

# Key amendments to each Note

## Primary Market Bulletin No. 8 – July 2014

The material changes to consultation version of the technical and procedural notes are marked below. The notes, as revised, have been added to the [UKLA Knowledge Base](#).

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### UKLA Procedural Note

#### Additional powers to supervise sponsors

Ref: UKLA/PN/910.1

**FSMA s88; FSMA s88E; LR 8.6.5AR; LR 8.6.5BG; LR 8.7.2AR; LR 8.7.2BG; LR 8.7.20G; LR 8.7.25R; LR 8.7.26G; LR 8.7.27G; DEPP 2.5.11A G; DEPP 2.5.11B G; DEPP 2 Annex 1; Depp 2 Annex 2; DEPP 4**

This note provides guidance to sponsors on the procedural aspects of the FCA's new statutory powers to suspend, limit or restrict sponsors under sections 88 and 88E FSMA. It covers:

- sponsors applying to the FCA for a suspension of approval (or a withdrawal thereof)
- the imposition, by the FCA, of a limitation or restriction on the services a sponsor can provide, either at the request of a sponsor or on the FCA's initiative (or a withdrawal thereof) and
- the suspension of a sponsor's approval or the limitation or restriction on the services a sponsor can provide, by the FCA, in order to advance one or more of the FCA's operational objectives.

#### **A. Applying for a suspension of approval (s 88(3)(f) FSMA)**

If a sponsor wishes to apply for a suspension of its approval, it should contact its Sponsor Supervision Relationship Manager, first by telephone, at the earliest opportunity, to discuss the request. Then, the sponsor should confirm the request in writing (in accordance with LR 8.7.25R), including the following information:

1. the sponsor's name
2. a clear and detailed explanation of the background and reasons for the request
3. the date on which the sponsor's request should take effect
4. a signed confirmation that the sponsor will not provide any sponsor services from the date the request is submitted, and
5. the name and contact details of the person at the sponsor with whom the FCA should liaise regarding the request

The FCA will consider the sponsor's request, seeking further information if required.

If we approve the sponsor's request, we will confirm our decision to the sponsor in writing.

If we propose to refuse the sponsor's request, FSMA requires the FCA to undertake a statutory notice procedure. In accordance with the Decision Procedure and Penalties Manual (DEPP), this will be carried out by FCA staff under executive procedures (as set out in DEPP 2 Annex 1G and DEPP 4).

We will inform the sponsor when we start this process and we will liaise with the sponsor throughout, including where the sponsor wishes to make representations to the FCA regarding the proposed refusal. Under the statutory notice procedure, the FCA ~~may~~ will issue a Warning Notice, ~~followed by~~ a Decision Notice and Final Notice to the sponsor. Usually, the Final Notice will also be published on the FCA's website and ~~a link to the Final Notice will be included in~~ the List of Sponsors published on the FCA website will be updated accordingly.

### ***Applying to withdraw a suspension***

A sponsor may apply to withdraw a suspension request at any time before the suspension takes effect (under LR 8.7.26G) or after a suspension has been agreed (under section 88(8)(c) FSMA).

If a sponsor wishes to withdraw its suspension request before the suspension takes effect, it should contact its Sponsor Supervision Relationship Manager, first by telephone, to discuss the request and then follow up in writing, as soon as possible, explaining the reasons for the withdrawal request (as set out in LR 8.7.26G). Similarly, if a sponsor wishes to apply to withdraw a suspension after it has taken effect, it should contact its Sponsor Supervision Relationship Manager, first by telephone, to discuss the request and then follow up in writing, as soon as possible, explaining the reasons for the application. If the FCA agrees to the request, we will confirm our decision to the sponsor in writing. However, if we propose to refuse a withdrawal application, FCA staff, under executive procedures, must follow the statutory notice procedure as described above (DEPP 2 Annex 1G, DEPP 4).

### **B. Limitations or restrictions of sponsor services (s 88(3)(e) FSMA)**

Under section 88(3)(e) FSMA, a limitation or restriction of sponsor services can be put in place at the time of approving a new sponsor application (LR 8.6.5AR, LR 8.6.5BG) or at any time after approval has been granted (LR 8.7.2AR, LR 8.7.2BG).

For new applicants, the process to limit or restrict sponsor services will be undertaken in parallel with the sponsor application process. For existing sponsors, a limitation or restriction may be requested by the sponsor or otherwise agreed with the FCA as an outcome of sponsor supervisory processes.

#### *1. Requesting or otherwise agreeing with the FCA a limitation or restriction of sponsor services*

Where a new applicant or existing sponsor wishes to request a limitation or restriction of its sponsor services, it should contact its Sponsor Supervision Relationship Manager, by telephone, at the earliest possible opportunity, to discuss its request. The sponsor should follow up this discussion with a written request, including the following information:

- the sponsor's name
- a clear and detailed explanation of the background and reasons for the request
- the date on which the sponsor's request should take effect
- the name and contact details of the person at the sponsor with whom the FCA should liaise regarding the request.

In circumstances where the FCA wishes to agree a limitation or restriction with a new applicant or existing sponsor, but the applicant or sponsor has not requested it, the FCA will discuss its proposals with the firm – either as part of the new application process or via the usual sponsor supervisory channels – to determine how best to proceed.

#### *2. The FCA imposes a limitation or restriction on a new applicant or sponsor*

Where the FCA is unable to agree a limitation or restriction of sponsor services with a new applicant or existing sponsor but we believe, under the circumstances, that a limitation or restriction on sponsor services is appropriate, we may still seek to impose such a limitation or restriction on sponsor services.

***How does the limitation or restriction take effect?***

FSMA requires the FCA to follow a statutory notice procedure for a restriction or limitation of sponsor services to take effect (as set out in DEPP 2.5.11AG and DEPP 2 Annex 1).

Where a restriction or limitation of sponsor services is requested or otherwise agreed by a new applicant or sponsor, the statutory notice procedure will be undertaken by FCA staff under executive procedures (DEPP 4). Where the restriction or limitation is being imposed by the FCA, the statutory notice procedure will be undertaken by the FCA's Regulatory Decisions Committee (RDC) (DEPP 3). We will liaise with the new applicant or sponsor throughout the process, including where the new applicant or sponsor wishes to make representations to the FCA regarding its proposed decision.

Under the statutory notice procedure, the FCA ~~may~~ will issue a Warning Notice, ~~followed by a~~ Decision Notice and Final Notice to the new applicant or sponsor. Usually, the Final Notice will also be published on the FCA's website and ~~a link to the Final Notice will be included in~~ the List of Sponsors published on the FCA website will be updated accordingly.

If, on reflection, we wish to refuse a sponsor's request to limit or restrict its sponsor services, we will confirm our decision to the sponsor in writing.

***Applying to withdraw an existing limitation or restriction***

Under section 88(8)(d) FSMA, a sponsor may apply for the withdrawal or variation of a limitation or restriction of its sponsor services at any time after it has taken effect. The FCA is required to follow a statutory notice procedure in this regard (as set out in DEPP 2.5.11BG and DEPP 2 Annex 1), carried out by FCA staff under executive procedures or by the RDC depending on who imposed the limitation or restriction initially. As part of this process, the sponsor can make representations to us regarding our proposed decision.

- If the withdrawal request is approved, we will confirm the decision to the sponsor in writing.
- If we refuse the withdrawal request, we will issue a Warning Notice, Decision Notice and Final Notice to the sponsor and publish the Final Notice on our website. The limitation or restriction will continue to apply.

**C. Suspension of approval, limitation or restriction of sponsor services in order to advance the FCA's operational objectives (s 88E FSMA)**

We may suspend a sponsor's approval or impose a limitation or restriction of the sponsor services it can provide if we consider it desirable to do so to advance one or more of our operational objectives, in accordance with LR 8.7.27G and section 88E FSMA. The FCA's operational objectives are set out in sections 1B(3) and 1C-1E FSMA. It is likely that we will take such action only in situations where our concerns cannot be effectively and promptly resolved via the usual sponsor supervisory channels (please refer to TN 712.1 for guidance on the use of these powers).

A suspension of a sponsor's approval or a limitation or restriction of sponsor services imposed in this way can take effect either immediately or at some point in the future. The suspension, limitation or restriction can be imposed for the period of time we consider appropriate in light of the prevailing circumstances.

If this is the chosen course of action, we will inform the sponsor that we are seeking to suspend, limit or restrict its sponsor services under section 88E FSMA. FSMA requires the FCA to follow a statutory notice procedure in this regard and this will be undertaken by FCA staff under executive procedures (DEPP 2 Annex 2G, DEPP 4). We will liaise with the sponsor throughout the process, including where the sponsor wishes to make representations regarding our proposals.

Where a suspension, limitation or restriction is imposed through this route, we will issue the sponsor with a first Supervisory Notice followed by a second Supervisory Notice. The second Supervisory Notice may be published on our website (~~a link will be included in the List of Sponsors~~) and the List of Sponsors published on the FCA website may be updated accordingly.

Once imposed, we may withdraw or vary the suspension, limitation or restriction to reduce the time period or otherwise limit its effect. We will inform the sponsor as soon as possible of any such proposal.

#### **D. Publication of statutory notices**

Publishing statutory notices is important to ensure the transparency of FCA decision-making and helps to inform all consumers as to our approach to supervising and disciplining sponsors. We intend to publish Final Notices on the FCA website unless, in accordance with s 391(6) FSMA, we are of the opinion that it would be:

- unfair to the sponsor
- prejudicial to the interest of consumers or
- detrimental to the stability of the UK financial system or our statutory objectives.

The FCA will not normally refrain from publishing a notice for the sole reason that it could have a negative impact on the sponsor's reputation or in the event that confidentiality is requested. However, the FCA will, upon request, review notices that are published on our website and will determine at that time whether continued publication is appropriate or whether they should be removed or amended. Please refer to section 6 of the FCA's Enforcement Guide for further information about publicity.

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#### **UKLA Technical Note**

#### **Additional powers to supervise and discipline sponsors**

**Ref: UKLA/TN/712.1**

**FSMA s88; FSMA s88A; LR 8.6; LR 8.6.5AR; LR 8.6.5BG; LR 8.7.2AR; LR 8.7.2BG; LR 8.7.20G; LR 8.7.25R; LR 8.7.26G; LR 8.7.27G; DEPP 2.5.11A G; DEPP 2.5.11B G; DEPP 2 Annex 1; DEPP 2 Annex 2; DEPP 4**

Section 88 FSMA and Chapter 8 of the Listing Rules have been amended to reflect our additional statutory powers regarding the supervision and discipline of sponsors.

These additional powers allow:

- the restriction or limitation of services performed by sponsors, both on and post-approval (s 88(3) FSMA)
- a sponsor to request its approval to be suspended (s 88(3) FSMA)
- the suspension of a sponsor's approval or the imposition of a limitation or restriction on the services a sponsor may perform, for such a period as the FCA considers appropriate, in order to advance one or more of the FCA's operational objectives (s 88E FSMA) and
- the FCA to fine, suspend, restrict or limit the services performed by a sponsor for a maximum period of 12 months and/or publicly censure a sponsor if it has contravened the Listing Rules relating to sponsors (s 88A FSMA).

#### **A. Restrictions or limitations on sponsor services (s 88(3) FSMA)**

##### **General**

We have the power to restrict or limit the services a sponsor provides both at the time of a sponsor's approval or at any time thereafter (s 88(3)(e) FSMA, LR 8.6.5AR and LR 8.7.2AR).

The ability to restrict or limit sponsor services adds flexibility to the sponsor regime by allowing us to approve a new applicant or maintain a sponsor's approval where previously it might not have met the sponsor approval criteria under LR 8.6. For example, where we consider that a new applicant or sponsor does not have the relevant experience or appropriate systems and controls to provide the complete range of sponsor services it wishes to undertake, rather than refusing a sponsor application or seeking a sponsor's cancellation, we can limit or restrict the scope of sponsor services that it provides. For the sake of clarity, we do not intend to restrict a sponsor's ability to provide sponsor services on a transaction-by-transaction basis but on a more generic basis, such as, but not limited to, by type of issuer (eg, premium listed investment companies).

The FCA must follow a statutory notice procedure for a restriction or limitation of sponsor services to take effect, which is set out in the Decision Procedures and Penalties Manual (DEPP) (DEPP 2.5.11AG and DEPP 2 Annex 1). For new applicants, the statutory notice procedure will be undertaken alongside the sponsor approval process.

Where a restriction or limitation of a sponsor's services is requested or otherwise agreed by a new applicant or sponsor, the statutory notice procedure will be undertaken by FCA staff under executive procedures (as set out in DEPP 2 Annex 1G and DEPP 4). Where a new applicant or sponsor does not consent to the restriction or limitation, the statutory notice procedure will be undertaken by the FCA's Regulatory Decisions Committee (RDC).

##### **On approval**

LR 8.6.5AR is supplemented by guidance under LR 8.6.5BG regarding the circumstances that the FCA will have regard to when considering whether to impose restrictions or limitations on a sponsor's services at the time of a sponsor's approval.

We may seek to impose a restriction or limitation where the FCA considers that an applicant does not demonstrate the relevant experience and expertise in relation to the provision of the complete range of sponsor services.

We are most likely to consider these types of restrictions or limitations appropriate where an applicant has employees that can demonstrate relevant experience and expertise of providing sponsor services solely to premium listed investment companies. The applicant may request, or have imposed on its approval, a limitation that enables it to provide sponsor services to premium listed investment companies subject to LR 15 and LR 16, but restricts it from providing sponsor services to premium listed commercial companies.

### **Post-approval**

Guidance is provided at LR 8.7.2BG, in relation to LR 8.7.2AR, describing the circumstances that we will have regard to when considering whether to impose restrictions or limitations on the services a sponsor can provide at any time after its approval.

We are most likely to consider restricting or limiting the services a sponsor may provide when concerns come to our attention, via the usual supervisory processes, that a sponsor does not ~~have the relevant experience and expertise or appropriate systems and controls to provide sponsor services for a particular type or size of transaction or sector~~ demonstrate the relevant experience and expertise in relation to the provision of the complete range of sponsor services it is seeking to provide.

For example, we may seek to restrict a sponsor that has predominantly provided sponsor services solely to premium listed investment companies from providing sponsor services to other premium listed companies.

Further, we may seek to restrict or limit the services a sponsor provides where we consider the sponsor's systems and controls are not appropriate in light of the factors set out in LR 8.6.13G. It is possible that, where we believe that a sponsor is not able to comply with LR 8.6.5R(3), in light of guidance set out in LR 8.6.12G and LR 8.6.13G, we may seek to restrict or limit the services it may provide.

### **Withdrawing a restriction or limitation**

Under section 88(8)(d) FSMA, a sponsor may apply for the withdrawal or variation of a limitation or restriction to its sponsor services after it has been applied.

We are required to follow a statutory notice procedure in this regard (as set out in DEPP 2.5.11B G and DEPP 2 Annex 1). This statutory notice procedure will be carried out by FCA staff under executive procedures or by the RDC depending on who undertook to impose the limitation or restriction initially.

## **B. Suspension of a sponsor's approval at the sponsor's request (s88(3) FSMA)**

### **General**

Where a sponsor is unable to meet the sponsor approval criteria (s 88(3)(f) FSMA, LR 8.6), the sponsor may request a cancellation of its approval. However, where a sponsor considers that this is a short-term concern and, given the irrevocable nature of a cancellation and the associated administrative and financial costs of re-applying for approval, a sponsor may prefer to request a

suspension of its approval instead. This may provide the sponsor with the necessary time to take remedial action to ensure that it can comply with the sponsor approval criteria in the future.

### **Requesting a suspension**

A suspension request must be in writing and include the information set out in LR 8.7.25R. The suspension request will be considered by FCA staff and where the FCA accepts the request, the sponsor will be notified accordingly. Where we are proposing to refuse the request, FCA staff are required to undertake a statutory notice procedure under executive procedures (DEPP 2 Annex 1G).

Circumstances where a sponsor might choose to request a suspension of its approval include, but are not limited to, where it is undergoing a re-organisation or other corporate event that introduces uncertainty about its future or where there is an unplanned, temporary or permanent loss of experienced members of staff impacting the sponsor's ability to meet the criteria under LR 8.6 and/or appropriately resource sponsor services.<sup>1</sup>

Nonetheless, sponsors should be aware that, over time, a suspension of approval may result in a sponsor being unable to comply with the sponsor approval criteria on an ongoing basis. For example, we consider that, to comply with the competence requirement (LR 8.6) at all times, sponsor experience needs to be ~~continuously refreshed~~ sufficiently up to date to be relevant. However, a sponsor cannot undertake sponsor services for the duration of a suspension, increasing the risk that its sponsor experience becomes less relevant over time as the listing regime and the market in which sponsors operate is subject to change. We may therefore still seek to cancel the approval of a suspended sponsor should it be unable to take remedial steps to address its ability to comply with the sponsor approval criteria within a reasonable timeframe.

### **Withdrawing a suspension**

Should a sponsor decide not to progress with an application for a suspension of its approval, it may apply to withdraw a suspension request at any time before the suspension takes effect (LR 8.7.26G). A sponsor may also apply to withdraw the suspension, under section 88(8)(c) FSMA, in circumstances where a suspension has previously been agreed. In considering whether to apply, we suggest that the sponsor is comfortable it has taken all necessary remedial steps to comply with the sponsor approval criteria. Should we propose to refuse a sponsor's application to withdraw an existing suspension, FCA staff, under executive procedures, must follow a statutory notice procedure (DEPP 2 Annex 1G).

## **C. Suspensions, limitations and restrictions of sponsor services to advance the FCA's operational objectives (s 88E FSMA)**

The FCA may suspend a sponsor's approval or impose restrictions or limitations on the services a sponsor can provide, for such a time that it considers appropriate, if we consider it desirable to do so to advance one or more of its operational objectives (under section 88E FSMA and as explained in LR 8.7.27G). Our operational objectives are set out in sections 1B(3) and 1C-1E FSMA. For example, we may intervene on the basis that we consider that consumer protection or the integrity of the UK financial system may be jeopardised if the sponsor continues to provide sponsor services in a particular set of circumstances.

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<sup>1</sup> TN/709.1 highlights the need for sponsors to consider whether their resources are sufficient to carry out sponsor services in accordance with LR 8.

We expect to use this power in circumstances where we need to act urgently to prevent a sponsor from either agreeing or continuing to provide sponsor services on a particular transaction (or, potentially, all transactions). Before using this power, we are likely to have made our concerns clear to the sponsor already, through our usual supervisory processes.

Whilst situations where we might intervene in this way are likely to be rare, circumstances where we might do so include, but are not limited to, where:

- a sponsor seeks to accept a mandate for which we consider they are unable to meet the sponsor competence requirements
- we have serious concerns that a sponsor's systems and controls are not appropriate to support the proposed sponsor service
- there is an unplanned, temporary or permanent loss of experienced member(s) of staff
- we take the view that the sponsor is unable to manage an actual or perceived conflict of interest, or
- the sponsor is in financial distress and about to enter insolvency proceedings

To effect a suspension, limitation or restriction in such circumstances, FCA staff, under executive procedures, must follow a statutory notice procedure (DEPP 2 Annex 2G). FSMA does not currently limit the length of time the restriction, limitation or suspension can be imposed however, as with all of the additional sponsor powers the subject of this note, the FCA is required to act reasonably and proportionately in the circumstances. Under section 88E FSMA, the FCA may also withdraw or vary a limitation, restriction or suspension of this nature after it has taken effect.

#### **D. Disciplinary Powers (s 88A FSMA)**

Section 88A FSMA gives us the power to impose a range of disciplinary sanctions on sponsors, in the event of a breach of the Listing Rules, including:

- public censure
- suspending the approval of a sponsor (for a period not exceeding 12 months)
- imposing limitations or restrictions on the provision of sponsor services (for a period not exceeding 12 months), and
- imposing financial penalties.

Guidance on this is included in LR 8.7.20G and DEPP 2 Annex 1G.

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#### **UKLA Technical Note**

#### **Listing Principle 62 - Dealing with the FCA in an open and co-operative manner**

**Ref: UKLA/TN/209.1**

#### **LR 7.2.1R and LR 1.2.5G**

LP 62 requires premium listed issuers to deal with the FCA in an open and co-operative manner. This obligation is broader than simply requiring issuers to ensure that they deal with the FCA in an open and co-operative manner on on-going matters. In particular, LP 62 also requires issuers to approach the FCA in relation to significant transactions. However, it is not necessary for issuers to contact the FCA in relation to all transactions; the following provides an indication of the factors that should be considered and examples of transactions that could be considered significant.



It is not possible to describe all the factors that should be taken into account when trying to ascertain whether to contact the FCA, however, the following considerations are likely to be relevant.

- Is there a role for the FCA?

Issuers should consider the need for timely disclosure to the FCA in circumstances where the FCA has a regulatory role to perform before the transaction can proceed. Examples of where the FCA will have a role to play include providing guidance on the interpretation of a rule, waiving or modifying the application of a rule, or making a decision on whether a suspension is appropriate.

- Is the decision time critical?

Where an issuer is aware that a decision will need to be made by a certain point in time, for example making an announcement before the market opens, issuers should ensure that they contact the FCA well in advance of the event.

- Does the timing of contact allow for the FCA to disagree with the proposed approach?

Issuers should ensure that they allow, within their timetable, sufficient time for the FCA to consider the substantive matter presented and to form a view. This is particularly important in circumstances where the timetable cannot be delayed if the FCA disagrees with an issuer's position, due to an immovable event such as insolvency or a need for a suspension before the market opens.

Based on the above considerations, examples of the types of transactions where we would expect an issuer to carefully consider the timing of initial contact with the FCA includes reverse takeovers and class 1 disposals by issuers in severe financial distress. However, a routine class 1 transaction with a limited role for the FCA before the submission of the circular is unlikely to require early contact.

In circumstances where an issuer is unclear on whether LP 6<sub>2</sub> applies, LR 1.2.5G offers general guidance highlighting that issuer should consult the FCA 'at the earliest possible stage' if there is any doubt about how a Listing Rule applies in a particular situation.

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## **UKLA Procedural Note**

### **Sponsor firms - ongoing requirements during re-organisations**

**Ref: UKLA/PN/909.2**

#### **LR 8**

No changes to Note consulted on.

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## **UKLA Technical Note**

### **Sponsors: uncertain market conditions**

**Ref: UKLA/TN/705.2**

## **LR 8**

### **Sponsor procedures in uncertain market conditions**

Uncertain market conditions can heighten risks that sponsor firms face from failures in their systems and controls. Sponsors should consider if their existing procedures, relating to working capital and new business take-on, are robust enough to deal with the challenges arising from such market conditions.

### **Working capital (LR 8.4.2R(5), LR 8.4.8R(3) and LR 8.4.12R(3))**

In uncertain market conditions, there can be an increase in transactions with a 'rescue' element, or where particular attention should be paid to an issuer's working capital position.

When carrying out due diligence in an environment characterised by changeability and companies in financial distress, sponsors need to carefully consider how they assess working capital. In particular, the inherent unpredictability of the business environment could make assessing forecasts, assumptions, sensitivities and bank facilities more difficult. It is important for sponsors to carry out sufficient due diligence and in doing so specifically be aware of:

- the inherent difficulties in making accurate forecasts and projections
- the need to have an appropriate basis for each of the assumptions used in the working capital model
- whether the sensitivities that have been run consider all probable outcomes and give the necessary comfort that the issuer has sufficient headroom and
- whether financing facilities are in place and will remain so throughout the working capital period.

Given the important role that the sponsor has to play in reviewing and challenging working capital exercises, sponsor firms should consider whether they need to revisit their systems and controls over working capital and make appropriate enhancements to reflect the uncertain environment. These may include introducing enhanced review procedures, the provision of additional training to staff on undertaking due diligence in times of financial distress, and ensuring communication between the sponsor, the issuer and the reporting accountant is clear and effective.

### **New business take-on (LR 8.6.5R(3), LR 8.6.12G and LR 8.6.13G)**

The effect of an economic downturn on work pipelines and the financial position of a sponsor firm itself can place pressure on a sponsor firm to introduce new business. This may mean that prospective transactions are considered that would normally be regarded by the firm as too risky to act on. It is important that a firm's risk appetite remains within sensible parameters, is consistently applied and not compromised. This is an area where compliance departments should play an active monitoring role.

As such market conditions may test sponsor firms' new business procedures, there needs to be an appropriate level of due diligence undertaken by the sponsor team and challenge from a firm's new business committee or equivalent challenge process. Sponsor firms should consider if their existing procedures should be enhanced or supplemented to deal with the challenges arising. It is not the intention of the UKLA to assess a sponsor's ability to comply with LR 8.6.5R and LR 8.6.6R on a transaction-by-transaction basis. However, sponsors should be aware of the possibility of an intrusive approach taken by the UKLA in this regard. The FCA's powers to suspend a sponsor's approval or to impose limitations or restrictions on the services a sponsor can provide are discussed in UKLA/TN/712.1 – Additional powers to supervise and discipline sponsors.

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## **UKLA Technical Note**

### **Sponsor transactions – Adequacy of resourcing**

**Ref: UKLA/TN/709.2**

**LR 8**

No changes to Note consulted on.

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**UKLA Technical Note**

**Reverse Takeovers**

**Ref: UKLA/TN/306.2**

**LR 5.1.2G(4), LR 5.6.7G, LR 5.6.8G and LR 7.2.1R**

**Early engagement on reverse takeovers**

LR 5.6.8G highlights that, in the case of a reverse takeover, the FCA will often consider that a suspension is necessary. In cases where there is doubt about whether a suspension will be required, the FCA will need to consider whether or not a suspension is appropriate.

We would like to remind issuers of the need to ensure that they consider LP 62, which requires issuers to deal with the FCA in an open and co-operative manner, when considering the appropriate time to contact the FCA.

Early engagement is particularly important in circumstances where the issuer intends to pursue the transaction or has reached a stage where the transaction can be described in contemplation (LR 5.6.7G). A decision to suspend an issuer can have a significant market impact and, as such, we consider that early engagement, preferably before the point where a reverse transaction can be considered in contemplation, is essential.

**Timing of the announcement**

The Listing Rules create a rebuttable presumption that an issuer will be suspended upon announcement or leak of a reverse takeover. When suspending, we will rely on the general suspension powers set out under LR 5. LR 5.1.2G(4) refers only to a 'proposed transaction'. However, we would consider this to refer to situations where information has been announced or leaked in relation to transactions under contemplation, as well as those where the terms have been agreed.

LR 5.6.7G sets out examples of when the UKLA will generally consider a potential transaction sufficiently advanced to trigger a potential suspension requirement. However, we appreciate that at times the situation may not be as clear cut as set out in these examples and there may be situations where there has been a purely speculative leak where a potential suspension would be inappropriate.

We are also aware that competitive auction processes are often difficult to fit into this framework, so we are happy to discuss the specifics of each case with issuers or their advisers. In making a decision about whether it is appropriate to consider suspension, we would expect an issuer to apply a similar rationale, as they would when considering the announcement requirements under the Disclosure and Transparency Rules. We would not, for example, expect an issuer to request a suspension where the transaction in question is too speculative to trigger an announcement under the continuing obligations regime.

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