CP17/5 – REFORMING THE AVAILABILITY OF INFORMATION IN THE UK EQUITY IPO PROCESS

AFME / BBA RESPONSE

A. BACKGROUND

The stated intention of the reforms proposed in CP17/5 (the ***CP***) is to seek to improve the timing, sequencing and quality of information being provided to market participants in the UK IPO process by focusing on the centrality of the prospectus, the management of conflicts of interest in the preparation and distribution of connected research and the promotion of market conditions in which unconnected research may emerge.

The Association for Financial Markets in Europe (***AFME***) and the British Bankers' Association (***BBA***) welcome the opportunity to comment on the proposed reforms.

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. AFME advocates 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. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

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.

AFME and the BBA agree with the FCA's policy objectives and consider that the broad thrust of the proposals set out in the CP is balanced and effective and will help achieve the FCA's stated aims. AFME / BBA have some observations and comments on aspects of the detail of the modified IPO process proposed in the CP (the ***Proposed Model***) which are set out below.

The specific questions asked by the FCA in the CP are set out in **Appendix 1** to this paper and cross-refer where relevant to the comments made in the body of this paper.

Appendix 2 to this paper contains a proposed mark-up of Annex B to the CP ("Amendments to the Conduct of Business Sourcebook (***COBS***)") to reflect the comments set out in this paper.

The scope of this response (prepared by an Equity Capital Markets focused working group) does not extend to considerations on the handling and disclosure of inside information and compliance with the Market Abuse Regulation (***MAR***) in the context of the IPO process and connected analyst interactions. A response to the issues referred to in paragraphs 4.15 to 4.24

and question 10 in CP 17/5 is set out in an AFME document entitled "AFME Response to Issues arising from CP 17/5 relating to the handling and disclosure of inside information and compliance with the Market Abuse Regulation and connected analysts interactions", which is being submitted alongside this response.

Further, this response does not consider the proposal in CP 17/5 to amend COBS 12.2.21A G, which has been addressed in a document entitled "AFME Research Working Group Response to CP 17/5 – Connected Research Analyst Interactions with Issuers, Shareholders and Corporate Finance Advisers" . The AFME /BBA working group responsible for this response agrees with the AFME Research Working Group response and its proposed changes to the new COBS Guidance (which are reproduced in the mark-up of COBS 12.2.21A G set out in Appendix 2 to this response).

B. KEY ISSUES ARISING OUT OF THE CP

1) The Registration Document

A tripartite prospectus

Paragraph 4.9 of the CP suggests that the Proposed Model would feature a 'tripartite' prospectus but does not clearly specify whether publication of an integrated document would be permitted. We believe that issuers will want to and should be able to retain the flexibility to choose whether, having published a stand-alone FCA-approved registration document, to follow with either (a) a combined registration document, securities note and summary (a ***Price Range Prospectus***) or (b) a separate summary and securities note that sit alongside the already published stand-alone FCA-approved registration document.

We also believe that during the marketing phase of an IPO, investors expect and would therefore be likely to prefer to be given one composite document rather than three separate documents when considering an IPO so they can review the issuer, its business and the offer specifics in one place. Further, we believe that given the global nature of target investors for UK IPOs, issuers would be better served by the option to distribute a single, integrated and current document consistent with international market practice

In addition, a tripartite prospectus comprising three separate documents could increase the difficulty of recording and identifying any changes or updates that are required to be made to the original stand-alone approved registration document following its publication (e.g. offering-related risk factors and changes to the material contracts summary, which would need to include the underwriting agreement, and any relationship agreement, stock loan and new facilities agreements) or to reflect any change in circumstances arising, for example, because of the passage of time, particularly where there is a longer gap between the date of publication of the original stand-alone approved registration document and the tripartite prospectus.

Where there is not a long period of time after publication of the registration document before the rest of the IPO process proceeds, which we expect to represent the more common timetable, issuers should be able to publish these updates in a separate stand-alone section of the Price Range Prospectus setting out, referring to or highlighting any such updates (but not identifying any immaterial or typographical corrections). **Appendix 3** to this paper contains a draft template of this stand-alone section.

On the other hand, in cases where there has been a significant delay between publication of a stand-alone approved registration document and the later stages of the IPO process, we believe that the most efficient way to update the registration document would be to publish a new consolidated registration document as part of a Price Range Prospectus rather than iterative, separate supplements to the stand-alone approved registration document. For example, we would expect this to be the case where new financial information relating to the issuer has become available. This updated registration document would ensure that, during the IPO process and subsequently, investors will have access to all the information relating to the issuer and the offer in one comprehensive document.

In both cases, to assist the FCA with the approval process for the new information, we would recommend that a full, marked document tracking all changes should also be filed with the FCA.

In addition, the CP does not address the situation in which a potential IPO process is abandoned following publication of the registration document but before publication of the Price Range Prospectus. It would be helpful for the FCA to clarify in its Policy Statement or a separate technical note that, in this situation, the obligation to publish any supplements to the original stand-alone approved registration document during the 12 month period it is "live" falls away unless it is to be used by the issuer for another purpose.

We believe that the Prospectus Directive (***PD***) permits the publication of both a stand-alone approved registration document and a Price Range Prospectus:

- Article 12 PD 'Prospectuses consisting of separate documents' states as follows: '*An issuer which already has a registration document approved by the competent authority shall be required to draw up only the securities note and the summary note when securities are offered to the public or admitted to trading on a regulated market..*'. We understand this Article to mean that although an issuer cannot be required to prepare a second registration document if it has already had one approved by the FCA, it may do so voluntarily. This Article will be carried over into Article 10 of the proposed new Prospectus Regulation.

- Article 9 PD 'Validity of a prospectus, base prospectus and registration document' states as follows as regards a registration document, which '*previously filed and approved, shall be valid for a period of 12 months. The registration document, updated in accordance with Article 12(2) or Article 16, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.*' We understand this Article to mean that although an original registration document shall be a valid part of the prospectus when accompanied by a securities note and summary, there is no requirement to use that registration document as part of the Price Range Prospectus (i.e. it is possible to use a new, updated registration document). This Article will be carried over into Article 12 of the proposed new Prospectus Regulation. Although the wording will be slightly different, it will include the same flexibility: A registration document which has been previously approved "*shall be valid for use as a constituent part of a prospectus for 12 months after its approval*". Accordingly, it would be helpful for the FCA to confirm in its Policy Statement that it will treat the updated registration document as a new document rather than a supplementary registration document.

We further note that where the summary and securities note are published separately from the registration document, Article 12(2) of the PD requires each document to be approved. Accordingly, in the event that issuers choose to publish the registration document, summary and securities note separately, we believe that the FCA will be required to approve each document separately.

Stamping of stand-alone approved registration document

The Proposed Model should clearly set out at which point(s) in time the FCA would approve documents ("stamping"). We would recommend that the registration document is formally approved (or otherwise clearly provided with a formal sign off or official confirmation of no further comments) prior to its publication and then the Price Range Prospectus is also stamped at the point of publication, as an integrated document.

Distribution of the stand-alone approved registration document

We do not believe that issuers should be required to distribute the stand-alone approved registration document not least because it is not clear to whom the issuer would be distributing it if, at the time of publication, there is no reference to a possible offering of securities. We consider that publication on the issuer's website and through the National Storage Mechanism, with an accompanying announcement, would be sufficient to ensure availability of the registration document, while addressing issuer concerns relating to the costs of distribution. We would also encourage consideration of the FCA website hosting company filings (similar to the way in which the SEC hosts EDGAR).

Financial promotion regime and advertisements

The Proposed Model may cause confusion in the applicability of the financial promotion regime to the publication of the company registration document. It would be helpful for the FCA to confirm in its Policy Statement or a separate technical note that the approved registration document will not constitute a financial promotion unless and until the subsequent publication of and combination with a securities note and summary. This is consistent with its content, as it does not relate to an offer for securities and is simply a company disclosure document similar to a company's annual report and financial statements. It should also be made clear that the approved registration document would not constitute a financial promotion following publication of the summary and securities note, if these are published as separate documents forming a tripartite prospectus and each approved by the FCA separately, since it would then be incorporated by reference into an approved prospectus. Furthermore as mentioned above, any Price Range Prospectus should also be stamped by the FCA as a whole to avoid the need for any sections of it to be approved as a financial promotion by an authorised person.

It would also be helpful for the FCA to confirm in its Policy Statement or a separate technical note that (i) the stand-alone approved registration document will not constitute an advertisement under the Prospectus Rules since it does not at that point (a) relate to a specific offer to the public of securities or to an admission to trading on a regulated market; or (b) aim specifically to promote the potential subscription or acquisition of securities, and therefore does not constitute an "*advertisement*" for the purposes of Prospectus Rule 3.3; and (ii) the Price Range Prospectus (whether published as a single document or several) does not constitute an advertisement under the Prospectus Rules because it is a fully approved prospectus.

Stabilisation

The FCA should confirm that disclosure of potential stabilisation in the stand-alone approved registration document should not be required to enable the issuer to benefit from the relevant safe harbour because there is no offer-related disclosure of the stand-alone approved registration document and so inclusion of stabilisation wording would be inappropriate. Instead, the disclosure should be made in the securities note as part of a published prospectus.

2) Indicative timelines

In paragraph 4.10 of the CP, the FCA sets out two indicative timelines for the Proposed Model: the first proposed timeline features a presentation to connected and unconnected analysts being held in the weeks prior to the Intention to Float (***ITF***) announcement and the second proposed timeline shows access to management by unconnected analysts being delayed until after the stand-alone approved registration document is published.

Envisaged preference of issuers and syndicate banks

We understand the rationale for giving issuers the flexibility to choose which timeline to follow. As a general observation, we believe that in practice the second model is likely to be favoured by issuers and their advisers in most cases in light of the confidentiality concerns which may arise from granting access to a large number of unconnected analysts during the private phase of the transaction (described in further detail below).

Timing of eligibility process

The eligibility process with the FCA should commence during the period of preparation of the stand-alone approved registration document, with any fundamental eligibility concerns being cleared by the time of publication of the stand-alone approved registration document. Although a final determination on eligibility could only be made on the basis of an approved Price Range Prospectus, we believe that it is important that issuers and underwriters receive a clear indication from the FCA at the point of publication of the approved stand-alone registration document that, subject to a defined list of outstanding matters being resolved (such as the amount of proceeds to be raised, any updates to historical financial information, working capital or free float), they would expect eligibility to be confirmed. It would be helpful for the FCA to clarify these points in its Policy Statement.

Impact of timeline on sponsor regime

The Proposed Model should not require sponsors to provide confirmations or declarations at the time of publication of the stand-alone approved registration document.

We believe that the FCA should confirm in its Policy Statement that the preparation of a registration document requires the appointment of a sponsor under Listing Rule 8.2 and that the preparatory work that the sponsor undertakes for the issuer in relation to the registration document constitutes a "sponsor service" as defined in the Listing Rules. To ensure that the sponsor can carry out the sponsor service properly, it would be helpful for the FCA to clarify in its Policy Statement that an issuer intending to publish a stand-alone registration document for use in an initial public offering of equity should appoint a sponsor substantially in advance of filing that registration document with the FCA and that the sponsor should be involved in the preparation of the registration document itself. This should also help to prevent the FCA having to review registration documents that have not had the benefit of being carefully

assessed beforehand by an approved sponsor, or from having to review substantial changes, or a new registration document, resulting from subsequent assessment by a sponsor in connection with making sponsor declarations.

We do not, however, believe that sponsors should have liability for the company registration document unless and until it forms part of a Prospectus and we do not anticipate that sponsors or any other banks would be named in it. Sponsor confirmation would be given at the time of the Price Range Prospectus, which would also name the underwriting banks.

3) Connected research

Issuer access to connected analysts

We discuss this aspect of the CP in greater depth in the separate paper prepared by the AFME Research Working Group, which is attached to this submission for ease of reference.

While we refer the FCA to the attached submission from the AFME Research Working Group for a detailed response to this aspect of the CP, we do wish to emphasize in this paper that we are concerned that the FCA should maximise clarity regarding the end of the period during which connected analysts are prohibited from meeting with issuers. Insofar as there are many legitimate reasons why a firm's relative share of underwriting obligations may change over the course of the transaction (the most frequent of which is the addition of a tier of junior underwriters later in the process), we believe it would create uncertainty and reduce flexibility to fill out a syndicate later in the process if syndicates needed to be fixed artificially early in order to permit analyst/issuer contact. However, we do believe it is very important for the FCA to provide in its guidance a clear statement that subjecting appointed underwriters to further "competition" during the preparation process is prohibited insofar as the pressure on analyst independence is considered the same as in the pre-mandate phase.

Lack of variation in connected research

We note the FCA's conclusion in paragraph 3.7 of the CP that where there is little variation in the forecasts contained in research reports prepared by connected analysts it is negative and demonstrates inappropriate bias. We strongly disagree with this assessment. In the context of an IPO transaction, connected research is subjected to a stringent factual accuracy and verification process undertaken in compliance with the COBS and monitored and overseen by external lawyers and banks' compliance teams. The purpose of this exercise is to ensure that there are no factual errors in research reports that would, if uncorrected, conflict with the factual information contained in the Prospectus. Additionally, analyst views on valuation are redacted and are not reviewed. The key reason that little variation in the forecasts in connected research produced by connected analysts may occur is that analysts, when presented with the same detailed information and undergoing a careful fact checking and correction process, often reach similar conclusions and less diverse projections. We further note that the UKLA has stated in its past guidance that it does not prohibit issuers from correcting analysts' reports, and indeed, this may sometimes be necessary to avoid the dissemination of misleading information (see List! 9, paragraph 4.7). Finally, the information provided to analysts is subject to the rules on Regulatory Technical Standards (Regulation (EU 2016/301) under the Omnibus II Directive (2014/51/EU) so all material information provided to analysts must be and is included in the prospectus. We strongly disagree with the suggestion that processes for the factual review of connected research are designed to, or do, control messaging around the offering or drive price discovery.

4) Unconnected research

(i) Logistics and restrictions

Access to unconnected analysts

Under the first proposed timeline, which envisages management access for unconnected analysts prior to the publication of a stand-alone approved registration document, unconnected analysts should be required to sign a non-disclosure agreement (***NDA***) prior to their participation in a presentation. The NDA would be market standard and not subject to negotiation, consistent with the current model for the AFME block trade NDA. The NDA would give the issuer direct recourse to an unconnected analyst that breaches its non-disclosure obligations. An NDA would not be required under the second model unless, prior to the ITF, material non-public information about the offer was being shared with analysts (such as timing, size of capital raise or split of newly issued shares and sale shares) or if there were other circumstances that warranted it (such as a spin-off IPO of a listed company asset).

In addition, the first proposed timeline suggests that issuer access to connected and unconnected analysts must be provided at the same time and in an identical manner. The requirement to provide identical access to connected and unconnected analysts ignores the critical function of connected analysts in the IPO process more generally, including during the due diligence phase. In particular, early interaction between issuers and connected analysts is an important step in assessing whether the issuer is ready for an IPO and in preparing management for presentations to potential investors (and potentially other analysts). At this point in the IPO process the connected analysts act as a proxy for the way potential investors think and provide valuable feedback to management that assists in the development and refinement of the issuer's equity story and provides management with an opportunity to enhance its presentation for the investor roadshow. We believe that exposing certain issuer management teams to unconnected analysts at this point could deny them the opportunity to benefit from this guidance in a smaller, private setting and could lead to negative research commentary that reflects lack of management preparedness rather than meaningful concerns with the business. Further, some banks use feedback from early interaction between issuers and connected analysts to complete their own internal approval processes, which provide another valuable examination as to whether the issuer is ready for IPO. While each firm has its own procedures, such vetting feedback is channelled via managerial, legal or compliance lines in a manner that does not involve direct, unchaperoned banker and analyst interaction.

We believe that instead issuers using the first proposed timeline should have the flexibility to provide access to unconnected analysts at a time of their choosing, provided it is reasonably in advance of the publication of the registration document (and in any event not less than seven days), such that it afforded analysts the time to produce meaningful research.

Reasonable terms when contracting with unconnected analysts

Paragraph 4.12 of the CP recognises that geographical restrictions would be appropriate in the distribution of connected research.

We believe it will also be important to specify that a temporal restriction will be included in the "reasonable terms" upon which unconnected analysts will be engaged. For example,

unconnected analysts should not be permitted to publish unconnected research or otherwise to contact their clients ahead of the ITF (or publication of connected research, if later).

Appendix 2 includes suggested wording in this regard.

Form of unconnected analysts' presentation

The form which the presentation to unconnected analysts should take is not specified in the CP. Proposed COBS 11A.1.4BR(2)(b)(i) requires that "*the mode of communication must be reasonably appropriate for the purposes of enabling those unconnected analysts to receive information from and make enquiries to the issuer team*". Allowing issuers optionality to choose face to face presentations and/or webinars would provide most flexibility to issuers and may facilitate participation for unconnected analysts who may be travelling, not based in London or able to make the time to travel to the issuer's location, while also reducing costs for both issuers and unconnected analysts. We suggest that the FCA clarify this point in its Policy Statement.

IPOs without research

We agree with and support the way that the CP addresses a scenario where no research is published at all (e.g. on an accelerated IPO or a fund). COBS 11A.1.4A R (2) makes it clear that the relevant rules apply only where the firm is intending to disseminate research and therefore do not require unconnected research to be published where no connected research is published.

(ii) Selection of unconnected analysts

Liability for banks

Proposed COBS 11A.1.4BR(4) would require syndicate banks to assess the potential range of unconnected analysts for each transaction with a view to selecting unconnected analysts who would publish research in connection with the IPO which, in turn, would lead to "*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*".

We have significant concerns about the availability of reliable information on the universe of independent analysts (the "denominator") and the banks' ability to develop appropriate criteria by which to select analysts from that universe of independent analysts for any particular IPO (the "numerator"). It is particularly challenging for banks to decide what the "denominator" should be given that independent research franchises may often be smaller, recently established institutions whose employees and sector expertise are not widely known in the market. We also note that MiFID II may have a material impact on the current analyst community and its reach into the broader investor market once equity research is required to be purchased. It will inevitably affect the number of analysts providing equity research to the market as well as create additional difficulty in assessing the potential "reach" of any particular analyst's research product.

Even if it were possible to agree the "denominator" when considering the potential range of unconnected analysts, it is unclear how banks could develop criteria that would allow an accurate assessment of the proper "numerator" on a case by case basis. In particular, there is no single established objective ranking for research franchises (some rankings assess the

performance of individuals, other rankings assess the performance of teams) and rankings may in any event omit some research franchises. Rankings are also not consistent with respect to the underlying criteria and not all research business models are consistent with all ratings systems (cf, for example, the ratings criteria of Institutional Investor vs Starmine). In the absence of clear rules as to how many unconnected analysts should be selected (which may in any event vary according to the relevant sector and market conditions), there is likely to be potential pressure from the issuer's other advisers to select (or exclude) certain analysts over others. We also believe that there are significant conflicts of interest that could be difficult to manage both where the banks' own analysts will be involved in the transaction and themselves compete with other research franchises for investor attention.

There is a further tension that exists in the first proposed timeline, where the desire to maintain confidentiality is in direct conflict with the selection of more than a very small number of additional unconnected analysts. Finally, we believe that in light of the difficulty of selecting unconnected analysts and the concerns over potential liability for having to make "reasonable prospect of enabling" -type judgements, the most likely outcome of a system as currently proposed is a further strong preference for the FCA's second proposed timeline where a general invitation is made to all analysts.

Market standard research guidelines

To encourage better visibility and efficiency, we would recommend that the FCA promulgate a set of market standard guidelines for unconnected analysts (the ***Guidelines***) that would apply generally to all analysts involved in IPOs (AFME would be happy to assist the FCA in preparing the Guidelines), regardless of the timeline followed. We suggest that the Guidelines should cover, *inter alia*, the following issues:

1. **Confidentiality**: The Guidelines should require, in the case of pre-announcement invitations, analysts to keep the fact and details of the IPO confidential until the formal announcement of the transaction (i.e. the ITF announcement);

2. **Timing**: As discussed further below, the Guidelines should impose temporal restrictions on the publication of unconnected research (i.e. not prior to ITF or publication of connected research, if later);

3. **Access to management**: The issuer should be able to exclude the obligation to respond to any questions unconnected analysts may have following the analyst briefing (unless they are also responding to connected analysts);

4. **Distribution restrictions**: The Guidelines should impose the same geographic restrictions relating to the distribution of unconnected research prior to completion of the IPO that are imposed on connected analysts.

Register of unconnected analysts

The FCA would then maintain a register of sell-side research analysts or organisations (agreed as appropriate by AFME/BBA, the FCA and other market participants) that have agreed to the Guidelines, all of whom would be required to be invited by issuers and syndicate banks to attend an unconnected analyst presentation. The FCA would consult trade associations for investment banks and independent research providers when assembling the register of eligible research organisations. Provided those on the register were notified of the details of the

unconnected analyst presentation then any obligations of the connected banks in relation to providing access to unconnected analysts (even if not individually selecting those analysts) would have been discharged. We do however believe that the use of a register of sell-side research analysts would still be unlikely to influence the envisaged strong preference of issuers and their advisers for the second proposed timeline in light of the confidentiality concerns described above.

We believe that the FCA is the appropriate institution to fulfil this function because (i) it will likely be perceived by market participants as an objective and trustworthy guardian of the register; (ii) unconnected analysts would be more likely to comply with the confidentiality and other requirements of the NDA and the Guidelines if a regulatory authority such as the FCA has the power to sanction any breach by, for example, suspending or removing the offending unconnected analyst from the register; (iii) the trade body for independent research analysts is unlikely to be willing to host AFME members who most often serve as connected analysts; and (iv) AFME is unable to host a register including non-member independent research firms.

We further suggest that only sell-side analysts be included in any register. Analysts employed by asset managers or other investors on the buy-side will not publish their research and therefore their participation would not lead to the FCA's stated objective of increasing the availability of independent research in the market.

C. TIMING FOR THE INTRODUCTION OF RULES

We believe that it would be beneficial to market participants for the new regime to be introduced gradually by providing for an initial time period during which adherence to the revised COBS rules will be optional. It is suggested that the FCA introduce the new rules during a time of the year when traditionally IPO activity is lower (e.g. shortly before or after the Christmas break or in the summer lull during July and August). Ideally the market would be given sufficient lead time such that IPOs already in preparation can continue without modification but IPOs due to launch (i.e. publish an ITF) after a specified date must follow the new rules.

For example, if the amendments to the COBS were to be introduced on 1 July 2018, ongoing IPOs could be carried out under the existing regime but IPOs which published an ITF on or after 1 January 2019 would have to comply with the new rules.

D. NEXT STEPS

AFME / BBA would be happy to make themselves available for any further discussions or to answer any questions the FCA may have on the proposals in this response

Appendix 1

Questions

Q1: Are you aware of any other conduct risks associated with the production of connected research? If so, please describe them.

See comments in the body of the submission, in particular our refutation of the feedback described in paragraph 3.7 of the CP.

Q2: Do you agree that connected research should continue to play a role in the UK IPO process?

Yes. See comments in the body of the submission.

Q3: Do you agree that simultaneous publication of an approved prospectus or registration document and connected research does not adequately address level playing field issues for unconnected analysts and still leaves connected research excessively prominent in initial price discovery?

No, we believe the Proposed Model would provide every opportunity for unconnected research coverage to develop as a feature of the UK IPO market. However, only time will tell whether and to what extent unconnected analysts will actually publish research.

See also comments in the body of the submission.

Q4: Do you agree that, if unconnected analysts were to be provided with access to the issuer's management only at a later stage than connected analysts, there should be a mandatory seven-day period of separation before any connected research could be released?

Yes. See comments in the body of the submission.

Q5: Do you agree that this proposed policy measure would effectively advance our objectives of enhancing market integrity, protecting investors and promoting effective competition? If not, how should it be amended? Please explain how your alternative suggestion would advance our objectives.

Yes. See comments in the body of the submission and Appendix 2 of this submission for suggested redrafting of the proposed rules.

Q6: Do you agree with the proposed rules set out in Appendix 1? If not, how should they be amended?

See comments in the body of the submission and Appendix 2 of this submission for suggested redrafting of the proposed rules.

Q7: If you think that there are advantages to an alternative approach to the one we had envisaged, please provide details.

See comments in the body of the submission and Appendix 2 of this submission for suggested redrafting of the proposed rules.

Q8: Does this proposal have any practical implications for the transaction review process?

Yes. See comments in the body of the submission.

Q9: Do you think that the suggested industry guidelines would help to operationalise the proposed rule requiring syndicate banks to provide unconnected analysts with an opportunity to be in communication with the issuer's management?

Yes. See comments in the body of the submission.

Q10: Do you have any comments on how/if you think that the handling and disclosure of inside information in the IPO process is consistent with MAR? In particular, if an analyst presentation contains inside information please describe:

- Why you believe disclosing inside information in an analyst presentation is in accordance with Article 10 of MAR, taking into account that disclosure is being made both to the analyst and the recipient of the analyst's research.
- Why you think that the grounds for delaying disclosure of that information under Article 17 of MAR will have been met.
- Alternatively, please describe why you believe the information disclosed in an analyst presentation does not amount to inside information as per Article 7 of MAR.

We believe that this technical legal question is best addressed in the separate paper on the subject which has been prepared by AFME in response to the CP, and which is attached to this paper.

Q11: Are you aware of any aspects of existing market practice that has developed in relation to the current IPO process that may be inconsistent with the broader regulatory framework (for example the Prospectus Rules)? If so, please describe and comment on whether these would be equally relevant to the market practice adopted following our proposed reforms.

No. See also the separate AFME Research Working Group paper on connected research analyst interactions that is attached to this submission.

Q12: Do you agree that the proposed policy measure helps to address the identified conduct risks associated with the production of connected research, and serves as an appropriate basis for reformed market practice? If not, how should it be amended?

See comments in the body of the submission (including in particular commentary on paragraph 3.7 of the CP) and Appendix 2 of this submission for suggested redrafting of the proposed rules. See also the separate AFME Research Working Group paper on connected research analyst interactions that is attached to this submission.

Q13: Is it appropriate to extend our proposed rules to firms providing underwriting or placing services on IPOs on MTFs, notably the AIM and NEX Exchange growth markets? In supporting your answer, please provide details of the following:

- The sources of information that are currently made available to investors during IPOs on these markets, their role in investor education and price discovery, and a description of the process;

- The extent to which current market practice for IPOs on MTFs poses similar or different risks to the FCA's operational objectives as market practice for IPOs onto regulated markets, as outlined in Chapter 1;
- Any specific concerns with extending the proposed rules to firms providing underwriting or placing services on IPOs on MTFs.

In considering the proposals for reform we have only considered the practice on regulated markets. 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 on MTFs.

Q14: Do you agree with the CBA for our policy proposals as summarised in Annex 1? Do you expect our policy proposals to give rise to any costs and benefits that are not of minimal significance that have not already been considered in the CBA?

Although we do not believe that the policy proposals as summarised in Annex 1 are based on the correct methodology (and focus to a large extent on costs that are not material), we are broadly in agreement with its conclusions. We do not expect the policy proposals to give rise to any material costs and benefits that have not already been considered in the CBA.

Appendix 2

Suggested redrafting

Amendments to the Conduct of Business sourcebook (COBS)

[*Editor's note*: The text in this Annex takes into account the changes proposed by "CP15/43 Markets in Financial Instruments Directive II Implementation – Consultation Paper I" (December 2015), "CP16/29 Markets in Financial Instruments Directive II Implementation – Consultation Paper III" (September 2016) and "CP16/43 Markets in Financial Instruments Directive II Implementation – Consultation Paper IV" (December 2016), as if they were made.]

11A Underwriting and placing

General requirements concerning underwriting and placing

...

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

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

(1) h*as 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*.

11A.1.4B R (1) Unless it complies with paragraph (2) a *firm* must

prevent its staff involved in the production of *investment research* or *non-independent research* ("~~the *firm's*~~connected analysts") from being in communication with the *issuer client* and/or the *issuer client's* representatives outside of the *firm* ("the *issuer* team").

(2) The *firm* must ensure that ~~a range of~~ unconnected analysts (meeting the criteria in ~~paragraphs~~paragraph (3~~) and (4~~)) are given the opportunity (subject to *COBS* 11A.1.4CR) either:

(a) to join the ~~*firm's*~~connected analysts in any communication with the *issuer* team (or, join a subsequent communication with the *issuer* team that is equivalent to a previous communication between the *issuer* team and *connected analysts*, provided that any such subsequent communication is made not less than seven days prior to the publication of the relevant document in *COBS* 11A.1.4E R (3))[1] 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~~ (provided that the *firm* may require any such unconnected analysts to enter into a non-disclosure agreement prior to joining any communication with the *issuer* team and any unconnected analyst who does not enter into such a non-disclosure agreement will not be permitted to join any communication with the *issuer* team); or[2]

(b) to be in communication with the *issuer* team in a way that satisfies the following conditions:

(i) the mode of that communication must be reasonably appropriate for the purposes of enabling those unconnected analysts to receive information from and make enquiries to the *issuer* team (provided consistent with the legal and regulatory obligations of the *issuer* team), so that the unconnected analysts are able to form a substantiated

[1] Early interaction between issuers and connected analysts is an important step in assessing whether the issuer is ready for an IPO and in preparing issuer management for presentations to potential investors. Issuers should have the flexibility to provide access to unconnected analysts at a time of their choosing, provided it is reasonably in advance of the publication of the registration document.

[2] The requirement to execute a non-disclosure agreement is intended to address confidentiality concerns which may arise from granting access to a large number of unconnected analysts during the private phase of the transaction.

opinion about the *issuer client* or the relevant securities as described in *COBS* 11A.1.4AR(1); and

(ii) that communication must be completed or, in the reasonable opinion of the *firm* substantially completed before the *firm* disseminates any *investment research* or *non-independent research* on the *issuer client* or the relevant securities.

(3) For paragraph (2), 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.;

(4) (a) The *firm* must:

(c) who is not employed by and does not act on behalf of a business which may, in the reasonable opinion of the firm, acquire relevant securities; and

(id) undertake an assessment of the potential rangewho has been entered into the register of unconnected analysts for the purposes of paragraph (2); andmaintained by the FCA.[3]

(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

[3] We have significant concerns regarding the availability of reliable information on the universe of independent analysts and therefore the suitability and ability of banks to develop appropriate criteria by which to select analysts for any particular IPO. We believe that the FCA should maintain a register of sell-side research analysts or organisations (agreed as appropriate by AFME, the FCA and other market participants) that have agreed to market standard research guidelines, all of whom would be required to be invited by issuers and syndicate banks to attend an unconnected analyst presentation

~~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.~~

11A.1.4C R A *firm* must ensure that any opportunity given to ~~the range of~~ unconnected analysts under *COBS* 11A.1.4BR(2) is given on reasonable terms.

11A.1.4D E (1) For *COBS* 11A.1.4CR, a term is reasonable if:

(a) it restricts the geographical dissemination of research produced by an unconnected analyst; ~~and~~

(b) it requires research produced by an unconnected analyst to not be published before research produced by connected analysts;[4]

(~~b~~c) such a restriction does not materially exceed prevailing *UK* market practice for independent research on initial public offerings.

[4] In addition to geographical restrictions, we believe it is also important to specify that a temporal restriction will be included in the "*reasonable terms*" upon which unconnected analysts will be engaged to prevent unconnected analysts publishing their research before connected analysts.

(2) Compliance with (1) may be relied upon as tending to establish compliance with the requirement under *COBS* 11A.1.4CR, but only for the reasonableness of any terms that restrict the geographical or temporal dissemination of research.

(3) Contravention of (1) may be relied upon as tending to establish a contravention with the requirement under *COBS* 11A.1.4CR, but only for the reasonableness of any terms that restrict the geographical or temporal dissemination of research.

11A.1.4E 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 relevant securities.

(4) For this *rule*, publication of the relevant document means making the relevant document available to the public in accordance with *PR* 3.2.4R (Method of publishing).

...

12 Investment research

...

12.2 Investment research and non-independent research

...

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

12.2.21A G ~~The~~In connection with an initial public offering, the phrase "participating in 'pitches' for new business" in Recital 56 to the *MiFID Org Regulation* includes during the Relevant Time Period (as

defined below), a financial analyst interacting with an issuer (including the *issuer's* representative[5]) to whom the *relevant* *firm* is proposing to provide underwriting ~~or placing~~ [6]services ~~(including the *issuer's* representatives outside of the *firm*), until both:~~

The relevant firm shall mean the *firm* that employs the financial analyst.

The *issuer's* representatives include its shareholders, advisers (including any corporate finance adviser) and other party acting on behalf of the *issuer*.

The Relevant Time Period commences from the time (i) the issuer makes known to the *relevant firm* it has determined to proceed with the selection of underwriters in connection with an initial public offering; and (ii) the relevant research analyst has been wall-crossed in connection with that proposed initial public offering transaction.

The Relevant Time Period ends when both:

(1) the *relevant* *firm* ~~that employs the financial analyst has *agreed*~~has been selected *to carry on regulated activities* that amount to underwriting or placing services for the *issuer*; and

~~(2) 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 contractually agreed and documented between the *firm* and *issuer*.~~

(2) that *relevant* *firm's* role in the proposed transaction or syndicate has been determined,

and each of (1) and (2) has been communicated in writing (in any form whatsoever) by the *issuer* (or one of its representatives) to the *relevant firm*.

For the avoidance of doubt, this 12.2.21A G shall not apply to any interactions between a *financial analyst* and an *issuer* (including the issuer's representatives):

(i) to whom the *relevant firm* is proposing to provide underwriting or placing services in connection with a transaction that is not an initial

[5] The AFME Research Working Group is unaware of any circumstances in which a firm would be acting in the capacity of an issuer's representative in connection with a potential IPO. We would therefore propose deleting the words in square brackets.

[6] The AFME Research Working Group is unaware of any circumstances in which a firm would act as placement agent, rather than underwriter, in connection with an IPO. We would therefore propose deleting references to placing services.

public offering (including a rights issue or other follow-on offering); or

(ii) for the purposes of a *financial analyst's* role in producing or disseminating investment research on an *issuer*, including in circumstances where the financial analyst covers an *issuer* that proposes to carve-out or spin –off a subsidiary or business of the issuer through an initial public offering and the *financial analyst* is not wall-crossed on such a proposed transaction.

Amend the following as shown. New text is underlined.

Sch 1 Record keeping requirements

…

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
COBS 11.7A.7EU	…	…	…	…
~~*COBS* 11A.1.4BR(4)(c)~~	~~The firm's assessment under *COBS* 11A.1.4BR (4)(a)~~	~~(i) The *firm's* process for conducting the assessment and reaching the opinion under *COBS* 11A.1.4BR (4)(a);~~ ~~(ii) the *firm's* staff that were involved in reaching that opinion; and~~ ~~(iii) an explanation of the *firm's* consideration of the number and expertise of the unconnected analysts~~	~~Once the firm has formed its opinion under *COBS* 11A.1.4BR (4)(a)~~	~~5 years~~

			~~included in the range.~~		
	~~...~~				

Appendix 3

Draft Stand-alone section of Price Range Prospectus setting out Recent Developments

Part [•]: SCHEDULE OF RECENT DEVELOPMENTS

This Part [•] of the Prospectus (the "**Schedule of Recent Developments**") sets out, refers to or highlights material updates to the registration document relating to the Company published on [•] (the "**Original Registration Document**") and prepared in accordance with the Prospectus Rules of the Financial Conduct Authority (the "**FCA**"). This Schedule of Recent Developments forms part of the Prospectus comprising the Registration Document, the Securities Note and the Summary for the purposes of Article 3 of the European Union Directive 2003/71/EC, as amended and is made available to the public in accordance with section 3.2 of the Prospectus Rules.

This Schedule of Recent Developments must be read in conjunction with, the entirety of the Prospectus and the Original Registration Document (and any supplements thereto).

Capitalised terms contained in this Schedule of Recent Developments shall have the meanings given to such terms in the Prospectus unless otherwise defined herein.

Any statement of fact, information, expression of intention or opinion contained in the Original Registration Document (or any supplement thereto) which is modified is superseded by this Schedule of Recent Developments shall be deemed to be so modified or superseded in the Prospectus. To the extent that there is any inconsistency between (a) any statement in this Schedule of Recent Developments or any statement incorporated by reference into the Prospectus by this Schedule of Recent Developments and (b) any other statement in or incorporated in the Prospectus (as previously supplemented from time to time), the statement in (a) will prevail.

Prospective investors should read this Schedule of Recent Developments in its entirety together with the Original Registration Document and the Prospectus (including all information incorporated therein and herein by reference) and, in particular, the discussion of certain risks and other factors that should be considered prior to any investment in the Shares as set out in the section entitled "Risk Factors".

Purpose

The purpose of this Schedule of Recent Developments is to: [*include summary of changes. Example:*

(a) *Update the historical financial information available on the Company*;

(b) *Highlight material changes to the "Risk Factors relating to the Company" as described in the Original Prospectus, including a new section entitled "Risk Factors relating to the Offering";*

(c) *Highlight changes in material contracts to which the Company is a party; and*

(d) *Highlight the addition of a pro forma capitalisation table to reflect the proceeds to be raised by the Company in the Offering*]

Documents incorporated by Reference

[•]

Changes and Updates to the Original Registration Document

1. **Historical Financial Information relating to the company**[7]

   [•]

2. **Material changes to the "*Risk Factors relating to the Company*" as described in the Original Prospectus**

   [•]

3. **Changes in material contracts to which the Company is a party, including the addition of the following new material contracts:**[8]

   a. **the underwriting agreement between the Company, the Selling Shareholder and the Underwriters;**

   b. **[the relationship agreement between the Company and the Selling Shareholder;]**

   c. **[the stock lending agreement between the Overallotment Shareholder and the Stabilising Manager;] and**

   d. **[the new facilities agreement].**

4. **Pro forma capitalisation table**

   [•]

The Company Directors accept responsibility for the information contained in this Schedule of Recent Developments. The Company Directors confirm that, having taken all reasonable care to ensure that such is the case, the information contained in this Schedule of Recent Developments is, to the best of their knowledge and belief, in accordance with the facts and does not omit anything likely to affect the import of such information.

[7] **Drafting note**: The headings included are illustrative and intended to serve as examples of the headings which might feature in stand-alone sections recording updates and changes.

[8] **Drafting note**: The list of material contracts is illustrative. The relationship agreement, stock lending agreement and facilities agreement may not feature in every IPO.