

7 November 2014

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

By email: cp14-21@fca.org.uk

CP14/21: comments on proposed Technical Notes on sponsor competence

Dear Ms Richardson

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on CP14/21: Technical Notes on sponsor competence—Questions 1 and 2. We will be responding to the remaining questions in due course.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants, including the largest and most active of the firms approved by the UKLA to act as sponsor.

We look forward to discussing our response with you, if that would be useful.

Yours faithfully



William Ferrari
Managing Director, Corporate Finance

Association for Financial Markets in Europe

London Office: St. Michael's House, 1 George Yard, London EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301

Brussels Office: Square de Meeûs 38-40, 1000 Brussels, Belgium T: +32 (0)2 401 8724 F: +32 (0)2 401 6868

Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard, London EC3V 9DH

www.afme.eu

FCA CP14/21

Consultation on joint sponsors and call for views on sponsor conflicts

7 November 2014

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **FCA CP14/21 Consultation on joint sponsors and call for views on sponsor conflicts**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

List of Questions

Sponsor Competence Technical Notes

Q1. Do you have any comments on the Technical Note “Sponsors: Guidance on competence requirements set out under LR 8.6.7R (2)”?

We have the following comments/suggestions pertaining to UKLA/TN/7()()

- Section A 1) on page 38: In the last sentence “In addition, we would expect sponsors to be aware of market commentary and practice around the application of the relevant rulebooks and guidance set out above”, we suggest that reference to “market commentary” is removed. This term is vague and potentially very broad. For example, a passing note on a new piece of legislation in Financial Times or another newspaper could be considered by some as “market commentary”. We do not feel Sponsor firms should be bound by or held responsible for not being aware of such “commentary”. We believe that reference to “practice” is sufficient in this case.
- Section A 3) on page 39 (second bullet point): We are concerned by the provision that a sponsor’s due and careful enquiry must include a review of drafts of any reports intended to be addressed to them and the challenge of “any” findings therein. We accept that a sponsor is required to review and test the findings of reporting accountants based on the sponsors’ understanding of the issuer and its financial position and processes, but there may be findings related to technical matters about which sponsors will have very little expertise. For example, a report may be made by a technical specialist in mining. In such cases, a sponsor should satisfy itself of the expertise of the reporting expert, but it would be unreasonable for a sponsor to challenge the expert’s view. Also, it would be helpful if the word “review” could be substituted for the word “challenge”. It may be that a review of a report from a reporting accountant could lead to a challenge of certain findings, but a challenge would not seem to be necessary where a

review of findings led to a conclusion that the findings were consistent with the information in the hands of the sponsor i.e. where there were no material discrepancies.

- Section A 3) on page 39 (third bullet point): The phrase “and ensuring that conclusions reached are appropriate given the circumstances” can be read in a number of ways e.g:
 - 1) as referring to the “conclusions” reached based on the expert reports (in which case we believe the phrase should be reworded to read: “considering as to whether, in the light of their own knowledge and experience of the issuer and its operating environment, the material conclusions reached in relation to the transaction, based on the expert reports, are appropriate given the circumstances”); or
 - 2) as referring to the conclusions made in the sponsor declaration.

It would be helpful if UKLA could clarify this point.

- Section A 3) on page 39 (fourth bullet point): it would be helpful if UKLA could identify the governing bodies referred to, at least by way of an example in the context of one industry. We understand that this is intended to capture leading, clearly recognised governing bodies. For example, we assume UKLA have in mind Bank for International Settlements pronouncement on capital adequacy and not a JORC comment relevant only to practicing geologists but greater clarity here would be welcome.
- Section A 5) on page 40, we suggest removing “shipping companies” as a specialist sector. While a specialism, so too are retail and mobile telephony. The prescribed sectors should be confined to areas with specialist listing rules. ESMA guidance on shipping companies does not, in our view, require the standing maintenance of internal competency although of course the (rare) shipping deal would attract the involvement of transportation specialists. We would also suggest that the word “may” is removed from the phrase “Specialist sectors may include”.
- With respect to Section B 3, we also make the above comments.

Q2. Do you agree that the Technical Note “Sponsors: Practical implications of competence requirements for sponsors and applicants”, as set out in Annex 1, provides sufficient guidance to support the amendments made to LR 8.6R?

With respect to UKLA/TN/7 () () [Practical Implications of Competence Requirements...], we have the following comments/suggestions:

- Page 42, for clarity reasons, rather than saying “essentially by reference to two specified competency sets”, it would be helpful to cross refer to the two specified sets (i.e. 8.6.19 R (2)(d) and (e)), or rephrase this sentence to say; “demonstrate an understanding of skills, knowledge and expertise specified in this rule, i.e. possesses technical knowledge of rules, guidance and ESMA publications directly relevant to the sponsor service and understands the responsibilities and obligations of the sponsor under LR 8 in relation to the sponsor service (as set out in LR 8.6.19 R (2))
- Section (a) would require sponsors to notify the UKLA of “any possible breach of LR 8.6.5R as soon as possible and in practice well before they foresee a potential breach of their obligations under 8.6.7R(i). It may not be possible to anticipate the sudden departure of a key person upon whom reliance is reasonably placed to meet the competence requirement. Sudden health changes/accidents can intervene. A clarification of the requirement would be helpful e.g. sponsors should inform the UKLA of a “likely breach” rather than “any possible breach”.
- Section (c) – The third bullet point on page 43 requires a sponsor to raise “any” failure by its client to comply with the LRs and DTRs. We would suggest that it reads “any known failure”.

- Section (g) – We accept that a sponsor will need to demonstrate that it has a reasonable basis to confirm that it continues to meet all criteria for approval including competence. However, there is a concern that the example suggests that the AN examples will require duplication. We suggest that the guidance indicate the concise representations will be acceptable so long as sufficient to establish the necessary qualifications.
- Section (n) – We would propose that the sponsor should be allowed to nominate a second key contact where there is a foreseeable need for a specialist in a particular area. Also where it is foreseeable that a key contact will be away on holiday, it is understood that any second key contact will be expected to be up to date and that the UKLA will be able to rely on representations made by the second key contact as being fully authorised.
- Section (p) – We would suggest that the UKLA should expect a sponsor to consider the person “appropriately qualified” rather than “best placed” to meet the requirements of 8.6.19R. This would be in line with the UKLA’s view that a sponsor should have flexibility in using its staff and resources.
- We understand the general need that the key contact is available between 7.00 am and 6.00 pm, to answer queries from the FCA, but given UKLA expectation that there is generally only one key contact per transaction, this poses significant practical difficulties. The key contact may not always be available during these hours during the course of the entire transaction. For example, the key contact may need to attend meetings (including the meetings with the issuer in relation to the underlying transaction or other transactions), or may be on long distance flights for such meetings. We assume that this is understood and permissible and that UKLA would not expect to be notified that on each occasion when the key contact is not available, unless the key contact expects UKLA to raise a query at a specific time (e.g. the key contact is in the midst of discussions with UKLA on a particular complex matter or where UKLA has indicated that it wishes to discuss a specific matter on the specific day). It would be helpful if the Technical Note clarifies this position. We would also suggest that that the guidance permits appointment of a day-to-day contact who, in the situations where the key contact is not be available (for the reasons as indicated above), can receive queries for the UKLA and if able, respond to such queries or refer / discuss such queries with the key contact.
- Section (q) – Where a sponsor loses key personnel and finds itself unable to meet the competence requirement in full, we propose that the sponsor be allowed to continue providing sponsor services to clients for whom it is already acting, subject to the proviso that it has the competent resources to do so and that the issuer agrees. Of course, in such cases, a sponsor should not be allowed to take on or solicit new business.

AFME contacts

William Ferrari, william.ferrari@afme.eu

+44 (0)20 7743 9320