



The Law
Society

**CITY OF LONDON LAW SOCIETY AND LAW SOCIETY RESPONSE:
FCA CONSULTATION PAPER 23/31 - PRIMARY MARKETS
EFFECTIVENESS REVIEW: FEEDBACK TO CP 23/10 AND DETAILED
PROPOSALS FOR LISTING RULES REFORMS – SPONSOR
COMPETENCE**

16 FEBRUARY 2024



Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (the **CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to equity capital markets.

FOR FURTHER INFORMATION PLEASE CONTACT:

Nicholas Holmes
Ashurst LLP
nicholas.holmes@ashurst.com

Q55: Do you agree with our proposed changes to sponsor competence requirements?

The group is broadly supportive of the proposals relating to sponsor competence. The group welcomes the proposal to extend the time period during which a sponsor must have submitted a sponsor declaration to the FCA from three to five years given the proposed changes relating to the scope of the sponsor regime and fluctuating market conditions which, together, provide less opportunity for sponsors to submit a sponsor declaration.

The group is also in favour of the introduction of an alternative method for assessing competence under LR 8.6.7R(1)(b) which allows competence to be demonstrated by reference to the provision of sufficient relevant corporate finance advisory services to certain issuers, without the need to have previously submitted a sponsor declaration (or relying on looking through to employees that have previously had material involvement in sponsor services requiring a sponsor declaration). It would seem sensible for a broader range of transactions and different issuer types to be taken into account in this context, ensuring a suitably diverse list of sponsors with the requisite experience is available to support issuers in the new regime.

In light of the proposed liberalisation of the approach to demonstrating competence, the group welcomes the guidance set out in LR 8.6.7AAG on non-exhaustive factors the FCA may consider when determining whether a sponsor (or applicant for sponsor approval) satisfies the requirement in LR 8.6.7R(1)(b) in addition to the guidance in revised Technical Note 715.2 on meeting the requirements of LR 8.6.7R(1)(b). However, we believe that it would be helpful if it could be clarified, either in the rules or through additional guidance, that the provision of sponsor services within the framework of the proposals, which do not necessarily lead to a sponsor declaration, are also relevant in determining whether the requirements of LR 8.6.7R(1)(b) are met – particularly given that many sponsor services in the reframed regime will not lead to the delivery of a sponsor declaration. Examples would include the cases where an issuer seeks guidance or a modification or waiver to FCA rules (under UKLR 7.1.11R, for instance) and the delivery of a fair and reasonable opinion (under UKLR 8.2.1R(3), for instance). Whilst such services do not require the submission of a sponsor declaration, they are nevertheless valuable constituents of the sponsor skillset which we believe could be more obviously foregrounded as relevant experience.

In line with this, it would be helpful if the guidance in revised Technical Note 715.2 which refers to experience that is 'analogous to the provision of sponsor services culminating in a sponsor declaration' in relation to meeting the broadened competence requirement in LR 8.6.7R(1)(b) could be reframed such that the analogous experience which is deemed to be sufficient is not necessarily tied to the delivery of a sponsor declaration.

Overall, it is important that the rules and guidance are able to be applied with certainty by the sponsor community, such that sponsors are able to fulfil their role effectively, which in turn supports market integrity.

More broadly, we note that the proposals require an issuer to appoint a sponsor when it seeks individual guidance in relation to the listing rules, the disclosure requirements or the transparency rules in connection with a matter referred to in UKLR 7, UKLR 8 or UKLR 11. The group is of the view that it may be considered overly burdensome for issuers to be required to appoint a sponsor for the purpose of seeking guidance given the formalities this entails. Please see further comments on this subject in our follow-up submission.