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# Primary Market Technical Note

## Sponsors' obligations on no adverse impact

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

Under UKLR 24.3.10R(2), where a sponsor submits a circular to the FCA on behalf of a listed issuer, in relation to a transaction that requires a circular the sponsor must:

'come to a reasonable opinion, after having made due and careful enquiry, that the transaction will not have an adverse impact on the listed issuer's ability to comply with the listing rules, the disclosure requirements or the transparency rules'.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with UKLR 24.3.10R(2). This guidance is not exhaustive and a sponsor should exercise professional judgement when it decides what steps it should take to comply with the rule.

### **The scope of UKLR 24.3.10R(2)**

The sponsor declaration under UKLR 24.3.11R(1), addressing the requirement in UKLR 24.3.10R(2), is concerned with ensuring that the transaction will not have an adverse impact on the listed issuer's ability to comply with the listing rules, the disclosure requirements or the transparency rules. In order to do this, the sponsor will need to satisfy itself that, after taking into account the impact of the relevant transaction, the listed issuer has effective procedures, systems and controls in place at the point of completion that will enable it to meet the requirements of Listing Principle 1.

Listing Principle 1 covers all obligations under the listing rules, disclosure requirements, transparency rules and 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)
- UKLR 11 (Closed-ended investment funds: requirements for listing and continuing obligations)
- 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 and the disclosure requirements and transparency rules that may impose obligations on the listed issuer or its directors. For example, sponsors should have regard to 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.

Although UKLR 24.3.10R(2) does not contain a specific reference to the directors' ability to make judgements on an ongoing basis about the financial position and prospects of the listed issuer and its group, we would expect a sponsor to assess this as an integral part of its work under UKLR 24.3.10R(2).

Sponsors should be mindful that a sponsor service continues to the point of completion. For some sponsor services, there may be a period of time between the publication of the circular for shareholders to approve the transaction and the completion of the transaction. Under UKLR 24.2.2R, for so long as it provides a sponsor service, the sponsor has an obligation as soon as possible to provide to the FCA any information of which it becomes aware that materially affects the accuracy or completeness of information it has previously provided. Therefore, if the sponsor becomes aware of information that compromises the sponsor declaration given under UKLR 24.3.11R(1) addressing UKLR 24.3.10R(2) during the period between making its declaration and completion of the transaction, the sponsor should notify the FCA as soon as possible.

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

Sponsors have a critical role to play in maintaining the integrity of the listing regime by providing assurances to us that listed companies undertaking certain transactions will continue to be able to comply with their obligations under the listing rules, the disclosure requirements and the transparency rules.

In respect of UKLR 24.3.10R(2), it is important to note that the sponsor's role is in addition to that part played by the directors of the listed issuer and by any adviser such as a reporting accountant and/or firm of lawyers appointed by the listed issuer or sponsor. As stated in UKLR 24.2.5G, a sponsor remains responsible for complying with its responsibilities even where reliance is placed on a listed issuer, applicant 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.

Typically, a sponsor will be an addressee of a comfort letter provided by the listed issuer or adviser that effectively mirrors the language of the sponsor declaration required under UKLR 24.3.11R(1) addressing UKLR 24.3.10R(2). In our view, reliance on a written confirmation, without an adequate level of enquiry, consideration and challenge (where appropriate) by the sponsor, is unlikely to be sufficient evidence to demonstrate that a sponsor has reached a reasonable opinion after due and careful enquiry.

In coming to its reasonable opinion under UKLR 24.3.10R(2), we would expect the sponsor to apply its own knowledge and experience of the listed issuer 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 an adviser's work and reviewing its observations and recommendations in order to identify which (if any) procedures, systems and controls require enhancements to be made prior to completion. We would remind sponsors of their record keeping obligations in UKLR 24.4.25R to UKLR 24.4.27G. Sponsors should refer to the Primary Market/TN/717 for further guidance on the application of record keeping requirements.

A sponsor should be able to demonstrate that a systematic process has taken place. Clearly, a review of an issuer's existing procedures, systems and controls may highlight a need for enhancements to be made or for new procedures, systems and controls to be put in place. Where this is the case, due consideration must be given to ensure that, at the point of the sponsor declaration, the listed issuer has appropriate plans to ensure these procedures, systems and controls to be designed, documented, approved and communicated by completion of the transaction.

## **Determining due and careful enquiry**

In assessing the impact of the transaction on the listed issuer's ability to comply with the listing rules, the disclosure requirements or the transparency rules, the sponsor should have regard to the type of transaction being undertaken. It should also have regard to the circumstances and characteristics of the listed issuer and, if applicable, the subject of the transaction as well as the listed issuer's experience of undertaking transactions of a similar nature. This will allow the sponsor to determine the due and careful enquiry required to form its reasonable opinion.

Factors that may be relevant for a sponsor to consider could include:

- whether the target is a listed company (or listed in a jurisdiction with similar obligations) and therefore has established procedures, systems and controls to comply with Listing Principle 1 (or the equivalent) on a standalone basis
- whether the directors of the listed issuer have experience of integrating businesses or assets of a similar size and nature
- the degree to which the listed issuer and the target have complex operations, operate in a specialist industry sector (such as property or mineral companies), have significant operations overseas and/or are part of a large or complex group of companies
- whether the transaction will result in new controlling shareholders, related parties and/or permanent insiders
- whether the transaction will result in changes to directors, PDMRs and/or other employees of the listed issuer who are responsible for performing the procedures, systems and controls for the purpose of Listing Principle 1

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

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

In carrying out its work for UKLR 24.3.10R(2), the sponsor should first understand the listed issuer's existing procedures, systems and controls in order to assess the extent to which they will be impacted by the transaction. If the transaction involves the acquisition or disposal of a company or business, then the sponsor should also

understand the relevant procedures, systems and controls of the subject of the transaction in order to assess the impact it may have on the listed issuer.

We recognise that the nature of the assurance required under UKLR 24.3.10R(2) for an existing listed issuer is different than the assurances required for a new applicant. This is because a listed issuer will already be complying with its obligations arising from the listing rules, disclosure requirements and transparency rules. Therefore, in gaining an understanding of the listed issuer's existing procedures, systems and controls, a sponsor may not be required to carry out the same degree of enquiry as would be necessary to fulfil its obligations under UKLR 24.3.2R(4) and UKLR 24.3.2R(5). However, a sponsor should be mindful of its obligations under UKLR 24.2.10R to promptly notify the FCA should it become aware that the issuer is failing or has failed to comply with its obligations under the listing rules, the disclosure requirements or the transparency rules.

We would expect to see evidence that the content of the listed issuer's board memorandum or integration plan has been reviewed, considered and challenged (where appropriate) by the sponsor. This includes defining the scope of these documents to ensure that they deal with issues that might arise in relation to the listed issuer's ability to comply with all aspects of the listing rules, the disclosure requirements and transparency rules. We would also expect the sponsor to be present at key meetings with the listed issuer where the contents of the documents are discussed and approved.

We accept that it is possible, at the time the sponsor declaration is given, that not all necessary enhancements to procedures, systems and controls will have been effected. If this is the case, we would expect the sponsor to have formed a reasonable opinion that the directors have formally committed to implementing the enhancements on a timescale that will ensure the listed issuer will, following completion, be able to comply with its obligations when required. The commitment should be appropriately detailed such that the directors have identified, for each enhancement to be made, the individual at the listed issuer who will be responsible for its implementation, a plan of action and a timetable for when the enhancement will be completed. The sponsor should review the listed issuer's commitment and plan in order to form a view on whether it is sufficient for the purpose of enabling the sponsor to meet UKLR 24.3.10R(2).

## **Reverse takeovers with accelerated timetables**

Reverse takeovers may be subject to accelerated timetables where there is a short period of time between the listed issuer approaching the target and the publication of the circular for shareholders to approve the takeover. We recognise that transactions are often conducted in circumstances where speed of execution and confidentiality of information is of paramount importance. In such circumstances a listed issuer may have not yet formed a detailed integration plan and the sponsor may not be able to perform the same degree of due diligence that it could otherwise undertake.

The listed issuer should be mindful of its obligation to comply with Listing Principle 1. It may be appropriate to put into place interim arrangements with the target to ensure that it can comply with its immediate obligations upon completion, with full and formal integration occurring at a later date. In this event, we would expect the sponsor to have particular focus on the operational effectiveness of the interim arrangements. In particular this should include those procedures, systems and controls relating to identifying whether any obligations arise under UKLR 7 (Equity shares (commercial companies): significant transactions and reverse takeovers) and UKLR 8 (Equity shares (commercial companies): related party transactions) as well as the timely and accurate disclosure of information to the market under the Market Abuse Regulation (as referred to in DTR 2).

## **Reverse takeovers with limited access**

In certain types of reverse takeovers, access to information regarding the target will be limited. In this instance, we would expect the sponsor to seek out and assess the best information available to it for the purpose of forming its reasonable opinion with respect to UKLR 24.3.10R(2).

In some instances, no access to non-public information on the target will be given to the listed issuer and its advisers prior to the sponsor making its declaration. When this occurs, the sponsor should consider what due diligence can practically be undertaken and whether this is sufficient for the purpose of meeting UKLR 24.3.10R(2). For example, this could include:

- reviewing the target's published accounts and comparing them with the listed issuer's accounting policies, reporting currency, reporting frequency and financial year-end

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- reviewing any published details on corporate governance arrangements
- reviewing public announcements for adequacy of compliance with the listing rules, disclosure requirements and transparency rules

In forming its reasonable opinion, the sponsor may also wish to take into account any relevant factors outlined above under 'Determining due and careful enquiry'.

The sponsor should be mindful that, even where it has no access to non-public information on the target, it must be comfortable that it has had access to sufficient information to satisfy its obligation under UKLR 24.3.10R(2).