

Proposed amendments to the Listing Rules in relation to sponsor competence and other amendments to the Listing Rules and Prospectus Rules

January 2014



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We are asking for comments on this Consultation Paper by 30 April 2014.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp14-02-response-form.

Or in writing to:

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Markets Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 6372
Email: cp14-02@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this paper

DTR	Disclosure Rules and Transparency Rules
ESMA	European Securities and Markets Authority
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LR	Listing Rules
PR	Prospectus Rules
SEE	Suitably Experienced Employee
UKLA	UK Listing Authority
UKLA Knowledge Base	The Knowledge Base is the UKLA's repository of available technical guidance on the FCA Listing Rules, Prospectus Rules and Disclosure and Transparency Rules. The information is designed to assist both issuers and practitioners advising issuers in interpreting these rules. http://www.fca.org.uk/firms/markets/ukla/knowledge-base

1. Overview

Introduction

- 1.1** This consultation paper sets out our proposals to amend the Listing Rules and Guidance on sponsor competence as well as seeking market views on joint sponsor arrangements.
- 1.2** There are also two other proposals that we are consulting on in this paper:
- The proposal to remove a Listing Rule requirement for a premium listed issuer to have to prepare a 28-day circular.
 - The creation of new Prospectus Rules making it clear that an applicant is responsible for submitting a compliant and factually accurate prospectus.

Structure of this publication

- 1.3** As well as our sponsor competence proposals, we also propose to introduce a new Procedural Note and Technical Note to sit as formal guidance in the UKLA's Knowledge Base. Chapter 4 of this paper sets out further details of these proposed changes. Annex 1 contains the Procedural Note and Technical Note, which we are consulting on as part of this paper. We have included in Chapter 5 discussion-type questions that will seek views on the use of joint sponsors. Finally, Chapter 6 contains the remainder of our proposals in relation to 28-day circulars and prospectuses.

Who should read this paper?

- 1.4** This paper will be of interest to:
- Premium listed issuers or issuers considering a Premium Listing on their securities.
 - Firms and sponsors advising issuers of premium listed securities.
 - Firms or persons investing in or dealing in premium listed securities.
 - Persons responsible for submitting a prospectus to us for approval.

Is this of interest to consumers?

- 1.5** This paper will be of interest to consumers who deal and invest in premium listed securities either directly or indirectly through institutions. In addition, this paper will be of interest to premium listed issuers or applicants for Premium Listing as consumers of sponsor services. The policy proposals raise issues concerned with protecting investors.

Next steps

- 1.6** We want to know what you think of our proposals. Please use the online response form or write to us at the address on page 2. The consultation period closes on 30 April 2014 and we intend to publish our feedback in the last quarter of 2014.

2. Executive summary

Introduction

- 2.1** Sponsors are a fundamental part of the Premium Listing regime and play a critical role in providing investors with confidence in the integrity and effectiveness of that regime. They perform a unique, dual role on transactions:
- They provide expert guidance to premium listed issuers and applicants for Premium Listing on the interpretation of our rules, to help them meet their obligations.
 - They also give us important confirmations of a premium listed issuer's ability to meet certain obligations which helps us meet our objectives.
- 2.2** Given the importance of the sponsor regime, we are considering two key aspects:
- redefining what we mean by 'competent' in the context of sponsor approval, and
 - joint sponsor arrangements
- 2.3** The regime for sponsors has undergone several significant changes over the last year, including the introduction of statutory powers to fine, and to suspend and limit sponsors, as well as enhancements in our rules in areas such as record keeping and conflict management. Our proposals build on these changes and are designed to improve awareness of our expectations of sponsors through a more robust and transparent regime.
- 2.4** This paper also proposes some amendments to issuer obligations on significant transactions. It clarifies the obligations on those who submit prospectuses to the UKLA for approval.
- 2.5** The proposals in this paper sit alongside our work on *Enhancing the effectiveness of the Listing Regime* (in our consultations CP12/25 and CP13/15), where our overall focus has been maintaining the integrity of the Premium Listing Regime and ensuring that it continues to provide an appropriate degree of investor protection.
- 2.6** A fundamental principle of this work, and key to the FCA's strategic objective to make markets work well, has been that shareholders should be actively engaged and able to take important decisions on a properly informed basis. Sponsors play a crucial role in guiding premium listed issuers through their obligations under our rules – helping this aim by promoting compliance and transparency.

Summary of the proposals on sponsor competence

2.7 The package of proposed measures clarifies that:

- **The sponsor regime is an expert regime requiring sponsors to have recent previous experience:** Our proposals require sponsor services to have been carried out within a recent specified period of time. This approach clarifies our expectation that sponsors retain relevant 'on-the-job' experience of having provided these services. We believe that a proven track record is the best way to demonstrate expertise, an approach strongly endorsed by market participants.
- **We expect sponsors to retain sufficient skilled resource to carry out their role to a high standard:** Our proposals clearly articulate the minimum level of knowledge and ability that we expect sponsors to retain through appropriately staffed teams. This will allow sponsors to identify any areas where further training or experience may be required.
- **Liaison with the UKLA by sponsors should meet certain levels of expertise:** Our proposals strengthen the need for personnel in contact with us to meet minimum standards of knowledge and experience and to be able to act with requisite authority.
- **We are open to applications from sponsors acting only in specialist sectors:** Our proposals recognise that sponsors may only wish to act in a specialist sector and allow us to approve sponsors on that basis. This opens up the approval process to certain specialist sponsors, thus promoting competition and the development of expertise.

Joint sponsors

2.8 In addition to our work on competence, Chapter 5 includes a discussion on the use of joint sponsors. At present, issuers may appoint more than one sponsor to act jointly on a transaction. We are aware that there is no homogenous view within the stakeholder community, including issuers, investors and sponsors, as to how well this aspect of the regime operates in practice. We are therefore seeking views from stakeholders on the regime as it currently operates, which we will use to decide whether we need to do more policy work in this area.

Sponsors under the Listing Regime

2.9 We believe the changes we are proposing are needed to position the sponsor regime appropriately within the FCA's statutory framework and objectives. Premium listed companies are consumers of the regulated financial services provided by sponsors, and our proposals will enhance their ability to appoint a sponsor with confidence. Recognising that our approval of a sponsor is seen as an important endorsement of a sponsor's abilities, our proposals clarify our expectations of sponsors and the criteria we will use for their approval.

2.10 Since 1 April 2013, we now have statutory powers to take a wider range of formal action against sponsors, including suspending or limiting their approvals. We will consider using these powers where a sponsor fails to comply with our ongoing criteria for approval, including competence. It is therefore essential that our rules in this area are transparent. This is in line with the FCA's

Transparency Framework¹, which we published in August 2013, setting out our commitment to be clear in how we communicate and work and to exercise our functions as transparently as possible. As we currently operate a principles-based approach to sponsor competence, our proposals make our approval criteria clearer for prospective sponsors and give existing sponsors sufficient guidance to continue to meet our criteria for approval. A transparent approach to competence is also, in our view, important for other stakeholders such as premium listed issuers, investors and other advisers.

- 2.11** We believe our proposals promote consumer protection and market integrity on the one hand, and promote effective competition in the interest of consumers on the other.

¹ www.fca.org.uk/static/fca/documents/feedback-statements/fca-transparency-framework.pdf

3.

Summary of the sponsor competence proposals

- 3.1** This paper presents a package of measures designed to enhance the effectiveness of the sponsor regime and to ensure that it continues to be appropriately placed within the wider regulatory framework. This paper addresses two key areas by consulting on the competency requirements for sponsors and inviting discussion around joint sponsor arrangements.
- 3.2** The regime for sponsors has undergone several significant changes over the last few years, including the introduction of statutory powers to fine, suspend and limit sponsors as well as enhancements to our rules in areas such as record keeping and conflict management. Our proposals build on these changes and are designed to improve awareness of our expectations of sponsors through a more robust and transparent regime.

Background to our proposals

The sponsor regime

- 3.3** Sponsors are critical to the integrity of the premium listed equity market in London. They perform a dual role; firstly, providing expert advice and guidance to premium listed companies undertaking transactions and applicants seeking a Premium Listing, in order to ensure that they understand the regulatory framework imposed on them under Part VI of FSMA. Secondly, we receive assurances from sponsors that premium listed companies undertaking transactions, and new applicants, are complying with this regulatory framework.
- 3.4** The FCA, acting as competent authority, maintains the list of approved sponsors for the purposes of section 88 of FSMA. We are responsible for approving firms as sponsors as well as maintaining the list and removing sponsors no longer meeting the approval criteria.
- 3.5** Approval criteria are three-fold: (1) a person must be an authorised person or a member of a designated professional body; (2) a person must demonstrate they are competent to carry out sponsor services; (3) a person must have appropriate systems and controls. These criteria provide a threshold for firms applying for approval as a sponsor and must be complied with on an ongoing basis.
- 3.6** In certain instances, the Listing Rules require an issuer to appoint an approved sponsor. While issuers are ultimately responsible for their own compliance with the Listing Rules, Prospectus Rules and Disclosure Rules and Transparency Rules, they rely heavily on a sponsor's ability to guide them through the relevant rules, in particular their application and interpretation. Issuers, therefore, depend on a sponsor to provide competent advice. The list of approved sponsors is seen by the market as a strong endorsement by the FCA of a sponsor's abilities in this respect. Therefore, it is critical that the sponsor regime is robust and effective in order to maintain the integrity of the Premium Listing Regime.

The current approach to competence

3.7 To be approved as a sponsor, the firm must be competent to provide sponsor services. Since 2005, LR8.6.7R has stated that a firm is competent if it has a broad range of relevant experience and expertise in providing advice to listed companies on the Listing Rules. Since introducing this rule we have provided guidance in the Listing Rules on its application, firstly through the consideration of 'suitably experienced employees' (SEEs) and, more recently, a more principles-based, firm-focused approach requiring a demonstration of relevant skills, knowledge and expertise, including relevant experience of sponsor services.

3.8 In applying the current guidance in the Listing Rules, we have so far focused on:

- determining the relevance of prior sponsor experience with reference to how recently the sponsor, or employees of an applicant, carried out sponsor services, and
- whether the sponsor has appropriate staffing in the context of its business model and pipeline²

3.9 We continue to see the benefit of requiring sponsors and applicants to demonstrate recent sponsor experience and the need for resourcing a sponsor function appropriately. However, for the reasons set out below, we believe the current articulation of our approach to sponsor competence requires revision, as set out in more detail in Chapter 4.

Reasons for change

3.10 There has been a significant amount of change in the regulatory environment in which sponsors operate in recent years. This is primarily the result of our continuing obligation to keep the rules applying to sponsors fit for purpose and up to date with changes in market practice. But it also reflects the powers introduced by the Financial Services Act 2012³, in particular limiting the scope of a sponsor's approval and taking formal action against a sponsor for any breach of this limitation, as well as our overall guiding principle of transparency in carrying out our functions.

3.11 It is within this context that we are proposing new rules and guidance on sponsor competence. The proposals seek to complement earlier changes to the sponsor regime and the overall direction of policy in this important area. We want to address three main goals in these proposals:

a. Increasing transparency of the sponsor regime

Feedback has indicated that our approach to applying the current rules and guidance on sponsor competence is not clear from the detail of the rules. This lack of transparency can be confusing for both existing sponsors and new applicants. We recognise that this can lead to a perceived lack of consistency, which potentially undermines the integrity of the sponsor regime.

Achieving this objective is also consistent with the Transparency Framework, which set out our commitment to being a transparent regulator, to being clear in how we communicate and the way we work, and to exercising our functions as transparently as possible. Against this background, we do not believe that our rules on competency are sufficiently clear to provide an appropriate level of transparency to meet this new commitment.

In addition, following the changes to FSMA as a result of the Financial Services Act 2012, issuers are now consumers for the purposes of our statutory objectives: as the Listing Rules

² See Technical Note TN709.1 www.fca.org.uk/static/documents/ukla/knowledge-base/tn-709-1.pdf

³ <http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted>

require premium listed issuers to appoint a sponsor in certain circumstances, or applicants for Premium Listing to appoint a sponsor, they are consumers of sponsor services. It is therefore essential that sponsor approval should not be given, or retained, unless sponsors are able to demonstrate an ability to meet clear threshold conditions, allowing issuers to appoint a sponsor with confidence.

These proposals also seek to make our expectations for sponsors more transparent to sponsors and their advisers, in turn building on our commitment to ongoing dialogue with sponsors.

b. Reflecting changes to the statutory powers

Changes made to the provisions in FSMA regarding the sponsor regime by the Financial Services Act 2012 permit us to restrict or limit the approval of sponsors. As highlighted in CP12/37⁴, these changes enable us to approve sponsors who wish to specialise in certain sectors, such as offering sponsor services to premium listed investment companies. We believe this approach will improve competition in certain sectors. However, the current rules on competence require sponsors to demonstrate a 'broad range of relevant experience'. This is clearly no longer our intended approach. Further, the rules do not make it clear that competence can be considered in the context of an application for a restricted or limited sponsor approval. As such, our rules on competence need to reflect this new approach to approving sponsors. Our proposals clarify our intention to use these new powers to consider applications for sponsor approval on a restricted or limited basis and that we will consider their competence in light of the nature of their application.

c. Enabling appropriate sanctions

Our new powers in FSMA as a result of the changes made by the Financial Services Act 2012 allow us to use a wider range of sanctions for sponsors beyond cancellation, including imposing fines or suspending or limiting a sponsor's approval. These powers are likely to be used where we have concerns about a sponsor's capability. We will consider using appropriate sanctions where a sponsor fails to meet our criteria for approval, including the need to be competent. It is possible that we would seek to suspend a sponsor where there is a risk that it is no longer competent. To apply these sanctions effectively, and to communicate our application of these rules to sponsors seeking to comply, it is essential that our expectations are clear.

Our proposals

3.12 Against this context, our package of proposals on competency will deliver a more robust and transparent regime, through:

- Requiring sponsors to have carried out sponsor services within a recent specified period of time, which we have set at three years.
- Requiring sponsors to staff sponsor functions with a sufficient number of employees meeting key competencies as assessed against an adopted competence framework.
- Strengthening requirements of a sponsor when liaising with the UKLA.

⁴ CP12/37 www.fsa.gov.uk/static/pubs/cp/cp12-37.pdf

- Facilitating applications for sponsor approval from persons wishing to provide sponsor services on a limited basis.

3.13 Detailed consideration of these proposals is in Chapter 4. We have explained below our intentions in making these proposals.

Prior sponsor experience

3.14 When carrying out a sponsor service, sponsors are required to manage a series of interactions with us, balancing the regulatory responsibilities they have to us with the wide range of responsibilities they have to their clients. The regulatory framework in which sponsors operate is extensive, requiring them to interpret and apply a complex set of rules and guidance to a range of different transactions and issues undertaken by premium listed companies. For these reasons, we believe that the sponsor regime is an expert regime. We believe that the best indicator of competency is through previous experience of performing the role. We do not believe this experience can be gained through training alone, nor replicated through performing other advisory roles. While some aspects of other corporate advisory roles provide experience that is relevant to the sponsor role, it is our view that the basis on which a sponsor liaises with us and interprets our rules is particular to that role and is not replicated by other experience.

3.15 Given the changing regulatory environment, it is essential that those carrying out sponsor services are able to demonstrate recent sponsor experience. When considering firms already on the list of approved sponsors, our experience highlights that inactive sponsors can often pose a greater risk to our objectives than those who are active. Through lack of contact with us, it is our view that, over time, sponsors become less aware of rule changes and policy changes, both domestic and European, in applying the Listing Rules, Prospectus Rules and Disclosure Rules and Transparency Rules. For a number of years we have considered experience of providing a sponsor role within the last three years as sufficiently recent for sponsors to demonstrate a retention of expertise within the firm. Our proposals introduce, for the first time, a rule which requires activity within an explicit timeframe through the requirement for a sponsor to submit a declaration within the last three years. New sponsor applicants would demonstrate this through their sponsor service teams. Due to the infrequent occurrence of sponsor services, we believe that three years is an appropriate period of time in which a firm can demonstrate commitment to providing these services. We have also set out an expectation that individuals liaising with the FCA have had experience of providing sponsor services in the same timeframe, given the importance of those interactions.

3.16 We believe that this approach should enable most sponsors to meet this requirement even in a downturn in market activity. We believe that we require practical and transparent measures to enable us to reject any new applicants who do not meet the criteria and to remove existing sponsors who are inactive for this period of time from the list of sponsors. The new rules proposed will clarify to sponsors our expectations in a clear and transparent manner.

3.17 While developing these proposals, we considered the merits of using professional qualifications to demonstrate competence. We believe qualifications are important training tools for practitioners carrying out services to a professional standard and can go some way to training sponsors in particular areas of corporate finance. However, we believe that there is no single qualification that encompasses all the aspects we look for in a competent sponsor. We believe that certain necessary skills, such as the practical application of the rules and the interaction with us during a live transaction, can only be obtained through 'on the job' training; qualifications alone would not provide these skills. We are aware that there are issuers who share this view.

3.18 We recognise that strengthening the requirement for prior sponsor experience could create concerns that we are not meeting our statutory objectives and competition duty with these

proposals. We have carefully considered all our statutory objectives, and our competition duty, recognising that any threshold requirements for prior sponsor experience will restrict the number of firms granted sponsor approval. The sponsor regime exists to protect investors and premium listed issuers (both consumers under FSMA) and promote market integrity: we require those issuers to appoint sponsors to assist in carrying out corporate activities that are likely to have a material impact on shareholders and investors and on the market generally. We therefore believe that our proposals promote consumer protection and market integrity on the one hand and promote effective competition in the interests of consumers on the other.

Sufficient skilled resource

- 3.19** For the first time, our proposals for sponsor competence focus on the need for sponsors to consider resourcing issues specifically for their sponsor activity, rather than their corporate advisory work as a whole. We expect sponsors to be able to demonstrate that they are competent at all times, by considering resourcing needs on an ongoing as well as a specific transactional basis. The need for appropriate resourcing is a threshold condition for authorised persons carrying on regulated activity and is something we believe should also be applicable to sponsor services.
- 3.20** The sponsor regime regulates firms, and not individuals, and therefore we have made the need to staff business functions carrying out sponsor activity a responsibility for firms. However, we recognise that competence is best demonstrated through the activity and skill sets of individuals. We have therefore set out key 'competency sets' to demonstrate sponsor competence that will often sit with more than one employee, and which will require sponsors to consider their staffing proposition as a whole. Accordingly, we are identifying relevant areas of knowledge and skill that will be set out in a 'competency framework', as defined in our rules. This will include, for example, detailed knowledge of the relevant rule books, their application to transactions requiring sponsor services, and the overall responsibilities of sponsors set out in the Listing Rules. This will allow sponsors to identify potential knowledge and experience gaps.
- 3.21** We believe, from recent experience, that sponsors may not fully appreciate the levels of skills, knowledge and expertise we expect of them and that, as competency is an obligation to be met at all times, these expectations should be met not just for specific transactions, but also on a continuing basis. We believe that by adopting this approach, sponsors will be able to identify and address gaps in their staffing model, thereby leading to an increased ability to comply with our rules.
- 3.22** It is important to emphasise that we intend firms to use an appropriate 'competence framework' in a flexible way that meets their specific needs. The current list of approved sponsors is diverse in terms of firms with widely differing business models and size. It includes large integrated banks and corporate finance boutiques as well as legal and accountancy firms. This diversity is important and we recognise that a 'one size fits all' approach to staffing would not be appropriate. Our intention is therefore that firms should develop their own 'competence framework', based on the minimum 'competency sets' identified.
- 3.23** We believe that many of our more active sponsors already carry out informal and formal assessments of staff, taking into account previous 'on-the-job' experience as well as more formal training undertaken. Currently, all sponsors must confirm in writing on an annual basis that they remain competent to carry out sponsor services. Our proposal for existing sponsors should therefore only require firms to continue this process by reference to an adopted competence framework.

Communicating with the FCA

- 3.24** We have noticed a general decline in the quality of our interactions with sponsors. We rely heavily on the assurances provided to us by sponsors, not only formally through the declarations received on transactions, but also on the more ad-hoc interactions with individuals on behalf of their firm. At times, the quality of our interactions with individuals at firms has caused us to question whether we can rely on these assurances or whether they are acting with the full authority of their employer. It has also raised concerns as to a firm's technical ability. This presents a significant risk to our statutory objectives. To clarify our requirements in this area, we have decided that we should enhance the current rules around the named point of contact between a sponsor and the UKLA. Currently, the contact must be familiar with the transaction that is the subject of a submission to the UKLA Department. We are now proposing that this individual, or key contact, must also be technically and procedurally competent and understand a sponsor's regulatory obligations under LR8. They should also be authorised to make representations to us for and on behalf of the sponsor.
- 3.25** When considering whether they have sufficient numbers of appropriately skilled staff, we are requiring sponsors, in addition, to consider the number of key contacts they require. As with all considerations of resource, this requirement will also depend on the sponsor's business model and future pipeline of transactions. However, we would expect that all sponsors have a minimum of at least two key contacts, to address key person risk. For some of our most active sponsors, we expect this number to be considerably more.
- ### **Applications from specialist sponsors**
- 3.26** As highlighted above, following the recent changes made to FSMA as a result of the Financial Services Act 2012, we are now able to approve sponsors on a limited basis. Our package of changes, including the removal of the previous requirement for a broad range of experience, will facilitate applications from sponsors that may only wish to act in a specialist sector. We have already highlighted in CP12/37 that we see this being particularly beneficial for firms wishing to provide sponsor services for premium listed investment companies only.
- ### **Joint sponsors**
- 3.27** The Listing Rules currently recognise that, in certain circumstances, a premium listed issuer or applicant for Premium Listing may wish to appoint more than one sponsor. This is a particularly common approach in more complex, or larger transactions. Where sponsors wish to act jointly in relation to providing sponsor services, the Listing Rules make it clear that each sponsor is responsible for complying with their own Listing Rule obligations. We are aware that there is no homogenous view within the stakeholder community, including issuers, investors and sponsors, as to how well this aspect of the regime operates in practice. We have included in Chapter 5 of this consultation paper, discussion-type questions that will seek views on the use of joint sponsors and the potential risks, if any, that this practice may pose to the integrity of the sponsor regime or consumer protection. Our intention, following the discussion process, will be to consider whether to consult on policy change in this area. Any changes would be subject to a full consultation process.
- 3.28** While not directly relevant to the question of competence, we have decided to pose these questions at this time as clearly joint sponsor arrangements provide additional opportunities for sponsors to perform sponsor services. In light of the proposals on competence, we believe it is appropriate to address this issue in the same consultation paper, given the potential impact should responses to the discussion indicate a need for policy reform in this area.

4.

Details of the sponsor competence proposals

Introduction

- 4.1** In Chapters 2 and 3 of this paper we explained our reasons for wanting to change our approach to sponsor competence and summarised the proposals in that context. This chapter sets out in more detail our proposed changes. We have also proposed some minor amendments to LR8 that sit outside the proposals on sponsor competence, details of which are set out at the end of this chapter.

Existing approach to sponsor competence

- 4.2** Currently, we assess and interpret sponsor competence by reference to LR 8.6 and to Technical Note UKLA/TN/709.1.
- 4.3** LR 8.6.5R states that the FCA will approve a sponsor only if it is satisfied that it meets three criteria; 1) it must be authorised (or a member of a designated professional body), 2) it must be competent to provide sponsor services, and 3) it must have appropriate systems and controls in place to ensure that it can carry out its role as sponsor. LR 8.6.6R makes this a continuing obligation for existing sponsors.
- 4.4** LR 8.6.7R states that, to be competent to provide sponsor services, a person must have a broad range of relevant experience and expertise in providing advice to listed issuers and on the Listing Rules. LR 8.6.7AG states that, when assessing competence, the FCA will have regard amongst other things to: 1) prior relevant experience of providing sponsor services, 2) skills, knowledge and expertise necessary for the proper performance of sponsor services, and 3) prior corporate finance experience.
- 4.5** Technical Note UKLA/TN/709.1 provides further guidance on the application of LR8.6.7AG:

“Prior relevant experience of providing sponsor services remains of paramount importance in this context and the UKLA is of the view that the relevance of experience should be measured by reference to a number of factors including how recently the relevant sponsor services were provided and the extent to which those services are congruent with the range of services a sponsor typically provides. The UKLA acknowledges that sponsor experience resides in individuals at firms as well as the firm itself and that there are various methods by which such experience can be stored and transmitted within a firm, including through training or knowledge management systems. Whether or not a firm has prior sponsor experience is an important consideration in relation to whether or not the firm meets the competence criteria of LR 8.6.5R(2)....” and

"....when considering whether staffing and supervisory arrangements in relation to a sponsor service are appropriate, important factors will be whether the firm has experience relevant to the proposed sponsor service and how such experience will be applied."

Proposals

- 4.6** We are proposing to retain the current approval criteria for sponsors as set out in LR 8.6.5R, but change the supporting rules and guidance on the requirement in LR8.6.5R (2) for a sponsor to be competent to perform sponsor services.
- 4.7** Our proposed approach to sponsor competence is based on three key elements:
- A requirement for sponsors to have produced a sponsor declaration 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 an adopted competence framework (requiring some changes to systems and controls).
 - Substantially enhancing existing rules (LR 8.6.19R) to introduce specific requirements around the role of a 'key contact'.
- 4.8** We have proposed a revision of LR8.6 to address these requirements, and we are proposing to introduce a new Technical Note and Procedural Note (see Annex 1), to be included in the UKLA's Knowledge Base⁵, to provide further guidance on the practical aspects of these changes. The Technical Note will set out suggestions for the minimum requirements sponsors should be considering when adopting a competence framework. The Procedural Note will provide guidance on how we expect the new requirements, including the competence framework, to impact on new applicants and existing sponsors when applying for approval and/or carrying out their annual notifications. In this paper we are consulting on both the proposed changes to the Listing Rules and we would also welcome comments on the proposed Technical and Procedural Notes (see questions 14 and 15 below).
- 4.9** Lastly, LR8.6.5AR currently highlights that we may impose limitations or restrictions on a sponsor's approval. We are proposing new guidance to clarify that, in certain circumstances, we are able to apply this approach to new applicants who may wish to apply for approval as sponsor on a restricted or limited basis. We are also clarifying that competence will be considered in light of any restrictions or limitations sought.

Prior sponsor experience

- 4.10** The Listing Rules currently require a sponsor, or new applicant, to have a broad range of relevant experience and expertise in providing advice to listed companies and on the Listing Rules. LR 8.6.9AG provides guidance on some of the factors we currently consider when assessing whether a person is competent to provide sponsor services. These include the person's prior relevant experience of providing sponsor services.

⁵ www.fca.org.uk/firms/markets/ukla/knowledge-base

- 4.11** Since introducing this guidance, our approach to applying LR 8.6.7R and LR 8.6.9AG has broadly been to require sponsors to have completed sponsor transactions in the previous three years. This reflects our current approach which is, that the less recent the experience, the less relevant it is in terms of demonstrating competence.
- 4.12** We recognise that this critical element is not clearly articulated in the Listing Rules and is not transparent to the market as a whole.
- 4.13** We have therefore proposed a clearly defined timeframe for determining the relevance of sponsor experience, being three years. We consider a timeframe of three years takes into account the frequency with which sponsor declarations are required under the Listing Rules and potential changes in market conditions. We believe this proposal is an appropriate way in which we can ensure that new applicants and existing sponsors are able to demonstrate prior relevant sponsor experience. However, as with the current rules, we do not consider compliance with this requirement alone to demonstrate competence.
- 4.14** Proposed LR 8.6.7 R(1) requires that a sponsor, or a person applying for approval as a sponsor, must have submitted a sponsor declaration to us in the previous three years in the case of a sponsor firm (LR 8.6.7 R(1)(b)), or in the case of a person applying for approval as a sponsor, within three years of the date of its application (LR 8.6.7R(1)(a)). We have proposed that the submission of a sponsor declaration is required, rather than any sponsor services, as we believe this to be an objective and practical way of measuring substantive sponsor experience. Firstly, a sponsor declaration requires the sponsor to consider the key confirmations required of the regime. Furthermore, sponsors are required to monitor their submission of sponsor declarations and therefore should easily be able to assess their compliance with this rule using existing controls. For this reason we are proposing that sponsors should be able to submit declarations in this timeframe relating to initial or further issues of shares, or class 1 transactions, restructuring, refinancing and transfers or premium listing.
- Q1: Do you agree that prior relevant sponsor experience (evidenced by a sponsor declaration submitted to the FCA) should be a measure of sponsor competence (LR8.6.7R(1))?**
- Q2: Do you agree that a timeframe of three years is appropriate (LR 8.6.7 R(1))?**
- 4.15** We recognise that this proposal raises specific issues for new applicants. Where a new applicant is unable to demonstrate that it meets proposed LR 8.6.7R(1)(a), we will 'look through' to the employees of the firm rather than the firm itself. This means that we expect to derive a similar level of comfort from the individuals as we would from an operating sponsor. We are therefore proposing new guidance at LR8.6.7AG that clarifies that we will to look to the underlying employees who will be carrying out sponsor services, rather than the firm, in considering whether new applicants satisfy this requirement. The experience of individuals will need to be viewed as representing the firm's experience and applicants will need to take this into account. We would look to the individual(s) to provide us with a similar level of comfort that we would receive from a sponsor having submitted a declaration.
- Q3: Do you agree with the approach for new applicants as set out in LR 8.6.7AG taking into account the guidance set out in the Procedural Note in Annex 1?**

- 4.16** Where an existing sponsor does not comply with this requirement, but can demonstrate compliance with our other competence requirements, it may request that we modify or dispense with LR8.6.7(1)(b) under LR1.2.1R. In exceptional circumstances, for instance, where market conditions severely impact the activity of all sponsors and where we believe it is in the interests of premium listed issuers to do so, we may grant such requests. Given the level of activity of most sponsors in recent years, even during difficult market conditions, we anticipate that we would rarely need to grant such requests.
- 4.17** Where an existing sponsor is unable to satisfy us that it has provided a sponsor declaration within the last three years, and it proposes to recruit employees to satisfy these requirements, we may use the same route to look through to individuals as we would a new applicant. A level playing field between new and existing sponsors should therefore be preserved.
- 4.18** Where a sponsor is unable to comply with LR 8.6.5R, we would expect it to notify us under existing LR 8.7.8R. For example, a sponsor who is unable to demonstrate that it has submitted a declaration in the previous three years will be required to notify us of this under LR8.7.8R. If we believe this requirement can be met in the short term through recruitment, we would anticipate a sponsor to consider requesting a temporary suspension of its approval while the issue is resolved. Our approach is set out in the proposed guidance in LR8.7.26AG. Where there is no realistic prospect of resolving this issue in the short term, we would anticipate a sponsor applying for cancellation.
- 4.19** Further information on how we envisage sponsors and applicants addressing this requirement procedurally is in the proposed Procedural Note (see Annex 1).

Q4: Do you agree with the proposed new guidance in LR8.7.26AG?

Competency sets and competence framework

- 4.20** LR 8.6.9AG currently sets out what factors we consider when assessing whether a person is competent to provide sponsor services. We propose deleting LR8.6.9AG and amending LR8.6.7R. In proposed LR8.6.7R(2), we set out the key competencies (referred to as ‘competency sets’) which a sponsor must demonstrate in order to be competent.
- 4.21** In addition, we are proposing to introduce the concept of a ‘competence framework’. In LR8.6.12R(9), we are proposing that a sponsor adopts and applies an appropriate ‘competence framework’ and embeds it within its existing systems and controls. A competence framework, as set out in our proposed definition, is required to contain a minimum five ‘competency sets’ as set out in LR8.6.7R(2). As in the proposed LR8.6.7CG, we expect that all staff involved with sponsor services will need to be assessed against a competence framework in order for a sponsor to demonstrate it is competent. We also expect a sponsor to keep records of this assessment (further to the existing record keeping requirements in LR8.6.16AR).
- 4.22** We accept that employees, considered individually, will be unlikely to meet all the ‘competency sets’ set out in the competence framework. Therefore, in order to satisfy the requirements of LR8.6.7R(2), a sponsor will be required to consider how to apply its adopted framework to its staffing model operating on an ongoing basis and a transactional basis.

4.23 As explained above, both LR8.6.7R(2) and our proposed definition of a competence framework refer to five 'competency sets'. These 'competency sets' are as follows:

- Rules, guidance and ESMA publications directly relevant to sponsor services

Sponsors will need to demonstrate technical knowledge of the regulatory requirements triggered by providing sponsor services to a premium listed issuer or an applicant for Premium Listing. As such, we expect them to demonstrate a working knowledge of the Listing Rules, Prospectus Rules, Disclosure Rules, and Transparency Rules, as well as any guidance, including publications from ESMA. To the extent that it is relevant to providing a sponsor service, we will also expect sponsors to have an understanding of the wider UK regulatory framework. Furthermore, we expect sponsors to remain up to date with market commentary and practice around the application of the relevant rules and guidance set out above.

- The procedural requirements and processes of the FCA

Much of the expert nature of the sponsor role can be attributed to its required interactions with the UKLA. Therefore we believe that requiring sponsors to be proficient in our procedures is key to retaining an effective regulatory process for premium listed issuers. We maintain the UKLA Knowledge Base for sponsors and other practitioners and are committed to an ongoing dialogue with the sponsor community. Therefore, it is our intention to continue to provide guidance to support sponsors in meeting this obligation.

- The due diligence process required in order to provide sponsor services in accordance with LR 8.3 and LR 8.4

Sponsors are required to submit declarations to the FCA in terms set out in LR8.4 which requires sponsors to come to a reasonable opinion after having made due and careful enquiry. In providing these declarations, and other services, sponsors must comply with the principles in LR8.3, including acting with due care and skill, ensuring directors understand their obligations and identifying and managing potential or perceived conflicts. We recognise that sponsors will appoint their own advisers and receive their own assurances from their client and its advisers as part of carrying out due diligence into the issuer and the transaction. However, since the introduction of the current sponsor framework in 2005, we have sought to ensure that sponsors do not simply rely on 'back-to-back' comforts from third parties. As such sponsors are required to: ensure the scope of diligence is appropriate, review reports, and challenge findings in order to demonstrate that they have conducted due and careful enquiry into these matters with due care and skill. This competency set therefore requires sponsors to assess their employees' understanding not only of the scope of diligence required but also what is expected of sponsors before submitting the relevant declarations.

- The responsibilities and obligations of a sponsor set out in LR8

LR8 contains rules and guidance that apply to both sponsors and premium listed issuers. Our expectation is that a sponsor will be mindful of its own obligations under LR8 when conducting sponsor services. It should also be aware of the obligations of issuers under LR8 when advising its clients. Often, a sponsor will seek to ensure it is complying with LR8 through its compliance and/or legal teams on a day-to-day basis, as well as relying on external advisers for transaction-specific compliance. Accordingly, this is one area where we appreciate that, individually, all employees carrying out sponsor services may not be held to be competent. In this situation, we will look to assess the sponsor firm as a whole and would expect sponsors to rely on internal controls, such as escalation to staff who comply with this competency set. Furthermore, we have required any employee acting as a key contact to be competent in this area under LR8.6.19R.

- If relevant to the sponsor service, specialist industry sectors

Part of being able to advise clients on appropriate disclosure or structures that meet our eligibility requirements for Premium Listing, is an understanding of the industry sector in which their client operates. Sponsors are likely to be part of a larger organisation that may include research functions covering a particular sector, or they may have prior experience of providing advisory services to clients within certain sectors such as property companies, providers of financial services or extractive companies. This competency set will impact on other competencies set out above. However, we believe it is such an important consideration for sponsors when considering whether they are competent that it should sit separately from the other requirements. Also, by making this a separate competency set, sponsors can take into account differing staffing models, for instance when considering the competency of industry or sector teams.

To assist sponsors in complying with our proposed requirements regarding competency and, more specifically, the competence framework, we have included in the proposed Technical Note (set out in Annex 1) examples of competence frameworks based on the five 'competency sets' for both sponsors providing services to premium listed commercial companies and premium listed investment companies. We have expanded each 'competency set' heading to refer to the knowledge and expertise likely to be required in order to demonstrate competence in those areas. Where a sponsor provides sponsor services for both types of company we would expect the sponsor to apply the Premium Listing commercial company competence framework and reference the Premium Listing investment company competence framework through the 'specialist industry sector' competency set.

4.24 Under this proposal, sponsors are able to adopt their own competence framework as long as it includes, as a minimum, the five 'competency sets', as set out in our proposed definition of competence framework.

4.25 We believe this is a flexible approach that will allow sponsors to:

- make its own assessment, based on our expectations, as to the knowledge and experience staff must have in order to demonstrate a particular 'competency set'
- tailor the competence framework to meet its business model
- bolster its competence framework with other competency sets as it sees fit
- provide a framework to allow the identification of potential knowledge gaps that can be addressed through training or supervised transaction experience

4.26 We have provided further guidance in the proposed Procedural Note on how we expect the competence framework to apply in practice.

Q5: Do you agree that as part of the assessment of sponsor competence, a sponsor should have to satisfy the five 'competency sets', as set out in proposed LR8.6.7R(2)?

Q6: Does the proposed approach in LR 8.6.12(19)R and the Technical Note as set out in Annex 1 provide sufficient flexibility for sponsors?

Sufficient number of employees

- 4.27** This requirement focuses on a sponsor's need to demonstrate it has adequate resources for its sponsor services. Authorised persons are obliged to consider adequate resourcing provisions set out in the threshold conditions for carrying on regulated activity; they are not currently required to consider adequacy of resourcing specifically for their sponsor activity. We believe it is important to apply this requirement separately in LR8 for all sponsors.
- 4.28** We believe that the relevant number of employees providing sponsor services should be considered in the context of a sponsor's current and proposed business model. Therefore, the suggested text within LR 8.6.7R (2)(a) and (b) requires sponsors to ensure they have a sufficient number of employees with an understanding of the five competency sets. This replaces existing LR 8.6.9AG (2). In assessing whether a sponsor satisfies the new requirements, we will have regard to the same factors as currently set out in LR8.6.13G. We have repeated them in LR 8.6.7BG so that they apply to considerations of competence as well as a sponsor's systems and controls. We would expect sponsors to perform their own assessments of how they comply with LR 8.6.7R (2) by reference to their adopted competence framework. This expectation is set out at LR 8.6.7 CG. Further guidance on how we see a sponsor assessing competence and applying the competence framework is set out in the proposed Procedural Note (in Annex 1).
- 4.29** We expect senior management within the sponsor to continue to confirm, as part of the annual notification process (LR 8.7.7R), that our rules on competence have been satisfied.
- 4.30** LR 8.6.9BG currently states that, as part of our assessment of competence, we may also take into account guidance or advice on the Listing Rules or Disclosure Rules and Transparency Rules that the sponsor, or person applying for sponsor approval, has given in circumstances other than in providing sponsor services. We have retained this approach and amended LR 8.6.9BG so that it refers to the competence assessment within LR 8.6.7R.

Q7: Do you agree that, as part of the assessment of competence, a sponsor should have a sufficient number of staff who meet, as a minimum, the competency sets within LR 8.6.7R 2(b)?

Q8: Do you agree that the adequacy of resources obligation (LR 8.6.7R (2) (a) and (b) should apply on an ongoing basis?

Systems and controls

- 4.31** Our proposed changes to the systems and controls provisions in LR8.6.12R(9) seek to ensure that that the sponsor's competence framework is adopted at the procedural level and embedded within its systems and controls.
- 4.32** The need to demonstrate appropriate systems and controls is one of the three approval criteria for new sponsor applicants (LR8.6.5R) and a continuing obligation for existing sponsors (LR8.6.6R). LR8.6.12G currently sets out our expectations in terms of appropriate systems and controls. We have retained LR 8.6.12G but propose to make LR 8.6.12 a rule given its importance to the supervision of sponsors.

- 4.33** We have also included two additional requirements in relation to the competence framework. At LR 8.6.12R (1A) we have proposed an obligation that will require a sponsor to have in place effective systems and controls so that employees with management responsibility understand and apply the requirements of LR8. We have also proposed LR 8.6.12R (9) which requires sponsors to have in place appropriate systems and controls to allow the adoption and application of a competence framework for assessing employees carrying out sponsor services.
- 4.34** We have retained the guidance at LR 8.6.13G which takes into account certain factors when assessing whether a sponsor has complied with LR 8.6.12R.
- 4.35** We have proposed guidance on how we expect new applicants and sponsors to address our requirements on application or in an Annual Notification in the proposed Procedural Note (Annex 1).

Q9: Do you agree with our overall proposal to make the systems and controls provisions in LR 8.6.12G into a Rule (LR 8.6.12R)?

Q10: Do you agree that the additional provisions to LR 8.6.12R will ensure that a sponsor assesses staff against an adopted competence framework?

Enhancing the existing contact role (LR 8.6.19R): 'key contact'

- 4.36** As mentioned in Chapter 3, we have noticed a general decline in the quality of our interactions with sponsors. We place a great deal of reliance on their assurances to us, not only through declarations that we receive but also on ad-hoc interactions during the transaction vetting or individual guidance process.
- 4.37** As part of the proposed competence requirements, we require sponsors to be able to meet the requirements of LR8.6.19R. In this rule we have built on the existing contact person obligations by introducing additional requirements for employees communicating with the UKLA. We believe these new measures will ensure that, when sponsors communicate with us, they do so through appropriately skilled and experienced staff who have the authority to make representations on behalf of the sponsor. We expect this to lead to a significant improvement in interactions between sponsors and our document vetting function.
- 4.38** Proposed LR 8.6.19R (2) (c) will require the sponsor to identify and authorise the key contact to make representations on its behalf to us. This will require sponsors to consider whether it is appropriate for these employees to hold a mandate to act on its behalf, thereby using what should be an existing control mechanism in most firms.
- 4.39** LR 8.6.19R (2) (d)-(f) requires any key contact to be competent in three specified areas (which mirror three of the competency sets proposed in LR8.6.7R(2)(b) and our definition of 'competence framework'):
- possessing the technical knowledge of rules, guidance and ESMA publications directly relevant to sponsor services

- being proficient in the procedural requirements and processes of the FCA, and
- understanding the responsibilities and obligations of a sponsor set out in LR8

- 4.40** In proposed LR8.6.20G, we have set out our expectation for sponsors to assess key contacts by reference to their adopted competence framework and for key contacts to have carried out a sponsor service in the previous three years, so that it is clear that training alone is not sufficient to meet these requirements.
- 4.41** Our proposed guidance at LR 8.6.7DG expects sponsors to assess how many key contacts they are likely to need in light of their expected business model. To address key person risk, we recommend sponsors have at least two key contacts.
- 4.42** We have been mindful to avoid re-introducing guidance predating our current rules, which set out the suitably experienced employee regime. We believe these proposals strike the right balance between a firm-wide assessment of competence and a need to establish an appropriate way in which sponsors can provide us with assurances on which we can rely.
- 4.43** Under these proposals, we will not 'approve' individuals; the sponsor will need to assess whether enough employees are able to satisfy the firm's responsibility to meet its requirements. Furthermore, individuals will not have to 'claim' transactions: we expect sponsors to demonstrate prior relevant experience through applying the competence framework, which recognises the importance of training as well as practical experience. While the key contact requirement is for sponsor service experience, the approach is less prescriptive compared to the Suitably Experienced Employee (SEE) approach. We do not therefore view our proposals as being similar to the previous Financial Services Authority (FSA) guidance.
- 4.44** We currently require sponsors to assist in the smooth running of the sponsor service enquiry line (formerly, the 'UKLA Helpdesk') by using nominated callers. To avoid duplicating the efforts of both sponsors and the FCA, we intend to review the need for nominated caller arrangements some time after these proposals are introduced, as we expect these proposals to enhance sponsors' understanding of our requirements.

Q11: Do you agree with our proposals for key contacts as set out in LR 8.6.7R(2)(c), LR8.6.7 DG, LR8.6.19R and LR8.6.20G?

Limitation/restriction on approval

- 4.45** In April 2013, as a result of the changes to FSMA under the Financial Services Act 2012, the FCA was given powers to impose limitations or restrictions on the services that a sponsor can provide, either at the time of approval or subsequently. Our ability to impose limitations or restrictions is set out in existing LR 8.6.5AR. At that time we also included LR 8.6.5BG, which set out situations where the FCA may impose restrictions or limitations on a sponsor at the time of approval. As part of our sponsor competence considerations, we have considered how best to articulate our intentions surrounding this new power.
- 4.46** We are proposing to invite new sponsor applicants to apply for a limitation or restriction on their approval. This is set out in proposed LR 8.6.5CG.

- 4.47** As noted above and in our proposed Technical Note (set out in Annex 1), we have developed two competence frameworks, one for a sponsor providing or intending to provide sponsor services to premium listed commercial companies, and one for a sponsor providing or intending to provide sponsor services to premium listed investment companies. We believe these two categories within the Premium Listing segment provide a sufficient distinction in terms of sponsor competence and therefore an appropriate basis on which to limit or restrict sponsor services. Our current policy intention is to limit or restrict sponsor approvals to the Premium Listing investment company category only. We believe this will facilitate competition in sponsor services by allowing sponsors to specialise.
- 4.48** Further guidance on the practical arrangements for applications for limited sponsor approvals is set out in the proposed Procedural Note (in Annex 1).
- Q12: Do you agree with the FCA's proposal to consider applications for sponsor approval for the provision of sponsor services to premium investment companies only?**
- Q13: Do you agree with the proposal to assess competence to provide sponsor services to premium investment companies against a different competency framework?**

Proposed Procedural and Technical Notes

- 4.49** As noted above, Annex 1 includes a proposed Procedural Note and Technical Note. They are intended to illustrate how the proposals will operate for existing sponsors and also for new sponsor applicants, and will be included as formal guidance in the UKLA's Knowledge Base. While we usually consult on Procedural and Technical Notes via the UKLA's *Primary Market Bulletin*, we consider it helpful to our stakeholders to consult on both notes within this consultation, so that respondents can appreciate the proposals taken as a whole.
- Q14: Do you agree that the proposed Technical Note provides sufficient guidance to support the proposed amendments to LR8.6R?**
- Q15: Do you agree that the proposed Procedural Note provides sufficient guidance to support the proposed amendments to LR8.6R?**

Other amendments

- 4.50** We are proposing a change to the definition of a class 1 circular to include transactions that must comply with the requirements of a class 1 transaction. This will capture reverse takeovers where class 1 requirements are applied under LR5.6.3R: this will ensure that submitting a circular to us that relates to a reverse takeover is included in the list of sponsor services in LR 8.2.1R.
- Q16: Do you agree with the proposed amendment to the definition of a class 1 circular?**

- 4.51** LR 8.2.1 R (11) (requires a sponsor to be appointed when an issuer makes a disclosure announcement in connection with a reverse takeover) correctly refers to a 'declaration' in relation to LR5.6.15 G (3) or LR5.6.15 G (4). However, LR5.6.15 G (4) refers to the need for a 'statement'; we are therefore proposing to amend it to be consistent with the language used in LR8.2.1 R (11).

Q17: Do you agree with the proposed change to LR5.6.15 G (4) so that it refers to a 'declaration' rather than a 'statement'?

- 4.52** We are proposing minor changes to some existing Listing Rules within LR8 which will clarify the scope of the rule (namely, whether the rule applies to existing sponsors, new applicants or both). These changes reflect the current application of these rules. We have proposed changes to LR 8.1.1R, LR 8.1.1AR, LR 8.6.12R, LR 8.7.1AR and LR 8.7.8R.

Q18: Do you have any comments about the minor changes to LR 8.1.1R, LR 8.1.1AR, LR 8.6.12R, LR 8.7.1AR and LR 8.7.8R?

- 4.53** We have found an instance within LR8 where a rule has not been updated to reflect a policy change consulted on in CP12/02. In CP12/02: *Amendments to the Listing Rules, Prospectus Rules, Disclosure and Transparency Rules*, we proposed in LR11.1.10 R (1) (b) that a sponsor provide a fair and reasonable opinion instead of an 'independent adviser acceptable to the FSA'. We subsequently amended LR 11.1.10R (1) (b). We are now also proposing to amend LR11 Annex 1 8 (1) (b) so that it mirrors this change in approach. In addition, we are proposing a consequential amendment to LR8.2.1R to include this in the list of sponsor services.

Q19: Do you agree with the proposed changes to LR 11 Annex 1 8 (1) (b) and LR8.2.1R (15)?

- 4.54** LR8.2.1R (2) currently requires a sponsor to be appointed when a premium listed company is required to submit a class 1 circular to the FCA. We are proposing to extend this requirement to include any supplementary circular submitted to us, as required by LR10.5.4R. A supplementary circular under LR10.5.4R would be required if there was a material change to a class 1 transaction, occurring after shareholder approval but before completion of the transaction. In addition, we are also proposing to include any supplementary circular required by LR 10.5.4R within the existing provisions of LR8.4.11R.

Q20: Do you agree with the proposal to include the LR 10.5.4R supplementary circular within LR 8.2.1R(2) and LR 8.4.11R?

- 4.55** We consider that the following rules require minor amendment to correct either typographical errors or stylistic errors; LR 8.4.1R, LR 8.4.3R, LR 8.4.10R, LR 8.4.12R, LR 8.4.17R, LR8.6.5R, LR 8.6.12R(1), LR 8.6.13G, LR8.6.16AR.

Q21: Do you have any comments about the minor changes we have proposed in relation to the above rules?

- 4.56** We have proposed amendments to LR 8.6.12 R (6) and (7) so that they refer to all of the principles for sponsors and not just the principle for 'due care and skill'. This reflects our current expectations and application of the existing rule.

Q22: Do you agree with the proposed amendments to LR 8.6.12 R(6) and (7)?

Delegation to another sponsor/use of agents

- 4.57** In 2009, we changed the rules on the use of agents by sponsors so that a sponsor could only delegate its sponsor service related work to another approved sponsor. We further clarified that the delegating sponsor was not relieved of its obligations under the Listing Rules and the sponsor to whom the task has been delegated had to comply with LR8.3 despite the delegation.
- 4.58** Since these rules took effect, we have not received any notifications from sponsors advising that another sponsor is performing functions on its behalf, as required by LR8.7.18R, or otherwise come across the use of agents by sponsors. Given that we do not expect to see a resurgence in the use of agents, we are proposing that the ability to delegate to another sponsor be removed from LR8 by amending LR 8.7.16R and deleting LR8.7.17R and LR 8.7.18R. The proposed LR 8.7.16R will explicitly prevent the delegation of sponsor services to another person.

Q23: Do you agree with the proposed amendment to LR8.7.16R and the deletion of LR 8.7.17R and LR 8.7.18R?

5. Discussion on joint sponsors

Introduction

- 5.1** Where a sponsor is required to be appointed by an issuer or applicant under LR8.2.1R, the Listing Rules (LRs) currently provide for an issuer or applicant, should it so wish, to appoint more than one sponsor to provide a sponsor service. Where more than one sponsor is appointed, this joint sponsor arrangement is governed by the Principle for Sponsors set out in LR8.3.14R, which provides that:

“If a listed company or applicant appoints more than one sponsor to provide sponsor services in relation to a transaction then:

1. the appointment does not relieve either of the appointed sponsors of their obligations under LR 8; and
2. the sponsors are each responsible for complying with the obligations under this section and elsewhere in LR 8 in relation to the transaction.”

- 5.2** In addition, LR8.5.3R provides that:

“Where a listed company or applicant appoints more than one sponsor, the company must:

1. ensure that one of the sponsors that is appointed takes primary responsibility for contact with the FCA in respect of the entire application or transaction; and
2. inform the FCA, in writing, of the name and contact details of the sponsor taking responsibility under LR8.5.3R(1).”

- 5.3** The more typical joint sponsor appointments seen by the UKLA involve two or, less often, three sponsors. It may be that not all joint sponsors are appointed at the same time and, in many instances, the joint sponsors are also acting in other capacities on the transaction, for example as financial adviser, corporate broker or underwriter. We understand that the appointment of an existing adviser as a joint sponsor is frequently a secondary or consequential appointment.

- 5.4** As required by LR8.5.3R, only one sponsor takes primary responsibility for liaising with the UKLA throughout the sponsor service. However, other than in this one respect, LR8 does not explicitly recognise the concept of one sponsor being a ‘lead sponsor’. It is clear from LR8.3.14R that joint sponsors are severally (not jointly) liable and, accordingly, each sponsor is required to comply with the provisions of LR8. A joint sponsor appointment does not relieve the appointed sponsors of their respective obligations.

Potential benefits of joint sponsor arrangements

- 5.5** A joint sponsor arrangement can have advantages for an issuer or applicant. For example, one sponsor may have sector experience or have a presence in a particular geographical location and can bring such relevant experience to bear in a particular transaction. In addition, on particularly complex or sizeable transactions, issuers or applicants may wish to have the benefit of advice from multiple experienced advisers as opposed to relying on one firm.
- 5.6** There may also be benefits from an investor protection point of view since, where there are joint sponsors, each sponsor is responsible for undertaking relevant due diligence and giving the appropriate declarations to the FCA under LR8.4.
- 5.7** In addition, joint sponsor arrangements provide more opportunities for sponsor appointments, thereby enhancing competition amongst sponsors. This is in line with advancing the FCA's statutory objective of promoting effective competition in the interests of consumers in the markets for regulated financial services (given that in this context 'consumers' includes issuers, and 'markets for regulated financial services' includes sponsor services). Further, since the proposed changes to the sponsor regime (see Chapter 4) will require a sponsor to have provided a sponsor declaration in the previous three years in order to be able to meet the 'competence' limb of the sponsor eligibility criteria (LR8.6.5(2)R), the possibility of acting as a joint sponsor increases opportunities for sponsors to meet this proposed requirement.

Potential issues with joint sponsor arrangements

- 5.8** Despite the possible benefits of joint sponsor arrangements described above, certain issues have been identified which suggest that joint sponsor appointments may be problematic for issuers, sponsors and the sponsor regime generally. These issues create a potential concern that the ability of sponsors to discharge their obligations could be compromised or adversely affected by joint sponsor arrangements. In addition, concerns have been expressed to us that a joint sponsor arrangement may have an adverse impact on the progress of a transaction through the UKLA and on its ultimate outcome. Any such impact would clearly be undesirable from our point of view as we look to sponsors to steer issuers and applicants through our document vetting process, as well as relying on the assurances provided to us under LR8.4.
- 5.9** The issues that have been identified include:
- the fact that, more recently, there appears to be an unwillingness or reluctance on the part of the largest, most active sponsors to act as joint sponsor other than in the primary contact role, raising a concern that, despite the intention of LR8.3.14R that each joint sponsor is equally responsible, in practice there may be a perception of a 'two-tier' system whereby one sponsor is 'lead' and the other(s) are perceived to be 'junior'
 - an apparent lack of any formal or informal arrangements or understanding between joint sponsors as to how the joint sponsor arrangement will work, leading to the potential for one sponsor to rely on the work of another while retaining full responsibility for it under LR8.3.14R
 - situations where, due to a failure in communication between sponsors or between sponsors and their client, there is a disparity of information between the joint sponsors that could adversely affect the relevant sponsors' abilities to meet their obligations under LR8; for example, where our views are not accurately reported back to other joint sponsors by the

'lead' sponsor or where discussions with the issuer, applicant or other third party are not accurately communicated by one joint sponsor to another

- a risk that, in the effort by joint sponsors to reach a consensus view on an aspect of a transaction, the respective sponsors may face pressures to compromise their views on certain matters to the potential detriment of our consumer protection and market integrity operational objectives
- where a sponsor has a different view or opinion to the other joint sponsors but allows another joint sponsor's views, opinions and advice to prevail and be communicated to the issuer or applicant, thereby compromising its ability to meet its own obligation to guide and advise the issuer
- delay caused by the need for all joint sponsors to participate in decisions on a transaction; for example, where wording in a disclosure or in a submission to us is effectively 'drafted by committee', and
- the fact that a joint sponsor arrangement can require us to exercise greater management and control of the transaction as it progresses through the UKLA due to the number of joint sponsors involved, thereby increasing the cost and time necessary to progress the transaction

5.10 As a result of the issues raised, we are keen to discuss with market participants the respective merits and disadvantages of joint sponsor appointments with a view to either no longer permitting such appointments or introducing additional rules or guidance that would allow sponsors to act in a joint capacity without compromising their ability to comply with their obligations. Any proposed changes would be to ensure, not only that the sponsor regime is fit for purpose, but that it complies with our statutory objectives.⁶

Informal feedback from issuers

5.11 Informal feedback received suggestions that some issuers may share some of our concerns about joint sponsors, in particular relating to the potential for additional cost and time where joint sponsors are appointed. However, overall, informal feedback from some issuers that we have spoken to is that they would prefer to retain the opportunity to appoint joint sponsors and are in favour of the flexibility such appointments can offer, especially in situations where one sponsor may have expertise of a particular sector or market.

Informal feedback from shareholders and investor bodies

5.12 Informal feedback received from some investor bodies that we have spoken to also favours issuers having the ability to appoint joint sponsors, as it was felt that such appointments reflect the practice of transaction advisers taking on multiple roles. However, where joint sponsors are appointed, some investor bodies said that they would prefer to have the roles of the sponsors clearly defined, with a 'lead' sponsor that is accountable for the role.

⁶ To secure an appropriate degree of protection for premium listed issuers and applicants for Premium Listing (as consumers in this context), to protect and enhance the integrity of the UK financial system and our competition duty to, so far as is compatible with advancing these objectives to promote effective competition, in the interests of consumers.

Request for feedback from sponsors, issuers and investors

- 5.13** We recognise that there are potential benefits in joint sponsor arrangements to sponsors, issuers, investors and the premium listing segment generally. We also note the issues with the operation of joint sponsor arrangements that reflect our own experience, as well as the varied views expressed to date by sponsors, issuers and investor bodies.
- 5.14** We are increasingly detecting stakeholder concerns in this area and we therefore consider it appropriate to canvass debate and discussion about the issues with a view to potential reform of the relevant LRs. The questions set out below are intended to encourage stakeholder debate on the subject and we would be interested in receiving a response to these questions from all stakeholders. In addition, we would be interested in receiving views about any other aspects of joint sponsor arrangements that may not be covered by the specific questions. After considering these responses, we will decide whether we should seek to amend LR8 to address any concerns. For example, either to remove the ability for issuers to appoint joint sponsors or make changes to the rules and guidance necessary to allow the joint sponsor regime to continue in a manner that ensures sponsors and issuers comply with their LRs obligations.

Questions

- Q24:** Are you in favour of retaining the joint sponsor regime? Please give reasons for your answer (whether 'yes' or 'no'), detailing the main advantages or disadvantages to sponsors, issuers and the market generally.
- Q25:** If you are in favour of retaining the joint sponsor regime, what refinements or amendments would you suggest making to the rules or guidance to improve the regime?
- Q26:** If the use of joint sponsors is no longer permitted, do you think the proposals in this consultation paper about the requirement for prior sponsor experience (in the form of having submitted sponsor declarations to the FCA) need to be amended? If 'yes', please explain in what way.
- Q27:** Can you identify any need to retain the provisions of LR8.7.16R – 18R and LR8.3.13R relating to delegation of functions? If so, please explain your reasons.

6. Other proposed changes to the Listing Rules and Prospectus Rules

28-day circular

- 6.1** The Listing Rules impose certain disclosure requirements on premium listed companies in situations where the company makes a hostile bid (e.g. a takeover offer has not been recommended by the target board) or where the company has no access to due diligence information on the target at the time the class 1 circular is published (see LR13.4.3 R(2) to (6)).
- 6.2** LR 13.4.3 R(3) requires the company to produce a working capital statement on the basis that the acquisition has not taken place. However, when their takeover offer becomes or is declared unconditional, the company is required to publish an updated working capital statement (on the basis that the acquisition has taken place) within 28 days of that date. The rule also requires that the initial circular must state that working capital on a combined basis will be made available as soon as possible. LR13.4.3R (5) stipulates that, in the absence of exceptional circumstances, any material change or new information in relation to the listed company should be disclosed within 28 days of the offer becoming or being declared unconditional.
- 6.3** Taking into account some recent situations where the rule has been applicable, we have come to the view that the usefulness of such disclosures to shareholders who have already given their consent to the takeover is questionable. As the disclosures are not directly actionable in relation to the deal as they arrive after the deal became or was declared unconditional, this decision cannot be undone. Moreover, we believe that the circulars do not serve any purpose that would not have been addressed in complying with other Listing Rules and Disclosure and Transparency Rule requirements.
- 6.4** We therefore propose deleting the requirement from LR 13.4.3R for a premium listed company to publish a '28 day circular' on the basis that the circular does not contain useful information for shareholders.
- 6.5** We will consider amendments to existing Technical Notes 'Hostile Takeovers -UKLA/TN/305.1'⁷ and 'Working capital statements – basis of preparation UKLA/TN/320.1'⁸ once we have reviewed the consultation responses to this paper and decided on our final policy outcome.

Q28: Do you agree with the proposed amendment to LR 13.4.3R which will remove the obligation for premium listed companies from having to prepare a 28-day circular?

⁷ www.fca.org.uk/your-fca/documents/ukla/technical-note-hostile-takeovers

⁸ www.fca.org.uk/your-fca/documents/technical-note-working-capital-statements

Prospectus accuracy

6.6 According to a recent ESMA report on 'Comparison of liability regimes in Member States'⁹ in relation to the Prospectus Directive¹⁰, it is standard practice in Member States to provide for regulatory sanction in relation to defective prospectuses.

6.7 Section.91(1A) FSMA enables us to impose a penalty for incomplete, misleading or untrue information in prospectuses:

"If the competent authority considers that – (a) an issuer of transferable securities....has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement imposed on him under such a provision, it may impose on him a penalty of such a mount as it considers appropriate."

6.8 This does not, however, place an explicit obligation on a relevant person to prepare a compliant prospectus and neither do the Prospectus Rules. To ensure maximum transparency and align ourselves more closely with other Member States, we propose introducing new PR 3.1.2AR and PR 3.1.2BR which impose discrete obligations on an applicant to submit a compliant and factually accurate prospectus. We consider that this proposal reflects current market practice across Europe and regulatory expectations.

Q29: Do you agree with the proposed new PR 3.1.2AR and PR 3.1.2BR which place explicit obligations on an applicant to submit a compliant and factually accurate prospectus?

⁹ http://europa.eu/about-eu/countries/index_en.htm

¹⁰ <http://www.esma.europa.eu/content/Comparison-liability-regimes-Member-States-relation-Prospectus-Directive>

Annex 1

Sponsor competence Technical and Procedural Notes

Technical Note – Competence Frameworks for the assessment of employees carrying out sponsor services

LR8.6.12R(9) requires sponsors to adopt and apply an appropriate competence framework for the assessment of employees carrying out sponsor services. A 'competency framework' is defined as a framework used by a sponsor to demonstrate, as a minimum, an understanding of certain key issues, which we refer to in this note as 'competency sets'. In addition, the requirement to have a sufficient number of staff who understand these 'competency sets', in order to demonstrate that the sponsor or applicant is competent, is set out in LR8.6.7R(2). We make it clear in LR8.6.7CG that we expect a sponsor to make this assessment of its staff by reference to its adopted competency framework. To assist sponsors to meet the requirements of both LR8.6.12R(9) and LR8.6.7R(2), this note sets out our expectations of what an appropriate competence framework will address, including a short description of what we consider each 'competency set' covers. To assist sponsors, we have also set out examples of the knowledge elements relevant to each 'competency set' that we expect sponsors to consider when producing their own framework and assessing their staff. Guidance on how we expect sponsors to apply the framework is set out in Procedural Note (in Annex 1 of this consultation paper).

Note: This Technical Note includes two frameworks; the first highlights our expectations in relation to a sponsor offering services to premium listed commercial companies (see section A); and the second, which is standalone, highlights our expectations for a sponsor who specialises in advising premium listed investment companies (see section B). Sponsors offering sponsor services to both premium listed commercial and premium listed investment companies, will need to consider the most appropriate way to incorporate aspects of the premium listed investment companies framework (set out in Section B) into their own. Sponsors with dedicated teams focused on premium listed investment companies may wish to use both frameworks. Other sponsors may find it appropriate to incorporate the specialist aspects of the premium listed investment companies framework into 'competency set' 5 (specialist industry sectors) of their framework.

Section A – Competence framework - premium listed commercial companies

Competency set and description	Knowledge element
<p>1. Rules, guidance and ESMA publications directly relevant to sponsor services</p> <p>We expect sponsors to demonstrate technical knowledge of the regulatory requirements triggered by providing sponsor services to a premium listed issuer or an applicant for Premium Listing. As such, we expect sponsors to be able to demonstrate a working knowledge of the Listing Rules, Prospectus Rules, Disclosure and Transparency Rules as well as any guidance published thereon, including publications from ESMA and guidance published within the UKLA Knowledge Base. To the extent that it is relevant to providing a sponsor service, we will also expect sponsors to have an understanding of the wider UK regulatory framework. In addition, we would expect sponsors to remain up to date with market commentary and practice around the application of the relevant rules and guidance set out above.</p>	<ul style="list-style-type: none"> • A working knowledge of the following rule books relevant to the Listing Regime: <ul style="list-style-type: none"> • Listing Rules • Prospectus Rules, and • Disclosure and Transparency Rules • A working knowledge of the Listing Rules, would include, in particular, those chapters that are relevant to sponsor services: <ul style="list-style-type: none"> • knowledge of the Listing Principles (and their application) • awareness of a premium listed issuer’s obligations under LR8.5 • an understanding of the types of documents/ transactions covered by the sponsor regime, and • an understanding of broad subject matter/concepts relevant to a premium listed issuer such as significant transactions, related parties, disclosure requirements of a circular, dealing in own securities and treasury shares and eligibility • A working knowledge of the Prospectus Rules would include, in particular: <ul style="list-style-type: none"> • knowledge of the Annexes in PR Appendix 3 which are appropriate to the transaction and an understanding of the related disclosure requirements, and • a working knowledge of the Prospectus Directive requirements set out in PR 1-5, including the requirement to produce a prospectus and the exemptions from producing a prospectus • A working knowledge of the Disclosure and Transparency Rules would include, in particular, an understanding of the continuing obligations which apply to a premium listed issuer. • An awareness of guidance relevant to sponsor services published in the UKLA Knowledge Base (available on the FCA’s website). • An awareness of the guidance (Q&A and Recommendations) produced by European Securities and Markets Agency (ESMA). • An understanding of section 75(5) of Financial Services and Markets Act 2000 including an ability to identify circumstances that may raise concerns as to whether a listing would be detrimental to investors. • An understanding of other relevant provisions in the Financial Services and Markets Act 2000 relevant to sponsor services, including Part VI. • In so far as it may be relevant to a transaction or matters which are sponsor services, an understanding of the UK regulatory framework applicable to public (or equivalent) companies including, in particular:

	<ul style="list-style-type: none"> • UK regulation and the rules of other regulatory bodies such as POTAM, LSE and FRC. • If the issuer is authorised, the respective roles of the FCA and PRA.
<p>2. The procedural requirements and processes of the FCA</p> <p>To ensure an effective regulatory process for the premium listed regime, the UKLA operates processes and procedures which are designed to facilitate interactions with sponsors. As such, we would expect sponsors to be proficient in the procedures and processes of the UKLA.</p>	<ul style="list-style-type: none"> • An understanding of the UKLA processes and procedures including, in particular: <ul style="list-style-type: none"> • An understanding and appreciation of the key requirements of the UKLA document vetting process, including the use of checklists, the use of blacklining, turnaround times, the appropriate standard for the submission of documents for vetting and submission methods. • An awareness of the reliance placed by the UKLA on sponsor responses and confirmations provided throughout the document vetting process. • The process for seeking individual guidance and an awareness of the Sponsor Services Enquiry Line and how it operates. • An understanding of the use of ELS. • An awareness of the process and requirements for listing applications and amendments to the official list.
<p>3. The due diligence process required in order to provide sponsor services in accordance with LR 8.3 and LR 8.4</p> <p>We would expect sponsors to understand not only the scope of due diligence required but also what is expected of sponsors before submitting the relevant declarations to the FCA.</p> <p>Sponsors are required to submit declarations to the FCA in the terms set out in LR8.4: the Listing Rules require sponsors to come to a reasonable opinion on relevant matters having made due and careful enquiry. In providing these declarations, and other services, sponsors must comply with the principles for sponsors in LR8.3, including acting with due care and skill, ensuring directors understand their obligations and identifying and managing potential or perceived conflicts.</p> <p>We recognise that sponsors will appoint their own advisers and receive comforts from their client and its advisers as part of carrying out due diligence into the issuer and the transaction. We would expect sponsors to ensure the scope of due diligence is appropriate, review reports and challenge findings in order to carry out due and careful enquiry into these matters with due care and skill.</p>	<ul style="list-style-type: none"> • Selection and appropriate basis of engagement of experts and other advisers to carry out due diligence on the issuer and the relevant transaction. • An awareness of available industry guidance relevant to key sponsor workstreams. • An ability to review and consider third party and own due diligence in order to come to a reasonable opinion, after having made due and careful enquiry, on each of the sponsor declarations as set out in LR8.4 including: <ul style="list-style-type: none"> • compliance with the Listing Rules and Prospectus Rules, including areas such as significant change statements, pro forma requirements, profit forecasts and estimates, any relevant announcements under LR5.6, proper extraction from accounting records and appropriate forms of verification • compliance with the Disclosure and Transparency Rules, where applicable • whether the directors have a reasonable basis on which to make the working capital statement (including the ability to consider whether applied assumptions and sensitivities are appropriate) • whether there are established procedures for financial and reporting purposes • whether there are established procedures for compliance with continuing obligations, and • whether the transaction will have an adverse impact on the ability of the issuer to comply with its obligations

	<ul style="list-style-type: none"> • An understanding of the appropriate due diligence necessary where a listing may raise concerns under section 75(5) of FSMA (including the ability to consider an appropriate scope, use specialist intelligence sources where relevant and to review and challenge findings). • An understanding of the need to conduct sponsor services to an appropriate professional standard of care (in LR8.3.3R stated as “due care and skill”).
<p>4. The responsibilities and obligations of a sponsor set out in LR8</p> <p>LR8 contains rules and guidance which apply to both sponsors and premium listed issuers. We expect that a sponsor will be aware of its obligations under LR8 when providing sponsor services.</p> <p>We would also expect a sponsor to be aware of the obligations of premium listed issuers under LR8 when advising its clients.</p>	<ul style="list-style-type: none"> • An understanding of the role and responsibilities of a sponsor in general as set out in LR8, including: <ul style="list-style-type: none"> • an understanding of what the exercise of due care and skill means in relation to the provision of a sponsor service • an understanding of its firms’ procedures (and risk appetite) in agreeing to provide sponsor services to a premium listed issuer or an applicant for Premium Listing • an understanding of a sponsor’s duty regarding directors of premium listed companies or applicants for Premium Listing (as set out in LR8.3.1R(2)) • an understanding of the standard of conduct expected when dealing with the FCA (as set out in LR8.3.5R) • an understanding of how to identify, assess and manage conflicts of interest and the application of LR8.3.7G – 8.3.12G • an awareness of when the ‘whistleblowing’ provision in LR 8.3.5AR will apply • an awareness of what constitutes a sponsor service, the point at which a sponsor service is triggered and when the rules in LR8 will apply • an understanding of the role played by other experts, and • an understanding of the record management requirements in LR8 (including the individuals’ responsibilities in meeting these requirements)
<p>5. If relevant to the sponsor service, specialist industry sectors</p> <p>In order to advise clients on appropriate disclosure or structures that meet our eligibility requirements for Premium Listing, or when carrying out a transaction, we consider that it will be necessary for a sponsor to have an understanding of the industry sector in which their client operates. This competency set seeks to ensure that sponsors are aware of the specific guidance or rules for specialist industry sectors, the particular challenges or risks that a sector may face and the impact this may have on eligibility, document disclosure or the premium listed issuer’s continuing obligations.</p>	<ul style="list-style-type: none"> • Knowledge of specialist industry sectors, including awareness of additional guidance or rules that may be relevant to that sector. Specialist sectors include: <ul style="list-style-type: none"> • property companies • start-ups • shipping companies • mineral companies • funds and investment companies • financial institutions and other authorised firms, and • scientific research-based companies • An appreciation of the impact that operating in a specialist industry sector can have on a client, as regards disclosure under the LR and PR, eligibility under the LR and their continuing obligations.

Section B – Competence framework – premium listed investment companies

Sponsors specialising in advising premium listed investment companies

LR8.6.12R(9) requires sponsors to adopt and apply an appropriate competence framework for the assessment of employees carrying out sponsor services. A 'competence framework' is defined as a framework used by a sponsor to demonstrate, as a minimum, an understanding of certain key issues, which we refer to in this note as 'competency sets'. In addition, the requirement to have a sufficient number of staff who understand these 'competency sets', in order to demonstrate that the sponsor or applicant is competent, is set out in LR8.6.7R(2). We make it clear in LR8.6.7CG that we expect a sponsor to make this assessment of its staff by reference to its adopted competence framework. In order to assist sponsors meet the requirements of both LR8.6.12R(9) and LR8.6.7R(2), this note sets out our expectations of what an appropriate competence framework will address, including a short description of what we consider each 'competency set' covers for a sponsor specialising in advising premium listed investment companies. We have also set out examples of the knowledge elements relevant to each 'competency set' that we expect sponsors to consider when producing their own framework and assessing their staff. Guidance on how we expect sponsors to apply the framework is set out in Procedural Note (in Annex 1 of this consultation paper).

Note: Sponsors offering sponsor services to both premium listed commercial and premium listed investment companies will need to consider the most appropriate way to incorporate aspects of this framework into their own. Sponsors with dedicated teams focused on advising premium listed investment companies may wish to use both frameworks. Other sponsors may find it appropriate to incorporate the specialist aspects of this framework into 'competency set' 5 (specialist industry sectors) of their own framework.

Competency set and description	Knowledge element
<p>1. Rules, guidance and ESMA publications directly relevant to sponsor services</p> <p>We expect sponsors to demonstrate technical knowledge of the regulatory requirements triggered by providing sponsor services to a premium listed investment company or an applicant for Premium Listing under LR15 or LR16. As such, we expect sponsors to be able to demonstrate a working knowledge of the Listing Rules, Prospectus Rules, Disclosure and Transparency Rules as well as any guidance published thereon, including publications from ESMA and guidance published within the UKLA Knowledge Base.</p> <p>We would also expect sponsors to have an understanding of the specific disclosure requirements relevant to premium listed investment companies and to understand some unique challenges faced by these companies such as investment policies, diversification and spread of risk.</p> <p>In addition, we would expect sponsors to remain up to date with market commentary and practice around the application of the relevant rules and guidance set out above</p>	<ul style="list-style-type: none"> • A working knowledge of the following rule books relevant to the Listing Regime: <ul style="list-style-type: none"> • Listing Rules • Prospectus Rules, and • Disclosure and Transparency Rules • A working knowledge of the Listing Rules, would include, in particular, those chapters that are relevant to sponsor services in relation to premium listed investment Companies: <ul style="list-style-type: none"> • knowledge of the Listing Principles (and their application) • awareness of a premium listed issuer's obligations under LR8.5 • an understanding of the types of documents/ transactions covered by the sponsor regime • a detailed knowledge of LR15 and LR16, and • an understanding of broad subject matter/concepts relevant to a premium listed investment company such as significant transactions, related parties, disclosure requirements of a circular, dealing in own securities and treasury shares and eligibility.

	<ul style="list-style-type: none"> • A working knowledge of the Prospectus Rules that apply to premium listed investment companies would include, in particular: <ul style="list-style-type: none"> • knowledge of the Annexes in PR Appendix 3 (in particular Annex XV) which are appropriate to the transaction and an understanding of the related disclosure requirements, and • a working knowledge of the Prospectus Directive requirements set out in PR 1-5, including the requirement to produce a prospectus and the exemptions from producing a prospectus • A working knowledge of the Disclosure and Transparency Rules would include, in particular, an understanding of the continuing obligations which apply to a premium listed investment company. • An awareness of guidance relevant to sponsor services published in the UKLA Knowledge Base (available on the FCA's website). • An awareness of the guidance (Q&A and Recommendations) produced by the European Securities and Markets Authority (ESMA). • An understanding of section 75(5) of Financial Services and Markets Act 2000 including an ability to identify circumstances that may raise concerns as to whether a listing would be detrimental to investors. • An understanding of other provisions in the Financial Services and Markets Act 2000 relevant to sponsor services, including Part VI. • So far as it may be relevant to a transaction or matters which are sponsor services, an understanding of the UK regulatory framework applicable to public (or equivalent) companies including, in particular : <ul style="list-style-type: none"> • UK regulation and the rules of other regulatory bodies such as POTAM, LSE and FRC, and • if the issuer is authorised, the respective roles of the FCA and PRA • Ability to understand and identify whether an investment policy clearly sets the asset allocation, risk diversification and gearing policies and the maximum exposures. • Ability to understand whether a fund spreads investment risk.
<p>2. The procedural requirements and processes of the FCA</p> <p>To ensure an effective regulatory process for the premium listed regime, the UKLA operates processes and procedures which are designed to facilitate interactions with sponsors. As such, we would expect sponsors to be proficient in the procedures and processes of the UKLA.</p>	<ul style="list-style-type: none"> • An understanding of the UKLA process and procedures including, in particular: <ul style="list-style-type: none"> • an understanding and appreciation of the key requirements of the UKLA document vetting process. This includes the use of checklists, the use of blacklining, turnaround times, the appropriate standard for the submission of documents for vetting and submission methods

	<ul style="list-style-type: none"> • an awareness of the reliance placed by the UKLA on sponsor responses and confirmations provided throughout the document vetting process • the process for seeking individual guidance and an awareness of the Sponsor Services Enquiry Line and how it operates • an understanding of the use of ELS, and • an awareness of the process and requirements for listing applications and amendments to the official list
<p>3. The due diligence process required to provide sponsor services in accordance with LR 8.3 and LR 8.4</p> <p>We would expect sponsors to understand not only the scope of due diligence required but also what is expected of sponsors before submitting the relevant declarations to the FCA.</p> <p>Sponsors are required to submit declarations to the FCA in the terms set out in LR8.4: the Listing Rules require sponsors to come to a reasonable opinion on relevant matters having made due and careful enquiry. In providing these declarations, and other services, sponsors must comply with the principles for sponsors in LR8.3, including acting with due care and skill, ensuring directors understand their obligations, and identifying and managing potential or perceived conflicts.</p> <p>We recognise that sponsors will appoint their own advisers and receive comforts from their client and its advisers as part of carrying out due diligence into the issuer and the transaction. We would expect sponsors to: ensure the scope of due diligence is appropriate, review reports, and challenge findings in order to carry out due and careful enquiry into these matters with due care and skill.</p>	<ul style="list-style-type: none"> • Selection and appropriate basis of engagement of experts and other advisers to carry out due diligence on the issuer and the relevant transaction. • An awareness of available industry guidance relevant to key sponsor workstreams. • An ability to review and consider third party and own due diligence in order to come to a reasonable opinion, after having made due and careful enquiry on each of the sponsor declarations as set out in LR8.4. including: <ul style="list-style-type: none"> • compliance with the Listing Rules and Prospectus Rules, including areas such as significant change statements, pro forma requirements, profit forecasts and estimates, any relevant announcements under LR5.6, proper extraction from accounting records and appropriate forms of verification • compliance with the Disclosure and Transparency Rules, where applicable • whether the directors have a reasonable basis on which to make the working capital statement (including the ability to identify appropriate sensitivities and to challenge the basis of preparation) • whether there are established procedures for financial and reporting purposes • whether there are established procedures for compliance with continuing obligations, and • whether the transaction will have an adverse impact on the ability of the issuer to comply with its obligations. • An understanding of the appropriate due diligence necessary where a listing application may raise concerns under section 75(5) of FSMA (including the ability to consider an appropriate scope, use specialist intelligence sources where relevant, and to review and challenge findings). • An understanding of the need to conduct sponsor services to an appropriate professional standard of care (in LR8.3.3 R stated as “due care and skill”). • Areas specific to a sponsor focusing on premium listed investment company include, in particular: <ul style="list-style-type: none"> • verification that the fund has appropriate systems and controls in place for its nature

	<ul style="list-style-type: none"> • working capital – understanding that technically the working capital statements for LR 15 companies are the same as those for LR6 commercial companies,, but the underlying work will be different • understanding that the working capital exercise will vary depending on the structure of the fund, and • understanding the specific content taken into account in relation to a Fair and Reasonable statement for a fund e.g. management fees
<p>4. The responsibilities and obligations of a sponsor set out in LR8</p> <p>LR8 contains rules and guidance which apply to both sponsors and premium listed issuers. We expect that a sponsor will be aware of its obligations under LR8 when providing sponsor services.</p> <p>We would also expect a sponsor to be aware of the obligations of premium listed issuers under LR8 when advising its clients.</p>	<ul style="list-style-type: none"> • An understanding of the role and responsibilities of a sponsor in general as set out in LR8, including: <ul style="list-style-type: none"> • an understanding of what the exercise of due care and skill means in relation to the provision of a sponsor service • an understanding of its firms’ procedures (and risk appetite) in agreeing to provide sponsor services to a premium listed issuer or an applicant for Premium Listing • an understanding of a sponsor’s duty regarding directors of a premium listed issuer or an applicant for Premium Listing (as set out in LR8.3.1R(2)) • an understanding of the standard of conduct expected when dealing with the FCA(as set out in LR8.3.5R) • an understanding of how to identify, assess and manage conflicts of interest and the application of LR83.7G – 8.3.12G • an awareness of when the ‘whistleblowing’ provision in LR 8.3.5AR will apply • an awareness of what constitutes a sponsor service, the point at which a sponsor service is triggered and when the rules in LR8 will apply • an understanding of the role played by other experts, and • an understanding of the record management requirements in LR8(including the individuals’ responsibilities in meeting these requirements)

Procedural Note

Title: **Sponsors: Practical implications of competence requirements for sponsors and applicants**

Reference: UKLA/TN/7[][]

Date: [][] 2014

Rules: LR8.6.5R; LR8.6.5CG; LR8.6.6R; LR8.6.7R; LR8.6.7AG; LR8.6.7BG; LR8.6.7CG; LR8.6.7DG; LR8.6.9BG; LR8.6.12R; LR8.6.13G; LR8.6.19R; LR8.6.20G; LR8.7.7R.

Introduction/PMB article wording

In 2014, we introduced new competence requirements for sponsors and applicants for approval as a sponsor. This note is designed to answer some of the queries sponsors, or applicants for sponsor approval, may have when considering the practical application of these provisions.

This procedural note summarises the overall competence requirements, before then considering separately issues more relevant to (1) existing sponsors and (2) applicants for sponsor approval. However, both firms may find relevant guidance in each section.

Competence requirements

The need for a sponsor to be competent is a continuing obligation (LR8.6.6R). The competence requirements for sponsors and applicants for sponsor approval can be found in LR8.6.7R – LR8.6.9BG, which require them:

- to have produced a sponsor declaration within the last three years (LR8.6.7R(1)), and
- to staff sponsor functions with a sufficient number of skilled employees who, inter alia, understand identified ‘competency sets’ (LR8.6.7R(2))

The five ‘competency sets’ set out in LR8.6.7R(2)(b) highlight the specific areas of skills, knowledge and expertise that a sponsor must demonstrate. LR8.6.12R(9) requires the sponsor to adopt and apply an appropriate competence framework for the assessment of employees carrying out sponsor services.

In addition, LR8.6.19R requires a sponsor to ensure that, when it is performing a sponsor service which requires the submission of a document or contact with the FCA, it provides the UKLA Department with the name of a ‘key contact’. LR8.6.19R(2) requires any key contact to meet certain levels of skill, knowledge and experience (e.g. they satisfy three specific ‘competency sets’) and is authorised to make representations to the UKLA Department. LR8.6.20G anticipates that the key contact will have experience of carrying out sponsor services in the last three years.

Considerations for existing sponsors

The following questions and answers are aimed at assisting existing sponsors meet the requirements in LR8.7.7R regarding their annual notification. Sponsors should however be mindful of the requirement in LR8.6.6R that they are required to meet our approval criteria at all times and are required to notify us when they are or may be unable to meet the criteria (LR8.7.8R(1)(a)), including being competent. Where we consider the ongoing nature of these obligations to impact on a sponsor’s working practices, we have also tried to explain our expectations. New applicants are also likely to find some of these issues relevant.

a. *What is a competence framework?*

A competence framework is defined in our rules as “a framework which is used by a sponsor to demonstrate, as a minimum, an understanding of:

- *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.”

A competence framework is therefore an articulation of the skills, knowledge and experience underpinning the core ‘competency sets’ (set out in LR8.6.7R 2(b)) that a sponsor believes their team carrying out sponsor services need to meet in order to demonstrate competency. The competence framework may also contain additional areas or ‘competency sets’ that the sponsor feels necessary to demonstrate competence based on their own business model. In addition, we have not prescribed the level of detail which must underpin each of these ‘competency sets’, but we have provided examples in the Technical Note of the knowledge elements that we feel underpin each ‘competency set’ and that we anticipate would feature within an individual sponsor’s competence framework. Again, sponsors may wish to add additional knowledge elements under each ‘competency set’ to suit their own circumstances. We would anticipate that each sponsor produces their framework with enough detail that individuals are able to understand what is required of them and that the sponsor is able to assess staff on an ongoing basis.

b. *Does the UKLA Department require us to submit a competence framework for comment or approval?*

We do not expect existing sponsors to submit their competence framework for comment or approval on a routine basis. By including detailed rules in LR8, and by providing further guidance on our expectations within the Technical Note, we expect sponsors to be able to create and adopt a competence framework that is complementary to any existing training and competence programmes currently in place within the sponsor firm. Our expectation is that a sponsor will assess their staff against such a framework and that these conclusions will be acknowledged within their annual notification. However, we expect sponsors to retain records of this assessment to allow the FCA to assess compliance with these rules, using our supervisory powers set out in LR8.7.1AR – LR8.7.4G. We may request these records where we wish to consider whether a sponsor continues to meet the competence requirements or where we have concerns about the sponsor’s performance on a particular transaction.

c. *Do we need to identify key contacts on an annual basis or on a transaction basis?*

Both. The role of the key contact is transaction, or submission based – each time a sponsor acts on a sponsor service requiring the submission of a document or contact with the FCA, the sponsor must identify a key contact (LR8.6.19R(1)). However, in order to ensure that they are suitably resourced at all times, sponsors are required to maintain a sufficient number of employees who are able to meet the requirements of LR8.6.19R in light of their expected pipeline of sponsor work. Our expectation is that sponsors will be able to

identify employees capable of acting as key contacts on an ongoing basis and provide details of those individuals as part of their annual notification. As set out in LR8.6.7DG, as a minimum, we would expect a sponsor to identify two employees who are qualified to carry out the key contact role. Sponsors may identify more employees on their Annual Notification Form and may, at any point, notify the FCA of additional key contacts. This can be communicated directly to the sponsor's relationship manager within the UKLA department. Where the UKLA Department considers that more key contacts are required than the number identified in the Annual Notification Form, we may seek to challenge and discuss this with the sponsor.

d. *How many key contacts do we need?*

It depends. As highlighted above, LR8.6.7DG indicates that in order to be competent, we would expect a sponsor to have a minimum of two employees capable of performing the role of key contact. However, a sponsor will need to consider the number of key contacts that it needs in the context of its business model and activity levels. This may require a sponsor to staff themselves with significantly more than the minimum number of key contacts set out in our guidance.

e. *How do we demonstrate competence at a business function level rather than at an individual level? Will you expect each employee involved in sponsor services to be able to satisfy all the 'competency sets'?*

As being competent is a continuing obligation for a sponsor, it is important that each sponsor is able to demonstrate an ability to comply with LR8.6.7R - LR8.6.9BG on an ongoing basis.

We expect a sponsor to consider the skills and experience of its employees in order to demonstrate compliance with LR8.6.7R(2). To comply with this rule on an ongoing basis, it will be necessary for a sponsor to be able to identify which employees they expect to act on the full range of sponsor services that firm offers and to assess its ability to comply with LR8.6.7R - LR8.6.9BG with reference to the skills knowledge and experience of those employees. It is also a requirement that these employees comprise sufficient resource in order to carry out its expected business pipeline.

We are aware that sponsors do not all conduct their business in the same way, often using different staffing or management models. We are aware that, when a firm acts as a sponsor, there will not necessarily be a separate business unit acting 'as sponsor'. Firms may identify employees from a number of different business areas to carry out sponsor services, or function as a sponsor. Depending on the type of service offered and the structure of the sponsor firm, the employees identified may each hold different skill sets.

Therefore, we do not necessarily expect each employee to be able to satisfy all 'competency sets'. However, should a sponsor be structured in a way which does not require each employee to meet all five 'competency sets', it needs to ensure that the staffing model used for sponsor services takes this into account. Those employees identified as the sponsor function should be able to demonstrate all competency sets when considered as a whole at an operational level. This will require sponsors to ensure the relevant staff are used at an appropriate point in the execution of sponsor services. This does not mean that sponsors will need to restructure their businesses but rather than they will need to monitor staff capable of acting on sponsor services on an ongoing basis, recognising which 'competency sets' an individual meets, and ensuring the sponsor function, taken as a whole, is able to meet our requirements in full.

- f.** *We currently monitor the matters on which we act as sponsor for the purposes of our annual notifications. How are these proposals likely to change our current practices?*

We expect little to change in the way of monitoring of sponsor transactions. However, the requirement in LR8.6.7R to have submitted a sponsor declaration in the last three years (as part of our assessment of a sponsor's competence) is likely to require sponsors to continue this type of monitoring and analysis, bearing in mind two points:

- The purpose behind requiring the submission of a sponsor declaration is that this demonstrates that a sponsor has considered all substantive areas covered by the sponsor regime. Therefore we would not consider that all types of sponsor declarations are relevant (for example, a declaration given on an announcement of a reverse takeover under LR8.4.17R will not be relevant for satisfying this requirement and we have drafted the definition of 'sponsor declaration' accordingly)
- Sponsors will need to build into their procedures an internal notification requirement which alerts management to the fact that the firm has not conducted sponsor transactions resulting in the production of a relevant sponsor declaration for a period of time. While the Sponsor Supervision Team will be communicating with sponsors who they consider may be struggling to satisfy this requirement, the sponsor is under an obligation to notify us of any possible breach of LR8.6.5R and should be mindful of this obligation in LR8.7.8R(1)(a) well before a three year period of inactivity.

In relation to the requirements surrounding key contacts, we envisage that changes to monitoring may be more substantive. We are aware that some sponsors still retain a record of individuals who have worked on sponsor transactions or communicate with the UKLA Department. Other firms recognise certain employees as experts in sponsor and/or other UK regulatory matters. In addition we have been operating the Sponsor Services Enquiry Line (SSEL, formerly the UKLA Helpdesk) in a way which requires sponsors to identify 'nominated callers' to communicate with the UKLA Department. We are therefore confident that sponsors generally have some oversight of sponsor experience at an individual level; it is however very likely that the key contact requirements in LR8.6.19R and the guidance in LR8.6.20G may mean that sponsors will need to adjust their monitoring practices. We discuss further the impact of the key contact requirements below (question (e)), however, it should be noted here that we have stated our expectation (as set out in LR8.6.20G) that key contacts should have carried out sponsor services in the last three years. This expectation has been included in the Handbook so that a key contact's ability to demonstrate compliance with the three core 'competency sets' out in LR8.6.19R(d) to (f) should be considered in light of practical experience and not simply on the basis of training.

- g.** *You have referred to the nominated caller regime above. Is this still in operation?*

Yes, at the moment. We currently require sponsors to assist in the smooth running of the SSEL by using nominated callers. However, we recognise that in retaining the nominated caller regime there could duplicate efforts on the part of both sponsors and the FCA. In CP14/2, we committed to review the need for nominated caller arrangements after an appropriate period of time following the introduction of the new competence requirements, as we expected those proposals to enhance sponsors' understanding of our requirements. We are therefore monitoring the need to retain the nominated caller regime.

- h. How will the Annual Notification Form change in light of the proposals set out in CP14/2?**

Question and answer valid until september 2014 only. This will be replaced with a new question and answer following the introduction of an updated annual notification form.

We are reviewing the current Form and will be publishing a revised form ahead of January 2015. However, we would note that the following changes are likely to result in sponsors wishing to review the way in which they record sponsor services. Under Q12 we currently require sponsors to list sponsor services provided in the last year. We also require, under Q13 and Q14, a sponsor to record (1) any relevant corporate finance experience; and (2) any experience of advising or providing guidance on the LRs and DTRs that they consider relevant in complying with the current guidance in LR8.6.7B.

These submissions allow the UKLA Department to monitor a sponsor's activity and future pipeline in the context of other relevant work. In light of LR8.7.1G, and our expectation to maintain a broad awareness of a sponsor's activities, we currently intend to maintain the requirements in Q12 and Q14. We expect that information currently recorded for Q12 to 14 will be of interest to sponsors when considering their ability to comply with the need for employees and key contacts to be able to meet relevant 'competency sets'. We do not intend to maintain the requirement in Q13 which provides sponsors with the opportunity to highlight other relevant corporate finance experience.

We will seek confirmations from sponsors on the Form in relation to the proposals in LR8.6.7R(2) without needing to review the sponsor's competence framework or the records showing staff assessments against it. However, we are likely to retain parts of Q16 to Q18 around staff moves and changes, succession planning and provision of firm-wide training and guidance.

As mentioned above, we will also require sponsors to state whether they have complied with LR8.6.19R and, in doing so, have followed the guidance set out within LR8.6.7CG and LR8.6.20G.

- i. What happens if employees providing sponsor services, including key contacts, leave the firm? Will we still be competent?**

Possibly. We expect all sponsors to retain two employees capable of acting as a key contact. As key contacts are required to be able to make representations on behalf of the sponsor, our expectation is that they will be likely to hold a more senior position in the firm. Should employees providing sponsor services leave a firm, whether or not they are key contacts, the sponsor must consider whether they are staffing sponsor services in a way that allows them to continue with fewer personnel. In any event a sponsor must notify the Sponsor Supervision Team of any material changes in personnel under LR8.7.8R(1). As stated in CP14/2, where we believe that remedial steps can be taken in the short term, a sponsor may seek to suspend their sponsor activity until such time as they can recruit further staff

or otherwise satisfy these requirements. Where it is unlikely that a sponsor will have at least two key contacts, a sponsor may need to consider seeking a cancellation of their approval.

Considerations for applicants for sponsor approval

The following questions and answers are aimed at assisting persons wishing to apply for sponsor approval following the implementation of these proposals:

a. *We are a Nominated Adviser for the AIM requirements. Can we become a sponsor automatically?*

No. We believe the sponsor regime is an expert regime and that the best indicator of competence is through previous experience of performing the role. Based on discussions with stakeholders before the publication, it is our view that the role of the sponsor cannot be replicated by other experience.

b. *Does the UKLA require us to submit a competence framework for comment or approval? Are there any other requirements in relation to staffing that require the UKLA Department's approval?*

Yes. As a new applicant, we would expect to review the full staffing proposition of the business that is to provide sponsor services. Accordingly, where we currently seek background information on key employees of the applicant, such as statements of experience and CVs, we would require an applicant to submit their competence framework for review and their records demonstrating how their sponsor function complies with all identified 'competency sets'. We would expect, as part of that submission, to be provided with:

- a copy of the sponsor's competence framework
 - a list of staff providing sponsor services
 - an organogram of the sponsor function
 - assessments of staff against the competence framework
 - an explanation of how transactions are expected to be staffed
 - what reporting lines and control functions are put in place to ensure compliance with LR8.6.12R (taking into account LR8.6.7BG), and
 - identification of the employees able to meet the key contact requirements in LR8.6.19R
- c. *How do we demonstrate that the sponsor function complies with a competence framework on a business level rather than at an individual level?***

Please refer to question (c) in the (existing sponsor) section above.

d. *In CP14/2 you state that in order to meet the requirement of providing a sponsor declaration in the last three years, you will 'look through' to individuals to satisfy this requirement. What does this mean?*

We have stated in CP14/2 that individuals will be viewed as representing the experience of the firm in terms of providing sponsor declarations. We state that we expect to derive a similar level of comfort from 'looking through' to individuals as we would from an operating

sponsor. By this we mean that a new applicant, to satisfy this requirement, should retain relevant employees who understand the process behind a sponsor declaration, what our expectations are in terms of reaching a reasonable opinion after due and careful enquiry, and what obligations face a sponsor before submitting a declaration. This should be evidenced at least through an employee's appropriate level of involvement in submitting a sponsor declaration at their previous employer (an approved sponsor), demonstrating an understanding of these requirements.

We would therefore not consider the following examples, by themselves, to demonstrate an appropriate level of involvement:

- Signing a sponsor declaration: sponsor declarations are given by firms, not individuals. Declarations are required to be signed by a duly authorised officer of the sponsor but we acknowledge that individuals completing the form on behalf of the sponsor may not have carried out any of that sponsor service and may have been providing an executive or peer review function at their previous employer. While the expectation is that the individual signing has sufficient understanding of the sponsor regime to provide sufficient comfort that the sponsor requirements have been complied with, we would not assume this is the case based solely on the execution of the declaration;
 - Submitting documents to the UKLA Department: we recognise that someone making the submissions on the day of stamping may not have the requisite skills in order to satisfy this requirement and therefore we cannot make the assumption that being a contact for a transaction will satisfy this requirement.
- e. *Does this mean that we should only be seeking to recruit staff with prior sponsor experience to carry out sponsor services?***

Our competence requirements focus on the need for a sponsor to maintain a sufficient number of skilled staff, or, adequacy of resource. We do not expect any sponsor to be able to satisfy this requirement by employing the minimum number of employees capable of meeting the key contact requirements in LR8.6.19R. Therefore staff able to meet some or all of the five 'competency sets' without prior sponsor experience will be an important consideration for a new applicant as well as those with prior sponsor experience. However, in order to satisfy LR 8.6.7 R(1) (submission of a sponsor declaration in the last 3 years), new applicants will need to recruit employees with prior sponsor experience as discussed in the question above. New applicants will also need to consider how they utilise staff providing sponsor services in order to ensure that those recruits are appropriately used. This will require those recruits with prior sponsor experience to be involved in providing sponsor services.

New applicants may also need to recruit individuals with prior sponsor experience to satisfy our requirements and expectations around employees carrying out the role of a key contact. We expect key contacts, not require them, to have undertaken sponsor services, and not necessarily those requiring submission of a sponsor declaration, in the last three years. However, given the rules on competence, we would expect a new applicant to contact us to discuss whether an individual should be identified as a key contact where they have limited or no practical experience of sponsor services.

- f. *We only want to provide sponsor services to premium listed investment companies. Can we still apply? Will the process be different?***

Yes. In April 2013, the FCA received new powers which enabled us to consider approving

sponsors with restrictions or limitations. LR8.6.5CG provides for firms who wish to apply on a limited basis. We recognise that one area where firms may wish to specialise is advising premium listed investment companies. The requirements for assessing whether an applicant meets our competence requirements are largely the same as for any applicant. However, recognising that the regime for premium listed investment companies differs from premium listed commercial companies in some areas, we have provided guidance within the Technical Note on how an appropriate competence framework (and specifically the knowledge elements) may differ. We would also expect that key contacts have had some experience of providing sponsor services in this area.

g. *What are the differences between LR8.6.12R(6) requirements for “appropriate staffing arrangements” and the competence requirements in LR8.6.7(2)R?*

Details of all approved sponsors are published on a list maintained by the FCA and, as such, at any time they could be asked to provide sponsor services. LR8.6.7(2)R therefore seeks to ensure that, on an ongoing basis, a sponsor has adequate resources to provide a premium listed issuer with sponsor services at any given moment.

The sponsor regime is however a transaction-based requirement for premium listed issuers – the appointment of a sponsor is triggered by a premium listed issuer considering or entering into a significant corporate transaction. The requirement that a sponsor has “appropriate staffing arrangements” seeks to ensure that sponsors are considering the ability of the execution team allocated to the sponsor service to comply with the requirements of LR8, including the Principles for Sponsors in LR8.3. As we stated in CP14/2, we also expect sponsors to consider staffing of services in light of the competence framework they have adopted.

Annex 2

Cost benefit analysis

1. Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.

Strengthening the sponsor regime: sponsor competence

2. In Chapters 3 and 4 we have explained our reasons for reviewing the current rules relating to sponsor competence, and the detail of the proposals on which we are consulting. In summary, sponsors play a critical role in ensuring the overall effectiveness of the Premium Listing regime, through providing expert guidance to issuers and giving us important confirmations of an issuer's ability to meet its obligations under the Premium Listing Rules. This ultimately provides investors with confidence in the integrity of the regime, and helps to ensure that we meet our statutory objectives. The proposals in this paper therefore stand alongside the changes that we will be making later this year to the Premium Listing regime following our consultations in CP12/25 and CP13/15.
3. Our proposals to strengthen the sponsor regime need to be viewed against this wider background. They will help maintain and improve the integrity of the listing regime and will support the ability of firms to raise capital.
4. Our proposals seek to promote consumer protection and market integrity and to promote effective competition in the interests of consumers.
5. We set out below some costs that may arise in a number of areas. But we do not expect these to be anything other than minimal.

Direct costs to sponsors and the FCA

Requirement for a sponsor declaration in the last three years

6. For existing sponsors, this requirement will be satisfied by their submission of a sponsor declaration to the FCA within the last three years. We believe there will be minimal compliance costs for sponsors associated with this proposal for the following reasons:
 - The submission of a sponsor declaration is an existing requirement for certain sponsor services. Our proposals do not seek to alter this. Accordingly, sponsors are already monitoring and recording transactions to determine whether a sponsor declaration is required.
 - Our analysis of sponsor activity suggests that most approved sponsors are currently able to meet this requirement. Our own experience over the last five years supports this supposition.

7. For new applicants, we will 'look through' to the employees of the firm to consider whether any of those employees intending to provide sponsor services have submitted a sponsor declaration in the last three years. This is not a significant change from the current assessment of new applicants, since the FCA currently applies the existing Listing Rules and Guidance to require new applicants to demonstrate that their staff have recent prior sponsor experience at a previous employer.
8. We do not believe there will be any additional costs to the FCA in monitoring this new requirement as we already have the systems in place to monitor all sponsor activity on an annual basis, and for new applicants considers individual experience in assessing their competence.

Sufficient number of employees meeting an appropriate competence framework

9. We do not believe that our requirement for sponsors to have a competence framework in place will result in significant direct costs for the following reasons:
 - Sponsors are already under an existing obligation to ensure they are competent on an ongoing basis and we believe most sponsors recognise that their staff should be competent in areas identified in the five competency sets. Sponsors also currently provide training programmes for staff; our proposal is designed to ensure that this training includes appropriately focused materials in order to meet the needs of the sponsor role.
 - As authorised persons or members of a designated professional body, sponsors are already required to have training and competence frameworks in place for staff. As such, they should already have in place the infrastructure necessary to comply with this requirement.
 - The proposals do not set a rigid competence framework for sponsors to adopt; provided the framework complies with the minimum requirements, sponsors may create an approach which is complementary to their existing requirements and business model.
10. Some initial costs will be incurred by sponsors in order to adopt and embed a competence framework containing the required five competency sets. For example, this might include reviewing current training and supervision programmes to adopt our requirements and assessing staff annually against these competency sets where these do not form part of their current annual assessments of competence. However, we expect these costs to be minimal given that firms are likely to use relevant existing competency requirements for staff as required to meet existing LR 8.6.9A(2) G. In addition and as noted above, sponsor firms are required to be authorised persons or member of a designated body. As such they are already required to have training and competence frameworks in place for staff.
11. Currently, LR 8.6.13G applies only to a range of systems and controls, including the existing requirement that sponsors staff transactions appropriately. Under our proposals sponsors will need to consider whether they have a sufficient number of trained staff on an ongoing basis as well as on a transaction basis. However, we do not see this as a substantive change in practice for sponsors who need to monitor their ability to staff sponsor transactions on an ongoing basis. Any recruitment costs incurred to address this proposal are likely to be costs that should be incurred presently to meet our requirements under LR8.6.6R.
12. We have supplemented LR 8.6.12R to include specific obligations that arise in connection with the competence framework and management of sponsor services. These are procedures that sponsors should already have in place to ensure they are competent on an annual basis and we do not expect them to lead to significant costs.

Key contacts

13. Under our key contact proposals, we expect sponsors to have at least two employees that meet the proposed key contact requirements (LR 8.6.7DG). We believe that existing sponsors have employees capable of meeting the requirement to meet the three named competency sets (LR 8.6.19R (2)) and are likely to have had sponsor service experience in the last three years (LR 8.6.20G). Therefore we expect recruitment costs to be minimal. In addition, since sponsor firms are expected to consider key person risk, we do not believe that complying with our guidance, which anticipates there being at least two key contacts, should create any recruitment costs.
14. Sponsors will need to assess and identify relevant staff members to be allocated to sponsor services as a key contact. Sponsors will also need to establish a procedure to assess staff for compliance on an ongoing basis. Sponsors are currently required, at a firm level, to consider and maintain records of their prior experience of providing sponsor services and must submit these details to us on an annual basis. Therefore we do not believe the costs will be significant.
15. We do not believe there will be any additional material costs to us in monitoring the new rules. However, we will need to train staff receiving submissions from sponsors in these requirements so that we are able to supervise sponsors appropriately but we do not believe these costs will be significant.

Clarification on the use of limitations on approval (using the powers provided by the Financial Services Act 2012).

16. The proposed guidance at LR 8.6.5C G will make it clear that new applicants can apply to limit or restrict their approval (in accordance with section 88 of FSMA). New applicants will be able to apply for an approval to carry out limited types of sponsor services. We see this as facilitating market access and therefore being pro-competitive.
17. We do not believe there will be any additional costs to sponsors or the FCA in monitoring the new rules.

Indirect costs / benefits – impact of our proposals on competition

18. The FCA must, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers. In practice, we will generally choose the most pro-competitive measure that is compatible with what we are seeking to achieve in advancing our consumer protection or market integrity objectives.
19. We have taken this obligation into account when assessing our proposals and we believe that effective competition would be promoted for the following reasons:
 - Our proposal will allow new applicants to apply formally for a limitation or restriction on their approval. Our current policy intention is to consider limitations or restrictions to sponsor approvals in respect of providing sponsor services to premium listed investment companies only. This will promote competition by allowing specialist applicants to apply and develop expertise.
 - We believe that applicants will benefit from a clear articulation of the sponsor approval criteria. Previously we have not given a timeframe in which new applicants need to have demonstrated prior experience or expressed exactly what experience we consider relevant.

As staff recruitment with prior experience is currently the most common route for new applicants to take in order to meet competence requirements, we expect our proposals to enable new applicants to recruit new staff with more certainty as to their ability to enhance the firm's competence to the level we expect.

- Our approach is proportionate with regard to the different business models of sponsor firms providing a range of different services, and is therefore the most pro-competitive approach.
- Our approach is flexible. We expect firms to adopt their own competence framework in a flexible way that meets their specific needs.
- We believe the likely impact of our proposal on effective competition for existing sponsors will be negligible. We believe the approach should enable most sponsors to remain able to meet the three year declaration in the event of a downturn in market activity and for new applicants to recruit appropriate staff.

20. We do not expect that the availability of sponsors to issuers to diminish as a result of our proposals for the following reasons:

- We estimate there are approximately 500 staff¹¹ within existing sponsor firms who would be able to perform sponsor services, a number of whom are likely to be capable of being a key contact.¹² We do not believe this pool of people would diminish as a result of our proposals.
- The market in which sponsor firms operate is fluid. For example, in the last three years we have approved five new sponsors and 14 sponsor firms have voluntarily cancelled their approval.¹³ During this period the guidance applying to sponsor approval criteria has required firms to demonstrate 'prior relevant sponsor experience' which we have interpreted as requiring 'recent' experience to be relevant. That has meant, in most cases, the need to show they have submitted a sponsor declaration in the last three years. Therefore we do not believe that our proposals will impact on this attrition rate.

Benefits

21. We believe our proposals will clearly advance the FCA's objectives of market integrity and consumer protection, while promoting effective competition, in the following way:

- Premium listed issuers, who are consumers under FSMA, rely on sponsors to ensure that they are able to comply with their obligations under the LRs, DTRs and PRs. As such, the role of sponsor is a key protection mechanism not only for investors but also issuers. We believe these proposals will ensure greater consumer protection in this area by allowing issuers, who are consumers of sponsor services, to appoint sponsors with greater confidence.
- When carrying out a sponsor service, sponsors are required to manage a series of interactions with the FCA, balancing the regulatory responsibilities they have to us with the wide range

¹¹ Based on an approximate number of employees identified by approved sponsors as able to use the Sponsor Services Enquiry Line.

¹² We estimate that the number of employees able to meet the criteria set out in LR 8.6.19R and who should also be able to meet the expectations set out in LR 8.6.20G is approximately 120 to 150, based on an assessment of staff providing sponsor services in a sample of ten sponsors of varying sizes and business models.

¹³ This does not take into consideration any changes in legal status or mergers of existing sponsors which required firms to make new applications and or cancellations.

of responsibilities they have to their clients. The regulatory framework in which sponsors operate is extensive, requiring them to interpret and apply a complex set of rules and guidance to a range of different transactions and issues undertaken by listed companies. A key example of this is the role of the sponsor, and in particular the advice and guidance they provide on significant corporate events, such as on initial listing or when an issuer enters into a significant transaction. We believe the proposals are consistent with furthering the market integrity objective by enhancing the provision of advice from sponsors.

- Our proposals will deliver a clear articulation of the approval criteria for sponsors which we believe will provide greater clarity to prospective new applicants and enhance the quality of this expert regime and therefore increase investor confidence.
- Our proposal to welcome applications from sponsors wishing to operate in specialist areas, such as premium listed investment companies, under a limited approval, assists in encouraging applications from firms that might not otherwise be eligible under the current regime. This facilitates market access, which improves competition.

Other changes to the Listing Rules and the Prospectus Rules

28-day circular

- 22.** The deletion of the 28-day circular requirement from LR 13.4.3R will remove an obligation for existing premium listed issuers as this circular is deemed not to contain useful information for shareholders. We do not see any cost benefit implications, for issuers, by removing this requirement.

Prospectus accuracy

- 23.** This proposal reflects current market practice and regulatory expectations and so we do not foresee any cost benefit implications.

Q30: Do you have any comments on the CBA?

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

1. This Annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This Annex also sets out our view of how the proposed rules are compatible with our duty, so far as is compatible with acting in a way which advances the consumer protection or market integrity objectives, to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA). This duty applies so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
3. This Annex also includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles

4. The proposals set out in this consultation are compatible with our strategic objective of ensuring that the relevant markets function well, as they assist in ensuring that the Premium Listing regime remains effective. The proposals set out in this consultation are primarily intended to advance our operational objectives of:
 - Enhancing market integrity – protecting and enhancing the integrity of the UK financial system by ensuring that the Premium Listing regime remains robust and effective.
 - Delivering consumer protection – maintaining and securing an appropriate degree of protection for consumers, by providing premium listed companies and investors with confidence in the sponsor regime.
5. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B FSMA.

The need to use our resources in the most efficient and economic way

6. We believe that the proposals in this consultation paper will have minimal impact on our resources.

- The principle that a burden or restriction should be proportionate to the benefits**
7. We believe the proposals in this consultation paper are proportionate to the benefits.
- The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**
8. We believe the proposed rule changes will lead to greater transparency and therefore confidence in the sponsor regime. We believe this will lead to increased confidence in the Premium Listing regime.
- The general principle that consumers should take responsibility for their decisions**
9. We believe that our proposals will lead to a robust sponsor regime and will lead to increased confidence among premium listed companies or applicants for Premium Listing in their choice of sponsor.
- The responsibilities of senior management**
10. Our proposals are designed to set out clearly the expectations we have of individual sponsors who communicate with us and the attributes we expect of employees within sponsors who have management responsibilities.
- The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons**
11. We believe our proposals do not undermine this principle. Most of our proposals affect sponsors and our proposals explicitly recognise and cater for different business models of firms providing or wishing to provide sponsor services.
- The desirability of publishing information relating to persons**
12. We believe that our proposals do not undermine this principle.
- The principle that we should exercise our functions as transparently as possible**
13. We consider that our proposals in relation to sponsor competence will provide clear-cut objective measures for determining sponsor competence. We consider that providing this level of clarity will benefit sponsors, applicants for sponsor approval and premium listed companies.

Compatibility with the duty to promote effective competition in the interests of consumers

14. In preparing the proposals as set out in this consultation, we have had regard to our duty to promote effective competition in the interests of consumers under section 1B(4) FSMA.
15. Please see Annex 2 for our explanation on how our proposals may impact on effective competition.

Expected effect on mutual societies

16. Section 138K of FSMA requires us to state whether in our opinion our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons. The relevant Listing Rules that we propose to add, delete or amend apply equally to all premium listed companies regardless of whether they are an authorised person that is a mutual society or another authorised person.

- 17.** We therefore believe that the impact of our proposals would not significantly differ depending on whether a premium listed company is:
- an authorised person which is a mutual society, or
 - another authorised person

Equality and diversity

- 18.** We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
- 19.** Our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender, nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. We would nevertheless welcome any comments respondents may have on any equality issues they believe may arise.

Annex 4

List of questions

Chapter 4 details of the sponsor competence proposals

- Q1:** Do you agree that prior relevant sponsor experience (evidenced by a sponsor declaration submitted to the FCA) should be a measure of sponsor competence (LR8.6.7R(1))?
- Q2:** Do you agree that a timeframe of three years is appropriate (LR 8.6.7 R(1))?
- Q3:** Do you agree with the approach for new applicants as set out in LR 8.6.7AG taking into account the guidance set out in the Procedural Note in Annex 1?
- Q4:** Do you agree with the proposed new guidance in LR8.7.26AG?
- Q5:** Do you agree that as part of the assessment of sponsor competence, a sponsor should have to satisfy the five 'competency sets', as set out in proposed LR8.6.7R(2)?
- Q6:** Does the proposed approach in LR 8.6.12(19)R and the Technical Note as set out in Annex 1 provide sufficient flexibility for sponsors?
- Q7:** Do you agree that, as part of the assessment of competence, a sponsor should have a sufficient number of staff who meet, as a minimum, the competency sets within LR 8.6.7R 2(b)?
- Q8:** Do you agree that the adequacy of resources obligation (LR 8.6.7R (2) (a) and (b) should apply on an ongoing basis?
- Q9:** Do you agree with our overall proposal to make the systems and controls provisions in LR 8.6.12G into a Rule (LR 8.6.12R)?
- Q10:** Do you agree that the additional provisions to LR 8.6.12R will ensure that a sponsor assesses staff against an adopted competence framework?

- Q11:** Do you agree with our proposals for key contacts as set out in LR 8.6.7R(2)(c), LR8.6.7 DG, LR8.6.19R and LR8.6.20G?
- Q12:** Do you agree with the FCA's proposal to consider applications for sponsor approval for the provision of sponsor services to premium investment companies only?
- Q13:** Do you agree with the proposal to assess competence to provide sponsor services to premium investment companies against a different competency framework?
- Q14:** Do you agree that the proposed Technical Note provides sufficient guidance to support the proposed amendments to LR8.6R?
- Q15:** Do you agree that the proposed Procedural Note provides sufficient guidance to support the proposed amendments to LR8.6R?
- Q16:** Do you agree with the proposed amendment to the definition of a class 1 circular?
- Q17:** Do you agree with the proposed change to LR5.6.15 G (4) so that it refers to a 'declaration' rather than a 'statement'?
- Q18:** Do you have any comments on the minor changes to LR 8.1.1R, LR 8.1.1AR, LR 8.6.12R, LR 8.7.1AR and LR 8.7.8R?
- Q19:** Do you agree with the proposed changes to LR 11 Annex 1 8 (1) (b) and LR8.2.1R (15)?
- Q20:** Do you agree with the proposal to include the LR 10.5.4R supplementary circular within LR 8.2.1R(2) and LR 8.4.11R?
- Q21:** Do you have any comments on the minor changes we have proposed in relation to the above rules?
- Q22:** Do you agree with the proposed amendments to LR 8.6.12 R(6) and (7)?
- Q23:** Do you agree with the proposed amendment to LR8.7.16R and the deletion of LR 8.7.17R and LR 8.7.18R?

Chapter 5 discussion on joint sponsors

- Q24:** Are you in favour of retaining the joint sponsor regime? Please give reasons for your answer (whether 'yes' or 'no'), detailing the main advantages or disadvantages to sponsors, issuers and the market generally.
- Q25:** If you are in favour of retaining the joint sponsor regime, what refinements or amendments would you suggest making to the rules or guidance to improve the regime?
- Q26:** If the use of joint sponsors is no longer permitted, do you think the proposals in this consultation paper on the requirement for prior sponsor experience (in the form of having submitted sponsor declarations to the FCA) need to be amended? If 'yes', please explain in what way.
- Q27:** Can you identify any need to retain the provisions of LR8.7.16R – 18R and LR8.3.13R relating to delegation of functions? If so, please explain your reasons.

Other proposed changes to the Listing Rules and Prospectus Rules

- Q28:** Do you agree with the proposed amendment to LR 13.4.3R which will remove the obligation for premium listed companies from having to prepare a 28-day circular?
- Q29:** Do you agree with the proposed new PR 3.1.2AR and PR 3.1.2BR which place explicit obligations on an applicant to submit a compliant and factually accurate prospectus?

Annex 2: Cost benefit analysis

- Q30:** Do you have any comments on the CBA?

Appendix 1

Draft Handbook text

LISTING RULES (SPONSORS) (AMENDMENT NO 5) INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Prospectus rules);
 - (3) section 88 (Sponsors);
 - (4) section 96 (Obligations of issuers of listed securities);
 - (5) section 137A (General rule-making power);
 - (6) section 137T (General supplementary powers); and
 - (7) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]* 2014.

Amendments to the FCA Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.
- F. The Prospectus Rules sourcebook (PR) is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the Listing Rules (Sponsors) (Amendment No 5) Instrument 2014.

By order of the Board of the Financial Conduct Authority
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>competence framework</i>	<p>(in the <i>FCA Handbook</i>) a framework which is used by a <i>sponsor</i> to demonstrate, as a minimum, an understanding of:</p> <ul style="list-style-type: none"> (a) <i>rules, guidance</i> and <i>ESMA</i> publications directly relevant to <i>sponsor services</i>; (b) the procedural requirements and processes of the <i>FCA</i>; (c) the due diligence process required in order to provide <i>sponsor services</i> in accordance with <i>LR 8.3</i> and <i>LR 8.4</i>; (d) the responsibilities and obligations of a <i>sponsor</i> set out in <i>LR 8</i>; and (e) if relevant to the <i>sponsor's</i> approval, specialist industry sectors.
<i>sponsor declaration</i>	<p>(in the <i>FCA Handbook</i>) a declaration submitted by a <i>sponsor</i> to the <i>FCA</i> as required under <i>LR 8.4.3R</i>, <i>LR 8.4.9R</i>, <i>LR 8.4.13R</i> or <i>LR 8.4.14R</i>.</p>

Amend the following definition as shown.

<i>class 1 circular</i>	<p>a <i>circular</i> relating to a <i>class 1 transaction</i> <u>or a transaction which must comply with the requirements of a <i>class 1 transaction</i>.</u></p>
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Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5.6 Reverse takeovers

...

- 5.6.15 G Where the *target* in a *reverse takeover* is not subject to a public disclosure regime, or if the *target* has *securities* admitted on an investment exchange or trading platform that is not a *regulated market* but the *issuer* is not able to give the confirmation and make the announcement contemplated by LR 5.6.12G, the *FCA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction such that a suspension is not required where the *issuer* makes an announcement containing:

...

- (4) a ~~statement~~ declaration confirming that the *issuer* has made the necessary arrangements with the *target* vendors to enable it to keep the market informed without delay of any developments concerning the *target* that would be required to be released were the *target* part of the *issuer*.

...

8 Sponsors: Premium listing

8.1 Application

Sponsors and applicants

- 8.1.1 R A *sponsor* ~~and a person which is applying for approval as a sponsor~~ must comply with:

- (1) LR 8.3 to LR 8.4; and
- (2) LR 8.6 to LR 8.7.

- 8.1.1A R A person which is applying for approval as a sponsor must comply with LR 8.6.

...

8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its *equity shares* must appoint a *sponsor* on each occasion that it:
- ...
- (2) is required to submit to the *FCA* a *class 1 circular* or any supplementary circular required under LR 10.5.4R for approval; or
- ...
- (14) is required to provide an assessment of the appropriateness of an investment exchange or *multilateral trading facility* under *LR 13.5.27BR*; or
- (15) is required by LR 11 Annex 1R(8) in relation to joint investment undertakings, to provide a written opinion to the FCA.

...

Principles for sponsors: identifying and managing conflicts

- 8.3.7A G The purpose of *LR 8.3.7BR* to ~~*LR 8.3.13G*~~ *8.3.12AG* is to ensure that conflicts of interest do not adversely affect:

...

...

8.4 Role of a sponsor: transactions

Application for admission: new applicants

- 8.4.1 R *LR 8.4.2R* to *LR 8.4.4G* apply in relation to an application for *admission* of *equity shares* to *premium listing* if an *applicant* does not have *equity shares* already admitted to *premium listing* and ~~*LR 6.1.1R*~~ does not apply because of the operation of *LR 6.1.1AR*, and, in connection with the application, the applicant is required to submit to the FCA:
- (1) ~~the production of a prospectus, supplementary prospectus or equivalent document is required;~~ or
- (2) ~~the application is accompanied by~~ a certificate of approval from another competent authority; or
- (3) ~~the application is accompanied by~~ a summary document as required

by under PR 1.2.3R(8); or

- (4) ~~the production of listing particulars is required in the circumstances referred to in~~ or supplementary listing particulars under LR 15.3.3R or LR 16.3.4R;

unless LR 6.1.1AR applies.

...

Further issues: procedure

...

- 8.4.10 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm in writing to the *FCA* the number of *equity shares* to be allotted or admitted. [Note: see LR 3.3.4R]

Class 1 circulars, refinancing and purchase of own equity shares

- 8.4.11 R LR 8.4.12R to LR 8.4.13R apply in relation to transactions involving an issuer with a premium listing of equity shares that is required to submit to the FCA:
- (1) ~~is required to produce~~ a class 1 circular, or a supplementary circular required under LR 10.5.4R, for approval; or
 - (2) ~~is producing~~ a circular that proposes a reconstruction or a refinancing which does not constitute a *class 1 transaction*; or
 - (3) ~~is producing~~ a circular for the proposed purchase of own shares;
 - (a) which does not constitute a *class 1 circular*; and
 - (b) is required by LR 13.7.1R(2) to include a working capital statement.

- 8.4.12 R A *sponsor* must not submit to the *FCA*, on behalf of a *listed company*, ~~an application for approval of~~ a *circular* regarding a transaction set out in LR 8.4.11R for approval, unless the *sponsor* has come to a reasonable opinion, after having made due and careful enquiry, that:

...

...

Reverse takeovers

- 8.4.17 R A *sponsor* acting on a *reverse takeover* where the *issuer* decides to make a disclosure announcement under LR 5.6.15G must:

...

- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FCA* in considering a proposed disclosure announcement under *LR 5.6.15G* have been disclosed with sufficient prominence in the announcement or otherwise in writing to the *FCA*.

~~[Note: The Sponsor's Declaration for a Reverse Takeover Announcement can be found on the UKLA section of the *FCA* website.]~~

[Note: The Sponsor's Declaration for a Reverse Takeover Announcement can be found on the UKLA section of the *FCA* website.]

...

8.6 Criteria for approval as a sponsor

...

Criteria for approval as a sponsor

- 8.6.5 R The *FCA* will approve a *person* as a *sponsor* only if it is satisfied that the *person*:

- (1) is an *authorised person* or a *member* of a *designated professional body*;
- (2) is competent to ~~perform~~ provide *sponsor services* in accordance with *LR 8*; and
- (3) has appropriate systems and controls in place to ensure that it can ~~carry out its role as a~~ provide *sponsor services* in accordance with this chapter *LR 8*.

...

- 8.6.5C G Where a *person* wishes to apply for approval as a *sponsor* providing a limited range of *sponsor services*, it may do so on the basis that the *FCA* will impose a limitation or restriction on its approval (in accordance with section 88 of the *Act*). In such circumstances, the *FCA* will assess whether the *person* satisfies *LR 8.6.5R(2)* and (3) taking into consideration the *sponsor services* to which the approval, as formally limited or restricted by the *FCA*, will relate.

Continuing obligations

- 8.6.6 R A *sponsor* must comply, at all times, with the criteria set out in *LR 8.6.5R*.

Competence of a sponsor

- 8.6.7 R A *sponsor*, or a *person* applying for approval as a *sponsor*, will not be competent to provide *sponsor services* if it has a broad range of relevant experience and expertise in providing advice to *listed companies* and on the

~~listing rules~~. unless:

- (1) it has submitted a *sponsor declaration* to the *FCA*:
 - (a) in the case of a *person* applying for approval as a *sponsor*, within three years of the date of its application; and
 - (b) in the case of a *sponsor*, within the previous three years; and
- (2) it has a sufficient number of *employees* with the skills, knowledge and expertise necessary in order for it to:
 - (a) provide *sponsor services* in accordance with *LR 8.3*;
 - (b) understand:
 - (i) *rules, guidance* and *ESMA* publications directly relevant to *sponsor services*;
 - (ii) the procedural requirements and processes of the *FCA*;
 - (iii) the due diligence process required in order to provide *sponsor services* in accordance with *LR 8.3* and *LR 8.4*;
 - (iv) the responsibilities and obligations of a *sponsor* set out in *LR 8*; and
 - (v) if relevant to the *sponsor's* approval, specialist industry sectors; and
 - (c) comply with the requirements of *LR 8.6.19R*.

8.6.7A G In order to determine whether a *person* applying for approval as a *sponsor* satisfies *LR 8.6.7R(1)(a)*, the *FCA* will consider whether any of the *person's employees* who will be providing *sponsor services* have submitted a *sponsor declaration* within the previous three years.

8.6.7B G In assessing whether a *sponsor* or a *person* applying for approval as a *sponsor* satisfies *LR 8.6.7R(2)*, the *FCA* will consider a variety of factors including:

- (1) the nature, scale and complexity of its business;
- (2) the diversity of its operations;
- (3) the volume and size of transactions it undertakes;
- (4) the volume and size of transactions it anticipates undertaking in the following year; and
- (5) the degree of risk associated with the transactions it undertakes or anticipates undertaking in the following year.

8.6.7C G The FCA would expect a *sponsor* to assess its ability to satisfy LR 8.6.7R(2)(b) by reference to the *competence framework* adopted by the *sponsor*.

8.6.7D G Notwithstanding the factors set out in LR 8.6.7BG, when considering whether a *sponsor* satisfies LR 8.6.7R(2)(c), the FCA would expect a *sponsor* to have no less than two *employees* who can satisfy the requirements of LR 8.6.19(2)R.

...

8.6.9A G ~~In assessing whether a *person* is competent to provide, or to continue to provide, *sponsor services*, the FCA will generally have regard amongst other things to the *person's*: [deleted]~~

~~(1) prior relevant experience of providing *sponsor services*;~~

~~(2) skills, knowledge and expertise necessary for the proper performance of *sponsor services*; and~~

~~(3) prior corporate finance experience.~~

8.6.9B G In assessing whether a *sponsor* or *person* applying for approval as a *sponsor* can demonstrate it is competent in the areas required under LR 8.6.7R(2) is competent to provide, or to continue to provide, *sponsor services*, the FCA may also take into account, where relevant, the quality of any guidance or advice on the *listing rules* or *disclosure rules* and *transparency rules* the *sponsor* or *person* has given in circumstances other than in providing *sponsor services*.

...

Systems and controls: general

8.6.12 G A *sponsor* or a *person* applying for approval as a *sponsor* must have in place will generally be regarded as having appropriate systems and controls if there are to ensure that it can provide *sponsor services* in accordance with LR 8, including:

(1) clear and effective reporting lines ~~in place~~ for the provision of *sponsor services* (including clear and effective management responsibilities);

(1A) effective systems and controls to ensure that *employees* with management responsibilities for the provision of *sponsor services* understand and apply the requirements of LR 8;

(2) effective systems and controls for the appropriate supervision of *employees* engaged in the provision of *sponsor services* by the *sponsor* ;

- (3) effective systems and controls to ensure its compliance with all applicable *listing rules* at all times, including when performing *sponsor services*;
- (4) [deleted]
- (5) [deleted]
- (6) effective systems and controls to ensure that it has appropriate staffing arrangements for ~~the performance of providing each~~ *sponsor service services with due care and skill in accordance with the principles for sponsors set out in LR 8.3;*
- (7) effective systems and controls to ensure that ~~employees~~ *employees* engaged in the provision of *sponsor services* ~~by the sponsor~~ receive appropriate guidance and training for ~~the performance of those services with due care and skill~~ providing each sponsor service in accordance with the principles for sponsors set out in LR 8.3; and
- (8) effective systems and controls to identify and manage conflicts of interest; and
- (9) adopting and applying an appropriate *competence framework* for the assessment of *employees* carrying out *sponsor services*.

8.6.13 G ~~The nature and extent of the systems and controls which~~ When considering a sponsor's ability to comply with LR 8.6.12R, a sponsor will need to maintain will depend upon the FCA will consider a variety of factors, including:

- (1) the nature, scale and complexity of its business;
- (2) the diversity of its operations;
- (3) the volume and size of the transactions it undertakes;
- (4) the volume and size of the transactions it anticipates undertaking in the following year; and
- (5) the degree of risk associated with the transactions it undertakes or anticipates undertaking in the following year.

...

Systems and controls: record management

8.6.16A R A *sponsor* must have in place effective arrangements to create and retain for six years accessible records which are sufficient to be capable of demonstrating that it has provided *sponsor services* and otherwise complied with its obligations under LR 8 ~~in accordance with the listing rules,~~ including:

- (1) where a declaration is to be submitted under *LR 8.4.3R(1)*, *LR 8.4.9R(1)*, *LR 8.4.13R(1)*, *LR 8.4.14R(2)* or *LR 8.4.17R* or, where relevant, a declaration pursuant to an appointment under *LR 8.2.1R(5)*, is submitted, the basis of each declaration given;

...

- (4) the steps taken to comply with its ~~conflicts~~ obligations under *LR 8.3.7BR*, *LR 8.3.9R* ~~and~~, *LR 8.3.11R* and its ~~ongoing eligibility obligations under *LR 8.6.6R*~~.

...

Contact persons Key contact

- 8.6.19 R For each ~~transaction for which it provides sponsor services~~ sponsor service requiring the submission of a document to the FCA or contact with the FCA, a sponsor must:

- (1) at the time of submission or on first making contact with the FCA, notify the FCA as soon as practicable of the name and contact details of the main a key contact person or persons in within the sponsor for that transaction matter; and
- (2) ensure that ~~the~~ any key contact person or persons:
- (a) ~~have~~ has sufficient knowledge about the *listed company* or *applicant* and the proposed ~~transaction matter~~ to be able to answer queries from the *FCA* about it; ~~and~~
 - (b) ~~are~~ is available to answer queries from the *FCA* on any business day between 7 am and 6pm;
 - (c) is authorised to make representations to the FCA for and on behalf of the sponsor;
 - (d) possesses technical knowledge of rules, guidance and ESMA publications directly relevant to sponsor services;
 - (e) is proficient in the procedural requirements and processes of the FCA; and
 - (f) understands the responsibilities and obligations of a sponsor under LR 8.

- 8.6.20 G The FCA would expect a sponsor to assess the ability of a key contact to satisfy the requirements of LR 8.6.19R(d) to (f) by reference to the competence framework adopted by the sponsor. The FCA would expect an employee carrying out the role of key contact to have provided a sponsor service in the previous three years.

8.7 Supervision of sponsors

...

Requirement to provide information

- 8.7.1A R (1) The *FCA* may by notice in writing given to a *sponsor*, ~~or a person applying for approval as a *sponsor*~~, require it to provide specified documents or specified information to the *FCA*.
- (2) The *sponsor*, ~~or the person applying for approval as a *sponsor*~~, must as soon as practicable provide to the *FCA* any documents or information that it has been required to provide under (1).
- (3) This rule applies only to documents or information reasonably required by the *FCA* in connection with the performance of its functions in relation to a *sponsor*, ~~a person applying for approval as a *sponsor*~~ or a *company* that has appointed a *sponsor*.

...

General notifications

- 8.7.8 R A *sponsor* must notify the *FCA* in writing as soon as possible if:
- (1) (a) ...
- (b) the *sponsor* becomes aware of any fact or circumstance relating to the *sponsor* or any of its employees engaged in the provision of *sponsor services* by the *sponsor* which, in its reasonable opinion, would be likely to adversely affect market confidence in ~~the *sponsor* regime~~ *sponsors*; or

...

...

Performance of functions on behalf of a sponsor

- 8.7.16 R A *sponsor* must not delegate any of its functions as such, or permit another *person* to perform those functions, ~~unless that *person* is on the list of *sponsors*~~.
- 8.7.17 R (1) ~~A *sponsor* that delegates any of its functions or permits another *sponsor* to perform its functions is not relieved of its obligations under the listing rules. [deleted]~~
- (2) ~~A *sponsor* that performs any function on behalf of another *sponsor* must comply with the requirements set out in LR 8.3. [deleted]~~

- 8.7.18 R ~~A sponsor must notify the FCA in writing as soon as practicable before another sponsor performs functions on its behalf of: [deleted]~~
- (1) ~~the identity of that sponsor; and~~
 - (2) ~~a detailed description of the functions that the sponsor is to perform on its behalf.~~

...

Suspension of a sponsor's approval at the sponsor's request

...

- 8.7.26A G A sponsor may wish to consider submitting a suspension request under LR 8.7.25R where the sponsor ceases to satisfy the criteria for approval as a sponsor but, following a notification made to the FCA under LR 8.7.8R, there are ongoing discussions with the FCA and remedial actions being undertaken by the sponsor which may result in the sponsor being able to satisfy the criteria for approval.

...

11.1 Related party transactions: Premium listing

...

11 Annex 1 R Transactions to which the related party transaction rules do not apply

...			
Joint investment arrangements			
8	(1)	An arrangement where a <i>listed company</i> , or any of its <i>subsidiary undertakings</i> , and a <i>related party</i> each invests in, or provides finance to, another undertaking or asset if the following conditions are satisfied:	
		(a)	...
		(b)	an independent adviser acceptable to the FCA <u>a sponsor</u> has provided a written opinion to the FCA stating that the terms and circumstances of the investment or provision of finance by the <i>listed company</i> or its <i>subsidiary undertakings</i> (as the case may be) are no less favourable than those applying to the investment or provision of finance by the <i>related party</i> .
	...		
...			

...

13.4 Class 1 circulars

...

Takeover offers

- 13.4.3 R (1) If a *class 1 circular* relates to a takeover offer which is recommended by the offeree's board and the *listed company* has had access to due diligence information on the offeree at the time the *class 1 circular* is published, the *listed company* must prepare and publish the working capital statement on the basis that the acquisition has taken place.
- (2) If a *class 1 circular* relates to a takeover offer which has not been recommended by the offeree's board or the *listed company* has not had access to due diligence information on the offeree at the time the *class 1 circular* is published, then the *listed company* must comply with paragraphs (3) to (6).
- (3) The *listed company* must prepare and publish the working capital statement on the *listed company* on the basis that the acquisition has not taken place. ~~The working capital statement prepared on the basis that the acquisition has taken place must be updated and published and sent to shareholders within 28 days of the offer becoming or being declared wholly unconditional. The *circular* must state that the statements on a combined basis will be made available as soon as possible.~~
- (4) Other information on the offeree required by LR 13 Annex 1R should be disclosed in the *class 1 circular* on the basis of information published or made available by the offeree and of which the *listed company* is aware and is free to disclose.
- (5) ~~If the takeover offer becomes unconditional, any change or addition to the information disclosed which is material in relation to the *listed company*, should be disclosed in a *circular* published (in the absence of exceptional circumstances) within 28 days after the offer becoming or being declared wholly unconditional. [deleted]~~
- (6) If the takeover offer has been recommended but the *listed company* does not have access to due diligence information on the offeree, the *listed company* must disclose in the *class 1 circular* why access has not been given to that information.

...

Appendix 1 Relevant definitions

<i>class 1 circular</i>	<u>a circular relating to a class 1 transaction or a transaction which must comply with the requirements of a class 1 transaction.</u>
<u>competence framework</u>	<u>a framework which is used by a sponsor to demonstrate, as a minimum, an understanding of:</u> <ul style="list-style-type: none">(1) <u>rules, guidance and ESMA publications directly relevant to sponsor services;</u>(2) <u>the procedural requirements and processes of the FCA;</u>(3) <u>the due diligence process required in order to provide sponsor services in accordance with LR 8.3 and LR 8.4;</u>(4) <u>the responsibilities and obligations of a sponsor set out in LR 8; and</u>(5) <u>if relevant to the sponsor's approval, specialist industry sectors.</u>
...	
<u>ESMA</u>	<u>European Securities and Markets Authority.</u>
...	
<u>sponsor declaration</u>	<u>a declaration submitted by a sponsor to the FCA as required under LR 8.4.3R, LR 8.4.9R, LR 8.4.13R or LR 8.4.14R.</u>

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text.

Applying for approval

...

- 3.1.2A R An applicant must ensure that any prospectus submitted for approval, for which it is responsible, contains:
- (1) the necessary information as stipulated by section 87A of the Act; and
 - (2) the information items required in Annexes I to XVII and Annexes XX to XXX of the PD regulation, as appropriate to its application.
- 3.1.2B R An applicant must take all reasonable care to ensure that any prospectus submitted for approval, for which it is responsible, is to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

...



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