

Technical Note

Sponsors' obligations on financial position and prospects procedures

LR 7.2.1R and
LR 8

Under LR 8.4.2R(4), a sponsor must, before submitting a listing application for an 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 applies to transfer its category of equity shares' listing to a premium listing.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with the LR 8.4.2R(4) obligation. This guidance is not exhaustive and a sponsor should exercise professional judgement when deciding what steps it should carry out to comply with the rule.

The scope of LR 8.4.2R(4)

There is likely to be some overlap and connection between the work carried out by sponsors in order to make the LR 8.4.2R(4) declaration and that required in order to make the LR 8.4.2R(3) declaration for compliance with the listing rules and the disclosure requirements and transparency rules on an ongoing basis. For example, an applicant will need to ensure it has adequate procedures, systems and controls to make proper judgements about its financial position and prospects in order to identify any inside information under the Market Abuse Regulation (referred to in DTR 2). Similarly, it will need to be able to produce periodic financial reports under DTR 4. Notwithstanding such connection, LR 8.4.2R(4) is a separate declaration. It requires specific consideration of the directors' ability to make proper judgements, on an ongoing basis, as to the financial position and prospects of the applicant. Sponsors should refer to UKLA/TN/719.1 for guidance on their obligations under LR 8.4.2R(3).

The meaning of 'established'

Listing Principle 1 requires all listed companies to take reasonable steps to establish and maintain the necessary procedures, systems and controls in place to enable it to meet its obligations from the point it becomes a listed company. These include those procedures, systems and controls contemplated by LR 8.4.2R(4). Accordingly, while at

the time the sponsor declaration is given not all necessary procedures, systems and controls will have been operated, they should have taken reasonable steps to have been designed, documented, 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, systems and controls in a timescale that will ensure that the information required to make proper judgements on the financial position and prospects of the applicant will be generated as and when required by the directors. The sponsor should review the applicant's implementation plan in order to form a view on whether it is sufficient for the purpose of enabling the sponsor to comply with LR 8.4.2R(4).

The sponsor's role

Sponsors have a critical role to play in maintaining the integrity of the premium listing regime by providing assurances to us that companies applying for a premium listing of equity shares will be able to comply with their obligations under the listing rules, disclosure requirements and transparency rules. 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 applicant and by any reporting accountant appointed by the applicant and sponsor. As stated in LR 8.3.2AG, a sponsor remains responsible for complying with its responsibilities even where reliance is placed on a listed company, applicant or third party. In this regard, reliance on a third-party opinion or a comfort letter provided by the listed company is unlikely, without an appropriate level of enquiry and challenge by the sponsor, to be sufficient evidence to demonstrate that a sponsor has reached a reasonable opinion after due and careful enquiry.

In order to meet its obligations, we expect the sponsor to review and challenge the work done by the listed company or third party. In doing so, the sponsor should use its own knowledge and experience of the applicant, its operating environment, other companies in its sector and its general experience of advising premium listed companies. Further, the sponsor should recognise its unique role among the parties involved in the process by drawing on its experiences of other sponsor service transactions and its interaction with the FCA on matters concerning the application of the listing rules and disclosure requirements and transparency rules.

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 third party's work and reviewing the reporting accountant's observations and recommendations in order to identify which procedures, systems and controls should be established at the point of admission. We would remind sponsors of their record keeping obligations in LR 8.6.16AR to LR 8.6.16CG. Sponsors should refer to UKLA/TN/717.1 for further guidance on the application of record keeping requirements.

A sponsor should be able to demonstrate that a systematic process has taken place. As a starting point, sponsors may wish to understand from the applicant the necessary procedures, systems and controls that should be in place at admission to generate the information required to make proper judgements on financial position and prospects. The sponsor should assess the quality and extent of those procedures, systems and controls that are already in place, and whether there are any gaps. Where there are gaps, steps should be taken to ensure that necessary procedures, systems and controls are designed, documented, approved and communicated to those responsible for their implementation and use and in place at the point of admission.

IPO preparatory work prior to a sponsor's engagement

We are aware that an applicant may engage advisers, such as a reporting accountant, at the preliminary stage of an IPO process (prior to the appointment of a sponsor) to undertake preparatory work in relation to establishing procedures that provide a reasonable basis for them to make proper judgements on an ongoing basis as to the financial position and prospects of the applicant and its group. Should a sponsor be subsequently engaged, we would expect to see evidence that it has reviewed the work already undertaken by the adviser(s) and applicant, and assessed the appropriateness and timing of any work outstanding.