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Dear Victoria,

NAPF response to CP14/02 - Proposed amendments to the Listing Rules in relation to sponsor competence

The NAPF is the leading voice of workplace pensions in the UK. We speak for 1,300 pension schemes with some 16 million members and assets of around £900 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector.

The NAPF welcomes the opportunity to respond to the FCA's consultation on proposed amendments to the Listing Rules in relation to sponsor competence. Sponsors play a very important role in maintaining the integrity and high standards of governance associated with the UK market. We believe it is important that sponsors engender and maintain the trust and confidence of the end consumers of their activities – the regulator and the investors. In order that this trust and confidence is maintained the competence of the sponsor is vital; furthermore however, it is equally important that any conflicts of interest – real or perceived – faced by sponsors are transparently disclosed and appropriately managed.

We have responded in brief to the current consultation overleaf and broadly welcome the FCA's moves to strengthen requirements around sponsor competence. Given the reliance upon assurances from sponsors it is disappointing to note the reported general decline in the quality of the FCA's interactions with sponsors. We do however, caution against moves which may unintentionally impact upon competition within the sector. It is important to balance introducing requirements for minimum standards of experience against the introduction of potentially insurmountable barriers to entry.

We also wish to take this opportunity to expand briefly upon the broader issue of the sponsor's role in maintaining market confidence. I hope that these points may be taken into consideration and reflected within further work to be undertaken by the FCA.

The ultimate consumers

Given the vital role sponsors play in providing investors and the regulator with confidence in the integrity of the Premium Listing regime, it is to our mind essential that real, and perceived, conflicts of interests are managed or avoided. However, in reaching a view as to what is a pertinent conflict, it is crucial that the FCA defines clearly to whom sponsors owe their primary interest. It is the view of our members, that despite the (often opaque) commercial relationship being between issuer and sponsor, the ultimate consumer of the service provided in this case is demonstrably the investor and to a lesser extent also the regulator itself.

Confidence in the integrity and effectiveness of the Premium Listing regime underpins the UK's attractiveness for raising capital. Whilst the principle of caveat emptor is right and investors do have a responsibility to

undertake appropriate due diligence ahead of making investments, both the regulator and investors do also place a significant amount of trust in the competence and integrity of the sponsor regime. As such it is they, rather than the issuer client who are their ultimate consumers. We believe therefore that the FCA should approach any consideration of the role, responsibilities and culture of sponsors by looking through the lens of the investor.

In looking at the sponsor regime through the lens of the investor consumer, we would encourage the FCA to give consideration to whether the ultimate consumers are currently being appropriately served by the present arrangements.

Other commercial arrangements

We believe that given the important role of the sponsor, their independence, real and perceived, should be considered paramount and thus other commercial arrangements between the sponsor firm and issuer client should be closely monitored and disclosed. As with the role played by the external auditor, the sponsor's responsibility should ultimately be to investors. Independence should be safeguarded by ensuring that the fees received for other (non-sponsor) services provided do not unduly outweigh those received for the sponsor service and thus potentially impact upon independence. These fees should be transparently disclosed so that investor confidence can be maintained.

Issuances of equity capital for example, whether at IPO or subsequently, and the basis upon which these are made, have significant implications for the delivery of long-term shareholder value. Value can easily be lost if the issuance is not undertaken on an efficient basis or in a robust manner. Issuers, however, are often unfamiliar with the equity capital raising process, not least when first coming to the capital markets; as such sponsors, who have a crucial role to play, are in a powerful position. This is true not least given that new issuers are often unwilling to challenge their advisers. The FCA will be aware of the general investor concerns about the pricing of equity issues, and the fees paid by issuers for these.

In order to maintain and encourage high standards of competence amongst sponsors there should be a competitive market for their services; this requires more transparent pricing than occurs at present. Issues such as whether the sponsor service should be offered as a 'loss-leader' need to be actively considered in this context.

The primary area where conflicts of interest occur is when a sponsor is also one of the lead distributors and therefore may be conflicted if there are any contentious issues with the company. Given the regulatory responsibility on the Sponsor which in effect asks them to perform a quasi-regulatory role, it is encouraging to see more use being made by issuers of independent sponsors. Indeed, it has been suggested that there could and should be scope for other professional firms such as lawyers and accountants take on the role of sponsor. Of course, as with integrated banks acting as sponsors, we would not expect the sponsor to also have another significant relationship with the issuer such as reporting accountant; effective safeguards to ensure appropriate separation of functions would be needed and would need to be clearly communicated.

Supervision and further reassurance

At present, investors in particular are reliant on the credibility brought to an issue by the preparedness of the sponsor to put their reputation on the line. Without the sponsor role, and the associated credibility of those fulfilling the role, the whole issuance process could be significantly delayed as each individual investor would need to satisfy themselves on issues rather than relying on the sponsor having completed due diligence.

In that context, investors welcome the FCA's additional statutory powers regarding the supervision and discipline of sponsors; however, these powers are very broad ranging. Given that much of a sponsor's role and related activity is hidden from their ultimate consumers – e.g. providing the UKLA with assurance that the relevant rules have been complied with and appropriate procedures are established to meet the eligibility criteria - investors would find it beneficial to see more detail provided publicly when the regulator has taken measures to enforce its rules. More transparency would provide further reassurance to investors that the regulator is ensuring that sponsors are appropriately delivering their crucial role.

Further still, one proposal which we believe would go a long way to focusing the minds of sponsors, drive up standards and give reassurance to investors, is that there should be a named individual within the sponsor who is the 'lead sponsor'. The 'lead sponsor' would then be accountable for the sponsor role. The intention is not in any way to reduce the firm's overall responsibility but to add an additional personal sense of accountability which ought to lead to greater attention and thought. We discuss this concept further below in the context of the current live consultation as an idea that could be introduced sooner rather than later.

We look forward to continuing to engage with the FCA and other stakeholders on this agenda.

CP14/02 - Proposed amendments to the Listing Rules in relation to sponsor competence and other amendments to the Listing Rules and Prospectus Rules

Sponsor competence proposals (Q's 1-23)

As is the case at present, prior relevant sponsor experience is undoubtedly an important consideration for the FCA in assessing whether to approve a sponsor. In addition, given the increasing speed of regulatory change and the related detail and complexity of many of these regulations it is understandable that the FCA wishes to introduce a requirement within the approval criteria for sponsors that they have produced a sponsor declaration within the last three years.

As recognised within the consultation document however, this more explicit requirement does potentially pose a barrier for new entrants to enter the market. In addition, as is implied by the revisions to the current rules, having produced a recent sponsor declaration is not in itself a demonstration of competence.

The proposed five 'competency sets' appear to be a sensible and detailed articulation of sponsor competence. A requirement that firms should provide a framework to allow the identification of potential knowledge gaps that can be addressed or monitored is a practical approach.

We believe that this more judgmental and flexible approach to the assessment of sponsor competence is preferable as opposed to the addition of some of the more prescriptive proposed rules. As such we would welcome more explicit reference within the rules to the guidance and framework with more prominence given to more judgmental elements of sponsor competence as opposed to a more arbitrary tests such as the three year rule. It is important that new entrants which are, by their nature, unable to meet the new proposed LR 8.6.7R(1)(a) are able to assess what is needed to demonstrate competence in the absence of recent activity

We believe that the FCA's new wide ranging supervisory and enforcement powers in this area should enable it effectively and more transparently to police the competence framework.

In addition, we believe that a requirement for a named individual 'lead sponsor' would provide greater accountability for the sponsor role. In our view, if there was a requirement for a 'lead sponsor' this would undoubtedly focus the minds of sponsors and in turn drive up and maintain high standards of competence. Such a requirement would likely focus attention on the sponsor's internal capabilities and improve accountability to both the regulator and to investors.

Joint sponsors (Q's 24-27)

The NAPF is not opposed to the appointment of more than one sponsor and indeed we can see benefits in such an approach. However, as at present it is important that where there is more than one sponsor one of the sponsors is appointed as the primary sponsor. We propose that as suggested above, there should also be a named individual who acts as the 'lead sponsor' and this 'lead sponsor' should in turn be within the sponsor which has taken primary responsibility for liaising with the UKLA throughout the sponsor service.

We acknowledge that the above proposal may further exacerbate the current unwillingness or reluctance on the part of the largest, most active sponsors to act as joint sponsor and enhance the perception of a 'two-tier' system whereby one sponsor is 'lead' and the other(s) are perceived to be 'junior'. However, in turn, acting as 'junior' partner in the sponsor process should also provide new entrants with valuable experience. Over time it should therefore build scope for greater competition.

If, as we encourage, the FCA also gives consideration to the management of potential conflicts within the largest most active sponsors then one may find that the above issues become less prominent as the trend towards more use of independent sponsors may accelerate.

Other proposed changes to the Listing Rules and Prospectus Rules

On the matter of the '28-day circular' requirement; we understand the rationale for the FCA's suggestion that the disclosure is of little value to investors given that the transaction has already been declared unconditional.

We also strongly support the imposition of discrete obligations on a sponsor applicant to submit a compliant and factually accurate prospectus. We agree that this would bring the UK into line with market practice in other EU member states. As suggested before, we believe that an introduction of a requirement for a named individual 'lead sponsor' would also bring the responsibilities of this proposal into greater focus.

Yours sincerely



Paul Lee
Head of Investment Affairs
NAPF