

Financial Analysts' Interactions with Representatives of Private Companies and/or their Financial Advisers under COBS 12.2.21A G

I. Introduction

The amendments to the Conduct of Business sourcebook (“**COBS**”) made by the Financial Conduct Authority (“**FCA**”) in PS 17/23 came into force on 1 July 2018. They include, inter alia, new COBS 12 rules comprising COBS 12.2.21A G (1) – (3) (the “**Rules**”) (attached as Appendix 1).

This guidance (the “**Guidance**”) has been prepared following discussions within the Association for Financial Markets in Europe’s (“**AFME**”) Research Issues Working Group. This Guidance should be read in conjunction with the Q&A dated 6 August 2018 prepared by AFME after discussions with the FCA in relation to COBS 12.2.21A G (the “**Q&A**”) (attached as Appendix 2).

II. Background

Recital 56 of the MiFID Organisational Regulation, to which COBS 12.2.21A G applies, states that “financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities would be inconsistent with the maintenance of that person’s objectivity.”

Recital 56 also states that activities that would be inconsistent with the maintenance of an analyst’s objectivity include “participating in investment banking activities such as corporate finance business and underwriting, participating in ‘pitches’ for new business or ‘road shows’ for new issues of financial instruments; or being otherwise involved in the preparation of issuer marketing.”

COBS 12.2.21A G (1) defines “participating in ‘pitches’ for new business” as generally including “a financial analyst interacting with an issuer to whom the firm is proposing to provide underwriting or placing services...., until both

- a. the firm that employs the financial analyst has agreed to carry on regulated activities that amount to underwriting or placing services for the issuer; and
- b. the extent of the firm’s obligations to provide underwriting or placing services to the issuer as compared to the underwriting or placing services of any other firm that is appointed by the issuer for the same offering is confirmed in writing between the firm and the issuer.”

Notwithstanding the statements made in the Q&A on how the above guidance should be applied, there remains some uncertainty as to which interactions between an analyst and a company (whether private or public) and/or its representatives/advisers/holders of an ownership interest (collectively, the “**Representatives**”) amount to an analyst “participating in a pitch”.

An analyst may interact a company and/or its Representatives in a wide range of contexts, including as part of his/her regular, research-driven activities or during industry gatherings. Some of these interactions will be independent of any interactions between the analyst’s firm’s investment banking/corporate finance staff and a private company and/or its Representatives. The contents and the context of any such interaction will be relevant for determining whether they are appropriate in any particular case.

This document sets out a list of scenarios which AFME members consider (as a minimum) should lead to member firms implementing procedures to govern further consultation/escalation by an analyst within his/her firm before a decision is taken as to whether the interaction takes place. These scenarios are in addition to situations where an analyst is aware or may have reason to believe that his/her firm is undertaking pitching or proposing to

undertake pitching activity for an underwriting or placing role. In such situations the analyst may not interact with a company or its Representatives.

III. Scenarios

1. A company requests an interaction with an analyst, which would also involve one or more of that company's Representatives;
2. An interaction request is made by a company that indicates that it is also in contact with investment banking personnel from the analyst's firm;
3. An interaction request is made by any financial sponsor or private equity firm only; or
4. An interaction request is made by a party which indicates that a company is: (a) considering a transaction; (b) evaluating strategic alternatives; (c) seeking a view on valuation; (d) asking how best to position the company with investors; or (e) the subject of the meeting is a potential IPO or other offering.

In addition to the above, an analyst should in all cases escalate an interaction request if in any way he/she has been made aware or may have reason to believe that the company intends to pursue an IPO.

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