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1 May 2014

Dear Ms Richardson,

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

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Finance Advisors Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. We believe that there are competition issues with the approach taken by the Financial Conduct Authority (FCA) in the proposed amendments to the Listing Rules in relation to sponsor competence. We believe that the new requirements make it harder and more onerous for new or small firms to become and remain sponsors, fail to promote effective competition and are not in the interest of consumer protection.

The FCA is creating a perhaps unfair set of rules by focusing exclusively on transactions that require a sponsor declaration in terms of a firm's qualification for the sponsor regime. By not considering takeovers or AIM flotation work as being equivalent to sponsor work, we believe that this will likely restrict the ability of advisory firms focused on the small and mid-size quoted companies to comply with the sponsor regime. The FCA's approach does not take into account the similarities of other corporate finance work to that of a sponsor. We believe that this is not good for market integrity and consumer protection in the sector.

Overall, we believe that other corporate finance work should be taken into account when determining sponsor competence.

Answers to specific questions

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 (LR8.6.7R(1))?

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

We would question whether it is appropriate to measure a sponsor's relevant experience only by reference to the number of sponsor declarations that have been submitted. There are proposed to be 18 instances when a sponsor must be appointed or guidance sought by a premium listed company, of which only five give rise to the requirement for a sponsor declaration to be filed. If an instance gives rise to a need for the expert services of a sponsor, we would question whether it is consistent or even fair not to recognise experience in providing such sponsor services.

While we understand the FCA's objective of defining competence in terms of recent experience to ensure that new applicants and existing sponsors are able to demonstrate prior relevant sponsor experience, we believe that it should be clearly disclosed how this proposal has taken into consideration the number of sponsor declarations made in the last three years, relative to the number of sponsors. As transactions on the market have been sparse throughout the financial crisis, we believe that this requirement could, *de facto*, limit the number of sponsors and could disproportionately affect smaller sponsor firms.

We question whether the FCA has conducted thorough background research and analysis on this matter, including the reasoning behind limiting the period for the submission of a sponsor declaration to three years. Overall, we strongly oppose a policy that would have the effect of limiting the number of sponsors and would question whether it is compatible with the FCA's statutory objective of promoting competition in financial markets.

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?

Q4: Do you agree with the proposed new guidance in LR8.7.26AG?

We welcome the consideration given to new applicants and their difficulty in entering the market; we appreciate that experience is a necessary component in the assessment of competency and this is how current rules are framed.

However, we are also concerned that the proposals effectively discount corporate finance experience and expertise, which should be considered as relevant, because it bears similarity in principal and practice to the Listing Rules regime. In particular, the Takeover Code and the AIM Rules bear strong similarities to the principles and practice of the Listing Rules. We do not understand on what basis the FCA has concluded that the role of sponsor bears no similarity whatsoever with the role of acting as financial adviser under Rule 3 of the Takeover Code or nominated adviser under the AIM Rules. Again, we would question whether this barrier to entry is consistent with the FCA's statutory competition objective.

Specifically, we believe that LR8.6.7AG should be rephrased, as it is acknowledged elsewhere in the paper that the person submitting the sponsor declaration (i.e. the senior person signing the document) is not necessarily the person who has done all the necessary work to satisfy sponsor services requirements. We

therefore suggest that "*whether any of the person's employees … have submitted*" is rephrased appropriately. This point is recognised in the Procedural Note where it is stated that "*individuals completing the form on behalf of the sponsor may not have carried out any of the sponsor service"*.

Having the possibility of recruiting employees to satisfy competency requirements is, in theory, an opportunity to establish a level playing field; however, we believe that it is still possible that small and mid-size firms may struggle to recruit potential employees that have provided a sponsor declaration within the last three years, as the number of sponsor declarations over that timeframe, we suspect, will have been limited.

As stated above, we believe that the overall changes proposed to the rules make it harder and more onerous for new or smaller firms to become or remain sponsors and to compete fairly in the sector.

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 LR8.6.7R(2)?

Q6: Does the proposed approach in LR 8.6.12(19)R and the Technical Note as set out in Annex 1 provide sufficient flexibility for sponsors?

We believe that these changes will benefit larger organisations and prevent smaller firms from becoming sponsors, and existing smaller firms will have difficulty in effecting the new rules as framed. Smaller firms do not have large compliance departments able to take the burden of monitoring the large lists of competencies, nor do they have staff dedicated to the training function. In addition, we query whether the FCA has quality assessed existing sponsor relevant training available (generally, case studies through law firms, not dealing, for example, with matters as how to deal with the FCA) or where there may be gaps in external training (for example, covering ESMA publications). Smaller firms are likely to go externally to secure training, rather than produce courses in-house.

The requirement for specialist industry sector understanding would potentially be inflexible, anti-competitive and create uncertainty should firms wish to enter into a new sector. The FCA should consult more clearly on which sectors this may apply to, although we acknowledge that certain sectors are mentioned in the paper and proposed Technical Note. Overall, the effect may be to limit the activity of any "generalist" sponsor firms and force them into specialisations. Firms undertaking investment company sponsor work and commercial company work will also find the dual list provided by the FCA to be confusing. We believe it would be best to have one main "commercial company competence framework" in the proposed Technical Note, with additional points applying to the investment company separately shown, for clarity.

Further, the FCA states that firms need to look on a transactional basis as to its competency framework. This is likely to create much administrative burden and be inflexible.

While we understand that the competency sets a sponsor must demonstrate in order to be competent need to define a high standard, some of our members question the emphasis on a sponsor having experience of liaising with the FCA/UKLA. The principles for sponsors are to deal with the FCA in an open and co-operative manner and undue emphasis on procedural issues does not aid this.

As mentioned before, the majority of sponsor services will not qualify for the assessment of competence. It would be useful to have a clear list of sponsor functions in a table, with an indication of how each would be viewed by the FCA with regard to sponsor competences.

It is further difficult to understand how the competency sets can be embedded in "*systems and controls*" beyond requiring training and assessing staff, or why any sponsor would adopt a different competence framework, other than adopting wholesale the FCA's view – it minimises its risk that the FCA will rule its own framework is insufficient.

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 8.6.7R 2(b)?

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

See our responses to previous questions with regard to the competency sets. However, in general, we agree that a sponsor will require sufficient staff and resources on an ongoing basis.

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)?

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 agree that the FCA should put in rules against systems and controls as opposed to guidance. However, with regard to (1A) requiring effective systems and controls, "*to ensure that … employees with management responsibilities…. understand and apply the requirements of LR8*", we are not clear what is envisaged or the purpose of this rule. Systems and controls cannot "ensure" that employees apply requirements unless there is constant monitoring throughout a transaction, which is not practicable or possible.

Mandatory training would seem to be required to meet this provision, but it does not fit with the practical reality that those with management responsibilities may not be those which meet the competency requirements, nor understand how to apply the requirements day-to-day. In addition, it should be clear which management figures are included in this – for example, is this confined to relatively senior figures within the sponsor function and the Head of Corporate Finance and /or the Head of Corporate?

Q11: Do you agree with our proposals for key contacts as set out in LR 8.6.7R(2)(c), LR8.6.7 DG, LR8.6.19R and LR8.6.20G?

We endorse the view that firms are able to assess the competence and number of key contacts that it requires in order to fulfil its sponsor obligations.

The FCA / UKLA should consider regulating sponsors more actively, perhaps giving informal feedback at the end of the sponsor service to deal with the stated "*general decline in the quality of [FCA] interactions with sponsors*". We believe that sponsors could also give constructive, confidential feedback on UKLA staff performance. This may facilitate better working practices between the FCA / UKLA and sponsors.

We agree that those dealing with the FCA should have the authority to make representations on behalf of sponsors and that sponsors should identify these individuals. However, within LR8.6.19R(2)(e), as stated above, we question the emphasis on a sponsor having experience of liaising with the FCA/UKLA and whether this will bring any added value to the work of the sponsor which could not be dealt with by having competent staff able to read the contents of the Knowledge Base.

Again, we do not understand on what basis the FCA has concluded that liaising with the UKLA bears no similarity whatsoever with liaison with the Takeover Panel or AIM Regulation. We would question whether this barrier to entry is consistent with the FCA's statutory competition objective.

LR8.6.19(2)(b) requires some thought as a key contact being mandated to be available to answer questions between 7a.m. and 6p.m. for the duration of a transaction does not seem realistic and does not cater for holidays, etc.. We assume that the FCA would be unable to give the same guarantee on the UKLA staff dealing with a matter. We believe this should be rephrased to require members of a transaction team to be generally available, with access to a key contact of the firm in the absence of the specific key contact for a matter.

LR8.6.20G should also refer to "*key contacts*" rather than "*a key contact*" as the firm should not be required to re-perform its assessment of competency for individuals in respect of each transaction, but overall as part of its competency framework.

We welcome that the FCA is to review the need for nominated callers as this introduces another layer of administration which we think is difficult to manage for both the FCA and sponsors.

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 the proposal to consider competency for premium investment companies to a different framework and that sponsors can be approved solely for premium investment companies. We believe that this would be a positive move to introduce more sponsors into this specialist area. However, we would prefer more public detail before the rules are finalised on why this sector is singled out in particular, perhaps going through the points in the specific competency requirements (e.g. the FCA believe that the working capital assessment is essentially the same but being specific as to why "*the underlying work will be different*", and so on).

We believe that the FCA should consider whether premium trading companies might also be broken into different sub-sectors – i.e. consideration given to extractive or technology industries as a specialist sector.

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

Please refer to our comments above. We believe that this is appropriate if further information is published, but also that this should be presented as an "add on" to the core competencies for premium listed commercial companies, highlighting additional requirements for knowledge and also areas which are not as key for this specific sector.

We believe that greater clarity would be obtained if one framework was maintained that simply divided section five with a sub-section for trading companies and a sub-section for investment companies that collected all the additional considerations for such companies in one place, in much the same way as the Listing Rules are set out.

Q14: Do you agree that the proposed Technical Note provides sufficient guidance to support the proposed amendments to LR8.6R?

Please refer to our comments above. We do not understand why sponsors would not simply adopt the competency framework proposed by the FCA to assess staff, as it would seem a risk to them to amend or omit any items, and a burden to add any additional areas given the potential extra administrative burden of the proposed rules with regard to competency assessment.

In terms of specific wording, the "*Knowledge element*" column sometimes requires "*knowledge*" and sometimes "*working knowledge*". This should be clarified – and goes back to our comments above that there is too much emphasis on actual experience of liaising with the FCA / UKLA. As long as an individual understands how this should be approached, actual experience may not be necessary.

Q15: Do you agree that the proposed Procedural Note provides sufficient guidance to support the proposed amendments to LR8.6R?

We refer to our comments under Q14 and elsewhere. In particular, it seems odd for a key contact to be assessed as only satisfying three specific competency sets and very prescriptive to require firms to apply the sets in such a binary way. If a firm has competency overall, then individuals should be able to work on sponsor transactions if they are assessed as senior enough and competent, as they are able to consult with colleagues in any areas where they are lacking knowledge.

We would also note that there is reference to "*existing training and competence programmes currently in place within the sponsor firm*". The FCA should note that smaller firms will not have formal, well-resourced programmes administered by a large compliance function or a dedicated training department. The competency frameworks proposed are much more prescriptive and will require much more resource to "mark individuals against", and then on an ongoing basis, to mark the firm against.

Other points raised by our members on the Procedural Note include:

- The FCA should be more transparent in this note as to which sponsor declarations are included and excluded from the definition in simple language, rather than by reference to LR paragraphs;
- The note should be clearer on what is meant by "*more senior position*" on key contacts – we would expect that this would be up to the judgement of the sponsor, particularly as individuals who are good executors (and therefore would perhaps be key contacts) may not be very senior as criteria for promotion may include other criteria; and
- The issue of failed transactions should be addressed – at times all the work may have been done towards a sponsor declaration, but at the last moment, the deal does not proceed.

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

Yes, it seems sensible to capture circulars relating to reverse takeovers.

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'?

Yes, we agree with the proposed change.

Q18: Do you have any comments about 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?

No, we do not have any comments on the minor changes to LR 8.1.1R, LR 8.1.1AR, LR 8.7.1AR and LR 8.7.8R.

Specifically with regards to LR 8.6.12R (1A), as stated above, employees with management responsibilities for the provision of sponsor services may not be those applying them, or with the best understanding of LR8 in detail. In particular, we do not understand which specific systems and controls can be put in place in addition to the general systems and controls for the firm overall, apart from targeted training.

Please refer to Q21 below for our comments on LR 8.6.12R.

Q19: Do you agree with the proposed changes to LR 11 Annex 1 8 (1) (b) and LR8.2.1R (15)?

Yes, 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?

Yes, we agree with the proposed change.

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

No, we do not have any comments on these minor changes.

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

Yes, we agree with the proposed change. However, we believe that LR 8.6.12 R(7) should refer to "sponsor services" in general, rather than "*each sponsor service*" – the latter implying that differing and specific systems and controls are needed by type of sponsor service.

Q23: Do you agree with the proposed amendment to LR8.7.16R and the deletion of LR 8.7.17R and LR 8.7.18R?

Yes, we agree with these amendments and the removal of the ability to use agents by 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.

We are in favour of maintaining the joint sponsors regime, which we believe provides more opportunities for smaller sponsor firms to participate in transactions and therefore increases competition in the sector. Notwithstanding that joint sponsors are not used by many small and mid-size quoted companies, we

believe that companies should have the flexibility to appoint joint sponsors. We agree with the consultation paper's analysis of the benefits of the joint sponsor regime, also noting that it is a good way to encourage continuing market best practice amongst sponsors and positive knowledge transfer.

However, with regard to the potential issues cited, we believe many of these could be addressed by proper planning and agreement of how sponsors will be working together to ensure the best outcome for the client and to fulfil regulatory requirements.

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?

We would like to see a separate guidance note addressing the issues cited and the FCA to reserve the right to include record keeping with regard to planning documentation produced at an early stage of the transaction to facilitate the two firms working together, including how key workstreams will be managed and information flows. A firm could lead a key workflow, but secondary review would come from the other firm, which should be prepared to endorse the work done or otherwise ensure corrective action is taken so that they can endorse the work.

However, we would comment that many of the issues cited are features not of the joint sponsor regime in particular, but in general on transactions. For example, a sponsor could allow their view or opinion to be overshadowed by a dominant client, broker or legal adviser, or any transaction with a large number of individuals (from the client, other advisers, or within a sponsor firm itself) risks disclosures being "*drafted by committee*".

If sponsors, joint or not, have effective systems and controls, are accountable to, and are effectively regulated by, the FCA, this is supportive to the FCA's consumer protection and market integrity operational objectives. This should also remove concerns raised in the paper by investor bodies.

Q26: If the use of joint sponsors is no longer permitted, do you think the proposals in this consultation paper about 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.

We would comment that if the supply of sponsor services is further restricted by removing the joint sponsor provisions, particularly if market conditions change, it may become increasingly difficult for sponsors to demonstrate competency. Larger, more successful, better resourced sponsors may dominate the market for sponsor services. The FCA should consider separately in this context whether the rules proposed in the consultation need to be made more flexible, and include other competency frameworks inclusive of more diverse corporate finance roles.

Q27: Can you identify any need to retain the provisions of LR8.7.16R – 18R and LR8.3.13R relating to delegation of functions? If so, please explain your reasons.

Please see our response to Q23. The retention or deletion of LR8.3.13R (sponsors acting for another sponsor) is not properly discussed in the consultation paper. We would suggest it is not deleted as it preserves flexibility until this is consulted on and its merits (or not) properly considered.

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?

Yes, we agree with the proposed change. We would only query whether it is more protective to consumers to focus companies on the fact that they will have to produce a 28-day-circular with an updated working capital statement. Otherwise, this does not appear to be properly considered on a combined basis for such transactions. If a company has issues in producing this circular, it should trigger a dialogue with FCA so that investor protection can be considered or other action taken, albeit that the shareholders cannot then withdraw consent to the takeover.

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 can see the rationale for this proposal. Presumably, if introduced, then the need for Form A on submission of a prospectus for approval would be eliminated, which we would welcome.

Q30: Do you have any comments on the cost benefit analysis (CBA)?

We believe that clearer and more comprehensive research and analysis data should have been presented by the FCA in its Cost Benefit Analysis in order to justify the proposed changes. For example, it would have been helpful for the FCA to publish research on the number of sponsor declarations in the last three years in order to quantify how many of the current sponsor firms would qualify for the proposed competence requirement.

We also refer to the comments above about smaller firms and their limited resources with regard to retaining compliance / training staff and less formal competency frameworks to adapt. We also believe that practitioners are likely to have to devote more resource to demonstrating competency. We therefore do not agree that the costs incurred by firms will be “minimal”; this added cost is most likely to be passed onto issuers by sponsor firms, increasing the cost of capital.

While we appreciate that the FCA considers its approach flexible, stakeholders are not likely to regard it as such. The competency frameworks are comprehensive, and as discussed above, firms are not likely to wish to adapt these as they may perceive additional risk in doing so. They are likely to adopt these as stated, which may be of benefit to the regime overall, but this is not properly considered as an outcome in the consultation paper, with attendant costs and benefits set out, as would be appropriate.

In general, we do not think that the proposed changes are clear, given the queries raised in our response, or proportionate and, as noted above, believe that existing smaller sponsor firms and potential new entrants may struggle to meet the new competences.

Yours sincerely,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Corporate Finance Advisors Expert Group

Samantha Harrison (Chairman)	RFC Ambrian Limited
David Foreman/Mark Percy	Cantor Fitzgerald Europe
Robert Darwin/Maegen Morrison	Hogan Lovells International LLP
Charles Simpson	Saffery Champness
Neil Baldwin/Mark Brady	SPARK Advisory Partners
Leighton Thomas	PricewaterhouseCoopers LLP
Richard Metcalfe	Mazars LLP
Simon Charles/David Bennett	Marriott Harrison
Sean Geraghty	Dechert
Richard Crawley	Liberum Capital Ltd
Tim Bird	Field Fisher Waterhouse
James Green	K & L Gates LLP
Nicholas Narraway	Moorhead James
Martin Finnegan	Causeway Law
Lesley Gregory	Memery Crystal LLP
Chris Searle	BDO LLP
Stuart Andrews	finnCap
Azhic Basirov	Smith & Williamson Limited
Richard Evans	Strand Hanson Limited
Philip Secrett	Grant Thornton UK LLP
Chris Hardie	Arden Partners PLC
Dalia Joseph	Oriel Securities Limited
Laurence Sacker	UHY Hacker Young
Jonathan King	Osborne Clarke
Nick Naylor	Allenby Capital Ltd
Jonathan Morris	Bates Wells & Braithwaite LLP
Daniel Harris	Peel Hunt plc