

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: UKLA/TN/712.2 – Additional powers to supervise and discipline sponsors

Lead regulator: FCA

Date of assessment: March 2017

Commencement date: March 2017

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? National

The UKLA's Technical Notes and Procedural Notes are short guidance notes intended to provide additional clarity to listed companies and their advisers (including sponsors) as to how the FCA interprets provisions in the FCA's Listing Rules, Prospectus Rules and Disclosure Guidelines and Transparency Rules. The FCA typically issues these when it has received a number of questions on the same topic, other market feedback, or regulatory developments which do not necessitate a change to these rulebooks. The amendments to the guidance provided in these notes is new guidance, which was subject to public consultation and finalised in March 2017. The objective of this new guidance is to clarify our rules and help firms to have a better understanding about application of those rules.

Sponsors are firms we approve to advise premium listed companies on their obligations under the listing regime and to provide important assurances to us regarding certain transactions. The Financial Services and Markets Act 2000 (FSMA), as amended, enables us to make rules that require an issuer to appoint a sponsor in certain circumstances. Issuers are responsible for complying with the FSMA Part 6 Rules, but sponsors give them specific expertise on how the Listing Rules, the Disclosure Guidelines and the Transparency Rules apply, using their experience of previous issues. They also help us meet our regulatory obligations by confirming that issuers have complied with the Listing Rules.

Under section 88 of the Financial Services and Markets Act 2000 (FSMA) and Chapter 9 of the Listing Rule, the FCA has statutory powers to suspend, limit or restrict sponsors. Under these powers:

- The FCA can restrict or limit the services performed by sponsors, both on and post-approval;
- The sponsor can request its approval to be suspended
- The FCA can suspend a sponsor's approval or the imposition of a limitation or restriction on the services a sponsor may perform, for such a period as the FCA considers appropriate, in order to advance one or more of the FCA's operational objectives

- The FCA can fine, suspend, restrict or limit the services performed by a sponsor for a maximum period of 12 months and/or publicly censure a sponsor if it has contravened the Listing Rules relating to sponsors.

We produced guidance to advise sponsors on the steps they need to take in order to effect any of the above procedures (when it is at the request of the sponsor) and explain how the limitation or restriction take effect when it is imposed by the FCA. The guidance was contained in the procedural note PN 910.1 which was published in August 2014.

As of 1 April 2015, under the concurrency provisions in FSMA, the FCA has competition law powers, including powers under the Competition Act 1998 (CA98) in relation to agreements and conduct relating to the provision of financial services (which includes the provision of sponsor services). We are bound by statutory provisions to give 'primacy' to CA98 enforcement in certain situations. This means that before exercising our section 88E FSMA powers (which enables us to limit, restrict or suspend a sponsor firm to advance our operational objectives), amongst others, we have a duty to consider whether it would be more appropriate to proceed under CA98. If we consider that it would be more appropriate to proceed under CA98, we must do so rather than exercise our section 88E FSMA powers. We aim to exercise our functions as transparently as possible, recognising the importance of ensuring that appropriate information is provided on our decision-making process and also to our being open and accessible to stakeholders. So we have updated this note to include reference to our C98 primacy obligation whenever considering the potential use of our section 88E powers. We have also taken this opportunity to make minor drafting amendments to the note.

Which type of business will be affected? How many are estimated to be affected?

The guidance applies to sponsors only. There are currently 41 approved sponsors which are mixture of large, medium and small investment banks, corporate advisory firms, accountancy firms and legal firms. It is relatively rare to suspend, limit or restrict a sponsor's activity. On average there will be one occasion a year.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2017	March 2017	10	-0.002	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

Note – for all cost estimates below we have assumed the changes will be applied by experienced compliance staff at an estimated rate of £48/hour. The 2016 Robert Half salary guide estimates that a compliance manager in the risk and compliance function of a financial services company based in London earns between £70,000 and £104,000 per annum. Based on working 8 hours per day for 260 days each year our rate equates to £100,000 per annum and is therefore considered a suitably prudent figure for the purposes of our estimates.

Sponsors will already be familiar with the guidance in the technical note given it was originally published in 2014.

We expect that all of the 41 approved sponsors would find it helpful to familiarise themselves with the changes to the 5 page guidance note. For the 41 approved sponsors who may find it helpful to familiarise themselves with the guidance, we would expect that the note would take up to 1hr to read, digest, and disseminate to any relevant members of staff, and, if necessary, update the relevant procedure to reflect the guidance.

This is an estimate of the maximum amount of time it might take a sponsor, as the 5 page note provides an update to the powers the FCA may use for sponsors. At the estimated rate of £48/ hour, the total estimated cost for all 41 approved sponsors would be approximately £2000 ([Robert Half salary guide](#))¹.

The changes to the guidance in the procedural note do not change the procedures the sponsor has to undertake. The guidance informs sponsors that the FCA may proceed under CA98 rather than exercise our powers under section 88E of FSMA. Therefore the additional work will fall to the FCA to decide which powers to use and as a result there should be no impact to the sponsor as a result of these amendments (regardless of which powers we select to use).

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

¹ We arrived at the 1hr estimate based on the following calculation. The 5 page technical note contains approximately 2000 words. The speed of reading technical text is 50-100 words per minute based on EFTEC (2013), "Evaluating the cost savings to business revised EA guidance - method paper" the time remaining to digest, disseminate the information and if necessary update the relevant procedures is based on our broader supervisory knowledge of how firms respond to our Technical Notes and also on supervisory conversations with firms about their procedures relating to this specific issue.