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Briefing note November 2014

# IMA republishes Transaction Guidelines

Following the merger of ABI Investment Affairs with the Investment Manager's Association (IMA) in June 2014, the enlarged IMA (to be renamed The Investment Association in January 2015) has assumed responsibility for the Transaction Guidelines previously published by the ABI. These guidelines make recommendations in relation to (1) IPOs, including the size of syndicates and the payment of discretionary fees, (2) secondary offerings, including reducing underwriting fees and (3) the role played by INEDs on corporate transactions. On 10 November 2014, the IMA republished the Transaction Guidelines, although it has not made any substantive changes to the text. Set out below is a reminder of the key provisions of these guidelines:.

## IPOs

***Syndicate issues***

- There should be no more than three bookrunners for transactions above £250m (excluding any over-allotment option) and no more than two bookrunners for transactions below £250m. Additional syndicate members should be appointed based on sector expertise or distribution capability.
- The inclusion of syndicate members solely for relationship reasons is discouraged. If a passive syndicate member is appointed, this should be clearly specified.

***IPO fees***

- There should be greater transparency of all fees paid, including the maximum incentive fee. Individual syndicate members' fees should also be disclosed. ***CC Comment – the FCA have also invited comment on whether sponsor fees should be separately disclosed following publication of consultation paper, CP14/21 in September 2014.***
- The determination and payment of discretionary fees should be made at the later of (1) the end of the first quarterly results and (2) three months after listing. ***CC Comment - please note that the FCA announced on 7 November 2014 that the requirement to publish IMS's was being removed from the DTRs with immediate effect.***
- Recommended factors to be taken into account in awarding discretionary fees are (1) the stability of the share price, (2) the allocation of shares to long-term shareholders, as evidenced by the stability of the register, (3) the extent and quality of research both during and after IPO and (4) the continuity of research post-IPO. ***CC Comment – there may be concerns about managing the potential conflict (or the perception of conflict) where discretionary fees are determined following a long period post-IPO and factors taken into account include share price performance and research. Does this mean that restrictions need to be imposed on the sales desk? In addition, given the independence of the research function, is it appropriate to link IPO fees to the pre-deal and post-IPO research?***

## Secondary offerings

- Companies should use deep discounts in rights issues to reduce fees paid to primary underwriters and sub-underwriters. Firm undertakings should be sought from sub-underwriters before announcing the transaction. ***CC Comment – great care needs to be taken in wall-crossing ahead of a secondary offering, with recipients of information being subject to confidentiality obligations and restrictions on dealings, and the cleansing strategy being carefully***

***considered. In addition, wall-crossing requirements are becoming increasingly burdensome as a result of the forthcoming Market Abuse Regulation which will take effect in July 2016 and will require enhanced record keeping and additional safeguards prior to any market soundings.***

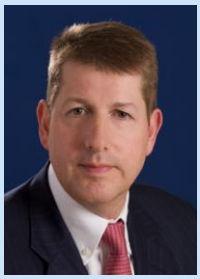
- Fees should be disaggregated with fees for advice, primary underwriting and sub-underwriting shown separately. Similarly, fees of other advisers such as lawyers, accountants and independent advisers should be shown separately.
- The aggregate fees charged, and discount to the mid-market price at the time of agreeing the placing, should be disclosed in the pricing announcement for non-pre-emptive placings.

## Corporate transactions and Independent Non-Executive Directors

- INEDs should be given sufficient time and information to consider the merits of the proposed transaction and to provide their views to those shareholders who are "insided".
- INEDs should be given a narrative description of discussions with the target and this narrative should be disclosed in summary form in the circular. ***CC Comment – in the US there has been a longstanding requirement to disclose fully the progress of negotiations.***
- INEDs should be given direct access to financial and legal advisers and INEDs should consider whether to seek independent advice on the merits of the proposed transaction.
- On certain transactions (MBOs, transactions with major shareholders) an independent committee of un-conflicted directors should be formed, which should take independent financial and legal advice. A Chinese wall within existing advisers will not suffice.
- The independent committee should consider whether the transaction (as opposed to other courses of action) is in the best interests of shareholders as a whole. ***CC Comment – the recent Rural Metro case in Delaware highlighted some significant deficiencies in the role played by the special committee on an all cash third party buy-out. For more details, see our briefing Rural Metro – More lessons on practices to avoid when selling a publicly traded Delaware Corporation which is available here.***

**Click here to access a copy of the Transaction Guidelines.**

# Contacts

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