Availability of information in the UK equity IPO process

On 01 March 2017, the Financial Conduct Authority (FCA) published a consultation paper on its proposals for improvements to the timing, sequencing and quality of information provided to market participants in the UK IPO process (CP17/5). The paper is based on feedback gathered from stakeholders following publication of a discussion paper on the subject in April 2016 (DP16/3) and follows up on potential remedies identified in the FCA’s report of findings from its investment and corporate banking market study in October 2016.

The FCA proposes two key reforms:

- An approved prospectus or registration document must be published and unconnected analysts must have access to management before publication of connected research. The FCA’s intention is that this will restore the primacy of the approved disclosure document, improve the range and quality of information available to investors and support more balanced investor education and price discovery.
- Clarification that any interaction between a bank’s analysts and issuers or their corporate finance advisers would be treated as the analysts participating in pitching for the IPO work from the issuer (and therefore inconsistent with maintaining the analyst’s objectivity) until the bank has accepted an IPO mandate and its position in the syndicate has been agreed.

Responses are due by 01 June 2017 and the FCA expects to publish a policy statement outlining any changes to its Handbook later in 2017.

FCA review of UK primary markets

On 14 February 2017, the FCA published two papers relating to its review of the structure of the UK’s primary markets to ensure that they continue to service the needs of issuers and investors:
a discussion paper in which they are looking to prompt a broad discussion about the effectiveness of the UK primary markets landscape (DP17/2), and
a consultation paper on proposed enhancements to the Listing Regime (CP17/4).

DP17/2 provides a broad overview of the UK's current primary markets, the listing regime, the FCA's regulatory role and data that the FCA has collated relating to those markets. It focusses on whether the existing categories of listing segments are sufficient.

CP17/14 proposes changes to the premium listing rules in the Listing Rules which are technical enhancements rather than fundamental changes.

Responses are due by 14 May 2017 and the FCA will publish rules in response to its consultation paper in the second half of 2017.

**FCA Quarterly Consultation (CP16/39)**

On 02 December 2016, the FCA published its fifteenth quarterly consultation paper. This includes amendments to the Disclosure Guidance and Transparency Rules (DTRs) to address new requirements in regulatory technical standards on the Transparency Directive (TD).

Article 21a of the TD requires the European Securities and Markets Authority (ESMA) to develop and operate a European electronic access point (EEAP) to provide fast access to, and make available to end users, all regulated information filed by issuers under the TD on a non-discriminatory basis. The EEAP will be a web portal accessible through ESMA's website. To facilitate the search for regulated information and to ensure fast access to that information, the EEAP will offer the ability to search by legal entity identifier (LEI), home Member State or type of regulated information. The EEAP must be established by 01 January 2018 and Member States must ensure access to their national central storage mechanisms - known as officially appointed mechanisms (OAMs) - through the EEAP, so that the EEAP can provide access to the regulated information which is stored by these mechanisms. In the UK, the FCA is the OAM.

In September 2015, ESMA published draft RTS setting out various elements required to implement the EEAP. The RTS were adopted by the European Commission on 19 May 2016 and published in the Official Journal on 31 August 2016. The intention of the RTS is that regulated information which has been filed in the year prior to the EEAP becoming operational will be fully searchable once the EEAP goes live on 01 January 2018. For this reason, certain requirements regarding data provision, covered in Articles 7 and 9 of the RTS, came into force on 01 January 2017. This includes an obligation for the FCA, as the OAM, to classify all regulated information. The FCA itself will not necessarily know, however, what type of regulated information an issuer is filing unless the issuer provides classification details to the FCA. The FCA is therefore proposing adding new rules in DTR 6.2 which will require the issuer to supply an LEI and to classify the regulated information which will enable the FCA to fulfil its obligations as the OAM under Articles 7 and 9 of the RTS.

The proposed amendments will require issuers to:

- apply to the FCA for an LEI
- provide that LEI when filing regulated information, and
- classify regulated information when they file it using the classes and subclasses which will be set out in DTR 6, Annex 1R. (Where more than one class or subclass applies, all of them should be notified.)
Responses to the proposed amendments were due by 02 January 2017. Although the new rule will not apply until it comes into effect, the FCA is encouraging issuers to comply with it from 01 January 2017 so that all information will be searchable from that date. Information on how to obtain an LEI is available here.

**Investment and corporate banking: prohibition of restrictive contractual clause**

Following the FCAs final report of the findings from its investment and corporate banking market study, the FCA is consulting on a proposed ban of restrictive clauses in investment and corporate banking engagement letters and contracts where the clauses cover future corporate finance services carried out from an establishment in the UK (CP16/31). The ban would apply to all agreements entered into after the commencement date of the new rules but would not apply to existing agreements. Responses to the consultation were due by 16 December 2016. Subject to the responses, the FCA expect to publish final rules in early 2017.

**Recent amendments to DTRs**

**Delayed disclosure:** on 24 February 2017, the FCA published rule changes to DTR 2.5 (delaying disclosure of inside information) in response to CP16/38. These changes, which take effect on that date, have been made so that the rule is consistent with ESMAs Guidelines on delayed disclosure.

The changes

- delete the sentence that delaying disclosure of inside information is only likely to be allowed where there are ongoing negotiations that would be jeopardised by early disclosure and instead refers to ESMAs non exhaustive list of situations where delay may be allowed, and
- continue to provide that the FCAs guidance in DTR 2.5.4G (about the ability to delay) is limited to the fact or substance of negotiations and an issuer cannot delay because its position in subsequent negotiations will be jeopardized).

**Board diversity policy:** on 04 November 2016, the FCA published the rule changes in response to its thirteenth quarterly consultation paper (CP 16/17). The changes to the DTRs include a new DTR 7.2.8A which requires issuers to disclose their board diversity policy in the corporate governance statement unless they fall within certain exemptions. This applies to financial years beginning on or after 01 January 2017.

**Primary Market Bulletin No.17**

On 30 March 2017, the FCA published Primary Market Bulletin (PMB) No.17. This edition addresses the feedback it has received to its Call for Views on Sponsor Conflicts and sets out its consultation on a new Technical Note (TN) 701.3 which will replace the existing guidance on sponsor conflicts in TN 701.2.

The call for views was originally published in CP14/21 in September 2014 but was postponed pending publication of the Market study on investment and corporate banking. The FCA recommenced its work after the Market Study’s interim report had been published in April 2016.

The FCA has also made the following changes to the Knowledge Base which they had proposed in PMB No. 13, 14 and 16:

- amendments to six procedural notes and to 12 technical notes
- the addition of seven new technical notes, and
the deletion of three technical notes.

The FCA is still reviewing certain matters that it consulted on in those earlier PMBs; namely amendments to:

- UKLA/TN/604.2 (PD advertisement regime) - have been postponed as it is likely to be affected by the FCA’s consultation paper on the availability of information in the UK equity IPO process
- UKLA/TN/541.2 - have been postponed as discussions on whether the DTRs apply to global depositary receipts is still ongoing at EU level
- UKLA/TN/202.2 (share buybacks with mix and match facilities) - as the FCA is still considering the feedback, and
- UKLA/TN/306.2 as a result of MAR implementation - have been postponed as a result of further work the FCA is undertaking in this area.

The FCA also states that a new TR-1 form will come into force on 30 June 2017 which should be sent to them in Microsoft Word format as opposed to readable pdf. The new TR1 form can be found on its website.

**Potential impact**

See the following articles on elexica:

Reforming the availability of information in the UK equity process: FCA publishes new consultation paper
Review of the effectiveness of primary markets: FCA publishes two new papers

**Look out for**

FCA response to outstanding issues and consultation in Primary Market Bulletin No. 17
FCA response to its consultations in CP17/5, CP17/4, CP 16/39 and CP16/31
FCA response to DP17/2.

**More information**

See our Equity Capital Markets page on elexica. See also our MAR knowledge centre on elexica.

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