TRAVERS SMITH

UK financial regulation reform impacts sponsors

Background to the changes

Following its policy consultation in February, the Government has published a draft Financial Services Bill and consultation setting out the details of its proposed reforms to the financial regulatory regime in the UK. Under the reforms, the UKLA will be part of the Financial Conduct Authority (the "FCA"), the new body responsible for conduct of business regulation, as well as most of the FSA's existing market regulation functions.

How do the changes affect you?

The proposals which are of particular relevance to you as a sponsor are summarised below:

Discipline and enforcement

- The new regime will extend the types of disciplinary sanctions which may be imposed on sponsors and the circumstances in which such action may be taken. In addition to the existing power to issue a public censure, the FCA will be able to impose a potentially unlimited penalty on a sponsor and/or make its approval subject to limitations or other restrictions.
- In addition to the existing power which the FSA has to cancel a sponsor's approval, the FCA will be able to suspend a sponsor's approval for up to 12 months. Depending upon the nature and scope of the suspension, this could have a significant impact upon a firm's ability to do business.
- If the FCA proposes to take action under its new and enhanced powers outlined above, it will be required to give the sponsor a warning notice (see below).

Warning notices

- Despite industry concerns about the reputational damage that might be caused, the Government has confirmed that the FCA will have a controversial new power to publish such information regarding warning notices as "it considers appropriate".
- The sponsor will only have 14 days from receipt of a warning notice to make representations to the FCA. Firms will therefore need to respond quickly to allegations set out in the warning notice in the knowledge that such notice may well be made public.
- One of the limited safeguards in the Bill is that the FCA will not be able to publish information on a warning notice if publication would *in its opinion* be unfair to the recipient of the notice. This is clearly a highly subjective test that is unlikely to give much comfort to firms.
- While these changes will not be in force until the beginning of 2013 at the earliest, a warning notice published under the new power may relate to matters arising before then –- so that conduct taking place now or over the next 18 months or so may be the subject of public allegations under the new regime. This is therefore a good time to

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Other enforcement powers

In addition to the above disciplinary and enforcement powers, the FCA will also be able to:

- suspend a sponsor's approval or impose limitations / restrictions on that approval if it considers that it is "desirable to do so in order to advance one or more of its operational objectives" under the new regime; and
- require a sponsor to provide it with a "skilled person's report" on any matter. The skilled person would be nominated and approved by the FCA but paid by the sponsor.

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Timing

The consultation period closes on 8 September 2011. Following the pre-legislative scrutiny and Parliamentary processes, the Bill will be enacted during the course of 2012. As things currently stand, it remains the Government's intention for the new regime to be in force at the beginning of 2013.

If you would like further information on any of the issues covered in this note, please contact any of the partners detailed below or your usual contact at the firm.

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