

Sponsor competence: FCA proposes Listing Rule changes

The FCA has published consultation paper CP14/2 setting out a series of proposals aimed at redefining what they mean by "competent" in the context of sponsor approval and seeking views on the merits and disadvantages of using joint sponsors.

Sponsor competence

The sponsor regime has undergone significant change over the last year, including rule changes relating to enhanced record keeping and conflict management which took effect on 31 December 2012 and the introduction in the Financial Services Act 2012 of increased powers for the FCA to approve sponsors (and to restrict and limit their approval) and to discipline them for breaches of their duties.

Against this background, the FCA is seeking to enhance awareness of its expectation of sponsors through the creation of a more robust and transparent regime. It is proposing a package of measures which clarify:

- that the sponsor regime is an expert regime; a sponsor must have recent "on-the-job" experience of providing sponsor services. The FCA intends to introduce a rule requiring sponsors to demonstrate that they have been providing sponsor services during the preceding three year period. For new sponsors, the FCA will "look through" to the experience of the sponsor's employees rather than to the sponsor itself;
- the minimum level of knowledge and ability that the FCA expects sponsors to retain through appropriately staffed teams. In doing so, sponsors will be required to have regard to a "competence framework", which identifies relevant areas of knowledge and skill that the sponsor team will need to satisfy. In particular, a sponsor will need to demonstrate that it has a sufficient number of employees with the skills, knowledge and expertise necessary to understand:

1. the rules, guidance and ESMA publications directly relevant to the provision of 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 Listing Rules 8.3 and 8.4;
4. the responsibilities and obligations of a sponsor set out in Chapter 8 of the Listing Rules; and
5. if relevant to the sponsor's approval, specialist industry sectors.

The FCA accepts that employees, when considered individually, will be unlikely to meet all the "competency sets" described above. Therefore, in order to satisfy the requirements of proposed LR 8.6, the sponsor will be required to consider how to apply the framework to its staffing model both on an ongoing basis and on a transactional basis. Sponsors will continue to confirm in their annual update that they remain competent to carry out sponsor services but this will be by reference to the competency framework;

- that those personnel who liaise with the UKLA on behalf of the sponsor must meet minimum standards of knowledge and experience and be able to act with requisite authority. All sponsors will be required to have a minimum of at least two key contacts, and, for the most active sponsors, this is likely to be considerably more; and

- that the FCA intends to encourage applications from sponsors seeking to act in a specialist sector only. It is hoped this will promote competition in the market and the development of specialist expertise.

The proposals will be implemented by way of changes to Chapter 8 of the Listing Rules and the introduction of two new technical and procedural notes. Annex 1 of CP14/2 contains the proposed text of a new technical note, *Competence Frameworks for the assessment of employees carrying out sponsor services*, which sets out the minimum requirements sponsors should be considering when adopting a competence framework. Annex 1 also contains the proposed new procedural note, *Sponsors: Practical implications of competence requirement for sponsors and applicants*, providing guidance on how the FCA expects the new requirements to impact on new applicants and existing sponsors when applying for approval or carrying out their annual notification. Appendix 1 of CP14/2 contains the details of the proposed changes to LR 8.

Joint sponsors

Whilst recognising the benefits that the appointment of joint sponsors can bring to a deal, the FCA has identified a number of potential concerns about the practice, including:

- a reluctance on the part of the largest, most active sponsors to act as joint sponsor other than in the primary contact role, creating a perception of a two-tier system, whereby one sponsor is the "lead" and the other the "junior";
- the apparent lack of arrangements or understanding between sponsors as to how the joint role will work, leading to the potential that one sponsor may rely on the work of the other while retaining full responsibility for it under LR 8;
- a failure of communication between the joint sponsors leading to a disparity of information between them which may adversely affect one sponsor's ability to properly perform its role;

- the risk that a sponsor's ability to provide its own guidance to the issuer is compromised where it is pressured to present a consensus view on an issue;
- delay, due to the need for all sponsors to participate in discussions about the deal; and
- increased costs for the UKLA due to the need for greater management and control of two sponsors.

As a result of these concerns, the FCA is seeking market participants' view on the merits and disadvantages of the joint sponsor regime, with a view to determining whether changes to the current rules or guidance are required.

Other proposals under consultation

The FCA is proposing the following:

- to delete the requirement in LR 13.4.3R to require a premium listed company to prepare a 28-day circular; and
- to introduce new Prospectus Rules, PR 3.1.2AR and PR 3.1.2BR to impose a discrete obligation on an applicant to submit a compliant and factually accurate prospectus. In doing so, the FCA believes this will bring the UK in line with practice in other member states.

What next?

The consultation closes on 30 April 2014 and the FCA currently expects to publish feedback in the last quarter of 2014.

How can we help?

We are talking to our clients about the implications of these proposals and the practical changes that they are likely to necessitate, with a view to feeding into the consultation process. To discuss the impact of CP14/2 for your business, please contact any of the authors of this note.

Download a copy of CP14/2 at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-02.pdf>.

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