

# Primary Market Technical Note

## Sponsors: Record Keeping Requirements

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules (UKLR), Prospectus Rules: Admission to Trading on a Regulated Market (PRM), 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 4.2.1R; UKLR 24.2.12R; UKLR 24.2.14R; UKLR 24.2.16R; UKLR 24.3; UKLR 24.4.10R; UKLR 24.4.12R; UKLR 24.4.21R; UKLR 24.4.25R; UKLR 24.4.26G; UKLR24.4.27G; UKLR 24.5.2R; UKLR 24.5.10R; UKLR24.5.12R

### Sponsors record keeping obligations

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UKLR 24.4.25R requires a sponsor to create and retain for 6 years accessible records which are sufficient to be capable of demonstrating that it has provided sponsor services and otherwise complied with its obligations under UKLR 24, including:

- the basis of each sponsor declaration given pursuant to UKLR 24.3.3R(1), UKLR 24.3.7R(1), UKLR 24.3.11R(1), UKLR 24.3.12R(2), UKLR 24.3.18R, or pursuant to an appointment under UKLR 4.2.1R(5)
- the basis of any opinion, assurance or confirmation given by the sponsor to the FCA or to an issuer with or applying for

admission of its equity shares, in relation to a sponsor service

- the basis upon which any guidance, judgements or opinions made or given by the sponsor to an issuer which underlie the request to the FCA to modify, waive or substitute the operation of UKLR 7, UKLR 8 or UKLR 11 pursuant to UKLR 4.2.3R; or for individual guidance pursuant to UKLR 4.2.4R
- the basis upon which the sponsor gives guidance to an issuer with or applying for admission of its equity shares pursuant to UKLR 4.2.6R or UKLR 24.2.1R(3), and the basis upon which any judgements or opinions underlying that guidance are made or given, and
- the steps taken to comply with its obligations under UKLR 24.2.12R, UKLR 24.2.14R and UKLR 24.2.16R (which all relate to conflicts identification and management), and UKLR 24.4.10R (ongoing compliance with approval criteria).

The record keeping obligations in UKLR 24.4.25R are designed to ensure sponsors retain information in a way that allows them to demonstrate how they have met their obligations and allows us to effectively supervise them, both in relation to performance on individual sponsor services and, more generally, their compliance with their obligations under UKLR 24.

Where sponsors fail to retain adequate records, this can impede our ability to assess matters such as whether the sponsor remains eligible, is identifying and adequately managing conflicts, is undertaking due and careful enquiry before providing any sponsor declaration, is acting with due care and skill, or has effective arrangements for supervising and providing guidance to staff undertaking sponsor services. This, in turn, can lead to an increased risk that non-compliance or poor performance by sponsors remains undetected and subsequently results in failures that cause harm to investors or damage to the reputation of the UK listing regime.

Additionally, sponsors should note that, where a sponsor fails to keep sufficient records to show that it had reasonable basis for making a significant judgement, that it undertook due and careful enquiry, or that it otherwise complied with its obligations under UKLR 24, we may, in some circumstances, be unable to conclude that the sponsor complied with the relevant substantive obligation

as well as its record keeping obligations.

This technical note is intended to help sponsors understand the objectives of the record keeping requirements and how we expect them to be applied. However, it is not possible for us to provide guidance on what UKLR 24.4.25R requires in every situation. It will be necessary for sponsors to exercise professional judgement about the nature, type and extent of records they keep in relation to the specific sponsor services they undertake and their sponsor business more generally.

We are conscious that complying with record keeping requirements can require a significant time commitment. We encourage sponsors to look for practical and efficient ways to meet the record keeping requirements. The Appendix to this technical note provides further guidance on the practical application of UKLR 24.4.25R in the form of questions and answers. Some of the information in the Appendix may assist sponsors in designing and implementing proportionate controls in relation to sponsor record keeping. We will seek opportunities to update this information with further questions and answers that support this aim.

We do not prescribe the types of records that can be used to meet the record keeping requirements (provided that they are accessible, can be retained for 6 years, and can be provided to us for review if required, in accordance with UKLR 24.4.25R and UKLR 24.5.2R), although we do not expect that sponsor service transaction files will be a sanitised set of standard form documents and file notes. Rather, we expect that sponsor service transaction files will typically contain a mix of internal and external emails, notes, memos, draft and final versions of reports, and other documents. Provided the sponsor's records contain sufficient explanation of the matter, we are happy for sponsors to use (for example):

- internal email discussions that are already being sent (which may be informal in tone) rather than creating a file note summarising the matter discussed
- drafts of documents, including hand marked-up versions, to show review and challenge or the development of presentations or opinions, and the thought process behind the approach taken

## **Recording material judgements underlying a sponsor declaration**

UKLR 24.4.27G provides that, in considering whether a sponsor has satisfied the requirements regarding sufficiency of records, the FCA will consider whether the records would enable a person with general knowledge of the sponsor regime and a basic understanding of a transaction to which a sponsor service relates, to understand and verify the basis upon which material judgements have been made throughout the provision of the sponsor service. As such, we consider that creating and retaining records that demonstrate a due diligence process was undertaken would, by itself, be unlikely to meet the requirement to retain sufficient records.

The specific nature of the records kept and the precise information the sponsor needs to record will vary depending on the particular judgement. However, we would generally expect to be able to ascertain from a sponsor's records the nature of the issue being considered, the facts and circumstances taken into account by the sponsor (which may include, where relevant, any that may support an alternative outcome) and the due and careful enquiry undertaken to establish the facts and circumstances, the sponsor's analysis of the issue, and the judgement reached.

We cannot prescribe the range of matters that may give rise to material judgements, and we expect sponsors to exercise judgement as to the level and nature of records they need to keep. However, sponsors should note that we are likely to regard a judgement as being material, if the outcome of the matter could either by itself or when taken together with other judgements the sponsor makes, affect the sponsor's ability to reach one of the opinions it is required to provide in a sponsor declaration.

## **Emails relating to a sponsor service**

Guidance in UKLR 24.4.26G(2) provides that a sponsor's records should include material communications which relate to the provision of sponsor services.

We expect a sponsor's records in relation to a sponsor service to include all emails that contain substantive points, including sharing information between the parties and advisers involved in the

transaction, the provision of advice or guidance by the sponsor, discussions or decisions about material judgements or opinions, or discussions about timing or progress on significant steps in the transaction.

As well as emails to external parties, we expect sponsor records to include material emails between deal team members, emails to or from any committee member, senior manager, peer reviewer or compliance staff relating to the transaction, and emails discussing potential conflicts of interest in relation to the sponsor service.

In making a deal file available to the FCA for a sponsor service review (under UKLR 24.5.2R), where email chains reflect a discussion between parties and advisers to the transaction, the sponsor will not usually need to provide each email as a separate file, provided that all relevant individual messages and attachments are within the email chains provided. Similarly, a sponsor will not usually need to provide emails of a purely administrative nature, such as emails arranging a meeting or conference call.

Sponsor records need to be retained for at least 6 years in an accessible form (UKLR 24.4.25R). We expect that records will be available to employees of the sponsor with a proper reason to access them, stored so that they can be made available to us on request, and retained despite any members of the deal team leaving the firm. In relation to emails stored electronically, we expect that, where a sponsor relies on a practice of retaining emails within individual employees' email inboxes, the sponsor will have in place arrangements that ensure that the records remain accessible for at least 6 years.

Additionally, when presenting records to us for sponsor service reviews, while sponsors may wish to include emails that have been retained in individual employees' email inboxes, we would not expect to be given direct access to the inboxes, unless a sponsor finds that this is the most efficient way to provide the FCA with the records it requests.

### **Records of meetings and calls**

As for communications which relate to the provision of sponsor services, the guidance in UKLR 24.4.26G(2) sets our expectation that a sponsor should retain records of all meetings, calls and other discussions during the course of the sponsor service where material issues relating to the provision of sponsor services are discussed.

We expect any written records of meetings, calls or other discussions to be prepared on a near contemporaneous basis (i.e. being prepared and finalised within a few days of the meeting, call or discussion taking place). We consider that the minute or file note is more likely to be complete and accurate (and it is less likely that the deal team will overlook to make a note at all) if a minute or file note is made while the discussion is fresh in the writer's mind. Where relevant, recordings of discussions held using video conferencing software (e.g. Microsoft Teams, WebEx or Zoom) can be retained in place of written minutes or file notes.

We expect these records to record the material points of the discussion, such that a person with general knowledge of the sponsor regime and a basic understanding of a transaction to which a sponsor service relates undertaken can understand:

- the basis of any material decisions, judgements or opinions made during, or based on the discussion or information provided during, the meeting, call or other discussion, and
- any material advice or guidance given by the sponsor during the meeting, call or other discussion and, to the extent explained during the meeting, call or other discussion, the basis for that advice.

The level of detail recorded will depend on the nature and importance of the matters being discussed, and we expect sponsors to exercise judgement as to which points need to be recorded. Near-verbatim written records of meetings, calls or other discussions will not usually be necessary. However, we consider that minutes or file notes of meetings, calls or other discussions that record the attendees, the key areas of discussion and any decisions, but contain little or no record of the discussion, will generally not be adequate.

### **Records of supervision of the deal team**

UKLR 24.4.25R(5) requires a sponsor to have effective arrangements to create and retain for 6 years accessible records sufficient to be capable of demonstrating it complies, at all times, with the approval criteria in UKLR 24.4.5R. This includes the systems and controls requirements in UKLR 24.4.5R(3) and UKLR 24.4.21R. As part of meeting this aspect of the record keeping requirements, we consider sponsors need to create and retain records to demonstrate there has

been appropriate supervision of staff engaged in the provision of sponsor services (in accordance with UKLR 24.4.21R(3)). As such, without limiting the obligation to keep sufficient records of the supervision of deal teams, we consider sponsors should ensure the following, as applicable to their supervision arrangements:

- where a sponsor uses any committee (including but not limited to a new business committee or sponsor committee) to oversee its performance of a sponsor service or any part of it, the sponsor should keep records of the information provided to that committee, material points discussed by the committee, and any decisions or recommendations of the committee and the basis for such decisions or recommendations
- where a sponsor relies on peer reviews or compliance reviews during a transaction to monitor the standard of work undertaken or the basis of material judgements, the sponsor should retain a record of what was reviewed, any substantive comments or queries raised by the reviewer, and any follow-up actions or responses to those comments and queries
- in relation to escalating or consulting with managers responsible for the sponsor function or compliance staff, the sponsor should keep a record of material discussions or other communications, and the outcome and the basis of such discussions or communications

### **Use of control schedules**

We have noted that some sponsors have implemented 'control schedules' to support meeting their record keeping obligations. We have seen a variety of approaches to control schedules by firms.

Sponsors are not required to use control schedules as part of their record keeping for sponsor services. Where they are designed and used effectively, control schedules can, however, assist with navigation of a deal file by providing links to relevant documents or folders, providing additional commentary on issues, judgements and decisions, and/or drawing together the basis for significant judgements and for making the sponsor declaration. In our view, however, control schedules are not the only way a sponsor can ensure that it complies with its record keeping obligations.

Sponsors can decide whether to use a control schedule, the form of any control schedule, and the policies and procedures they put in place to ensure any control schedule is used effectively. However, sponsors intending to use control schedules should note the following points:

- Using a control schedule does not remove or reduce the need to retain underlying records, such as material emails, file notes of material discussions, records evidencing review and challenge of information and opinions provided by the client, other advisers or third parties, and records of the basis upon which key decisions or judgements are made. However, depending on the sponsor's approach to control schedules, in some instances matters that would otherwise need to be recorded in a file note can be directly recorded in the control schedule. When we review a sponsor's deal file as part of a sponsor service review, inquiry or investigation, we are likely to request all relevant underlying records as well as any control schedule.
- Sponsors need to determine how their control schedule fits into their record keeping procedures and controls structures, and we expect sponsors to have processes in place to ensure that the control schedule is updated within appropriate timeframes for their approach. If the control schedule is being used to support decision making, escalation of issues, or supervision of deal teams, we would expect it to reflect the status of key issues and progress on each of the sponsor workstreams at the relevant times.

### **Records relating to other sponsor systems, controls and obligations**

While record keeping in relation to individual sponsor services is particularly important and often the aspect of record keeping we primarily focus our regulatory attention on, sponsors' record keeping obligations also extend to their broader obligations as a sponsor (UKLR 24.4.25R(5)). This will ensure that sponsors have the information required to monitor their compliance with their obligations under UKLR 24 and to demonstrate to us when required that they are in compliance with their obligations. Without limiting the application of UKLR 24.4.25R, we expect sponsors to ensure they have appropriate record keeping arrangements in the following areas:

- identifying and managing conflicts of interest and associated procedures, systems and controls in accordance with UKLR 24.2.12R to UKLR 24.2.17G, UKLR 24.4.21R(7) and UKLR 24.4.23G
- maintaining appropriately documented procedures, systems and controls that comply with UKLR 24.4.21R, which may include keeping records of any amendments made to those procedures, systems and controls and of any steps taken to monitor the effectiveness of those procedures, systems and controls
- monitoring and maintaining the sponsor's ongoing compliance with the competence criteria in UKLR 24.4.12R
- ensuring the sponsor has access to all information necessary to complete its annual notification on time in line with UKLR 24.5.10R and UKLR 24.5.11R
- ensuring the sponsor is able to identify matters that require notification, and make notifications, under UKLR 24.5.12R, and
- recording the basis upon which documents and information are compiled or prepared and provided to the FCA under UKLR 24.5.2R

## Appendix 1

The information in this Appendix supplements the guidance contained in the body of Technical Note TN 717 and the rules and guidance contained in UKLR 24.4.25R to UKLR 24.4.27G. It uses a Q&A style to address commonly asked questions or challenges that we are aware that sponsors have to confront when seeking to efficiently maintain adequate records of their work as a sponsor. We may update this appendix as appropriate to address additional questions that arise. When we do this, we will consult on the changes and expect to publicise this using our Primary Market Bulletin.

### **a. Do we need to provide specially prepared and/or curated records for a FCA sponsor service review?**

We do not expect sponsor service transaction files provided for review to be a curated set of documents and file notes or expect additional records to be compiled solely for the purposes of an FCA review. Records can be presented in the firm's existing file structures and format.

When requesting records for a sponsor service review, we typically expect sponsor service transaction files will consist of the firm's existing records, containing a mix of internal and external emails, notes, memos, draft and final versions of reports, and other documents already maintained by the firm in accordance with its own governance and compliance procedures. If contemporaneous records are maintained throughout the transaction, providing sufficient detail to describe the basis of the sponsor's judgements, additional records should not be necessary, either to meet the sponsor record keeping requirements or for the purposes of an FCA sponsor service review.

Over recent years, we have seen market practice develop around the use of a control schedule. Some firms may find these helpful to structure and organise records according to the specific responsibilities of a sponsor and assurances given to the FCA. Based on our review work, some firms find it efficient to use these control schedules on a live basis, as an aide memoire and control in storing relevant documents as part of an embedded process. For instance, reminding a member of the sponsor team that an email chain on a particular matter will be relevant for the sponsor file. The email chain would exist already, so the additional record keeping burden in this case relates to capturing in the control

schedule that it is relevant to supporting the basis of the sponsor's opinion in a particular area.

However, there is no requirement to create and maintain control schedules. In the context of an FCA review, we will analyse records, as provided. In many cases, we find that existing records in their native file structures are sufficient. So, in the example above relating to the email chain, where the email chain would be preserved anyway and presented to the FCA reviewers as part of the records to be made generally available, this would be sufficient for our purposes.

Based on our review work, a sponsor adopting best practice will include the following in its sponsor transaction file:

- contemporaneous file notes recording material discussions from meetings and deskside discussions that have particular significance (these can usually be efficiently captured in concise follow up email exchanges)
- committee papers and minutes containing sufficient detail of the committee's considerations and record the basis on which decisions were made, rather than only the decision
- marked up versions of reports and written representations from the issuer or third parties, accompanied by internal and external correspondence discussing material points
- email exchanges between the deal team capturing material discussions that underpin the formation of a sponsor's approach, its guidance and/or its opinions

Without additional curation, these records, which a sponsor is likely to maintain for its own purposes, should allow us to understand the firm's approach, its consideration of key matters and basis of its opinions in its sponsor role, should we perform a review.

### **b. Are there any common areas where sponsor records are incomplete or lacking sufficient detail?**

Based upon our experience performing sponsor reviews across a wide variety of sponsors and transactions, we have noted a couple of areas where the records kept by sponsors may not provide a clear or complete picture of the basis for a sponsor's opinions.

### *Committee meetings*

Committee meetings are an important way for a sponsor to ensure it has given appropriate consideration to key matters relating to a transaction. Committee meetings provide an important opportunity for escalation and independent challenge. As such, they can be an important feature of a transaction for the FCA to consider when performing a sponsor review. They can greatly assist us in understanding whether a sponsor has performed its work with due care and skill. We've found that sponsors adopting best practice will use committee papers and minutes to keep appropriately detailed records of the matters being considered by the committee, the decision, and importantly, a short record of any key considerations in the course of arriving at a decision. This results in a relatively efficient way of maintaining records that can suit both the sponsor's needs and also those of the FCA.

In some cases, we have found that whilst papers submitted to committees often present clearly the issues for discussion, the minutes of the meeting were so high level and lacking in detail, that whilst it was possible to understand the ultimate decision made, it was not possible to understand how the committee reached its decision. For example, where minutes of a meeting simply recorded 'The committee agreed to proceed'. In these cases, whilst we were reassured that a matter should have been carefully considered, it was not possible to understand why the sponsor made the decision it did.

### *The sponsor's obligation pursuant to UKLR 24.3.2R(4)*

Another area of sponsor record keeping where we have more commonly found records to be insufficient is in relation to the sponsor's work to assure the FCA that an issuer has established procedures which enable the issuer to comply with the listing rules and the disclosure requirements and transparency rules on an ongoing basis (UKLR 24.3.2R(4)).

In our technical note TN 719, we provide guidance that acknowledges that there is likely to be overlap in the underlying work a sponsor will do when coming to the opinion required by UKLR 24.3.2R(4) and when coming to the opinion required by UKLR 24.3.2R(5). Further, that there may also be overlap with work to support compliance with the principle set out in UKLR 24.2.8R. However, we also clarify in TN 719 and TN 708 that these are separate obligations and should be considered as such.

When reviewing sponsor records supporting the opinion reached in relation to UKLR 24.3.2R(4), we have sometimes found that sponsors have not appeared to have considered the full scope of the ongoing obligations applicable to the issuer, when considering the issuer's procedures. This has been evident where the sponsor has instead sought to rely overly on its records to support the opinion required by UKLR 24.3.2R(5) but where, for instance, a reporting accountant's report on the issuer's financial position and prospects procedures has not included the full range of relevant ongoing obligations within its scope. Similarly, we have seen sponsors relying on records of discussions with directors that were more relevant to the sponsor meeting its obligation in UKLR 24.2.8R but were not sufficient to support a meaningful consideration of the sponsor's procedures across the full range of its ongoing obligations.

Whilst we do not require the use of specific controls or control documents, sponsors may find it helpful to consider a control that reminds deal teams to record the separate basis for their opinions in relation to UKLR 24.3.2R(4), including reference to the full scope of the ongoing obligations applicable to the issuer. This may help to ensure that the basis for the sponsor's opinions is evidenced by a proper consideration of procedures relating to the full scope of the rules applicable to the issuer, rather than by reference only to exercises that do not fully assess this.

**c. We are satisfied that an expert's report provides the information we need to support our ability to provide assurance to the FCA. What records do we need to maintain to support the work we have undertaken?**

Sponsors may seek third party reports in a number of specialist areas. We discuss this further in Technical Note TN 722. In UKLR 24.2.3G we provide guidance that where sponsors provide information to the FCA based on information it has received from a third party, in assessing whether a sponsor has complied with its obligations in UKLR 24.2.2R(1), the FCA will have regard, among other things, to whether a sponsor has appropriately used its own knowledge, judgement and expertise to review and challenge the information provided by the third party. Records maintained by sponsors should be capable of demonstrating this.

During our reviews, we have observed cases where a sponsor's transaction files contain multiple versions of an expert's report, but

with no evidence that the reports have been reviewed or commented on by the sponsor. In these cases, it has been difficult for us to ascertain the extent to which the sponsor exercised due and careful enquiry, especially where the minutes of committee meetings relating to the transaction also contained only very short descriptions of the decisions made rather than the basis for those decisions.

Where a sponsor has considered and is content with the scope of the expert's work and receives draft and final reports in line with the expected scope of work, and not revealing matters warranting further discussion or challenge, it will be sufficient to make a brief contemporaneous note of these judgements and the basis for them. We are aware that, in response to our supervisory reviews, some sponsors feel pressure to provide evidence to demonstrate challenge to expert reporting even where they are satisfied with the comfort that the report provides. We do not wish to encourage this practice and ask sponsors to simply exercise, and demonstrate through a contemporaneous record, their judgement when relying on third party reporting.

Examples of best practice we have observed during our reviews include where we have seen committee papers and minutes containing adequate summaries describing the deal team's work to review and challenge (where appropriate) reports or underlying information and the committee's consideration of this.

**d. The FCA's review feedback letter has identified examples where relevant records were not kept and we have been asked to consider enhancements to our record keeping procedures. What does this mean in practice and what might an appropriate response include?**

Where our feedback contains reference to a record not appearing to have been kept, this will typically occur in a situation where the record in question was either supposed to have been kept in line with the sponsor's own procedures and controls and/or was considered an important record for the FCA to understand the sponsor's process or the basis of a sponsor's opinion. In some cases, particularly where we have serious concerns, our feedback may direct a sponsor to make changes to its procedures. However, it is far more common for our feedback to ask the sponsor to consider changing its procedures.

In practice, we will expect the sponsor to carefully consider our feedback, review its procedures in light of the feedback and consider if an appropriate change would be likely to help reduce the future risk that a sponsor may not comply with its own procedures or with the rules for sponsors. Factors that sponsors may wish to consider when determining the appropriate course of action include: the likelihood of future breaches of procedure or rules; the options available to address the problem of the missing record(s); and the relative costs and benefits of procedural change. Sponsors may consider alternative courses of action are more appropriate, for example staff training or feedback. Sponsors may wish to conduct their own monitoring before making changes to procedures or controls or to discuss the appropriateness of procedural changes further with the FCA.

**e. We disagree with the FCA sponsor service review feedback that we do not have records to support our due and careful enquiry. What action can we take?**

Following the completion of a sponsor service review, we typically report our feedback to a sponsor in the form of a letter. Our written feedback letter will usually describe the focus of our review, the work we performed and feedback on the matters we considered. In some cases, our feedback letter will contain details of actions we require the sponsor to take. This will usually occur where what we have observed does not appear to meet our requirements. We expect sponsors to review our feedback letters carefully.

Where a sponsor considers our feedback to be unfair or factually inaccurate, we expect the sponsor to tell us promptly, providing adequate supporting evidence. Typically, during the course of a review, we will contact the sponsor with a further information request letter outlining any areas where we request further clarification on records observed or where records appear to be omitted from the document submission. At this time, sponsors have the opportunity to provide any record or information which was not initially included in the records providing for review. This helps sponsors to provide their views and evidence during the course of the review rather than after our feedback letter, which is preferable.

Where a firm disagrees with feedback provided in the letter, we encourage sponsors to contact the Primary Market Specialist Supervision team to discuss this further. We welcome discussions

with firms to clarify any points provided in the feedback letter and before the firm submits their written response to the FCA. Further guidance on sponsor service reviews is provided in FCA Technical Note TN 723.

**f. What records are required to demonstrate the adequate supervision and oversight of sponsor staff (UKLR 24.4.21R(3))?**

During the course of our reviews of sponsor services, we expect to see evidence that a sponsor is complying with the requirement to have effective systems and controls for the appropriate supervision of employees (UKLR 24.4.21R(3)).

We understand that sponsor services often take place under time pressure and rely on deal team's collaborating at pace, using desk side conversations and shorts calls or messages to ensure agility in decision making. Understandably, it will not be practical to record all such interactions, including those where senior members of the deal team are consulted or provide oversight or direction. However, we often find that the routine recording of the discussion of material points or decisions on a transaction will evidence the involvement and oversight of senior staff. For instance, email chains or short meeting notes. Committee escalation is another area where a sponsor's routine records will naturally serve to show the oversight and supervision of sponsor staff.

We are therefore of the view that a sponsor that is complying with the requirement in UKLR 24.4.21R(3) is unlikely to need to create special or additional records to evidence its compliance. However, sponsors should consider if they are working in ways that serve to capture key escalations and instances of supervision. Where desk-side conversations are considered material, and would not otherwise be recorded, a short email follow-up can be an efficient way of capturing important information to support the sponsor's approach and/or its opinion.

**g. Can the FCA provide a checklist of due diligence procedures and related records to be retained, to assist sponsors in more confidently meeting the record keeping requirements?**

It is not possible for us to provide a prescriptive and exhaustive list of sponsor procedures to support due and careful enquiry on sponsor services, or to set out precisely the records a sponsor can retain to ensure it meets the record keeping requirements in UKLR 24.4.25R and UKLR 24.4.26G. This is because we expect sponsors to exercise judgement when performing their role, applying their skill and experience to efficiently and proportionately undertake and record work on sponsor services across a wide range of issuers and transactions.

We set out in question a. that there are a number of records that we typically expect to find in a sponsor deal file, and which a sponsor firm is likely to maintain for its own purposes. The presence of these records should allow us to understand the firm's approach, its consideration of key matters and basis of its opinions in its sponsor role, should we perform a review.

**h. We did not keep a record because it related to a matter that was considered unimportant at the time. Subsequent events mean the matter has new importance. What should we do?**

When we review a sponsor's files, we will attempt to consider the nature and extent of the records in the context of the information that was reasonably available to the sponsor at the time. This will include considering the relative importance of a record and whether it would have been reasonable to have kept it in light of the likely significance of the matter to which a record relates at the time the record was created.

We exercise judgement when forming views on matters of this sort in the context of supervisory reviews. To assist with this, our reviews involve peer review processes and managerial oversight and challenge. We will always offer sponsors the opportunity to provide any explanations or evidence that they feel is relevant during the course of our reviews. Sponsors can also reply to our review feedback letter if they disagree with our assessments. More detailed

guidance on sponsor service reviews is provided in Technical Note TN 723.

Although sponsors may choose to update or supplement sponsor deal files after a transaction closes, to add contemporaneous documents that subsequently are found to be relevant to supporting their due and careful enquiry, ongoing maintenance or curation of sponsor deal files after sponsor services have ceased on a transaction is not required in order to meet the sponsor record keeping requirements. Should we perform a sponsor review of a transaction, we will typically request to see any deal file that the sponsor has compiled. Where there have been subsequent events relating to matters that may not have been included in the original file, we may seek to identify if relevant documents exist from other sources, for instance by reviewing relevant emails or other records relevant to that matter at the time.

**i. Do we need to retain all emails in respect of a sponsor service? Where we determine that emails are relevant, how can we reduce the quantity we need to keep?**

A complete record of all emails relating to a sponsor service is not required for the purposes of meeting the sponsor record keeping requirements. However, email inboxes are often already preserved as part of a firm's IT and data management policies. So, in the context of a sponsor review, it may be efficient for a sponsor to simply provide the FCA with access to retained emails, as one source of records relevant to demonstrating compliance with the relevant requirements in UKLR24.

Where a sponsor wishes to retain limited email records, or to organise limited email records in a sponsor deal file and/or as part of using a control schedule, it will be necessary to consider the materiality and relevance of the records. This will involve considering how an email record supports that the sponsor has met its requirements in UKLR24.

In our experience of performing sponsor reviews, sponsors with well-trained deal teams and effective compliance oversight arrangements appear to have been able to quickly and efficiently determine whether an email record is likely to be material in the

course of their live transaction work. That is, the embedded procedures at the sponsor naturally lead to the retention of important email chains on the sponsor's deal file. Alternatively, where all email records are retained and we make a request for relevant email records, we have typically found that sponsors are quickly able to review email records to provide only those that are the most relevant.

Where relevant email records include multiple individual emails contributing to a conversation, it may be helpful to consider if retaining one email that contains the whole email chain would be an efficient and effective way to reduce the volume of records kept on the file for a sponsor service.

### **j. What level of detail is required in file notes or minutes of meetings?**

Determining the level of detail to record in a file note or meeting minute requires a degree of skill and judgement. We are aware that most sponsors spend time and effort training staff and monitoring the effectiveness of their record keeping arrangements. Based on the reviews that we have performed, we note that sponsors with well-trained and supervised staff and effective compliance oversight arrangement, tend to efficiently achieve an appropriate balance when determining which records to retain and how much to write when creating records.

When considering the level of detail in committee minutes, our reviews have revealed some good and poor practices. In the poor examples, a committee paper might contain very high-level statements that provide little insight into what the committee was asked to consider. In the worst cases, it has appeared that the committee was not provided sufficient detail to be able to perform its governance role effectively and to challenge the deal team. Statements in committee papers equivalent to 'The deal team considers the issuer complies' are a relatively poor source of evidence that a sponsor has carefully considered a particular matter. Related to this, a statement in the committee minutes that 'the committee agreed' may also be unhelpful in meeting the sponsor record keeping requirements or supporting the sponsor's due care in relation to a particular matter.

In the best examples we have seen during our reviews, committee papers contain short summaries of the work of the deal team or raise questions or issues for the committee to consider. Sponsor's adopting best practices when recording committee minutes include very short summaries of committee considerations and the basis for their overall decisions. For example, 'the committee noted the work performed by the deal team, and after considering x and y, and on the basis of z agreed to proceed on the basis proposed'.

Likewise, good practice we have seen around the efficient recording of file notes has seen some sponsors follow material desk-side discussions with short email exchanges capturing the decision reached in the discussion and a short summary of the thought process leading to it.

**k. In forming some of our sponsor opinions, and in deciding the extent of our enquiries or other work, we have taken into consideration our previous experience of working with the issuer and members of its management. How can we record this?**

We have often reviewed sponsor services where the sponsor has been able to take into account its prior experience of working with an issuer or members of its management as part of forming its opinions, or in deciding the extent of any further work or enquiry required to satisfy its sponsor obligations. Examples of this include where a sponsor decides not to perform additional steps in relation to the obligation under UKLR 24.2.8R, where it is clear from the sponsor's previous work with a director, that the director has a satisfactory understanding of the relevant responsibilities and obligations under the listing rules, the disclosure requirements and transparency rules.

Another example is where the sponsor takes into account its prior experience of working with members of the issuer's management, and their history of regulatory compliance, as part of considering whether an issuer is likely to comply with its ongoing obligations. This can be relevant when the sponsor is considering its obligations under UKLR 24.3.3R(3)(b). Efficient ways of recording a sponsor's considerations in this regard, as a means of ensuring that there is a record of the basis for the sponsor's opinion or to support the proportionality of its due diligence include any and all of: email exchanges among the deal team; committee papers or minutes; and

file notes recording desk side discussions, meetings or decisions.

**I. We are concerned we have not been able to obtain records from an issuer that our procedures would normally require. What should we do?**

A sponsor's response in this situation will depend on the nature and extent of the missing records, the impact on its ability to form a reasonable opinion and to evidence the basis for that

opinion. A sponsor may need to remind an issuer of its obligation to cooperate with its sponsor (UKLR 4.5.1R) and also of the sponsor's responsibilities to the FCA, including the sponsor record keeping rules and guidance. Where a sponsor does this and continues to have concerns that it is not in receipt of key information or documentation from an issuer, such that it cannot come to a reasonable opinion and evidence its care in forming that opinion, the sponsor will need to consider carefully whether it is able to proceed with the transaction.

We recognise sponsors sometimes have to make challenging judgements under significant time pressure. Exceptionally, a sponsor may be able to form its opinion in the absence of records it would have preferred to have received or would normally have received. In such a case, it may be sufficient for the sponsor to make a contemporaneous note of its judgement and how it was able to form an opinion in the absence of the relevant record. In these circumstances, it is likely to be appropriate to escalate the matter and to keep a contemporaneous note of the decisions of any senior staff in relation to the matter, as this in itself will assist in demonstrating, through the records, due care and skill in reaching an opinion. For the avoidance of doubt, we would never expect a sponsor to proceed with a transaction in circumstances where, in its reasonable opinion, it has not obtained sufficient evidence to support its opinion on matters that are considered key to the transaction or to its ability to provide the relevant information, confirmations and declarations to the FCA.

**m. Does an issuer have responsibilities to cooperate with its sponsor in relation to the sponsor record keeping requirements?**

We value the sponsor regime and the work sponsors do to guide issuers and provide us with information, confirmations and declarations. And we place significant reliance on sponsors to help us in exercising our own functions. As such, it is important that we are able to supervise the sponsor regime effectively and to test, from time to time, and through our review work, how a sponsor has approached the performance of sponsor services and the basis for its guidance and opinions. Our ability to do so is hampered where sponsors have not kept records that allow us to assess their work. Importantly, sponsors may breach the rules if they are not able to demonstrate that they have met our requirements.

In this context, it is important to recognise the responsibilities of issuers as regards their sponsor. Our rules require an issuer to cooperate with its sponsor, providing all information reasonably requested by the sponsor for the purpose of carrying out a sponsor service in accordance with the relevant rules. A sponsor may reasonably need to evidence that it has discussed certain matters with the issuer or had the opportunity to consider relevant information owned by the issuer. This may be relevant to achieving effective and efficient interactions with the FCA during the course of the FCA's consideration of a live listing transaction. It may also be necessary in the context of a review of a sponsor service by the FCA. Issuers should therefore recognise the sponsor's general duties and responsibilities to the FCA, including that a sponsor will need to be able to demonstrate to the FCA that it acted with care and skill in the context of a review of sponsor records.