

Feedback and policy statement on CP14/21 in relation to joint sponsor proposals

March 2015



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In this Policy Statement we report on the main issues arising from Consultation Paper 14/21 '*Feedback and Policy Statement on CP14/02, consultation on joint sponsors and call for views on sponsor conflicts*' and publish the final rules.

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Abbreviations used in this paper

CP	Consultation Paper
FCA	Financial Conduct Authority
LR	Listing Rules
UKLA	UK Listing Authority

1. Overview

Introduction

Why are we issuing this paper?

- 1.1** We are setting out our feedback, final rules and Technical Note in response to our consultation on joint sponsors set out in CP 14/21 'Feedback and Policy Statement on CP14/02**', consultation on joint sponsors and call for views on sponsor conflicts'.^{1,2}
- 1.2** We are retaining the joint sponsor regime and, to reflect the feedback received to CP14/02 and the proposals in CP14/21, we are making minor changes to LR 8 where they affect joint sponsors. We are also publishing the Technical Note that was included in CP14/21 subject to a minor change in response to feedback received.

Who does this affect?

- 1.3** This will interest:
- premium listed issuers or issuers considering a premium listing of their securities
 - firms and sponsors advising the issuers of premium listed securities
 - firms or persons investing in or dealing in premium listed securities
 - those responsible for submitting a prospectus to us for approval

Is this of interest to consumers?

- 1.4** This will be of interest to consumers who deal and invest in premium listed securities either directly or indirectly through institutions.

Context

- 1.5** We published CP14/02 in January 2014 and included a discussion paper outlining concerns with joint sponsor arrangements. All respondents were in favour of retaining the joint sponsor regime, so we included a consultation on some proposed changes to the Listing Rules (LR) in CP14/21. CP14/21 also consulted on a Technical Note, setting out formal guidance in relation to communications between the FCA and joint sponsors.

- 1.6** In CP14/21 we proposed to:

- a. Amend LR 8.5.3R so that the requirement for only one sponsor to take responsibility for contact with the FCA in respect of the sponsor service applies in respect of administrative arrangements only.

1 www.fca.org.uk/your-fca/documents/consultation-papers/cp14-21

2 www.fca.org.uk/your-fca/documents/consultation-papers/cp14-02

- b.** Introduce a new Technical Note to provide additional guidance to support the proposed amendments to LR 8.5.3R; the text of the proposed Technical Note was included in the consultation.
 - c.** Introduce new guidance in LR 8.3.15G in relation to joint sponsors co-operating with each other in relation to the sponsor service, including establishing arrangements for the sharing of information.
 - d.** Amend LR 8.3.14R so that the wording is consistent with other provisions in LR 8.

Summary of feedback and our responses

- 1.7** The consultation period closed on 30 December and in total we received 13 responses. Seven of those responded to the joint sponsor proposals. Three of these responses were from sponsor firms, one from an investor and three from trade associations.
- 1.8** The majority of respondents agreed with our proposal to amend LR 8.5.3R so that one sponsor is responsible for contact with the FCA as regards administrative arrangements. We are implementing this change but not introducing a requirement for a 'lead' and a 'junior' sponsor as suggested by a minority of respondents.
- 1.9** All respondents agreed that the proposed Technical Note provided sufficient guidance to support the proposed amendments to LR 8.5.3R. A query was raised about the practicalities of the new arrangement whereby one sponsor will be responsible for liaising with the FCA as regards administrative arrangements. As we discuss below, we believe LR 8.5.3R already deals with the concern raised. All respondents agreed with the proposed wording of LR 8.3.15G as regards co-operation between joint sponsors.
- 1.10** All respondents agreed to the proposed amendments to LR 8.3.14R (although one respondent suggested some minor drafting changes which we have decided not to adopt).
- 1.11** A summary of feedback received and our responses is set out in Chapter 2.

Next steps

- 1.12** We are proceeding as proposed in CP14/21. We are amending LR 8.5.3R and LR 8.3.14R and introducing new guidance in LR 8.3.15G. We are publishing the Technical Note, subject to a minor change to reflect feedback. The Technical Note and the changes to LR 8 will take effect from 1 April 2015.

2.

Summary of feedback and our responses

- 2.1** In this chapter we outline the feedback we received in response to the proposals on joint sponsors made in CP14/21 and set out our responses.

Overview of responses

- 2.2** CP14/21 contained feedback and a policy statement in relation to CP14/02 on sponsor competence and a call for views in relation to conflicts of interest, in addition to the consultation on joint sponsors. The consultation period in relation to joint sponsors closed on 30 December 2014 and in total we received seven responses from:
- three sponsor firms
 - one investor
 - three trade associations.
- 2.3** Respondents were supportive of our joint sponsor proposals, subject to some minor comments discussed below.

Feedback received

Q4: *Do you agree with our proposal to amend LR8.5.3R so that the requirement for only one sponsor to take responsibility for contact with the FCA in respect of the sponsor service applies in respect of administrative arrangements only?*

- 2.4** All respondents agreed in principle with this proposal apart from one who suggested that a publicly named individual at the firm be designated as 'lead sponsor' and be responsible for liaising with the UKLA throughout the sponsor service. The respondent believes this would increase accountability for the role as this individual would be responsible for the sponsor's work and would sign the sponsor declarations.

Our response

As noted in paragraph 4.13 of CP14/21, we do not consider it appropriate to introduce a formal concept of 'lead' and 'junior' sponsor given that under our rules (see LR 8.3.14R), a joint sponsor appointment does not relieve either of the appointed sponsors of their obligations under LR 8. Under these arrangements, joint sponsors are equally and severally liable and introducing a 'two-tier' regime

of ‘lead’ and ‘junior’ sponsor would potentially be misleading in relation to any apportionment of liability between the sponsors.

As regards having a publicly named individual at a firm designated as ‘lead sponsor’, the sponsor regime is firm-based and we do not authorise individuals to perform sponsor services. We therefore do not consider this suggestion to be appropriate and we are proceeding as proposed.

Q5: Do you agree that the proposed Technical Note (as set out in Annex 3) provides sufficient guidance to support the proposed amendments to LR8.5.3R?

- 2.5** All respondents agreed that the proposed Technical Note provided sufficient guidance to support our proposed amendments to LR8.5.3R, subject to the following:

- One respondent suggested that it would be helpful if we could send comment sheets and material, non-administrative correspondence to each joint sponsor at the same time, rather than sending it to the sponsor with responsibility for administrative matters for onward circulation.

Our response

We do not consider it unduly burdensome for the sponsor responsible for administrative matters to forward communications received from the FCA to the other joint sponsor(s). We do, however, attach importance to clarity on where responsibility for communication with the additional sponsors lies, and wish to avoid any ambiguity about whether the FCA or the sponsor with responsibility for administrative matters will circulate correspondence to the additional sponsors. We do not therefore intend to take forward this suggestion.

- One respondent suggested the Technical Note should allow for the scenario whereby a joint sponsor other than the one responsible for administrative matters may wish to initiate contact with the FCA in relation to non-administrative matters, particularly if urgent.

Our response

The Technical Note is drafted on the basis that proactive contact with the UKLA will be coordinated and made by the firm with responsibility for administrative matters and, in the vast majority of cases, we consider that this will be the most practical option. However, in relation to non-administrative matters, we recognise there may be occasions when it is appropriate for the other joint sponsor(s) to contact the UKLA. This may be in relation to an urgent non-administrative matter or in circumstances which apply to one sponsor alone and, in either case, the contact is necessary in order for that sponsor to discharge its duties under LR8.

We do not propose to make any changes to the Technical Note to deal with this point as we believe that it is already implicit in LR8.5.3R. In most situations,

it will be most appropriate and practical for the sponsor with administrative responsibility to arrange and coordinate calls with the FCA, and for discussions on material or technical matters to be held with both or all joint sponsors.

- Another respondent suggested that we clarify the Technical Note to make it clear that we may give feedback to the issuer or sponsors during a transaction if the joint sponsor arrangements are not working effectively. They further suggested it would be useful if we gave feedback to senior management/compliance promptly after any transaction has completed where we perceived that there had been issues with joint sponsor arrangements.

Our response

Since it is already our practice to provide feedback on performance to sponsors either during a transaction or after it has completed, we do not believe it is necessary to clarify this in the Technical Note. We do not normally give feedback directly to issuers since sponsors are, under LR8.3.2G, the main point of contact for us in relation to sponsor services. Despite this, where appropriate, we may communicate directly with an issuer and it is therefore possible that feedback on joint sponsor arrangements could be given directly to an issuer in certain circumstances.

Q6: Do you agree with the proposed new guidance in LR8.3.15G?

- 2.6** All respondents agreed with the wording of the proposed guidance and we are therefore proceeding as proposed.

Q7: Do you agree with the proposed amendments to LR8.3.14R?

- 2.7** All respondents agreed with the proposed amendments (subject to some minor drafting changes suggested by one respondent which we have decided not to adopt) and we are therefore proceeding as proposed.

Q8: Do you agree with the CBA?

- 2.8** All respondents agreed with the CBA.

Annex 1

List of non-confidential respondents

The Association for Financial Markets in Europe (AFME)

BDO

Law Society of England and Wales and City of London Law Society (Joint response)

Numis Securities Limited

The Quoted Companies Alliance (QCA)

UBS

USS Investment Management Limited (USS)

Appendix 1

Made rules (legal instrument)

LISTING RULES (SPONSORS) (AMENDMENT NO 6) INSTRUMENT 2015

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 88 (Sponsors);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 137A (General rule-making power);
 - (5) section 137T (General supplementary powers); and
 - (6) 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 1 April 2015.

Amendments to the FCA Handbook

- D. The Listing Rules sourcebook (LR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules (Sponsors) (Amendment No 6) Instrument 2015.

By order of the Board of the Financial Conduct Authority
24 March 2015

Annex

Amendments to the Listing Rules sourcebook (LR)

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

8.3 Role of a sponsor: general

...

Principles for sponsors: joint sponsors

- 8.3.14 R If a *listed company* or *applicant* appoints more than one *sponsor* to provide a ~~sponsor services in relation to a transaction service~~ 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~~.
- 8.3.15 G If a *listed company* or *applicant* appoints more than one *sponsor* to provide a *sponsor service*, the FCA expects the *sponsors* to co-operate with each other in relation to the *sponsor service*, including by establishing arrangements for the sharing of information as appropriate having regard to the *sponsor service*.

...

8.5 Responsibilities of listed companies

...

Listed company appoints more than one sponsor

- 8.5.3 R Where a *listed company* or *applicant* appoints more than one *sponsor* to provide a *sponsor service*, the *company* must:
- (1) ensure that ~~one of the sponsors that is appointed sponsor~~ takes primary responsibility for contact with the FCA in respect of ~~the entire application or transaction administrative arrangements for the sponsor service~~; and
 - (2) inform the FCA promptly, in writing, of the name and contact details of the *sponsor* taking responsibility under ~~LR 8.5.3R(1)~~.

Appendix 2

Technical Note

Title: Sponsors: Joint Sponsors –communications with the FCA

Reference: UKLA/TN/716.1

Date: 1 April 2015

Rules: LR 8.3.5R, LR 8.3.14R, LR 8.3.15G and LR 8.5.3R

Joint sponsors – one sponsor firm to have responsibility for contact with the FCA in respect of administrative arrangements and joint sponsors' participation in calls and meetings with the FCA

This TN sets out guidance in relation to communications between the FCA and joint sponsors.

Appointment of joint sponsors

Where a sponsor is required to be appointed by a listed company or applicant pursuant to LR 8.2.1R, the Listing Rules (LRs) currently permit a listed company 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 LR8.3.14R which states:

"If a *listed company or applicant* appoints more than one sponsor to provide a sponsor service 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 *LR 8*."

The guidance contained in LR8.3.15G sets out the FCA's expectation that joint sponsors co-operate with each other in relation to the provision of sponsor services. This states:

"If a *listed company or applicant* appoints more than one sponsor to provide a sponsor service, the FCA expects the sponsors to co-operate with each other in relation to the *sponsor service*, including by establishing arrangements for the sharing of information as appropriate having regard to the *sponsor service*."

Contact with the FCA in respect of administrative arrangements

LR8.5.3R requires that, where more than one sponsor is appointed, the listed company or applicant must ensure that one of the joint sponsors takes responsibility for contact with the FCA in respect of administrative arrangements for the sponsor service. In practice, therefore, where there are joint sponsors, the FCA will communicate on administrative matters with only one of the appointed sponsors, including sending comments sheets and other correspondence. We expect the sponsor which is taking responsibility for administrative contact to (amongst other things):

- arrange calls/meetings with the FCA as may be appropriate;
- submit draft documentation and completed comments sheets to the FCA; and
- circulate comments sheets and any other correspondence received from the FCA to the other appointed sponsors under the arrangements put in place pursuant to LR 8.3.15G.

Non-administrative calls/meetings with the FCA

By virtue of LR 8.5.3R, it is open to one or all of the appointed sponsors to participate in calls or meetings with the FCA where non-administrative matters will be discussed. However, multi-participant calls or meetings can raise a number of practical issues for the FCA. In order to ensure communications are effective and efficient, we would therefore expect each sponsor to consider the following:

- whether it will participate in the call or meeting;
- whether the nature of the call requires a key contact to be present;
- the number of representatives from a sponsor who will participate in the call or meeting; and
- whether its representatives will actively participate in the call or meeting or be in 'listening mode' only.

The FCA will arrange calls or meetings with joint sponsors through the sponsor which is responsible for the administrative arrangements. Where practical, the FCA will give an indication of calls or meetings where we consider it may be desirable for all joint sponsors to participate.

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