

Financial Conduct Authority: What listed issuers and sponsors need to know.

Introduction

On 1 April 2013, the new UK financial regulatory structure comes into force. Under the new “twin peaks” structure, prudential and conduct of business regulation will be carried out by two separate regulators, the Financial Conduct Authority and the Prudential Regulation Authority. The Listing, Prospectus and Disclosure and Transparency Rules will all be within the FCA’s remit as will the market abuse and financial promotion regimes.

This note describes how the new regulatory structure will apply to listed companies and sponsors, including those respects in which the FCA’s powers and responsibilities are different from those of the FSA.

UK Listing Authority

Currently the FSA has responsibility for determining eligibility for listing, reviewing and approving prospectuses and regulating the behaviour of listed companies and major shareholders under Part VI of the Financial Services and Markets Act 2000 (“**FSMA**”). The FCA will take over the FSA’s functions under Part VI, with some amendments.

The title UK Listing Authority (“**UKLA**”) will still be used by the FCA when exercising its Part VI functions. Part VI no longer refers to it as the “competent authority” and powers to transfer the functions to another entity have been removed.

The UKLA will no longer have separate objectives under section 73 FSMA as this section is being repealed. The section 73 objectives encouraged the promotion of innovation, the protection of the competitive position of the UK markets and set out, as a general principle, that a burden or restriction imposed should be proportionate to the benefits. The general strategic and operational objectives of the FCA will dictate the UKLA’s approach after 1 April. The FCA’s strategic objective is to make sure that the financial markets and the markets for regulated financial services function well. More

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“The functions of the FSA under Part VI of FSMA will transfer to the FCA”

colour is provided by the operational objections, in section 1B(3) FSMA. Further to these objectives the FCA must:

- > secure an appropriate degree of protection for consumers;
- > protect and enhance the integrity of the UK financial system; and
- > promote effective competition in the interests of consumers in the markets for regulated financial services and services provided by regulated investment exchanges.

Although the third objective refers to competition, it is competition for the interests of consumers, rather than for the UK markets. The focus of the objectives generally is very firmly on consumer protection and market integrity.

Sponsors

The FCA will have tougher powers to sanction sponsors. Previously the FSA has only been able to censure a sponsor or cancel its approval to act as a sponsor. The new powers, which will be inserted into FSMA as s.88A, include:

- > **Fines and suspensions:** in the event of a breach of the Listing Rules by a sponsor, the FCA will be able to:
 - > impose financial penalties; and
 - > suspend the approval of a sponsor (for a period not exceeding 12 months).

The FCA may also suspend the approval of a sponsor to advance its operational objectives (discussed above). In this case there is no set time limit on the length of the suspension. The FSA has stated¹ that it envisages this power would be used when the FCA had already made its concerns clear to the sponsor and needed to act urgently to prevent a sponsor acting, in order to protect consumers or the integrity of the UK financial system.

- > **Restrictions or limitations:** the FCA will have the power to impose restrictions or limitations on the sponsor work that may be carried out by:
 - > existing sponsors; or
 - > applicants at the time of approval.

The FCA may do this where they conclude that the existing sponsor's or applicant's experience and expertise, or systems and controls are appropriate for certain types of sponsor services only. In relation to existing sponsors only, this power may also be invoked to advance the

“The Act introduces tougher power for the FCA to sanction sponsors”

¹ CP 12/37

FCA's operational objectives. As with the FCA's power to suspend a sponsor to further its operational objectives, it is envisaged that restrictions or limitations would only be imposed on sponsors where urgent action is required.

Warning notices and limitation period

Warning notices

The disciplinary procedures to be followed where the FCA proposes to censure, fine or suspend a firm or Individual, are being changed to allow the FCA to make public a disciplinary action at an earlier stage.

A warning notice, which is issued at an early stage of an enforcement action, is currently a private communication, between the regulator and the firm or person in alleged breach of the rules. Under the FCA's new procedures, a warning notice may now be made public by the FCA. However, before publishing, the FCA will have to consult with the recipient of the notice. The FCA will not publish if it believes that to do so would be unfair to the person in respect of whom action has been taken, or where it would be prejudicial to the interests of consumers or to the stability of the UK financial system. The proposed use of the new power is currently the subject of consultation paper CP 13/8, available [here](#).

Limitation period

The limitation period, after which an action for breach of rules made under Part VI of FSMA may not be brought, has been increased from two to three years. It begins on the first day the FCA knows (or has information from which it can reasonably be inferred) that the entity has contravened the requirement or restriction.

Market abuse: LIBOR

The offences of misleading statements and practices in the context of financial services have been widened to encompass behaviour relating to benchmarks such as LIBOR. Section 397 of FSMA is repealed and replaced by sections 89-91 of the Financial Services Act 2012 .

The offences of making misleading statements and creating a misleading impression (sections 89 and 90) largely replicate the effect of section 397. The new offence (section 91) targets making misleading statements and creating a misleading impression in relation to setting "relevant benchmarks". For the time being, the only relevant benchmark will be LIBOR.

Financial promotions

The FCA will have a new power to direct an authorised person to withdraw or refrain from making a financial promotion if there has been or there is likely to be a contravention of the financial promotion rules. The power of the FCA is broad as the direction may also require the authorised person to publish

Financial Conduct Authority – listing regime

“A warning notice of breach of the FCA rules may be made public under the Act”

“The new offence targets making misleading statements and creating a misleading impression in relation to setting relevant benchmarks”

“The FCA will have a new power to direct an authorised person to withdraw or refrain from making a financial promotion”

details of the direction or do anything else specified in relation to the financial promotion.

If the FCA decides to make such a direction it must first give notice to the person concerned who will have the right to make representations. Following this the FCA will decide whether to confirm or revoke the first notice.

This new power is principally aimed at protecting consumers from financial promotions of certain financial products but it is broad enough to be used in relation to financial promotions of securities.

Primary information providers

New sections 89P-89V in FSMA, set out in the Act, will give the FCA power to regulate the approval, continuing obligations and supervision of primary information providers ("**PIPs**"). Currently PIPs are subject to the rules set out in the "Criteria for Regulated Information Services". The provisions in FSMA relating to approval and continuing obligations broadly formalise existing practice, however the disciplinary powers are new to the FCA.

The rules allow the FCA to impose restrictions or limitations on the services a PIP may provide and impose new continuing obligations. These include a duty on PIPs to ensure that they have appropriate measures in place to identify new and emerging risks to security of information, validation of submissions and data corruption. PIPs will also have to ensure that the FCA is kept informed of any matters which affect their ability to perform their core functions and they must be open and cooperative with the FCA.

The FCA will have a range of new disciplinary powers in relation to PIPs which include financial penalties and suspending or limiting approval.

Regulatory structure – further information

The new regulatory structure, in addition to the reforms relevant to the listing, disclosure and prospectus regimes for issuers, sponsors and PIPs as described above, makes major reforms to the regulation of the financial services sector.

- > **FCA:** the FCA will have responsibility for the business conduct of all firms currently regulated by the FSA.
- > **Prudential Regulation Authority:** this body will be concerned with "promoting the safety and soundness" of systemically important individual firms such as banks, building societies, insurers and certain investment firms.
- > **Financial Policy Committee:** this committee will exist within the Bank of England and act as the UK's macro-prudential authority considering issues of financial and economic stability.

"The provisions in FSMA broadly formalise existing practice, however the disciplinary powers are new to the FCA"

Our separate briefing, available [here](#), covers the new regulatory structure in more detail.

Conclusion

The new powers of the FCA to sanction sponsors is the major change that sponsors should be aware of under the Act. Aside from this and the changes in nomenclature it will generally be business as usual for the vast majority of sponsors and listed issuers. However, the change of focus of the FCA, as evidenced by its operational objectives, may mean that it exercises its inherited powers differently from its predecessor.

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