyst process should be weighed against an evaluation of empirical evidence as to whether there is likely to be any meaningful appetite on the part of unconnected analysts to write such research ahead of pricing. Accordingly, unconnected analysts may not accept invitations to attend an analyst presentation or, even if they have attended a presentation, may not distribute research. AFME is seeking to compile evidence on this from other jurisdictions and will share it with the FCA when available.

7. The existing eligibility and sponsor regimes should be preserved as part of and aligned with any modified IPO process

It is felt that the existing eligibility and sponsor regimes are fit for purpose and should be incorporated into any modified process. For example, it is anticipated that the eligibility process in relation to an issuer would be started by the sponsor bank(s) and the FCA so that it ran in parallel with the review by the FCA of the registration document. This would mean that, by the time the registration document was published, the FCA and the issuer and its advisers would be comfortable that all eligibility concerns had been cleared even if eligibility was not formally confirmed until the price range prospectus was approved by the FCA immediately prior to the management roadshow starting. The eligibility and sponsor regimes are particular to the UK so careful consideration should be given as to how these regimes are overlaid onto any modified process that is based in whole or in part on non-UK models such that their intrinsic value and effectiveness is not lost or impaired.

8. Any modified IPO process should not result in a retail offer being required on every IPO

In current UK IPO market practice it is usual for institutional investors to receive a pathfinder prospectus at the start of the management roadshow but under the potential modified process they would receive a full prospectus with a price range (an approach that is consistent with current market practice for retail offerings) at that time, having also had sight of the registration document. It does not follow, however, that all offerings under the potential alternative process should require a retail element. Issuers should still be free to decide whether to include a retail element (whether through a direct retail offer and/or an intermediaries offer) based upon factors such as the issuer's profile, offering size and the prevailing market conditions.

The Proposed Model

The principles and themes set out above have led to the development of the Proposed Model. It is set out in diagrammatic form in the Appendix to this paper, together with some notes that reflect some of the comments made above.

In the Proposed Model, the issuer would be able to choose whether to announce its intention to float at the same time as publishing the registration document or when the connected research is distributed or not at all. For example, it may alternatively choose to make a short announcement on the date of publication of its registration document that it has published the document, followed by its intention to float announcement if and when a decision is made to move forward with the offering and to distribute connected research. Issuers should be able to retain the freedom to choose their individual PR strategy and the timing and content of their announcements (although it is of course understood that they will have to make such decisions with due consideration for the circumstances of the transaction and applicable laws and regulation regarding publicity and disclosure).

As mentioned earlier, it is envisaged that the Proposed Model would be the standard approach to a UK equity IPO. It will be necessary, however, to preserve the ability for issuers to modify the process as necessary in the circumstances – for example to cater for extreme market turbulence, the nature of the pre-IPO shareholder register or other drivers. Examples include retaining the ability to conduct accelerated or 'club' IPOs such as the AA transaction, re-IPOs such as the Wizz Air transaction and processes where there is no distribution of research.

It is of course clear that nothing in the Proposed Model obviates the need for research analysts to remain independent and for firms to foster high standards of conduct, in particular in relation to conflicts of interest.

Guidance required from the FCA

The key principles of the Proposed Model set out above give rise to some areas where FCA guidance will be required.

- ***Eligibility process***

It is proposed that the eligibility process should commence during the period of preparation of the registration document, with a view to clearing any material eligibility concerns by the time of publication of the registration document. Does the FCA agree?

- ***Sponsor regime***

It is not anticipated that any sponsor confirmations or declarations will need to be given by sponsor bank(s) at the time of publication of the registration document, with formal declarations only being provided when the decision to proceed with an IPO has been taken and the price range prospectus is approved immediately prior to the management roadshow commencing. Does the FCA agree?

- ***Financial promotion regime***

The registration document should not constitute a financial promotion. Does the FCA agree?

If it believes that it would be a financial promotion, does it consider that issuers would be able to use an existing exemption from the regime – for example, Article 68 of the Financial

Services and Markets Act 2000 (Financial Promotion) Order 2005 – and be able to avoid it having to be approved?

Does the FCA agree that, if it approved the registration document, that document could be published without concern under the financial promotion regime pursuant to Article 70 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005?

- ***Advertisement regime***

The registration document should not constitute an advertisement, as it would not speak to a specific offer or admission of securities. Does the FCA agree?

- ***Timing of FCA review and approval***

The FCA should approve (whether formally or informally) the registration document prior to its publication. Does the FCA agree? If so, the approval should be flexible enough to be given the night before publication or first thing on the morning of publication to allow the registration document to be published at the same time as any announcement of its publication at 7 a.m.

The full prospectus should then be formally approved later in the process (comprising an integrated summary, registration document and securities note in the form substantially similar to that published on IPOs currently), with the registration document having been updated as necessary for any events that had occurred in the intervening period.

- ***Implications of publication of registration document***

At the point of introduction of a modified IPO process, it would be beneficial for the FCA to make a statement about the implications of a registration document being published so that the media and investors do not automatically assume that it means that an IPO is going to take place (given that the launch of the IPO will not necessarily be formally confirmed until distribution of the connected research). Would the FCA be willing to do that?

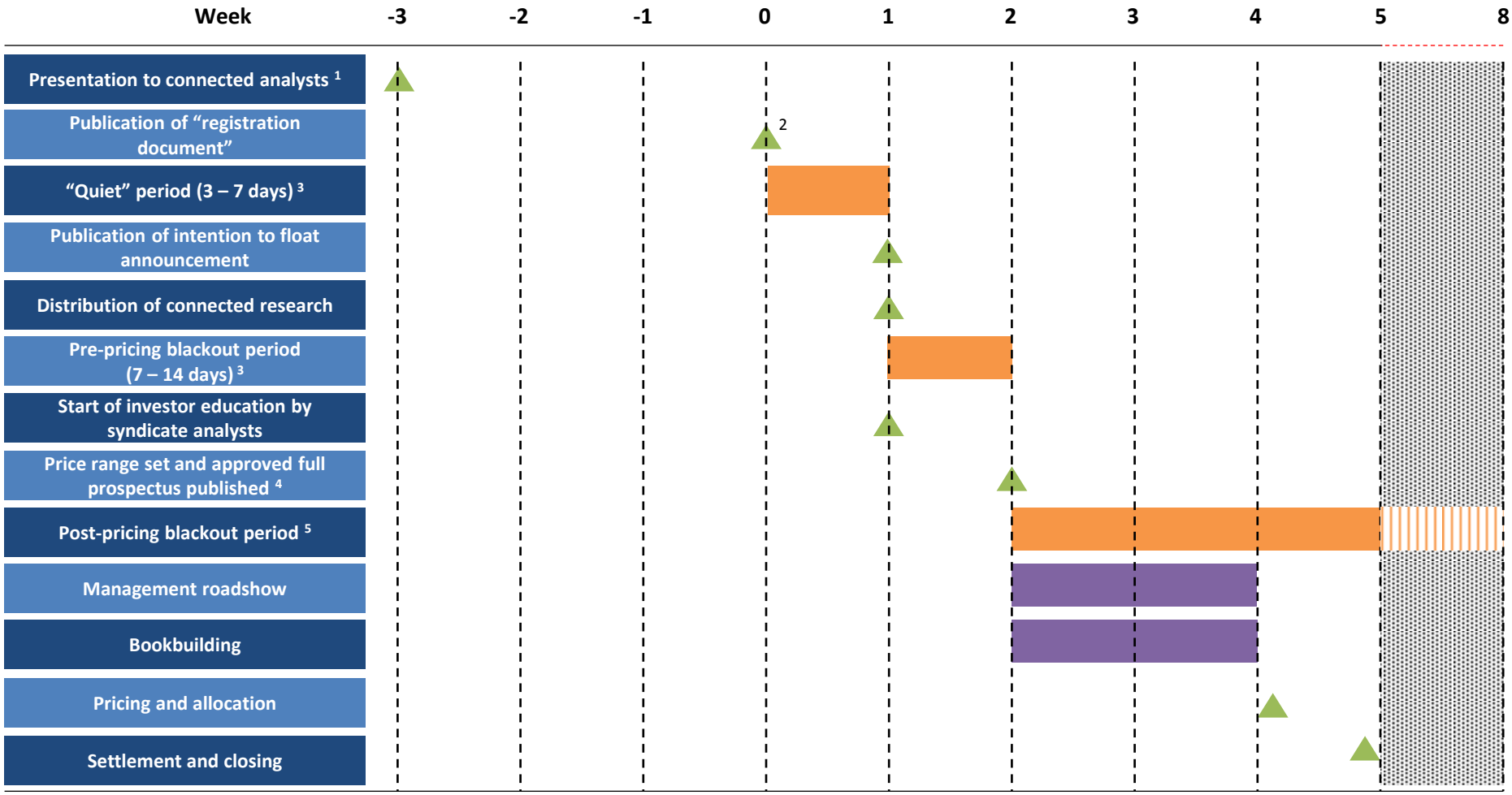
- ***Impact of shortening blackout period***

It should be confirmed publicly that shortening the blackout period will not, in and of itself, compromise the independence of the analyst research from the issuer or the offer documents. Would the FCA be willing to do that?

- ***Stabilisation***

Adequate disclosure of stabilisation in the registration document, as set out in paragraph 2.4.4 of the FCA's Code of Market Conduct (MAR 2) (Stabilisation) should not be required to enable the issuer to benefit from the safe harbour, with such disclosure being required in the securities note. Does the FCA agree?

Appendix
Proposed Model IPO process



1 – Timing and format of any unconnected analyst presentation / other materials to be discussed. For a number of reasons, any provision of information to unconnected analysts should probably take place only upon publication of the registration document.
2 – Eligibility and sponsor process would run alongside the registration document preparation process with the registration document being reviewed by the UKLA and only being published once the UKLA has either confirmed that it has no further comments on it or has approved it.
3 – Approximate minimum time period
4 – Full prospectus (i.e. the registration document, summary and securities note) that includes the price range would be approved by the UKLA and published before the roadshow started.
5 – Post-pricing blackout period extends to the 40 day period after the pricing of the offer during which connected analysts cannot publish research.

Association for Financial Markets in Europe

Practices and Principles with Respect to Research Meetings/Material Prior to the Award of a Capital Markets Mandate

July 2016

1 Meetings between Research Analysts and Companies (including their owners, managers, IPO advisers) during a Solicitation Period

i) Background

In connection with IPOs, research analysts' interactions with companies who are potential capital market issuers, financial sponsors and/or their advisors in advance of the banker selection decision (i.e., "pre-mandate meetings" during the "Solicitation Period") serve a number of useful purposes for the research analysts, their respective firms and the research analysts' investor clients. For example, these interactions provide the research analyst a forum in which to ask questions. Such questions assist the research analyst in beginning to understand the company's business model and in making a preliminary assessment of the merits of the company and the proposed transaction. The research analyst will then be more informed to provide independent views to support their firm's decision whether to participate in the transaction and for the benefit of potential investors. Additionally, the information gathered by the research analyst in these meetings may be helpful to research management in making decisions regarding coverage (i.e., whether to cover the company, the identification of the sector of which the company is a part, and the selection of the appropriate research analyst).

As part of this preliminary assessment and information gathering process, research analysts frequently discuss general market, sector and macro perspectives with the company in order to provide the company context for the questions being asked and facilitate a more interactive and fulsome diligence for the research analyst. However, these pre-mandate meetings need to be conducted appropriately to avoid the perception that the research analyst is participating in investment banking activities such as corporate finance business and underwriting or in 'pitches' for new business which could compromise the objectivity of research. It is clearly not permitted for a research analyst to offer favourable research coverage or to provide indications of likely ratings for the company once listed. Nor should a research analyst tout their firm's ability to successfully execute an investment banking transaction which would be inconsistent with the role of the research analyst. Whether a particular communication between a research analyst and a company rises to the level of improper behaviour will depend on the facts and circumstances of the communication. In order to facilitate compliance with appropriate practice and applicable regulatory rules, the following suggested practices have been developed to help provide guidance for firms and their research analysts in managing discussions and other communications relating to these meetings and to help promote appropriate research analyst participation in a securities offering more generally.

i) **Content of meetings**

Broadly, topics of discussion that are consistent with conversations research analysts would typically have with buy-side clients about their sector, or help provide background to frame their due diligence discussion should be viewed as appropriate communications during the pre-mandate period or solicitation period. These topics could include:

- regional and sector coverage of the firm's existing research business;
- analytical framework and valuation methodologies usually employed in the sector;
- key drivers and risks for the region and sector;
- companies in the research analyst's sector of coverage and the research analyst's current published research view on such companies, including valuation methodology;
- investor concerns and sentiment on the sector and investor perception of companies in the sector, including key themes; and
- research analyst questions regarding the company's business and management and questions regarding the company's financing plans.

The following topics of discussion and materials carry an elevated risk that they could be viewed in hindsight as inappropriate. They may also be impermissible depending on the context and content of the research analyst's discussion:

- the research analyst's specific views of the company, including:
    - valuation or positioning of the company;
    - discussion of the company relative to comps (e.g. position or ranking of the company within the comps, expectation of trading to a premium/discount);
    - targets, forecasts or ratings of the company;
    - the ranking of the company in the sector; or
    - suggesting and/or providing company specific opinions or recommendation regarding optimal capital structures to the company.
- a selection of research reports brought to a pre-mandate meeting which suggest a likelihood of favourable coverage of the proposed IPO company, i.e. selecting to bring only buy-rated single name reports in the sector when there are appropriate neutral and sell single name reports recently published;
- discussing the company's intended marketing process (e.g. discussing how the company would best be positioned to investors, identifying how the company can improve investor sentiment towards them suggesting potential marketing themes or specifying key investor targets for the company).

ii) **Structure of meetings**

- Investment banking and research staff should not attend the same meeting with the company and its advisors during the Solicitation Period (for the avoidance of doubt this does not include attendance at widely attended events, such as conferences).

  Research analysts' meetings during the pre-mandate phase may also include meeting with significant shareholders (e.g., financial sponsors) as such shareholders can provide detailed information and a different view on the company from company management; however, given the purpose of such meetings as set out in the Background section above, attendance by analysts at meetings with advisers or other representatives at which neither company management nor significant shareholders are present are discouraged.

2 Responses to common RFP questions

- RFP responses should not commit to a specific research analyst for a transaction unless such research analyst has been assigned by research management;

- Biographical information of the research analysts should be limited to basic information, such as years with the firm, sector and coverage universe and may include published rankings if that information is generally available to investor clients;

- Responses should not commit to specific activities/process for the research analysts beyond a general intention to produce pre-deal research or pre-deal investor education ("PDIE"), i.e. broad statements of firm policy would be appropriate and the expectation that if a research analyst is appointed to provide pre-deal research such research analyst would normally conduct PDIE, however, responses should not provide specific commitments, for example to conduct a specific number of PDIE meetings, or to dedicate a certain number of hours to the process/presentations.

- Any exclusivity or conflict of interest clauses requested from firms in the RFP should not bind research; for example, a prohibition on involvement in any other IPO PDIE in the same sector during a certain period of time; and

- Firms should not respond to requests for an estimation/indication of research analysts' views, including expected valuation ranges. Investment banking should not represent the views of research.

Any request by companies, financial sponsors and/or their advisors to a research analyst seeking information or commitments that are not consistent with these principles or otherwise inappropriate should be rejected and such rejection communicated to the requesting party.