

DRAFT FOR CONSULTATION

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Primary Market Technical Note

Sponsor transactions – Adequacy of resourcing

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules (UKLR), Prospectus Rules: Admissions to Trading on a Regulated Market (PRM), Disclosure Guidance and Transparency Rules (DTR), 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 24.4.10R; UKLR 24.4.12R; UKLR 24.4.13G; UKLR 24.4.21R;
UKLR 24.4.22G

Introduction

A sponsor is required at all times to demonstrate it is competent to perform sponsor services and it has appropriate systems and controls in order to carry out the role of sponsor in accordance with UKLR 24 (UKLR 24.4.10R). Since each sponsor is different and each sponsor transaction gives rise to different issues, the onus is on sponsor firms to assess their ability to act each time they are considering an appointment to act as sponsor. UKLR 24.4.12R, UKLR 24.4.13G, UKLR 24.4.21R and UKLR 24.4.22G will be relevant to sponsors in this regard.

Competence

UKLR 24.4.12R requires a sponsor or an applicant for sponsor approval to have a sufficient amount of relevant experience and expertise, and a sufficient number of employees with the skills and knowledge necessary for it to provide sponsor services in accordance with UKLR 4.2. UKLR 24.4.13G further explains that the FCA will take into account a range of factors relating to a sponsor's or applicant's business and operations when assessing whether a sponsor or applicant meets the competence requirements, including the nature, scale and complexity of its business, the volume and size of the transactions it undertakes, and the degree of risk associated with them. This is because the FCA expects that sponsors will have expertise that is relevant to the scale and nature of the sponsor services they expect to perform.

Prior relevant experience of providing sponsor services remains a valuable form of evidence, when demonstrating competence and the ability to staff and oversee sponsor services appropriately. This experience is also likely to be a relevant consideration when a sponsor considers the staffing arrangements for specific sponsor services. We expect sponsors or applicants for sponsor approval to measure the relevance of past sponsor service experience by reference to a number of factors, including how recently the relevant sponsor services were provided and the extent to which those services are congruent with the range of services a sponsor or applicant for sponsor approval typically expects to provide.

The FCA acknowledges that sponsor experience resides in individuals at firms as well as the firm itself and that there are various methods by which such experience can be stored and transmitted within a firm, including through training or knowledge management systems.

Systems and controls

UKLR 24.4.21R makes it clear that a sponsor is generally regarded as having appropriate and effective systems and controls where, amongst other things, it can ensure that it has appropriate staffing arrangements for the performance of sponsor services with due care and skill, and the appropriate supervision of those staff. UKLR 24.4.22G recognises that the nature and extent of the systems and controls which a sponsor will need to maintain depends on factors

including the nature, scale and complexity of its business, the volume and size of the transactions it undertakes, and the degree of risk associated with them.

Therefore, when considering whether staffing and supervisory arrangements in relation to a sponsor service are appropriate, important factors will be whether the firm has experience relevant to the proposed sponsor service and how such experience will be applied.

Practical considerations

Although listed companies, or applicants, are most likely to appoint advisers with experience relevant to the type of transaction contemplated, there could be instances where sponsors are approached to carry out sponsor services in the following circumstances (please note this list is not exhaustive):

- for companies in sectors where the sponsor firm or the staff allocated to the transaction have little to no relevant or recent experience
- where existing staff are overstretched and, therefore, at risk of not carrying out services with due skill and care, or
- at a time where the firm may be exposed to a key person risk in relation to sponsor expertise, for instance because key or experienced individuals have left the firm.

A sponsor which historically provides sponsor services in respect of a particular size of transaction or particular types of transactions, for example transactions in relation to closed-ended investment funds (rather than commercial company transactions) and wishes to take on a transaction of a different type, size or complexity, ought to consider whether it has the appropriate systems and controls in place to do so. The sponsor should ensure that it can appropriately staff the transaction so that it is performed with due care and skill. It should also ensure it has the relevant experience and expertise required by UKLR 24.4.12R; in other words that it is competent to provide that sponsor service. This is particularly important where the sponsor may not have undertaken a transaction of this type or nature within a

recent timeframe since experience can become less relevant with time.

Primary Market Specialist Supervision's approach

The FCA's Primary Market Specialist Supervision team monitors carefully the transactions to which sponsors are appointed. Exceptionally, where we are of the view that firms have limited or no relevant experience in carrying out the type of transaction being submitted to the FCA, or in working with a listed company in a certain industry sector, Primary Market Specialist Supervision have expedited discussions with the sponsor as to the arrangements they have put in place to ensure they are able to comply with UKLR 24 requirements as regards appropriate staffing.

Sponsors are strongly encouraged to assess carefully whether or not they have relevant experience and the appropriate systems and controls to carry out sponsor services in accordance with UKLR 24.4.12R, UKLR 24.4.13G, UKLR 24.4.21R and UKLR 24.4.22G. Primary Market Specialist Supervision considers that, should a mandate be accepted in circumstances where a sponsor cannot demonstrate sponsor competence in the relevant area or appropriate resource for the type of transaction, there is a risk to the integrity of, or market confidence in, the sponsor regime. Sponsor firms should therefore contact the Primary Market Specialist Supervision team before accepting a sponsor mandate where they feel they may lack the necessary staff or relevant expertise in a certain area to complete a sponsor transaction. The team will continue to monitor sponsor appointments and will be prepared to take action to require firms to review their ability to act on transactions in circumstances where, in our view, the risks to the integrity of the sponsor regime are considered high.

It is not the intention of the FCA to assess a sponsor's ability to comply with UKLR24.4.5R and UKLR 24.4.10R on a transaction-by-transaction basis. However, sponsors should be aware of the possibility of an intrusive approach being taken by the FCA in this regard. The FCA's powers to suspend a sponsor's approval or to impose limitations or restrictions on the services a sponsor can provide are discussed in the Primary Market/TN/712 – Additional powers to supervise and discipline sponsors.