

DRAFT FOR CONSULTATION

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Primary Market Technical Note

Sponsor Services: Principles for Sponsors

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 4; ~~UKLR 7.2.11R~~; ~~UKLR 7.2.15R~~; UKLR 7.5.3R; UKLR 7.5.5R; UKLR 8.2.1R; UKLR 13.4.13G; UKLR 13.4.15R; UKLR 20.4.4R; UKLR 20.4.5R; UKLR 24;

A sponsor service is defined as:

'a service relating to a matter referred to in UKLR 4.2 that a sponsor provides or is requested or appointed to provide including preparatory work that a sponsor may undertake before a decision is taken as to whether or not it will act as sponsor for a listed issuer or applicant or in relation to a particular transaction, and including all the sponsor's communications with the FCA in connection with the service. But nothing in this definition is to be taken as requiring a sponsor when

requested to agree to act as a sponsor for a company or in relation to a transaction.'

~~This guidance is intended to help sponsors determine what initial work is part of the provision of a sponsor service and in what circumstances services that might initially not be sponsor services under the definition may become a sponsor service as the transaction proceeds.~~

We have set out below further guidance, with examples where appropriate, ~~about to assist sponsors when~~ applying the above definition ~~and to help sponsors understand the scope of the application of the sponsor principles.~~

Notification of appointment

UKLR 4.3.1R requires a listed issuer or applicant to inform the FCA of the contact details of an appointed sponsor. However, if a sponsor is in discussion with the FCA concerning a matter that is a sponsor service, the sponsor will still be carrying out a sponsor service, notwithstanding any lack of formal confirmation of appointment, and will be subject to the requirements and principles for sponsors set out UKLR 24.2.

Preparatory work and FCA communications entered into by a sponsor

~~The definition of sponsor service includes "preparatory work". This is intended to means-refers to work performed in specific-connection to with a matter described in UKLR 4.2.1R to UKLR 4.2.6R, in-anticipation of before a formal engagement letter has been agreed. -This recognises that it is not unusual for services relating to a transaction to be provided before the negotiations on the form and content of a formal sponsor agreement, or engagement letter are concluded. , to-continue well into the life of a transaction.~~

The definition of sponsor service ~~also~~ includes services "provided" as well as "services...[it]...is requested or appointed to provide". Therefore, if a sponsor voluntarily provides guidance on the UKLRs or DTRs or enters into communications with the FCA in relation to an event which requires a listed issuer to appoint or obtain guidance from a sponsor, this guidance or communication falls within the definition of sponsor

services and the requirements and principles set out in UKLR 24.2 applies.

In both cases, a sponsor service can only exist in relation to o-an-event circumstances described in UKLR 4.2.

To illustrate ~~this~~these points and provide further guidance to sponsors, we have set out below some examples of situations where a sponsor service may (or may not) be regarded as being provided:

- ~~• a firm which provides advice on class tests on a transaction that ultimately does not meet the threshold for a reverse takeover or initial transaction would not be providing a sponsor service, as there are is no “event circumstances which requires a listed issuer to appoint or obtain guidance from a sponsor”~~
- ~~• where a firm provides initial advice on a proposed transaction which is not a reverse takeover or initial transaction, but due to share price movements or other factors the transaction becomes a reverse takeover or initial transaction, preparatory work undertaken by an advisor at an earlier stage may be regarded as a sponsor service only to the extent that it took place after it was known by once it was known that the transaction could amount to a reverse takeover the sponsor that it was performing a sponsor service in line with pursuant to UKLR 4.2.6R). This is only likely in circumstances where it was, or should have been, reasonably foreseeable that the transaction would become a reverse takeover or initial transaction.~~
- where a firm has provided advice on class tests on a transaction that is unlikely to be a reverse takeover or initial transaction which is not considered could amount to a reverse takeover but in any event and subsequently needs to approach the FCA for either:
 - a request under UKLR 4.2.3R to modify, waive or substitute the operation of UKLR 7, UKLR 8 or UKLR 11; or
 - a request under UKLR 4.2.4R to provide individual guidance ~~this will constitute a sponsor service. However,~~ the provision of the initial advice on class tests will not be regarded as preparatory work ~~(and therefore part of for the purposes of the~~

~~definition of the sponsor service) if it was not foreseeable at that time that a request for modification or guidance would be necessary where it preceded the sponsor being appointed for the purposes of UKLR 4.2.3R or UKLR 4.2.4R or knowingly performing work for those purposes~~

- where a firm provides advice on class tests on a transaction which requires aggregation with a previous transaction under UKLR 7.2.11R, and this results in the transaction amounting to one which could be a reverse takeover or initial transaction, ~~t~~The the sponsor will be providing a sponsor service will commence at at the point the sponsor is appointed to provide advice ~~or commences preparatory work on the second transaction pursuant to UKLR 4.2.6R or is knowingly performing a service in relation to s-work that provision purpose.~~ - That is, the sponsor must be aware that its is guiding an issuer in relation to a transaction that could amount to a reverse takeover. - Logically, this will occur after the sponsor has become aware of the result of any aggregation exercise.

For the avoidance of doubt, ~~it is not intended that~~ the UKLRs do not impose any requirement for an issuer to appoint a sponsor on a significant transaction, but the sponsor service definition will apply where sponsor services are provided in relation to UKLR 4.2.6R or to class tests that relate to a request for guidance or for a modification to certain UKLRs.

~~This~~The definition of sponsor services is not intended to capture, through the application of hindsight or by reference to the existence of 'preparatory work', situations ~~that are not foreseeably preparatory to matters described in~~ in which a sponsor does could not know that it is performing the role of sponsor pursuant in connection with a matter referred to to UKLR 4.

To clarify the application of the definition of sponsor services in this area further, it is worth considering the role of a sponsor in the context of a related party transaction.

The UKLRs ~~have been drafted to require~~require listed companies to obtain written confirmation from a sponsor that the terms of the

proposed transaction or arrangement with the related party are fair and reasonable as far as the security holders of the listed company are concerned (UKLR 8.2.1R(3)). ~~It~~ This is not intended to create a requirement for a sponsor to be appointed to advise the listed company on the content of the notification referred to in UKLR 8.2.1R(4) as part of the sponsor service.

Nevertheless, sponsors may find themselves also appointed as financial adviser and, as such, would be required to advise the listed company on the content of the notification. Should an approved sponsor firm accept this role ~~—~~ providing advice on the application of the UKLRs and DTRs as to the contents and publication of the notification, or entering into correspondence with the FCA regarding these, ~~—~~ the FCA would treat this advice as falling outside the definition of sponsor services where that is not providing a service relating to a matter in UKLR 4.2.

~~However, such advice will be treated as any other ad hoc advice on the UKLRs and DTRs, such as corporate broking advice, and may still be relevant to the FCA's assessment of a sponsor's competence pursuant to UKLR 24.4.20G. We would expect firms that are sponsors, when working on transactions in a broking, banking or advisory role, to be aware of the possibility that a transaction may change so as to require, or include the provision of, a sponsor service. Sponsor firms should also be aware that their work in these other roles may still be relevant to the FCA's assessment of a sponsor's competence pursuant to UKLR 24.4.20G.~~

Role of the sponsor following document approval

Listing and transfer of listing category

Sponsors should be aware that the sponsor service required to be provided under UKLR 4.2.1R(1) or UKLR 4.2.2R continues after the approval of the prospectus or equivalent document used for the purposes of seeking admission to the equity shares (commercial companies) category, the equity shares (closed-ended investment funds) category or the equity shares (shell companies) category, or a circular relating to a transfer to one of these categories, until the effective date of admission or transfer. Sponsors should therefore be aware of the following issues:

- 1.** On an application for listing, or transfer of listing category, a sponsor is required to submit a sponsor declaration on the matters

set out in the relevant section of UKLR 24.3. Therefore, those declarations must meet the required standards of care until the effective date of admission or transfer.

1.2. Furthermore, a sponsor is under an obligation to inform the FCA of any further information known to it before the date of the admission to listing or the effective date of transfer that, in its reasonable opinion, could fall under UKLR 24.3.3R(3), UKLR 24.3.7R(3) or UKLR 24.3.12R(3). Sponsors will therefore need to consider how information received from third parties, or matters otherwise within their knowledge, which relates to the listing or transfer, is dealt with, so that relevant information is provided to the FCA in accordance with these rules.

3. Where a sponsor is acting for an applicant requesting the admission to listing, for the first time, of equity shares to a listing category to which the sponsor regime applies, it is also required to submit a Shareholder Statement or Pricing Statement, as applicable, in accordance with UKLR 24.3.3R(2) (the underlying requirements being set out in UKLR 20.4.4R(1) and (2)). The submission of one of these documents forms part of the sponsor service being carried out by the sponsor as it is done in connection with the admission to listing or transfer of listing which requires the appointment of a sponsor.

2.4. Where the exact number of shares to be allotted cannot be confirmed two days before the listing hearing, a sponsor, if one is appointed, must submit in writing confirmation of the exact number of shares to be listed as required by UKLR 20.4.5R. Sponsors are reminded of this requirement in UKLR 24.3.4G (for new admissions) and UKLR 24.3.8G (for further issues of equity shares). Again, the submission of this confirmation forms part of the sponsor service being carried out in connection with the admission to listing or transfer of listing which requires the appointment of a sponsor.

On admission to listing or transfer of listing becoming effective, the sponsor service will cease in relation to that transaction. However, a sponsor is subject at all times to the principles of cooperation set out in UKLR 24.2.9R.

Circulars and shareholder approval

UKLR 4.2.1R(3) and (4) require the appointment of a sponsor where a listed company is producing a circular seeking shareholder approval. UKLR 7.5.5R requires a listed company to publish a supplementary circular in relation to a reverse takeover should a material new matter arise or a material change occur following the publication of a circular to shareholders but before the shareholder vote. The production of a supplementary circular for a reverse takeover will require the appointment of a sponsor.

Sponsors will continue to be subject to the principles for sponsors set out in UKLR 24.2 following the publication of a circular required by UKLR 4.2.1R(3) or (4). On completion of a transaction under UKLR 4.2.1R(3) or (4), the sponsor service ceases. Completion can take place some time after shareholders have voted on the resolutions in general meeting.

A sponsor will need to be mindful of its responsibilities up to completion, such as continuing to manage conflicts of interest in respect of the transaction. Where a sponsor is asked to give guidance or advice to their client during this period it will need to take reasonable steps to satisfy itself that the directors understand their responsibilities and obligations under the UKLRs and DTRs. More specifically, a sponsor may need to provide guidance to a listed company on the application of UKLR 7.5.3R.

As the period between the publication of the circular and completion may stretch into a number of months, a sponsor should put in place arrangements with its clients that will allow the sponsor to be notified of possible issues that may affect the sponsor role during the period between publication of the circular and completion and that will allow clients access to guidance from sponsors on their UKLR and DTR obligations.

Following completion, a sponsor will remain subject to the principles of cooperation set out in UKLR 24.2.9R.

Role of the sponsor following the making of a submission

Other sponsor services required under UKLR 4.2 may result in a sponsor making a particular submission to the FCA, such as an

eligibility letter (UKLR 4.2.1R(89)). All correspondence entered into by a sponsor with the FCA in relation to making that submission will fall within the definition of sponsor service and the requirements and principles for sponsors set out in UKLR 24.2 will apply to that correspondence. The sponsor service will continue only while the submission continues to be relevant to the transaction, for instance:

1. a sponsor's letter confirming eligibility of a new applicant will be relevant until the date of admission to listing (unless that sponsor ceases to be appointed by its client) and
2. confirmation provided by a sponsor for the purposes of UKLR 13.4.15R (that it is reasonable for the issuer to make the declarations required by UKLR 13.4.13G(3) and (4) given to satisfy the FCA that a suspension of the company's shares is not required) will be relevant until the publication of the approved documentation by the issuer.

Aborted transactions

Should a transaction abort, we would still expect a sponsor to have complied with the requirements of UKLR 24.2 in relation to the carrying out of any sponsor services which will include guidance provided to a new applicant or a listed issuer and any explanations or confirmations provided to us in carrying out this service. We make periodic visits to sponsors in accordance with UKLR 24.5.6G and UKLR 24.5.7G during which aborted transactions requiring the appointment of or guidance from a sponsor may be reviewed.