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Primary Market Technical Note

Additional powers to supervise and discipline sponsors

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules and Guidance

UKLR 24.4; UKLR 24.4.7R; UKLR 24.4.8G; UKLR24.5.4R; UKLR 24.5.5G; UKLR 24.5.17G; UKLR 24.5.22R; UKLR 24.5.23G; UKLR 24.5.25G; DEPP 2.5.11AG; DEPP 2.5.11BG; DEPP 2 Annex1; DEPP2 Annex 2; DEPP 4

Chapter 24 of the UK Listing Rules reflects additional statutory powers under section 88 FSMA, which allow:

- the restriction or limitation of services a sponsor may perform, both on and post-approval (s 88(3) FSMA)
- a sponsor to request its approval to be suspended (s 88(3) FSMA)

- the suspension of a sponsor's approval or the imposition of a limitation or restriction on the services a sponsor may perform, for such a period as the FCA considers appropriate, in order to advance one or more of the FCA's operational objectives (s 88E FSMA), and
- the FCA to fine, a sponsor and/or suspend, restrict or limit the services performed by a sponsor for a maximum period of 12 months and/or publicly censure a sponsor if it has contravened the UK Listing Rules relating to sponsors (s 88A FSMA).

A. Restrictions or limitations on sponsor services (s88(3) FSMA)

General

We have the power to restrict or limit the services a sponsor provides both at the time of a sponsor's approval or at any time thereafter (s 88(3)(e) FSMA, UKLR 24.4.7R and UKLR 24.5.4R).

The ability to restrict or limit sponsor services adds flexibility to the sponsor regime by allowing us to approve a new applicant or maintain a sponsor's approval where it might not meet the sponsor approval criteria under UKLR 24.4. For example, where we consider that a new applicant or sponsor does not have the relevant experience or appropriate systems and controls to provide the complete range of sponsor services it wishes to undertake, rather than refusing a sponsor application or seeking a sponsor's cancellation, we can limit or restrict the scope of sponsor services that it provides. For the sake of clarity, we do not intend to restrict a sponsor's ability to provide sponsor services on a transaction-by-transaction basis but on a more generic basis, such as, but not limited to, by type of issuer (eg, listed closed-ended investment funds).

Where a restriction or limitation of a sponsor's services is requested or otherwise agreed by an applicant for sponsor approval or sponsor, or where an applicant for sponsor approval or sponsor does not consent to the restriction or limitation, the statutory notice procedure will be undertaken by FCA staff under executive procedures (as set out in DEPP 4 (DEPP 2.5.11AG and DEPP 2 Annex 1)).

On approval

UKLR 24.4.7R is supplemented by guidance under UKLR 24.4.8G regarding the circumstances that the FCA will have regard to when considering whether to impose restrictions or limitations on a sponsor's services at the time of a sponsor's approval.

We may seek to impose a restriction or limitation where the FCA considers that an applicant does not demonstrate adequate relevant experience and expertise in relation to the provision of the complete range of sponsor services.

For instance, we are likely to consider these types of restrictions or limitations appropriate where an applicant has employees that can demonstrate relevant experience and expertise of providing sponsor services solely to listed closed-ended investment funds. The applicant may request, or have imposed on its approval, a limitation that enables it to provide sponsor services to listed closed-ended investment funds subject to UKLR 11, but restricts it from providing sponsor services to listed commercial companies.

Post-approval

Guidance is provided at UKLR 24.5.5G, in relation to UKLR 24.5.4R, describing the circumstances that we will have regard to when considering whether to impose restrictions or limitations on the services a sponsor can provide at any time after its approval.

For instance, we are likely to consider restricting or limiting the services a sponsor may provide when concerns come to our attention, via the usual supervisory processes, that a sponsor does not demonstrate the adequate relevant experience and expertise in relation to the provision of the complete range of sponsor services it is seeking to provide. For example, we may seek to restrict a sponsor that has predominantly provided sponsor services solely to listed closed-ended investment funds from providing sponsor services to listed commercial companies.

Further, we may seek to restrict or limit the services a sponsor provides where we consider the sponsor's systems and controls are not appropriate in light of the factors set out in UKLR 24.4.22G. It is possible that, where we believe that a sponsor is not able to comply with UKLR 24.4.5R(3), in light of guidance set out in UKLR 24.4.22G, we may seek to restrict or limit the services it may provide.

Withdrawing a restriction or limitation

Under section 88(8)(d) FSMA, a sponsor may apply for the withdrawal or variation of a limitation or restriction to its sponsor services.

We are required to follow a statutory notice procedure in this regard (as set out in DEPP 2.5.11B G and DEPP 2 Annex 1). This statutory notice procedure will be carried out by FCA staff under executive procedures as set out in DEPP 4.

B. Suspension of a sponsor's approval at the sponsor's request (s88(3) FSMA)

General

Where a sponsor is unable to meet the sponsor approval criteria, the sponsor may request a cancellation of its approval (UKLR 24.5.19G(1)). However, where a sponsor considers that this is a short-term concern and, given the irrevocable nature of a cancellation and the associated administrative and financial costs of re-applying for approval, a sponsor may prefer to request a suspension of its approval instead (s 88(3)(f) FSMA, UKLR 24.5.24G). This may provide the sponsor with the necessary time to take remedial action to ensure that it can comply with the sponsor approval criteria in the future.

Requesting a suspension

A suspension request must be in writing and include the information set out in UKLR 24.5.22R. The suspension request will be considered by FCA staff and where the FCA accepts the request, the sponsor will be notified accordingly. Where we are proposing to refuse the request, FCA staff are required to undertake a statutory notice procedure under executive procedures (DEPP 2 Annex 1).

Circumstances where a sponsor might choose to request a suspension of its approval include, but are not limited to where it is unable to meet the sponsor approval criteria (set out in UKLR 24.4.5R) because it is undergoing a re-organisation or other corporate event that introduces uncertainty about its future or where there is an unplanned,

temporary or permanent loss of experienced members of staff impacting the sponsor's systems and controls for sponsor services¹

We provide guidance at UKLR 24.5.24G in relation to requests for suspension. A sponsor may consider making such a request where it is having ongoing discussion with us about the relevant concern and is undertaking remedial action to be able to satisfy the ongoing criteria for approval. Given that a sponsor which is suspended will be working towards having the suspension lifted following remedial action, we will typically place a time limit on the period of suspension; this will take into account the concern, the likelihood of remedying it and how long it will take to do this. As an example, where a sponsor decides to recruit staff to ensure it is able to meet the competence criteria in UKLR 24.4.12R(2), we will expect to discuss with the sponsor what steps it will take, and what would be a reasonable period of time within which, to achieve this. UKLR 24.5.24G does not specify a maximum period for a suspension at a sponsor's request but, in practice, we are likely to consider a period of no more than six months to be appropriate, although this depends on the circumstances.

Requesting a suspension of its approval can give a sponsor a useful grace period in which to carry out remedial action to ensure it is now compliant with the sponsor approval criteria. Of course, while suspended, a sponsor will be unable to provide sponsor services. So, before making such a request, sponsors should carefully consider the impact of a period of suspension on their ability to comply with the approval criteria and, in particular, the competence criteria in UKLR 24.4.12R.

Withdrawing a suspension

Should a sponsor decide not to progress with an application for a suspension of its approval, it may apply to withdraw a suspension request at any time before the suspension takes effect (UKLR 24.5.23G). A sponsor may also apply to withdraw the suspension, under section 88(8)(c) FSMA, in circumstances where a suspension has previously been agreed. In considering whether to apply, we suggest that the sponsor is comfortable it has taken all necessary remedial steps to comply with the sponsor approval criteria. Should we propose to refuse a sponsor's application to withdraw an existing

¹ Primary Market/TN/709 highlights the need for sponsors to consider whether their resources are sufficient to carry out sponsor services in accordance with UKLR 24.

suspension, FCA staff, under executive procedures as set out in DEPP 4, must follow a statutory notice procedure (DEPP 2 Annex 1).

C. Suspensions, limitations and restrictions of sponsor services to advance the FCA's operational objectives (s88E FSMA)

The FCA may suspend a sponsor's approval or impose restrictions or limitations on the services a sponsor can provide, for such a time that it considers appropriate, if we consider it desirable to do so to advance one or more of our operational objectives (under section 88E FSMA and as explained in UKLR 24.5.25G). Our operational objectives are set out in sections 1B(3) and 1C to 1EB FSMA. For example, we may intervene on the basis that we consider that consumer protection or the integrity of the UK financial system may be jeopardised if the sponsor continues to provide sponsor services in a particular set of circumstances.

Before using our section 88E powers, we must consider, under our statutory primacy obligation in section 234K FSMA, 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.

We expect to use the section 88E power in circumstances where we need to act urgently to prevent a sponsor from either agreeing or continuing to provide sponsor services on a particular transaction (or, potentially, all transactions). Before using this power, we are likely to have made our concerns clear to the sponsor already, through our usual supervisory processes.

Whilst situations where we might intervene in this way are likely to be rare, circumstances where we might do so include, but are not limited to, where:

- a sponsor seeks to accept a mandate for which we consider they are unable to meet the sponsor competence requirements;
- we have serious concerns that a sponsor's systems and controls are not appropriate to support the proposed sponsor service;
- there is an unplanned, temporary or permanent loss of experienced member(s) of sponsor staff;

- we take the view that the sponsor is unable to manage an actual or perceived conflict of interest, or
- the sponsor is in financial distress and about to enter insolvency proceedings.

To effect a suspension, limitation or restriction in such circumstances, FCA staff, under executive procedures as set out in DEPP 4, must follow a statutory notice procedure (DEPP 2 Annex 2). FSMA does not limit the length of time the restriction, limitation

or suspension can be imposed; however, as with all of the additional sponsor powers the subject of this note, the FCA is required to act reasonably and proportionately in the circumstances. Under section 88E FSMA, the FCA may also withdraw or vary a limitation, restriction or suspension of this nature after it has taken effect.

D. Disciplinary Powers (s88A FSMA)

Section 88A FSMA gives us the power to impose a range of disciplinary sanctions on sponsors, in the event of a breach of the UK Listing Rules, including:

- public censure;
- suspending the approval of a sponsor (for a period not exceeding 12 months);
- imposing limitations or restrictions on the provision of sponsor services (for a period not exceeding 12 months), and/or
- imposing financial penalties.

Guidance on this is included in UKLR 24.5.17G and DEPP 2 Annex 1.