

Aquis Stock Exchange Consultation Response

Changes to the Aquis Corporate Adviser Handbook

On January 8, 2024, Aquis Stock Exchange issued a consultation paper seeking opinions on proposed changes to the Corporate Adviser Handbook, specifically the approach to the identification and management of conflicts of interest. We extend our gratitude to all market participants who contributed feedback and insights.

Summary of amendments

- Conflicts Management:
 - AQSE Corporate Advisers must proactively identify and manage conflicts that could impact their ability to perform functions outlined in the Handbook.
- Regulatory Conflicts:
 - Conflicts may arise when an adviser's interests clash with duties to the Exchange, termed as regulatory conflicts.
 - Vigilance is crucial to recognise conflicts between client responsibilities and obligations to the Exchange.
- Perceived Conflicts:
 - Advisers must address circumstances creating a perception in the market that they are unable to perform functions properly (perception test).
 - Assessment considers transaction specifics, existing arrangements, and the adviser's relationships with the issuer.

This paper sets out some of the key questions raised by respondents to the consultation, and outlines Aquis Stock Exchange's conclusions and guidance.

Question 1: Who, besides the Corporate Adviser, has the authority to decide if certain circumstances might lead to a conflict of interest? When do they make this determination?

Determining Conflicts of Interest

The Corporate Adviser holds primary responsibility for identifying and managing potential conflicts of interest, with oversight from the Exchange. Should the Exchange perceive a conflict or disagree with the Adviser's assessment, it can intervene during the transaction process. For instance, if the Exchange becomes aware of the Adviser's financial interests in a transaction's outcome, it may challenge the assessment and request clarification from the Adviser's senior management.

Stakeholders should note that the Financial Conduct Authority ("FCA") listing rules (LR 8.3.7BR to LR 8.3.12AG) serve as the basis for formulating the revisions to the AQSE Corporate Adviser Handbook. These rules are set out in the Appendix for ease of reference.

Conflicts of Interest Scenarios

Conflicts can arise in various scenarios, such as:

<i>Relationship</i>	<i>Situation</i>	<i>Implications</i>
Corporate Adviser vs Employee	An employee of the Corporate Adviser team has a material equity or other interest in a client or in a target company of the client.	The individual's interests may not be aligned with those of the Corporate Adviser or the Exchange due to self-interest.
Corporate Adviser vs Employee	An employee of the Corporate Adviser team has a current or past employment relationship or directorship with the client or target company.	The individual may be overly familiar with the client, therefore impacting objectivity. The individual's interests may not be aligned with those of the Corporate Adviser interest.
Corporate Adviser's Group vs Client (Loan Finance)	A member of the Corporate Adviser's group has made or is proposing to make available loan finance to the client	The financial interests of the Corporate Adviser's group in relation to the lending arrangements may be in conflict with their role as Corporate Adviser and their obligations to the Exchange, impacting objectivity.
Corporate Adviser vs. Issuers	Corporate Advisers may face conflicts if their firm has relationships with multiple companies considering admission to the same stock exchange, especially if those companies are in similar industries or compete with each other. Additionally, conflicts may arise if the Adviser's firm has a financial interest in companies considering admission, potentially leading to biases in the advice provided.	Conflict management strategies would involve ensuring that the Adviser's recommendations are impartial and in the best interest of each issuer, regardless of any affiliations or financial interests. A conflicts register would document this and detail how the Adviser's firm manages the conflict, such as by appointing separate teams to represent each party.

Conflicts Register

Maintaining a conflicts register is recommended as good practice. A conflicts register serves to record potential conflicts of interest as they arise and documents the steps taken to manage or mitigate them. For example, a corporate adviser may record in its conflicts register instances where it represents an issuer or applicant but is also managing or making an investment in the issuer or applicant. The register would outline the measures taken to ensure impartial advice and fair representations to Aquis that is unbiased by the financial interest. It may be the interest in the issuer is immaterial or information barriers exist, safeguarding the integrity of the advisory services provided by the corporate adviser.

Question 2: Can conflicts between an Adviser's engagement terms and regulatory obligations to the Exchange suggest improper behaviour rather than a simple conflict,

When Terms of Engagement clash with regulatory obligations

If an Adviser has drafted or accepted terms of engagement that directly clash with its regulatory obligations to the Exchange, it does indeed suggest a more fundamental issue than a mere conflict of interest. While conflicts of interest can generally be identified and managed, a deliberate violation of regulatory obligations could imply wilful malfeasance or improper behaviour on the part of the Adviser. This could potentially lead to serious consequences, including regulatory sanctions, reputational damage, and legal action.

Question 3: Are there instances where conflicts stem from an Adviser's legal or regulatory duties, and if yes, how do they arise?

Sources of Conflicts

Conflicts of interest can stem from various sources within the framework of corporate advising, necessitating careful navigation and consideration.

One significant source of conflicts arises when an adviser's obligations to their client clash with their legal or regulatory duties to third parties, such as the Exchange, the FCA or a court. For example, a duty of confidentiality to a client might conflict with disclosure requirements mandated by regulatory bodies. In such scenarios, navigating these conflicting duties requires careful consideration and often necessitates seeking client consent or relying on exceptions.

Another common source of conflict emerges when an adviser's duties to one client conflict with their own interests or those of another client. This situation poses a challenge where an adviser's loyalty to a client may be compromised by financial incentives favouring another client or themselves.

Warrants and Compliance

Conflict can also arise in relation to the percentage of warrants that Corporate Advisers acquire in relation to the total company value. Additionally, arrangements where Advisers assume roles on a solely contingent basis raise concerns about conflicts of interest.

Remuneration and Risk Award

Further deliberation is necessary regarding the influence of fees on Adviser actions. In particular, committing to transactions where an Adviser is uncertain as to whether the transaction is in the best interests of the market (including investors) should raise concerns. Conflicts clearly arise when an Adviser prioritise fee generation over objective decision-making, potentially leading to biased advice or actions that favour certain interests, particularly if the potential engagement is of strategic importance to the firm. Such scenarios necessitate careful examination to ensure that the Adviser's actions align with regulatory standards and maintain the integrity of the financial advice provided.

Concerns with Small Corporate Finance Broking Firms

There may also be concerns when small firms have both corporate finance and broking functions, particularly if a transaction depends on fundraising. In these instances, it is crucial to demonstrate that effective information barriers are in place.

Next Steps

The changes to the Corporate Adviser Handbook will have immediate effect and are now available for download on our website, www.aquis.eu.

Aquis Stock Exchange will allow issuers and Corporate Advisers a reasonable implementation period to comply with the new rules.

Appendix: Relevant extract from Listing Rules

Under the relevant legal framework, a sponsor is defined as follows:

(1) (in LR, except in LR 5.6.18AG) a person approved, under section 88 of the Act by the FCA, as a sponsor.

(1A) (in LR 5.6.18AG) as defined in LR 5.6.18BR.

(2) in in MIPRU 4 and in relation to a securitisation within the meaning of paragraph (2) of the definition of securitisation, an undertaking other than an originator that establishes and manages an asset backed commercial paper programme or other securitisation scheme that purchases exposures from third party entities.

Under the FCA's Listing Rule 8.3 (LR 8.3), a sponsor is required to take all reasonable steps to identify conflicts of interest that could adversely affect their ability to perform their functions under LR 8 properly.

In identifying conflicts of interest, LR 8.3.8G requires sponsors to consider circumstances that could:

- Create a perception in the market that a sponsor may not be able to perform its functions properly.
- Compromise the ability of a sponsor to fulfil its obligations to the FCA in relation to the provision of a sponsor service.

The 'perception test' set out in LR 8.3.8G(1) asks sponsors to consider wider market confidence issues when considering conflicts of interest. In practice, it also enables the FCA to be brought into the discussion when, despite a sponsor having in place conflict management arrangements, a perception in the market may exist that the sponsor may not be able to perform its functions properly.

The timing of when a potential conflict of interest is identified can vary depending on the specific circumstances and the nature of the transaction. However, it typically happens during the process of a transaction or when a potential conflict of interest arises.