

FCA PUBLISHES POLICY STATEMENT ON SPONSOR COMPETENCE AND FURTHER CONSULTATION

In January 2014, the FCA published consultation paper CP14/2 which proposed a package of measures intended to clarify and strengthen the sponsor competence regime. The FCA has now published CP14/21, a feedback and policy statement on CP14/2, which sets out the final rule changes to the sponsor competence regime. These rule changes will take effect on 1 February 2015. CP14/21 also contains a consultation on the joint sponsor regime and calls for views on sponsor conflicts.

Sponsor competence regime

In light of the feedback received in response to its January 2014 consultation, the FCA's views on the key issues consulted on in CP14/2 are as follows:

Sponsor declarations

The FCA is to implement its proposal that a sponsor must demonstrate prior relevant sponsor experience by the submission of at least one sponsor's declaration every three years (LR8.6.7R(1)). The FCA sees this as a basic threshold condition for assessing a sponsor's competence and is to introduce a new sponsor annual notification form (see Annex 2 of CP14/21) that will require a sponsor to list all sponsor declarations submitted to the FCA in the last three years. New guidance states that, only in exceptional circumstances, will the FCA consider modifying or dispensing with this requirement (LR8.6.7BG).

Competency sets and competence framework

New LR 8.6.7R(2) requires a sponsor to have a sufficient number of employees with the skills, knowledge and expertise necessary for it to provide sponsor services. Competency will be assessed by reference to five "competency sets". These require relevant employees to understand:

1. the rules, guidance and ESMA publications directly relevant to sponsor services;
2. the procedural requirements and processes of the FCA;
3. the due diligence process required in order to provide sponsor services in accordance with LR 8.3 and 8.4;
4. the responsibilities and obligations of a sponsor in LR 8; and
5. specialist industry sectors, if relevant to the sponsor services the sponsor provides or proposes to provide.

For each of the competency sets, there is a description of the FCA's expectations as to what they entail in a revised technical note *Guidance on the competence requirements set out under LR8.6.7R(2)(b)*, the text of which is set out in

Annex 1 of CP14/21 and on which the FCA is inviting comments.

Concerns were raised during the consultation in relation to the FCA's proposals to require sponsors to demonstrate competence through the adoption and application of a "competency framework". Respondents argued this approach was overly restrictive, burdensome and would have a significant impact on existing sponsors' systems and controls and record keeping. As a result, the FCA has removed the concept of the competency framework and will, instead, require sponsors to have in place effective systems and controls to enable them to comply with the five competency sets. Sponsors will be required to set out in their annual notification how they satisfy each of the competency sets, which will involve both deal experience as well as relevant training. Sponsors will no doubt wish to work with external legal counsel to ensure that full training on the competency sets is provided to staff to ensure that they can make the declaration required in their annual notification.

In determining competence, the FCA will apply a "look through" approach to the experience of the sponsor's employees rather than to the sponsor itself (LR8.6.7AG).

Key contact

In CP14/2 the FCA raised concerns about a general decline in the quality of their interaction with sponsors and sought to enhance the rules around the named point of contact between the sponsor and the UKLA. Respondents were generally supportive of the FCA's proposals in this regard. As such, LR 8.6.19R(2) has been amended to clarify that the key contact must (i) have sufficient knowledge about the issuer and the proposed transaction, (ii) be authorised to make representations to the FCA for and on behalf of the sponsor, (iii) possess technical knowledge of the rules and guidance directly relevant to sponsor services, and (iv) understand the responsibilities and obligations of a sponsor under LR 8.

The FCA expects a sponsor to have no less than two employees who are able to satisfy these requirements (LR8.6.7DG) and such employees are expected to have provided sponsor services in the previous three years (LR8.6.20G).

Limitations on sponsor approval

The FCA is to implement its proposal to allow applicants to limit their application for approval to provide sponsor services to premium listed investment companies only (LR8.6.5CG).

The amendments to the Listing Rules described above will take effect on 1 February 2015. Comments on the revised technical notes on sponsor competence should be received by 7 November 2014. The FCA expects such notes to form part of the UKLA Technical Base from 1 February 2015.

For further background on the consultation in CP14/2, see our February 2014 briefing, [Sponsor Competence: FCA proposes Listing Rule changes](#).

Joint sponsors and sponsor conflicts

In CP14/2 the FCA sought views on the merits and disadvantages of the joint sponsor regime, with a view to determining whether the current regime should be changed. The FCA has confirmed that it intends to retain the joint sponsor regime, but is consulting on a number of proposed rule changes. In particular, the rule changes will clarify that joint sponsors are jointly and severally liable for compliance with their obligations as joint sponsor (amended LR 8.3.14R(1)). Where joint sponsors are appointed, one should take responsibility for contact with the FCA in respect of administrative arrangements (amended LR8.5.3R(1)). Sponsors will also be expected to co-operate with one another, including by establishing arrangements for the sharing of relevant information (proposed LR8.3.15G).

Concerns highlighted by respondents to CP14/2 on the operation of the current sponsor conflicts regime have led the FCA to invite views on whether the current rules and guidance on sponsor conflicts are appropriate and effective. The FCA is currently giving consideration to whether sponsors should be required to disclose their transaction fees, along with details of their relationship with the issuer and any conflicts and how such conflicts are being managed. Any proposed changes will be the subject of a separate formal consultation.

The consultation period in respect of the joint sponsor proposals and questions in relation to sponsor conflicts closes on 30 December 2014. Feedback on the joint sponsor proposals will be published in the second quarter of 2015. Depending on the responses received in relation to sponsor conflicts, further proposals will be published for discussion later in 2015.

Miscellaneous rule changes which took effect on 1 October 2014

In CP14/2 the FCA consulted on (i) deleting the requirement in LR13.4.3R (takeover offers) to require a premium listed company to prepare a 28-day circular; and (ii) introducing a new Prospectus Rule to impose an obligation on an applicant to submit a compliant and factually accurate prospectus.

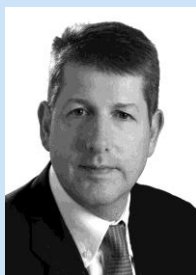
These rules changes, and one other very minor change to Listing Rule 5, were confirmed in CP14/21 and took effect on 1 October 2014.

How can we help?

To discuss how the new rules on sponsor competence or any other matters raised in CP14/21 might affect your business, please contact any of the authors of this note.

Download a copy of CP14/21 (September 2014) at:
<http://www.fca.org.uk/static/documents/consultation-papers/cp14-21.pdf>

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