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Response to the IOSCO Consultation Report on 'Conflicts of interest and associated conduct risks during the equity capital raising process'

The Swedish Securities Dealers Association (SSDA) appreciate the opportunity to respond to the IOSCO Consultation Report on 'Conflicts of interest and associated conduct risks during the equity capital raising process'.

The SSDA was founded in 1908 and represents the common interest of banks and investment firms active in the Swedish securities market. The Association's main objective is to promote a sustainable, strong and efficient securities market and it regularly raises its members' views on regulatory, market and infrastructure-related issues. It also provides a neutral forum for its members to discuss matters which are of common interest.

General comments on the proposed IOSCO Guidance

The SSDA welcomes IOSCO's Consultation Report and the aim to provide a guidance that helps IOSCO's members address potential conflicts of interest and associated conduct risks in the equity capital raising process.

Many of the proposed measures are reasonable and address relevant risks. From a European perspective, it should be noted that many of them have been covered through the implementation of MiFID I (2004/39/EC) and MiFID II (2014/65/EU). Through the implementation, investment firms are required to take appropriate steps to identify and to prevent or manage conflicts of interest. Notwithstanding this, the SSDA welcomes the attempt to raise the standards of conduct on a global level and supports the effort to create a level playing field.

From a general perspective, it should be noted that the equity capital raising process in the Nordic region has a well-established track record of providing efficient access to financing and capital for small and medium-sized entities. Financial research plays an important part of this process as investors need

to get information on what they are investing in. Considering that conflicts of interest have been thoroughly addressed through the implementation of MiFID II and the Delegated Regulation (2017/565), it is important to strike the right balance and avoid over-regulating an area which has just been subject to an extensive overhaul.

Measure 1: In the context of pitches to secure a mandate to manage an equities securities offering, regulators should consider requiring firms to take reasonable steps to prevent their analysts from coming under pressure to take a favourable view on the offering from the issuer's representatives.

Although the SSDA generally considers that the proposed measure is reasonable, it should be noted that from a European perspective this issue has been addressed through the implementation of MiFID II. Preamble 56 to the Delegated Regulation (2017/565) specifically provides that financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities are inconsistent with the maintenance of that person's objectivity. These include 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. It should also be noted that some conflicts of interest are difficult to erase completely, i.e. just because there is a conflict of interest does not mean that it cannot be managed. An analyst should be able to meet with issuers as long as mitigating actions by the investment firm ensure that the analyst will retain its objectivity. It should here be noted that preamble 56 does not prohibit analysts from participating in pitches or road shows as such if the analysts' objectivity can be maintained. The mitigating actions by investment firms may require the analyst to only hold a presentation on its views of the issuer, market and peers but not to stay for the presentation of the investment firms placing capability and not to comment on matters such as ideal timing of an issue. It should also be noted that there is a self-regulating mechanism built into the equity capital market since an analyst achieving a good ranking by investors is inconsistent with the analyst being influenced by the investment firm's corporate finance business. Thus, to completely prohibit analysts from participating in pitches and roadshows would, in the SSDA's view, take this measure too far and would mean that the EU Member States would have to adopt stricter regulation than what has just been adopted under MiFID II.

Measure 2: Regulators should consider requiring that, once an underwriting or placing mandate has been awarded, firms take the reasonable steps to prevent a connected analyst's views and research on the equities securities offering from being improperly influenced and to ensure that the analyst remains objective.

In the EU this measure has been handled through the implementation of the Market Abuse Regulation (596/2014)(MAR) and MiFID I and MiFID II; see in particular MAR Delegated Regulation (2016/958) and preamble 56 to the MiFID II Delegated Regulation (2017/565) which specifically addresses financial analysts and the measures that firms need to take to ensure that such persons' objectivity is protected.

Measure 3: Regulators should consider requiring that, once an underwriting or placing mandate has been awarded, firms have appropriate controls to manage potential conflicts of interest and associated conduct risks arising from connected analysts performing an internal advisory role within the firm in the context of an equity securities offering.

See response under Measure 2 above and the references to MiFID II. In addition, please note that the SSDA and its members are of the view that no additional measures are needed in the EU at this stage.

Measure 4: Regulators should consider requiring firms to support the provision of a wide range of independent information to investors in a timely manner, where distribution of such information is permitted under local law.

Measure 4 contains a quite broad requirement which could have unintended consequences, e.g. on price formation since analyst input is important when analysing the prospective investment case. Often there is a limited amount of public information available at the early stages of the process and it would be unfortunate if new regulations were introduced that would restrict the information that is available to investors even further. In particular, it would be unfortunate for the functionality of the price formation process if connected analysts' research were released only once an official offering document has been published.

Measure 5: Regulators should consider requiring firms to maintain an allocation policy that sets out their approach for determining allocations and that provides the issuer with an opportunity to express their preference during the process.

The SSDA generally supports the requirement in Measure 5 that firms should maintain an allocation policy. It should be noted though that MiFID II already covers such provision, see Art 40 of the Delegated Regulation (2017/565) which requires investment firms to establish, implement and maintain an allocation policy that sets out the process for developing allocation recommendations. The allocation policy shall be provided to the issuer client before agreeing to undertake any placing services and the policy shall set out relevant information that is available at that stage, including the proposed allocation methodology for the issue. Investment firms are also required to involve the issuer client in discussions about the placing process in order for the firm to be able to understand and consider the client's interests and objectives. In addition, the investment firm is required to obtain the issuer client's agreement to its proposed allocation per type of client for the transaction in accordance with the allocation policy. No additional regulation is therefore needed in the EU.

Measure 6: Regulators should consider requiring firms to maintain records of the allocation decisions to demonstrate that any conflicts of interest are appropriately managed.

Measure 6 has already been implemented in the EU through Article 43 of the MiFID Delegated Regulation (2017/565). Investment firms are accordingly required to keep records of the allocation decisions for each operation which should be kept to provide for a complete audit trail between the movements registered in clients' accounts and the instructions received by the investment firm. In particular, the final allocation made to each investment client shall be clearly justified and recorded.

Measure 7: Regulators should consider requiring firms to manage any conflicts of interest that arise in relation to pricing an equity securities offering, keep the issuer informed of key decisions or actions which can influence pricing outcome, and give the issuer an opportunity to express preference regarding the pricing of an issue during the pricing process.

From an EU perspective, it should be noted that similar requirements have been implemented through the MiFID Delegated Regulation (2017/565). The SSDA is therefore of the view that no additional regulation is necessary in the EU.

Measure 8: In the context of a securities offering, regulators should consider requiring firms to prevent any employees who have access to confidential information on the issuer from entering into or causing any personal transactions in situations where it involves misuse or improper disclosure of the confidential information. Regulators should also consider requiring firms to prevent any employees from entering into personal transactions where it otherwise gives rise to any conflicts of interest.

Measure 8 covers an area which is subject to several EU Directives and Regulations, including the Market Abuse Directive (2014/57/EU) and the Market Abuse Regulation (596/2014) (MAD/MAR), Art 16.2 of MiFID II and Arts 28-29 of the MiFID Delegated Regulation (2017/565). In addition, the established market practice in Sweden is the SSDA's rules and regulations governing transactions in financial instruments and currencies undertaken by employees of investment firms which its members and many other Swedish institutions adhere to. Since SSDA's rules and regulations are well implemented in the Swedish market and generally are highly efficient, the SSDA is of the view that no additional measures are needed.[1]

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Please do not hesitate to contact us if you have any questions or if there is anything that you would like to discuss.

Yours sincerely,

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[1] When appropriate, the SSDA develops self-regulation, industry guidance and standards to achieve high market integrity, efficiency and confidence in the Swedish securities market.