

UK Financial Conduct Authority Consultation on Sponsor Competence

February 4, 2014

On 30 January, the UK's Financial Conduct Authority ("FCA") issued a consultation paper ([CP 14/2](#)) on sponsor competence. Sponsors play a fundamental role in the FCA's premium listing regime, providing expert guidance to prospective and existing premium listed companies on the interpretation of the FCA's rules, and also providing important confirmations to the FCA that a premium listed company or applicant can meet its regulatory obligations under the listing regime. Sponsors are typically investment banks although accountants and lawyers can perform the role.

The regime for sponsors has undergone several significant changes over the last year, including the introduction of statutory powers to fine and suspend sponsors, to limit their functions, as well as further rules in areas such as record keeping and conflict management.

The current regime requires a sponsor to demonstrate competence, but the FCA acknowledges that its approach to applying the rules and guidance is not clear from the face of the rules. Given the increased regulatory powers that the FCA now has in relation to sponsors, it believes that it needs to increase the transparency of the sponsor regime to make its expectations clear. The consultation paper therefore proposes clearer Listing Rules, together with (binding) guidance in the form of a new technical note and a new procedural note.

Sponsor competence

To be competent to provide sponsor services, the current guidance states that a person must have a broad range of "relevant experience and expertise" in providing advice to listed issuers. Related guidance underlines the importance of prior relevant experience. The new proposals provide much more specific criteria against which the FCA will assess sponsor competence, and are based around three key elements:

- a requirement that sponsors must have submitted a sponsor declaration to the FCA within the last three years;
- a requirement for sponsors to staff sponsor functions with a sufficient number of employees meeting key competencies (as assessed against a new competence framework produced by the FCA) – requiring some changes to systems and controls; and
- substantially enhancing existing rules to introduce specific requirements around the role of the "key contact" with the FCA.

The three year rule

The three year rule codifies the FCA's current informal approach to determining whether prior relevant experience is sufficient, and so should not have a significant impact. Sponsor declarations made in connection with initial or further issues of shares, Class 1 transactions, restructurings, refinancings and transfers from a standard listing to a premium listing will all count towards satisfying the requirement. For firms applying for approval as a sponsor for the first time, the FCA will look through to its employees. Under the new proposals, if a sponsor finds that it is more than three years since it has submitted a sponsor declaration, it is required to notify the FCA, which can then suspend the approval or, if there is no realistic prospect of resolving the issue, cancel the approval entirely.

The competency framework

Under the new proposals, a sponsor must demonstrate that it has sufficient employees that understand:

- the rules, guidance and ESMA publications directly relevant to sponsor services;
- the procedural requirements and processes of the FCA;
- the due diligence process required in order to provide sponsor services in accordance with LR 8.3 and LR 8.4;
- the responsibilities and obligations of a sponsor set out in LR 8; and
- if relevant to the sponsor's approval, specialist industry sectors.

To support this requirement, sponsors will be required to adopt and apply an appropriate competence framework, and the FCA has supplied the detail of what it expects this framework to contain in a new draft technical note. A sponsor can either adopt this framework or tailor it to meet its own business model, provided that it meets the five minimum competency criteria set out above. The rules on systems and controls have been enhanced to ensure that the sponsor assesses staff against an adopted competency framework. This element of the package will require sponsors to review both their training and appraisal programs to ensure that they meet the new standards.

The key contact

The final element of the package of reforms is the introduction of additional requirements for employees communicating with the FCA – prompted by what the FCA perceives as a decline in the quality of its interactions with sponsors in recent years. Sponsors may need to nominate more senior employees to perform this role in the future, as the FCA will expect the key contact to possess adequate technical knowledge of the rules and guidance (including ESMA guidance) directly relevant to sponsor services, be proficient in the procedural requirements and processes of the FCA and understand the sponsor's duties. In practice, the FCA will expect the individual to have performed sponsor services within the last three years, and to have had his or her skills assessed by reference to the competency framework.

Other proposals

The FCA is also proposing to allow sponsors to apply for limited sponsor approval – most likely for those sponsors which typically only advise premium listed investment companies. It is proposing a separate competency framework for this on which it is inviting comments.

Also discussed in the paper is the issue of joint sponsors. The FCA is inviting views on whether the practice of allowing joint sponsor arrangements should be brought to an end or augmented by new rules, noting that there are potential issues with joint sponsor arrangements (including the risk of poor communication, possibilities of conflicting views and increased bureaucracy) but some potential benefits too. The FCA notes that larger sponsor firms increasingly appear unwilling to act as joint sponsor unless they are in the primary contact role, despite the intention that each sponsor is equally responsible.

Comment and next steps

The FCA's package of reforms are intended as a helpful clarification of the standards that it expects sponsors to meet, with a view to assisting sponsors to train and assess staff accordingly. Following more than two years of various consultations and rule changes in relation to the sponsor regime and with the increased regulatory risk that the role now arguably carries, sponsor firms may reasonably be considering whether there should be distinct value ascribed to the role in acting for issuer clients. Comments on the proposals are due by 30 April 2014, with feedback expected in the last quarter of 2014, so sponsors should have adequate time to prepare for the new requirements.

Davis Polk recently assisted IFLR in connection with their Bankers' Counsel Poll: European Capital Markets, which included the results of a poll of in-house legal counsel at some of Europe's top investment banks and financial advisory firms. The [article](#) contains further commentary on changes to the sponsor regime.

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