REFORMING THE AVAILABILITY OF INFORMATION IN THE UK EQUITY IPO PROCESS

ICAEW welcomes the opportunity to comment on the consultation paper CP17/5 Reforming the availability of information in the UK equity IPO process, published by the Financial Conduct Authority on 1 March 2017, a copy of which is available from this link.

This response of 7 June 2017 has been prepared on behalf of ICAEW by the Corporate Finance Faculty. Recognised internationally as a source of expertise on corporate finance issues and for its monthly *Corporate Financier* magazine, the Faculty is responsible for ICAEW policy on corporate finance issues including submissions to consultations. The Faculty's membership is drawn from professional services groups, advisory firms, companies, banks, private equity, law firms, consultants, academics and brokers.

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MAJOR POINTS

1. We agree with the aim of the policy proposals to enhance the importance of the prospectus in the IPO process. However, we do not believe that the same need exists for IPOs on MTFs, or indeed for small main market IPOs.

2. The FCA states that it would expect to allow a sufficient period between publishing its Policy Statement and the date at which policy changes come into force. This period must allow for any uncertainties to be resolved in conjunction with issuers, sponsors and their respective legal counsel, such as the level of verification at the registration document stage and during the 'public phase' (in paragraph 4.10). During this time the UKLA will also need to communicate its expectations of sponsors. The FCA may consider that a temporary dual process route may be desirable, to provide an alternative should difficulties due to the changes threaten the IPO process.

3. Early publicity of an issuer's intention to IPO may be undesirable to issuers that are more sensitive to failure and would prefer to announce the intention to float once the bookbuild is complete. This may make an IPO less attractive to a number of potential issuers including private equity house vendors who are undertaking a dual track process, as earlier publicity of an intention to IPO could adversely prejudice the private sale process.

4. The historical annual financial information presented in the prospectus must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard (PR Annex 1 item 20.1). LR6.1.3R(1)(e) requires that such historical financial information is not subject to a modified report or if it is, then either the modification arises in the earlier periods or if in the final period it includes an emphasis-of-matter paragraph with regard to going concern and LR6.1.16R, regarding sufficiency of working capital, is complied with (LR6.1.3AG). It is unclear what approval the FCA would give at the registration document date, its implications for director and sponsor responsibilities at that date as well as how it ties with the reporting accountant's responsibilities at that date, given that the reporting accountant's opinion on the historical financial information will be included in the registration document but provided separately and in advance of the securities note, including the working capital statement.

5. It is important to have legal clarification on whether the issuer has to be a registered plc at publication of the registration document. If so, this may render the plc subject to the provisions of the Takeover Code including having to respond to takeover approaches under the provisions of the Code, particularly if the IPO does not proceed, which may be a further deterrent from the IPO process for some issuers.

RESPONSES TO SPECIFIC QUESTIONS

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

6. We are not aware of any other conduct risks than those described in the consultation paper.

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

7. Yes, we agree and it is particularly helpful for smaller issuers where unconnected research may not be available even after implementing the proposals in CP17/5.

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?

8. We agree. The FCA's efforts should focus on requiring that an approved prospectus (or registration document) is available before publication of connected research but without mandating a period of separation because what is appropriate is dependent on the specific circumstances.

Q4: Do you agree that, if unconnected analysts were to be provided with access 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?

9. It is clearly important that unconnected analysts are given adequate time and access to management to enable them to prepare their research. We do not believe that it is appropriate to be too prescriptive in the time available for this, as it will depend on the circumstances. However, we think that rather than focus on the time separation from the registration document/prospectus it would be more beneficial to require that the connected research is not published before the unconnected research. A mandatory separation period will also be meaningless if unconnected research is not available (unpaid research is not a realistic prospect).

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.

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

10. In principle, we agree with the proposed policy measure.

11. As mentioned in the previous paragraphs we do not agree that seven days is the appropriate blackout period for all IPOs.

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

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

12. The implications for the transaction review process are dependent on the level of verification that the issuer and sponsor will require in order to publish the registration document, as this will determine the nature and timing of review work. One of the issues with splitting the publication of the Annex 1 and Annex 3 disclosure requirements is that we believe the reasons for the offer and use of proceeds is a key element of the information required by investors. The absence of such information to unconnected research houses and investors may significantly limit the benefits of the revised approach.

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?

13. Yes.

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.**

14. We believe that this is a matter of legal opinion.

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.

15. We are not aware of such aspects of market practice.

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?

16. We agree that it may help to a limited extent but the benefits may be limited and the disadvantages and the extra costs may outweigh the benefits. We would suggest that prior to proceeding, specific investigation is made of the commercial case for unconnected research – ie the willingness of analysts to prepare high quality unconnected research and/or the willingness of investors to pay for it.

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.**

17. We do not support extending the FCA's proposals to all IPOs on MTFs. Growth companies on MTFs do not generally produce a prospectus. For typical issue sizes of £100million, our members consider that negative impact of early publicity on smaller IPOs may render them unattractive compared, say, to raising funds from private equity investors. A syndicate of more than two banks is not common and there is minimal commercial opportunity for unconnected research.

18. We also point to US provisions under the JOBS ACT that allow eligible 'emerging growth companies' to submit registration statements confidentially to the Securities and Exchange Commission (SEC).

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?

19. The CBA may need to be re-performed depending on resolution of the legal uncertainty around verification at the 'private phase'. If verification is required at both private and public phases, this may give rise to inefficiency. Additionally we believe that market practice may develop for a single prospectus document to be prepared for marketing purposes, which could further add to the potential costs.

20. We do not expect smaller flotations to benefit from the policy proposals. We doubt that there will be appetite among unconnected researchers to take up opportunities to publish research for smaller IPOs because it is unlikely to be commercially viable.