

UKLA Technical Note

Sponsors' obligations on financial position and prospects procedures

Ref: UKLA / TN / 708.2

LR 7.2.1R and
LR 8

Under LR 8.4.2R(4), a sponsor must, before submitting a listing application for a new 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 judgments on an ongoing basis as to the financial position and prospects of the applicant and its group'.

A similar obligation exists under LR 8.4.15R(4) when an issuer is applying for a transfer between listing categories.

The meaning of 'established'

Listing Principle 1 requires all listed companies to have the necessary procedures, systems and controls in place to enable it to meet its obligations from the outset, ie, from the point it becomes a listed company. These include those procedures contemplated by LR 8.4.2R(4). While we would accept that it is possible, at the time the declaration is given, that not all necessary procedures will have been operated, we do expect them to have been designed, approved and communicated 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 on a timescale that will ensure that the information required to make proper judgments on the financial position and prospects of the applicant will be generated as and when required by the directors.

The sponsor's role

In respect of LR 8.4.2R(4), it is important to note that the sponsor's role is in addition to that part played directly by the directors of the new applicant and by any reporting accountant appointed by the new applicant and sponsor. In order to meet its obligations, we expect the sponsor to review and challenge the work done by the new applicant or reporting accountant, drawing on its own knowledge and experience of the new applicant, its operating environment and other companies in its sector.

A sponsor should be able to demonstrate that a systematic process has taken place in order to come to a reasonable opinion, after having made due and careful enquiry, that all necessary procedures are designed and in place at admission. For this purpose, sponsors may wish to carry out an analysis in the context of the directors' regulatory obligations which identifies the necessary procedures that should be in place at admission to generate the information required to make proper judgements on financial position and prospects, the quality and extent of those procedures that are already in place and whether there are any gaps. Where there are gaps, steps should be taken to ensure that necessary procedures are designed and in place before admission. Furthermore, we would not expect a sponsor to submit its declaration under LR

8.4.2R(4) without a new applicant having formally documented, approved and appropriately communicated those procedures that it has committed to implement on a timely basis.

While we are aware that it is customary for sponsors to rely upon reporting accountants to assist them when discharging their obligations, we recognise that the scope of a reporting accountant's engagement and its deliverables will vary, reflecting the fact that these are ultimately private contractual matters between the reporting accountant, new applicant and sponsor. Although the reporting accountant's involvement may vary, we would expect to see clear records to demonstrate a sponsor's own enquiries, challenge and action at all stages of the engagement. This is particularly so when defining the scope of the reporting accountant's work and reviewing the reporting accountant's observations and recommendations in order to identify which procedures should be designed and in place before admission. We would remind sponsors of their record keeping obligations in LR 8.6.16AR to LR 8.6.16CG.

It is not uncommon for sponsor firms to rely on comfort letters provided by reporting accountants that effectively mirror the language of the sponsor declaration required under LR 8.4.2R(4). In our view, reliance on a written confirmation designed to give 'back to back' comfort, as with any such confirmation from a third party adviser is, without an appropriate level of sponsor enquiry and challenge, insufficient evidence to demonstrate that a sponsor has reached a reasonable opinion after due and careful enquiry.