30 April 2014

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By email (cp14-02@fca.org.uk) and by post

Consultation Paper 14/02 – Proposed amendments to the Listing Rules in relation to sponsor competence and other amendments to the Listing Rules and Prospectus Rules

Dear Ms Richardson

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on CP14/2.

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 enclose our detailed response to CP14/2 with this letter. We consider that it might be helpful for us to meet with Toby Wallis to discuss our response once you have had a chance to consider it, and we will be in touch for this purpose in due course.

We look forward to discussing our response with you.

Yours sincerely

William Ferrari

Managing Director, Corporate Finance

Association for Financial Markets in Europe

Consultation response

CP14/2 Proposed Amendments to the Listing Rules in relation to sponsor competence and other amendments to the Listing Rules and Prospectus Rules

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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. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

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

Overall observations

We agree that sponsors play an important role in the Premium Listing regime, both through their role in providing expert advice and guidance to premium listed issuers and applicants for Premium Listing, and in providing confirmations to the FCA in relation to the eligibility of an issuer for listing or its ability to fulfil related obligations. We therefore agree that it is of crucial importance that those delivering sponsor services are competent to do so. This requirement of competence is already reflected in LR 8.6.5R(2) and LR 8.6.7R – 8.6.9BG.

We agree that it is helpful for the FCA to increase the transparency of its expectations in relation to the competence of sponsors, particularly for new applicants seeking approval as sponsor. We also recognise the need for this additional clarity where it is helpful or necessary to assist the FCA in exercising its newly acquired powers such as the powers to suspend or limit a sponsor's approval.

However, it is also important to recognise that there is a balance to be struck between the need for transparency and clarity and the risk that overly prescriptive requirements in relation to competence have unintended and undesirable consequences. Whilst we therefore welcome the spirit of the proposals set out in CP14/2, we are concerned that, as currently formulated, certain of the proposals go too far.

Specifically, the proposals around assessing the competence of staff against a specified competence framework appear to be excessively prescriptive and risk imposing significant internal administrative burdens on sponsors which are not proportionate to the objectives

underlying the proposed changes, as articulated at §3.11 of CP14/2. We understand from discussions with the FCA that one of its primary concerns is to strengthen the criteria which new applicants must satisfy to demonstrate their competence, but the new requirements appear, on their face, to go significantly beyond the existing arrangements in place at most sponsor firms in terms of the level of detail and prescription indicated as being necessary. We consider that the FCA's objectives can be achieved in a more proportionate way, and make some specific suggestions in this regard below. The FCA should not seek to introduce unnecessary additional changes which risk imposing significant administrative burdens for little incremental benefit. Doing so will also serve to discourage new applicants and will be detrimental to the achievement of the FCA's competition objective.

We also have some concerns about the key contact proposals, and suggest below certain ways in which these could be clarified without compromising the FCA's aim of improving the quality of its interactions with sponsor firms.

Finally, we comment below on the FCA's request for views in relation to the joint sponsor regime. Our members are in favour of retaining the joint sponsor regime. We set out the reasons for this below, and also make some specific suggestions as to the way in which the joint sponsor regime could be enhanced to address the issues identified.

Questions

We set out below our responses to the individual questions raised in CP14/2.

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 (LR 8.6.7R(1))?

Q2: Do you agree that a timeframe of three years is appropriate (LR 8.6.7 R(1))?

Response to Q1 and Q2

As noted earlier, we agree that it is of crucial importance that those delivering sponsor services are competent to do so. This requirement of competence is already reflected in LR 8.6.5R(2) and LR 8.6.7R-8.6.9BG, but we agree that it is helpful for the FCA to increase the transparency of its expectations in relation to the competence of sponsors, particularly for new applicants seeking approval as sponsor.

In that context, we agree that prior relevant sponsor experience is one of the key considerations for measuring the competence of a sponsor firm.

We do not agree, however, that the only relevant experience for assessing competence should be the particular transactions involving submission of a sponsor declaration which are currently included within the proposed definition of "sponsor declaration" – i.e. in connection with a new applicant, a further issuance, the production of a circular or the transfer of listing. We consider that a broader range of sponsor experience is relevant to the holistic assessment of the competence of a sponsor firm.

Specifically, the appointment of a sponsor to investigate suspected breaches by an issuer; the provision of fair and reasonable confirmations in connection with related party transactions; the provision of a declaration in connection with a reverse takeover; the provision of confirmations in connection with a severe financial difficulty transaction; and the provision of advice in relation to a potential class 1 transaction or reverse takeover or related party transaction, are all examples of relevant sponsor experience.

We also note that the current annual notification form for sponsors also provides for details to be given of other corporate finance experience and other corporate broking experience (advice or guidance relating to the listing, disclosure or transparency rules)

falling outside the scope of sponsor services, and believe that the provision of such services can also be relevant to the overall assessment of sponsor competence.

We therefore suggest that the current text of LR 8.6.7R be amended as follows:

> "*A sponsor, or a person applying for approval as a sponsor, will not be competent to provide sponsor services unless:*
>
> *(1) it has a broad range of relevant experience and expertise in providing sponsor services and other relevant advice to listed companies and on the listing rules; 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*".

We also suggest that a new "E" evidential provision be inserted to supplement the amended LR 8.6.7R, as follows:

> *"(1) A sponsor or person applying for approval as a sponsor will be deemed to have complied with LR 8.6.7R(1) if 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.*
>
> *(2) It is open to a sponsor or person applying for approval as a sponsor to demonstrate to the FCA that it has complied with LR 8.6.7R(1) by reference to the provision of other sponsor services and/or other relevant advice to listed companies and/or regarding the listing, disclosure and transparency rules."*

Finally, we also suggest that the new definition of "sponsor declaration" should be extended to include declarations provided in the context of a reverse takeover under LR 8.4.17R.

AFME considers that the approach reflected in the above draft provisions will strike the right balance between the need for clarity around the FCA's expectations and the need for flexibility in assessing a firm's competence and taking account of a broader range of relevant experience. By way of example:

- a firm may have provided sponsor services within the last three years in relation to a transaction which would ordinarily have resulted in a "sponsor declaration" (as defined) being submitted, but the transaction did not proceed for commercial reasons. In such circumstances, the mere fact that the transaction did not proceed should not preclude a firm from being able to rely on the provision of those sponsor services as a relevant factor in demonstrating its competence to act as sponsor.

- a firm may have last submitted a "sponsor declaration" (as defined) four years ago, but continued to have provided a wide range of other sponsor services during the subsequent period, such that it remains competent to provide sponsor services.

We would also note that, as CP14/2 recognises, the proposed requirements in relation to the assessment of sponsor competence could be affected by any changes made to the joint sponsor regime. For example, if the joint sponsor regime were to be discontinued, the timeframes and range of relevant experience currently proposed by the FCA could well need to be revisited, given the more limited opportunities that relevant firms would have to submit sponsor declarations and the adverse impact that unduly restrictive criteria would have on competition in this sector.

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?

We agree with the proposed approach set out in LR 8.6.7AG, subject to the considerations set out in our responses to *Questions 1* and *2* above.

Q4: Do you agree with the proposed new guidance in LR 8.7.26AG?

We agree with the proposed new guidance in LR 8.7.26AG.

For the reasons set out in our responses to *Questions 1* and *2* above, however, we do not consider that the mere fact that a firm has failed to provide a sponsor declaration (as defined) within the last 3 years should result in the firm automatically being deemed to be no longer competent. In such circumstances, it would not be automatically necessary to make a notification under LR 8.7.8R, or apply for suspension (or a formal modification or dispensation from the requirement to demonstrate submission of a sponsor declaration within the last 3 years). Rather, the onus would be on the firm to make a holistic assessment of its competence, and to satisfy both itself and the FCA that it remains competent.

We expect that the annual notification process would in most cases contain the relevant information being relied upon to establish sponsor competence in the absence of a relevant sponsor declaration within the last 3 years, but we would be open to the FCA introducing a specific requirement to address the situation where the 3 year period expires between annual declarations, so as to require the firm to notify the FCA and provide details of the alternative evidence being relied upon to demonstrate competence.

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 LR 8.6.7R(2)?

We agree that these are all relevant factors to the assessment of sponsor competence.

Q6: Does the proposed approach in LR 8.6.12(9)R and the Technical Note as set out in Annex 1 provide sufficient flexibility for sponsors?

As indicated earlier, we do not agree with the approach set out in LR 8.6.12R(9) and have significant concerns about this aspect of the FCA's proposals.

Specifically, the proposals in relation to the adoption and application of a "competence framework" (as defined) to assess the competence of individual staff to provide sponsor services appear to be excessively prescriptive and risk imposing significant internal administrative burdens on sponsors which are not proportionate to the objectives underlying the proposed changes, as articulated at §3.11 of CP14/2.

We understand from discussions with the FCA that one of its primary concerns is to strengthen the criteria which new applicants must satisfy to demonstrate their competence. However the new requirements appear, on their face, to go significantly

beyond the existing arrangements in place at most sponsor firms in terms of the level of detail and prescription indicated as being necessary.

Although CP14/2 states that the intention behind this requirement is to provide firms with flexibility in relation to the way in which sponsor competence is assessed, the level of prescription indicated by the proposed amendments and associated guidance in the draft Technical Note and draft Procedural Note have the potential to create significant additional administrative burdens for firms. In particular:

- The proposed rules and draft Procedural Note contemplate the adoption of a new written competence framework which addresses a minimum of the 5 competency sets, and which is "complementary to any existing training and competence programmes currently in place within the sponsor firm", and against which individual staff will be assessed and the results documented (see also §4.21 of CP14/2 "*As in the proposed LR 8.6.7CG, 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 LR 8.6.16AR)*").
- This indicates an approach which goes significantly beyond the measures currently in place at existing sponsor firms, who generally satisfy themselves as to competence by conducting a holistic assessment of the overall competence of the firm and its staff, taking account of their overall experience of sponsor transactions and their collective skills and experience.
- Based on the draft Procedural Note, compliance with the new requirements is likely to require the creation of new detailed training, skills and experience logs for every relevant individual employee and a detailed assessment of each person against the defined competency requirements (see, for example, the reference in the Procedural Note to "assessments of staff against the competence frameworks" and the need to recognise (and document) which particular competency sets individual members of staff possess. Such logs are not maintained at such a detailed level for individual members of staff currently, and the proposed amendments are likely to result in significant administrative burdens for firms and individual members of staff.

As indicated earlier, our member firms that are approved to act as sponsor have existing systems and controls in place that allow them to assess the competence and performance of their employees holistically, and periodically review such systems and controls – including as part of their annual sponsor notification process. The CP14/2 proposals set out a level of formality and documentation around the competence framework and the assessment and vetting process which is significantly more burdensome than the current systems and controls our members have in place. If the amendments were designed simply to clarify to new applicants the standards being adhered to by existing sponsor firms, then the new arrangements appear to go significantly beyond the arrangements in place at existing firms – not in terms of the level of substantive competence present, but in terms of the prescription and formality around the way in which such competence is evidenced and documented.

As noted earlier, we consider that the FCA's objectives can be achieved in a more proportionate way. The FCA should not seek to introduce unnecessary additional changes which risk imposing significant administrative burdens for little incremental benefit. Doing so will, in our view, be detrimental to the achievement of the FCA's competition objective, not only in terms of disincentivising new applicants, but also potentially discouraging existing sponsor firms from continuing to provide sponsor services, given the increasing costs, burdens and risks associated with doing so.

We therefore suggest that LR 8.6.7C G is deleted, and that LR 8.6.12R(9) is replaced with "*effective systems and controls in place to ensure compliance with LR 8.6.7R(2)*", rather than specifically requiring the adoption and application of a new "*competence framework for the assessment of employees carrying out sponsor services*". Similarly, the definition of competence framework can be deleted and the new LR 8.6.20G amended so as to read "*by reference to the systems and controls referenced at LR 8.6.12(9)*" rather than "*by reference to the competence framework adopted by the sponsor*".

We also suggest that, if the FCA considered it necessary or appropriate, the FCA could include an additional guidance note, supplementing the revised text of LR 8.6.12(9) set out above, along the following lines: "*In developing systems and controls in place to ensure compliance with LR 8.6.7R(2), sponsors are expected to assess their competence by reference to the criteria set out in LR 8.6.7R(2), including the specific competency sets listed at LR 8.6.7R(2)(b)*".

The draft Technical Note could then be used to explain the FCA's expectations as to the areas of knowledge and competence expected by reference to each of the competency sets, but without imposing detailed prescriptive requirements regarding the adoption and documentation of a new "competence framework" as the mechanism for conducting and documenting the assessment undertaken by firms. In this context, the FCA may consider it useful to refer to the examples listed in the "knowledge element" column of the draft Technical Note as examples of the sorts of factors the FCA may expect to fall within the overall competency sets listed in the first column of the draft Technical Note. However, we are of the view that neither the rules nor the Technical and Procedural Notes should seek to be unduly rigid about precisely how the examples are utilised by firms in their regular reviews of overall sponsor competence. Such an approach will give firms the flexibility to develop their existing systems and controls in a manner which addresses the FCA's expectations but without imposing undue burdens, either on existing sponsor firms or new applicants.

If the FCA does not agree with this approach, we consider that a significant amount of further dialogue will be required between firms and the FCA regarding how the FCA's expectations in relation to the adoption and implementation of new competence frameworks are intended to operate in practice, as the draft Technical Note and draft Procedural Note do not adequately address this at present.

We would be pleased to discuss member firms' concerns about this aspect of the consultation further with the FCA if that would be helpful.

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 8.6.7R2(b)?

We agree that sponsor firms should have a sufficient number of staff who, taken as a whole, fulfil the competency sets identified at LR 8.6.7R2(b). It is important that the rules recognise that the overall assessment of competence is one that is undertaken at a firm-wide level, rather than at an individual level. Not every individual will necessarily meet all of the competency sets – for example, an industry/sector banker providing sectoral expertise will not necessarily be fully conversant with the FCA's procedural and process requirements. Similarly, the sufficiency of employees with relevant skills and experience should be applied proportionately, having regard to the factors listed in LR 8.6.7B G.

These factors are to some extent already recognised in the consultation paper (see §4.22 "*We accept that employees, considered individually, will be unlikely to meet all the 'competency sets' set out in the competence framework*") and the draft Procedural Note (paragraph (e) on page 44 of CP14/2), but it would be helpful if these points were also reflected in a guidance note in the Handbook itself.

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

We agree that the adequacy of resources obligations set out at LR 8.6.7R(2)(a) and (b) should apply on an ongoing basis, but recognising the need for this to be assessed flexibly and proportionately, having regard to the factors listed in LR 8.6.7B G.

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)?

We agree with the overall proposal, but suggest that this is achieved in a different manner. Specifically, we would suggest that the opening sentence be made a rule, with some slight amendments as follows: "*A sponsor or a person applying for approval as a sponsor must take reasonable care to establish and maintain appropriate systems and controls to ensure that it can provide sponsor services in accordance with LR 8*" (emphasis added). This modification (an obligation to take reasonable care, rather than a strict requirement) is consistent with other systems and controls obligations elsewhere in the FCA Handbook – e.g. Principle 3 of the FCA's Principles for Businesses and SYSC 3.1.1R.

We would then suggest that the remainder of LR 8.6.12 remains as guidance, e.g. as a new LR 8.6.12A G – for example: "*For the purposes of complying with LR 8.6.12R, a sponsor or a person applying for approval as a sponsor should take reasonable steps to ensure that its systems and controls include:…*" Such an approach is consistent with the approach taken in other parts of the FCA Handbook (e.g. SYSC 3), and balances the need for the FCA's expectations in relation to be systems and controls to be reflected in a rule with the need to ensure that there is sufficient flexibility around how that systems and controls obligation is fulfilled. This is also appropriate given that the list in (1)-(9) of the proposed LR 8.6.12R is a non-exhaustive list in any event.

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?

We do not agree that the amendment to introduce LR 8.6.12R(1A) is necessary - it does not, in our view, add anything to the general requirements already articulated at LR 8.6.12R(1), (2), (6), (7) and (9).

We agree with the amendments to LR 8.6.12R(6) and (7). We have suggested some amendments to the wording of paragraph LR 8.6.12R(9), in the context of our response to *Question 6*.

Q11: Do you agree with our proposals for key contacts as set out in LR 8.6.7R(2)(c), LR 8.6.7 DG, LR 8.6.19R and LR 8.6.20G?

We agree with the proposals set out in LR 8.6.7R(2)(c) and LR 8.6.7DG.

We also agree with the majority of the amendments to LR 8.6.19R, but consider that it requires clarification in a number of specific respects.

Specifically, although this appears to be the intention given LR 8.6.19R(2)(b), we should be grateful if the FCA would confirm that its intention is simply to require that a key contact is available in respect of queries from the FCA, rather than being the only person responsible for all contact with the FCA. If the FCA were to adopt the latter approach, it would in our view be unworkable, not least because of the additional requirements being proposed at (2)(c)-(f). For example, at most of the large sponsor firms, requirement (2)(c) would typically require the involvement of a senior employee in every material call, and it would not be necessary or practical for a senior employee to be in attendance on every single call between a sponsor firm and the FCA. It may be appropriate for more junior members of the team with detailed knowledge of a particular topic arising on a transaction to respond to certain of the FCA's queries in the first instance.

Secondly, we consider that the Handbook provisions should make it clear that it is open to sponsor firms to appoint more than one key contact on an single transaction, and that firms can comply with LR 8.6.19R(2) by ensuring that the key contacts collectively meet requirements (a) and (c)-(f), rather than a single individual key contact meeting the requirements. For example, a firm may need to appoint one key contact that has detailed knowledge of the issuer and the proposed transaction to answer queries from the FCA regarding the transaction, and another key contact that has detailed knowledge of the procedural requirements and processes of the FCA. Provided that both parties are available, when required, to attend calls with the FCA, we consider that the objectives of the FCA regarding enhancing the quality of its interactions with sponsor firms will be fulfilled.

Thirdly, we consider that each of requirements (d)-(f) should be amended so as to make clear that the knowledge expected of them is that which is relevant to the particular sponsor service for which they have been nominated as the key contact.

We therefore suggest amending LR 8.6.19R as follows:

- Amend (1) so as to read "….*the name and contact details of one or more key contacts within the sponsor who have overall responsibility for the matter and who are available to answer queries from the FCA regarding the matter…*";
- Amend (2) so as to read "*ensure that the key contact (or, if more than one key contact has been nominated, the key contacts collectively):….*"; and
- Amend (2)(d) so as to read "*…directly relevant to the sponsor service in question*"; and
- Amend (2)(e)-(f) so as to add "*which are relevant to provision by the sponsor of the sponsor service in question*" to the end of each of them.

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?

We agree with this proposal.

Q13: Do you agree with the proposal to assess competence to provide sponsor services to premium investment companies against a different competency framework?

We agree that there are some different considerations which are relevant to premium investment companies but not to premium listed commercial companies. The differences between the two frameworks set out in the Technical Note are not extensive, however, and we query whether consideration could be given to combining the two – e.g. by adding an additional column identifying any points of difference for investment companies – rather than creating an entirely separate framework document.

We also refer to our response to *Question 6* above regarding competence frameworks more generally, and the appropriate use to which the Technical Note is put.

Q14: Do you agree that the proposed Technical Note provides sufficient guidance to support the proposed amendments to LR 8.6R?

Please see our response to *Question 6* above. We consider that the Technical Note requires some revisions to reflect our comments regarding the competency sets proposed in the new Handbook provisions.

Q15: Do you agree that the proposed Procedural Note provides sufficient guidance to support the proposed amendments to LR 8.6R?

Please see our response to *Question 6* above. We consider that the Procedural Note requires substantial revision to reflect our earlier comments. We would be pleased to discuss the form and nature of these amendments with the FCA further, once the FCA has had an opportunity to consider those comments.

Q16: Do you agree with the proposed amendment to the definition of a class 1 circular?

We agree with the proposed amendment.

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'?

We agree with the proposed change.

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?

We do not have any comments on the minor changes referenced at §4.52 of CP14/2, save to query whether the FCA may wish to retain for the avoidance of doubt the information gathering powers in LR 8.7.1AR as regards new applicants. If it wishes to do so, we suggest that these are included in LR 8.6, given the amendments made to LR 8.1.1R and LR 8.1.1AR.

We have commented separately (see Q6, Q9, Q10 above) on certain of the other proposed changes to LR 8.6.12R.

Q19: Do you agree with the proposed changes to LR 11 Annex 1 8 (1) (b) and LR 8.2.1R (15)?

We agree with the proposed changes.

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?

We agree with this proposal.

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

We do not have any comments on these changes, save as follows:

- We note that no amendments appear to be proposed to LR 8.4.3R, which is listed in §4.55 of CP14/2.
- In light of our earlier comments in response to *Question 9*, we suggest that the amendments to the opening line of LR 8.6.13G are not necessary, and instead that the words "*in order to comply with LR 8.6.12R*" are inserted after "*maintain*".

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

We agree with these amendments. We have commented separately on the status of these provisions – see our response to *Question 9* above.

Q23: Do you agree with the proposed amendment to LR 8.7.16R and the deletion of LR 8.7.17R and LR 8.7.18R?

We agree with these amendments and deletions, as the delegation rules are not being currently used. We note also that LR 8.3.13G will also require deletion to reflect these proposed amendments.

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.

Our members are in support of retaining the joint sponsor regime. Whilst they recognise that there are aspects of the way in which the joint sponsor regime currently operates which could be improved, they consider that it has a number of advantages, both for issuers and in terms of ensuring that there is a broad range of firms which are competent

to provide sponsor services, thereby facilitating competition in the sponsor sector and advancing the FCA's competition objective. In particular:

- the joint sponsor regime has a number of important benefits for issuers – it enables them to benefit from a range of differing experiences, skill sets and expertise, working together for the issuer's benefit. Generally, the experience of our member firms who are approved as sponsors is that their issuer clients are also in favour of retaining the joint sponsor regime, and perceive this as adding advantages which cannot be secured simply through the appointment of multiple firms to act as financial advisers. We note this is consistent with the overall feedback obtained by the FCA and summarised at §5.11 of CP14/2;
- the joint sponsor regime serves as a mechanism for ensuring that there are multiple parties applying scrutiny to a transaction, through the due diligence and confirmation/declaration process, to ensure that it fulfils the standards required by LR 8; and
- in light of the FCA's proposals in relation to sponsor competence, discussed earlier, it would become much more difficult for firms to satisfy the relevant experience requirement if there could only ever be a single sponsor on any transaction. This would reduce the skills and experience of the existing sponsor community, and would also reduce the opportunities for new applicants, both of which would be detrimental to achievement of the FCA's competition objective.

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?

Our member firms are aware that there have, on occasion, been some issues with the way in which the joint sponsor regime has operated on particular transactions.

The principal concern of our members with the current joint sponsor regime remains the concept of having a "lead sponsor" in a joint sponsor scenario. The desire on the part of the largest, most active, sponsors only to act as the "lead sponsor" is a reflection of the fact that the FCA's current practice is only to deal with the "lead sponsor". In the context of increasing awareness amongst the sponsor community that they share equal responsibility for compliance with LR 8, whether or not they are the "lead sponsor", many firms are more reluctant to take on a role which does not involve them taking the primary contact role with the FCA.

We do not believe that sponsors are being pressured by fellow sponsors to form a consensus view with which they do not agree. In particular, the increased awareness on the part of all sponsors of the risk of a regulatory conflict of interest and the fact that each of them is equally responsible for fulfilling their obligations under LR 8.3 and LR 8.4 act as important and effective mitigants against this risk.

We believe that the "lead sponsor" issue referred to earlier and the other points identified in CP14/2 can be addressed through refinements of the existing joint sponsor regime:

- We suggest that a guidance provision be added after LR 8.3.14R, along the following lines: "*Where more than one sponsor has been appointed to provide sponsor services in relation to a transaction, the FCA expects the joint sponsors to cooperate with each other in relation to the provision of the sponsor services, including establishing such arrangements in relation to the exchange and sharing of relevant information and developments as are appropriate having regard to the nature of the particular sponsor service, so as to enable each of them to fulfil their obligations under LR 8.3*".
- We suggest that LR 8.5.3R, or the way in which it has been applied in practice, is amended so as to enable all sponsors, and not just the "lead sponsor", to

participate directly in discussions and communications with the FCA. We do not consider that this will result in material additional burdens on the FCA – in practice, the joint sponsors can ensure that representatives from each firm are able to attend material meetings or telephone discussions (or agree which firm will take the lead in less material discussions where it is unnecessary for all firms to participate), and both joint sponsors and the FCA can easily ensure that each of the joint sponsors are copied in on written communications between them and the FCA. Such an approach would reduce any risk of the FCA's views being miscommunicated by the "lead sponsor" to a fellow sponsor, and would also reduce delay, as all of the sponsor firms would be equally privy to all material discussions with the UKLA.

- We also suggest that LR 8.5.6R is amended so as to clarify that the obligation on issuers set out in this rule applies equally towards all sponsors where the issuer has appointed more than one sponsor.

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.

If the use of joint sponsors is no longer permitted, we consider that the FCA's proposals in relation to prior sponsor experience will need to be amended. We have addressed this issue in detail in our responses to *Questions 1, 2, 4, 6* and *24*. The extent of the amendments necessary would be reduced if the suggestions set out in our responses to those earlier questions are adopted by the FCA (e.g. so as to make the provision of a relevant sponsor declaration within 3 years an evidential provision rather than a rule, and giving firms the ability to demonstrate competence by reference to a broader range of sponsor experience), but the time period used and the utilisation of a 3 year time period even within the evidential provision are likely to require further consideration even if those amendments were to be accepted.

Q27: Can you identify any need to retain the provisions of LR 8.7.16R–18R and LR 8.3.13G relating to delegation of functions? If so, please explain your reasons.

Please see our response to *Question 23* above.

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?

We agree with this amendment.

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?

We consider that these new rules require further consideration and consultation by the FCA. As currently drafted, the rules risk undermining the carefully designed civil liability regime for prospectus liability currently set out within FSMA.

We understand that the Law Society and City of London Law Society Company Law Committees will be submitting a more detailed response in relation to this question.

Annex 2: Cost benefit analysis

Q30: Do you have any comments on the CBA?

We refer to our earlier comments, including in particular our response to *Question 6*. In our view, the FCA's CBA does not adequately recognise the additional administrative burdens and significant associated costs that are likely to result from the proposed amendments as currently drafted, including in particular the costs associated with

designing, implementing and maintaining an additional competence framework of the type proposed in CP14/2 and the associated draft Technical Note and draft Procedural Note.

We also believe that the FCA's proposals in this regard could, as currently drafted, have significant potential adverse impacts on competition – not only in terms of disincentivising new applicants, but also potentially discouraging existing sponsor firms from continuing to provide sponsor services, given the increasing costs, burdens and risks associated with doing so.

For the reasons set out earlier, we believe that the FCA can achieve its objectives and benefits with a more flexible model which permits firms to undertake a holistic assessment of the overall competency of the firm, and thereby avoids unnecessary cost and burden for firms.

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