

Primary Market Technical Note

Sponsor's confirmation in relation to modified transfer of listing category

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

UKLR TP2; UKLR TP3; UKLR TP5

UKLR 4.2.2R (5), (6) and (7) require the appointment of a sponsor where an issuer in the equity shares (international commercial companies secondary listing) transfers its listing category to the equity shares (commercial companies), equity shares (shell companies) or closed-ended investment funds categories, respectively. UKLR 4.2.2R (8), (9) and (10) contain corresponding provisions relating transfers from the equity shares (transition) category.

However, in certain circumstances and where certain conditions can be met (see the UK Listing Rules Transitional Provisions) an issuer may use a 'modified transfer' process. Further, some types of modified transfer require a sponsor to provide a different form of service to that

described in UKLR 24.3.12R to UKLR 24.3.14R. The relevant sponsor service is described in the following transitional provisions:

- UKLR TP2.7R to UKLR TP2.11R (Transfers from the equity shares (transition) category into the equity shares (commercial companies) category)
- UKLR TP3.7R to UKLR TP3.11R (Transfers from the equity shares (transition) category into the equity shares (shell companies) category)
- UKLR TP5.7R to UKLR TP5.11R (Transfers from the equity shares (international commercial companies secondary listing) category into the equity shares (commercial companies) category)

In particular, TP2.10R, TP3.10R and TP5.10R require a sponsor to confirm to the FCA that it has not identified any adverse information that would lead it to conclude that the issuer would not be able to comply with its obligations under the listing rules, the disclosure requirements and the transparency rules. The relevant sponsor declaration (the Sponsor's Declaration for a Transfer of Listing: modified transfer process) includes a corresponding statement.

This negative form of confirmation differs from the positive form typically provided by sponsors, such as in relation to a new applicant. We would therefore like to clarify our expectations of sponsors when providing this confirmation. Importantly, we expect the sponsor to consider its obligation within the context of the more targeted work it will have undertaken to fulfil the other aspects of these more limited sponsor services. That is, we would not expect a sponsor under this modified transfer process to undertake a broader assessment of the issuer's procedures, systems or controls.

Instead, the sponsor may make a rebuttable presumption that an issuer that has already been subject to and complying with relevant UKLR (and previously LR), DTR and MAR obligations by virtue of its existing listing, has appropriate systems and controls in place, unless information arises during the course of its work to indicate otherwise. The basis of the confirmation is therefore that no evidence to the contrary has been identified in the course of the sponsor's work.

In this context, a sponsor's work is likely to entail due diligence to support its sponsor opinions and confirmations as well as for its own

commercial and wider regulatory purposes, including take-on, reputational risk and conflict checks.

The sponsor should consider whether any matters arising in the course of its due diligence indicate that the issuer will not be able to comply with its obligations under the listing rules, the disclosure requirements and the transparency rules. If the sponsor identifies anything of concern, it should consider exploring the matter further, to gain a proper understanding such that it can form a reasonable opinion after due and careful enquiry. For example, where in the course of its routine due diligence the sponsor identifies recent regulatory breaches by the issuer, (other than those that would preclude the use of TP2, TP3 or TP5), the sponsor should ascertain the nature and extent of the issue and make enquiries to understand whether the matters have been remediated. The sponsor would then need to take this information into account when considering the basis for its confirmation to the FCA or whether it is able to provide the confirmation. However, other than to assess the applicability of TP2 pursuant to TP2.1R(3) (or the corresponding relevant provisions in TP3 and TP5), the sponsor is not required to undertake any other special procedures or additional work to identify risks or concerns in the first place. The sponsor may decide it is appropriate to discuss any adverse findings with the FCA. Where the sponsor decides to do this, it should do so at a sufficiently early stage.