

# Primary Market Technical Note

## Sponsors' obligations on established procedures

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

### Rules and Guidance

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UKLR 2.2.1R; UKLR 24

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Under UKLR 24.3.2R(4), a sponsor must, before submitting a listing application for an applicant, come to a reasonable opinion, after having made due and careful enquiry, that:

'the directors of the applicant have established procedures which enable the applicant to comply with the listing rules, the disclosure requirements and the transparency rules on an ongoing basis'.

A similar obligation exists under UKLR 24.3.13R(3) where an issuer applies to transfer its category of equity shares' listing.

Listing Principle 1 requires a listed company to take reasonable steps to establish and maintain adequate procedures, systems and controls

to enable it to comply with its obligations. The Listing Principles are general statements of the fundamental obligations of listed companies. Issuers should therefore be aware of the importance we place on complying with these principles on an ongoing basis.

The UKLR 24.3.2R(4) sponsor requirement sits alongside (and should be read in conjunction with) Listing Principle 1. In forming its opinion on whether the applicant has established adequate procedures, a sponsor should have regard to the systems and controls that are relevant to the operation of such procedures.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with UKLR 24.3.2R(4). This guidance is not exhaustive and a sponsor should exercise professional judgement when it decides what steps are necessary for it to comply with the rule.

### **The scope of UKLR 24.3.2R(4)**

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There is likely to be some overlap and connection between the work carried out by sponsors in order to make the UKLR declaration and that required in order to make the UKLR 24.3.2R(5) declaration in relation to financial position and prospects. For example, an applicant will need to ensure it has adequate procedures, systems and controls to make proper judgements as to its financial position and prospects in order to identify inside information under the Market Abuse Regulation (referred to in DTR 2). Similarly, it will need to be able to produce periodic financial reports under DTR 4. Notwithstanding such connection, UKLR 24.3.2R(4) is a separate declaration. It requires broader consideration of the applicant's procedures, systems and controls than those which affect the directors' ability to make proper judgements, on an ongoing basis, as to the financial position and prospects of the applicant. Sponsors should refer to Primary Market/TN/708 for guidance on their obligations under UKLR 24.3.2R(5).

A sponsor's obligation to take reasonable steps to satisfy itself that the directors understand their responsibilities and obligations under the listing rules and, disclosure requirements and transparency rules as set out in UKLR 24.2.8R is also a separate obligation. While, in fulfilling this obligation, the sponsor may be involved with educating directors on their ongoing obligations, this exercise is unlikely to involve the

applicant designing and establishing specific procedures, systems and controls to ensure compliance on an ongoing basis. Therefore, the provision of advice in this regard, by itself, will be insufficient to underpin any sponsor confirmation for the purposes of UKLR 24.3.2R(4). Sponsors should refer to Primary Market/TN/718 for guidance on their obligations under UKLR 24.2.8R.

Together, Listing Principle 1 and UKLR 24.3.2R(4) encompass all ongoing obligations of the issuer under the listing rules, the disclosure requirements, the transparency rules and the corporate governance rules. This includes (but is not limited to) the provisions set out in the following chapters:

- UKLR 6 (Equity shares (commercial companies): continuing obligations)
- UKLR 7 (Equity shares (commercial companies): significant transactions and reverse takeovers)
- UKLR 8 (Equity shares (commercial companies): related party transactions)
- Disclosure Requirements (Articles 17-19 of the Market Abuse Regulation as referred to in DTR 2 and DTR 3)
- DTR 4 (Periodic financial reporting)
- DTR 5 (Vote holder and issuer notification rules)
- DTR 6 (Continuing obligations and access to information)
- DTR 7 (Corporate governance)

A sponsor should consider other provisions of the listing rules, the disclosure requirements and transparency rules that may impose obligations on the listed issuer or its directors. For example, sponsors should have regard to the guidance in relation to Listing Principle 1 in UKLR 2.2.2G – UKLR 2.2.5G, which provide additional guidance on the steps a listed issuer should take to ensure it is able to meet the requirement in Listing Principle 1.

### **The meaning of 'established'**

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Listing Principle 1 requires a listed company to take reasonable steps to establish and maintain the necessary procedures, systems and controls in place to enable it to meet its obligations from the outset, ie, from the point it becomes a listed company. Accordingly, while at the

time the sponsor declaration is given not all necessary procedures, systems and controls may have been operated, an applicant should have taken reasonable steps to have designed, documented, approved all necessary procedures, systems and controls and communicated them to those responsible for their implementation and use at the point of admission to the Official List. The applicant should commit to implementing those procedures, systems and controls in a timescale that will ensure it will be able to comply with its ongoing obligations when required. The sponsor should review the applicant's implementation plan in order to form a view on whether it is sufficient for the purpose of enabling the sponsor to comply with UKLR 24.3.2R(4).

### **The sponsor's role**

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Sponsors have a critical role to play in maintaining the integrity of the listing regime by providing assurances to us that issuers applying for a listing of equity shares in the equity shares (commercial companies) category, the equity shares (closed-ended investment funds) category or the equity shares (shell companies) category will be able to comply with their obligations under the listing rules, the disclosure requirements and the transparency rules.

In respect of UKLR 24.3.2R(4), it is important to note that the sponsor's role is in addition to the part played directly by the directors of the applicant and by any reporting accountant, lawyer or other adviser appointed by the applicant or sponsor. As stated in UKLR 24.2.5G, a sponsor remains responsible for complying with its responsibilities even where reliance is placed on an issuer or third party. Further, the sponsor should recognise its unique role among the parties involved in the process by drawing on its experiences of other sponsor service transactions and its interaction with the FCA on matters concerning the application of the listing rules, the disclosure requirements and the transparency rules.

Reliance on the work of a reporting accountant or other adviser or comfort provided by the applicant or its lawyers is unlikely, without an appropriate level of enquiry, consideration and challenge (where appropriate) by the sponsor, to be sufficient evidence to demonstrate that a sponsor has reached a reasonable opinion after due and careful enquiry. In order to meet its obligations, we expect the sponsor to review, consider and challenge (where appropriate) the work done by

the applicant and its advisers. In providing its confirmation under UKLR 24.3.2R(4), we would expect the sponsor to apply its own knowledge and experience of the applicant and take into account other factors that it may consider relevant. These factors could include the issuer's operating environment and any particular knowledge or experience the sponsor may have of the approach taken by issuers of a similar size, with a similar corporate structure or operating in the same sector.

Where an expert's (e.g. a reporting accountant) report is prepared, we would expect to see clear records to demonstrate a sponsor's own enquiries, consideration, challenge (where appropriate) and action throughout the engagement. This is particularly so when defining the scope of advisers' work and reviewing their observations and recommendations in order to identify which procedures, systems and controls should be established. We would remind sponsors of their record keeping obligations in UKLR 24.4.25R to UKLR 24.4.27G. Sponsors should refer to TN/717 for further guidance on the application of our record keeping requirements.

A sponsor should be able to demonstrate that it has taken a systematic approach to its assessment. This should cover whether the applicant has designed, documented, approved and communicated the required procedures, systems and controls to comply with each ongoing obligation. As a starting point, sponsors may wish to understand which procedures, systems and controls are already in place to enable the company to meet Listing Principle 1 and to assess whether they remain appropriate. Where a sponsor identifies omissions or gaps, it should take steps to ensure that procedures, systems and controls to address those omissions or gaps will be established at the point of admission.

### **Appropriate procedures, systems and controls**

UKLR 24.3.2R(4) requires a sponsor to come to a reasonable opinion and, accordingly, we would not expect a sponsor to take a 'one size fits all' approach. A sponsor should assess the circumstances and characteristics of the applicant in order to form a reasonable opinion of what procedures, systems and controls are appropriate for the applicant to comply with its obligations on an ongoing basis.

Factors that we would expect a sponsor to take into account in forming its opinion could include:

- the extent to which the applicant has complex operations, is part of a large group of companies and/or is operating in a specialist industry sector (such as property or mineral companies)
- the extent to which the applicant has significant operations overseas
- the extent to which the applicant has particular features such as a controlling or substantial shareholder
- the extent to which the applicant utilises the services of third parties to fulfil its ongoing obligations such as the outsourcing of its Secretariat or Investor Relations functions
- whether there are jurisdictional risks pertaining to the countries where the applicant operates
- whether the applicant was a previously listed company and therefore has a track record of complying with its regulatory obligations

We would expect the sponsor to record its assessment and retain any documentary evidence it has relied upon.

The sponsor will then need to assess whether the procedures, systems and controls put in place by the applicant are established. If a third party adviser such as a reporting accountant and/or firm of lawyers has been engaged to undertake the assessment, the sponsor must maintain an adequate level of oversight of the advisers' work throughout the process and challenge that work (where appropriate). Examples of actions a sponsor or third parties could take to assess whether the procedures, systems and controls put in place by the applicant are established include:

- reviewing documents setting out relevant policies and procedures and assessing the appropriateness of their design and documentation in the context of both the characteristics and circumstances of the applicant and the requirement of the obligation
- speaking with the management and senior employees of the issuer who will be responsible for the operation of the procedures to understand how they will be operated on a practical basis (this could include speaking with the Chief Financial Officer, Financial Controller, Company Secretary, Head of Legal and Head of Investor Relations) or, in some circumstances, it may be appropriate to examine the effectiveness of procedures by presenting an

illustrative scenario and assessing how the procedures would work in practice

- confirming that the procedures have been approved by the applicant and communicated to relevant employees
- confirming that systems are in place (such as those to capture and maintain insider lists and strategic projects and to allow the company to disseminate information via a RIS) and assessing their appropriateness in the context of both the characteristics and circumstances of the applicant and the requirement of the obligation
- reviewing the controls in place (such as arrangements to review compliance with procedures on a regular basis) and assessing their appropriateness in the context of both the characteristics and circumstances of the applicant and the requirement of the obligation

### **Review of board memoranda**

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Should the applicant prepare board memoranda setting out its procedures, systems and controls to enable it to comply with its obligations on an ongoing basis, we would expect to see evidence that the content of these documents has been reviewed, considered and challenged (where appropriate) by the sponsor. In our view, placing reliance solely on a review of board memoranda without an appropriate degree of enquiry as illustrated above, is unlikely to be sufficient evidence to demonstrate that a sponsor has performed due and careful enquiry for the purpose of UKLR 24.3.2R(4).

### **IPO preparatory work prior to a sponsor's engagement**

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We are aware that an applicant may engage advisers, such as a reporting accountant, at the preliminary stage of an IPO process (prior to the appointment of a sponsor) to undertake preparatory work in relation to establishing procedures, systems and controls for the purpose of complying with Listing Principle 1. Should a sponsor be subsequently engaged, we would expect to see evidence that the sponsor has reviewed any relevant work already undertaken by the adviser(s) and applicant and assessed the appropriateness and timing of any work outstanding.