

## Primary Market Technical Note

# Sponsors' obligations on financial position and prospects 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 24.3.2R(5); UKLR 24.3.13R(4); UKLR 24.4.25R; UKLR 24.4.26G; UKLR 24.4.27G

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Under UKLR 24.3.2R(5), 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 provide a reasonable basis for them to make proper judgements on an

ongoing basis as to the financial position and prospects of the applicant and its group’.

A similar obligation exists under UKLR 24.3.13R(4) when a sponsor submits a circular for an issuer applying to transfer its category of equity shares’ listing.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with the UKLR 24.3.2R(5) obligation. This guidance is not exhaustive and a sponsor should exercise professional judgement when deciding what steps it should carry out to comply with the rule.

### **The scope of UKLR 24.3.2R(5)**

There is likely to be some overlap and connection between the work carried out by sponsors in order to make the UKLR 24.3.2R(5) declaration and that required in order to make the UKLR 24.3.2R(4) declaration for compliance with the listing rules, the disclosure requirements and the transparency rules on an ongoing basis. For example, an applicant will need to ensure it has adequate procedures, systems and controls to make proper judgements about its financial position and prospects in order to identify any 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(5) is a separate declaration. It requires specific consideration of 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/719 for guidance on their obligations under UKLR 24.3.2R(4).

### **The meaning of ‘established’**

Listing Principle 1 requires all listed companies to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to meet its obligations from the point it becomes a listed company. These include those procedures, systems and controls contemplated by UKLR 24.3.2R(5). Accordingly, while at the time the sponsor declaration is given not all necessary procedures, systems and controls will have been operated, listed companies should have taken

reasonable steps to have designed, documented, approved and communicated all necessary procedures, systems and controls to those responsible for their implementation and use at the point of admission to the Official List.

Furthermore, the applicant must have committed to implement those procedures, systems and controls in a timescale that will ensure that the information required to make proper judgements on the financial position and prospects of the applicant will be available as and when required by the directors. 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(5).

### **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 companies applying for a listing of equity shares in the equity shares (commercial companies) category, the closed-ended investment funds category or the equity shares (shell companies) category will be able to comply with their obligations under the listing rules, disclosure requirements and transparency rules.

Sponsors should note UKLR 2.2.2G which provides guidance setting out areas in relation to which the FCA considers listed companies should place particular emphasis to ensure that they have adequate procedures, systems and controls.

In respect of UKLR 24.3.2R(5), it is important to note that the sponsor's role is in addition to the part played directly by the directors of the applicant or listed issuer and by any reporting accountant appointed by the applicant. 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. In this regard, reliance on a third-party opinion or a comfort letter provided by the applicant or listed issuer is unlikely, without an adequate 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 or listed

issuer and its advisers. In providing its confirmation under UKLR 24.3.2R(5), we would expect the sponsor to apply its own knowledge and experience of the applicant or listed issuer and take into account other factors that it may consider relevant.

These factors could include the company's operating environment and any particular knowledge or experience the sponsor may have of the approach taken by companies of a similar size, with a similar corporate structure or operating in the same sector.

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 and disclosure requirements and transparency rules.

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 the third party's work and reviewing the reporting accountant's observations and recommendations in order to identify which procedures, systems and controls should be established at the point of admission. 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 – Sponsors: Record Keeping Requirements for further guidance on the application of record keeping requirements.

A sponsor should be able to demonstrate that a systematic process has taken place. As a starting point, the sponsor may wish to understand from the applicant or listed issuer the procedures, systems and controls that the directors of the applicant or listed issuer have established or propose to establish ahead of admission in order to enable them to make proper judgements on an ongoing basis as to the financial position and prospects of the applicant or listed issuer and its group. The sponsor should assess the appropriateness of the procedures, systems and controls in place or proposed to be in place ahead of admission and identify any gaps. Where gaps are identified, the sponsor should ensure the applicant or listed issuer and its directors have taken or have undertaken to take necessary steps to address these gaps before the sponsor provides its declaration. Necessary steps may include the design, documentation, and approval of relevant procedures, systems and controls and communication of those

procedures, systems and controls to those responsible for their implementation and use.

If a third party adviser such as a reporting accountant has been engaged to undertake the work set out above, the sponsor must maintain an adequate level of oversight and challenge (where appropriate) of the adviser's work throughout the process.

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

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 that provide a reasonable basis for the directors of the applicant to make proper judgements on an ongoing basis as to the financial position and prospects of the applicant and its group. 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.