

UKLA Procedural Note

Additional powers to supervise sponsors

Ref: UKLA / PN / 910.2

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 An-
nex 1G; Depp 2
Annex 2G;
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, we expect the sponsor to 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 will issue

a Warning Notice, Decision Notice and Final Notice to the sponsor. Usually, the Final Notice will also be published on the FCA's website and 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, we advise the relevant firm to contact its Sponsor Supervision Relationship Manager, by telephone, at the earliest possible opportunity, to discuss its request; and to follow up this discussion with a written request, including the following information:

- the sponsor's or new applicant's name
- a clear and detailed explanation of the background and reasons for the request
- the date on which the sponsor's or new applicant's request should take effect
- the name and contact details of the person at the sponsor or new applicant 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 1G).

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 will issue a Warning Notice, 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 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 1G), 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 712.2 for guidance on the use of these powers).

Before using our section 88E powers, we must, under our statutory primacy obligation in section 234K FSMA, consider whether it would be more appropriate to use our powers under the Competition Act 1998 (CA98). If we consider that it would be more appropriate to proceed under CA98, we must do so rather than exercise our powers under section 88E.

A suspension of a sponsor's approval or a limitation or restriction of sponsor services imposed under section 88E 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 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.