

UKLA Technical Note

Sponsors: Record Keeping Requirements

Ref: UKLA / TN / 717.1

LR 8.2.1R,
LR 8.3.7BR,
LR 8.3.9R,
LR 8.3.11R,
LR 8.4,
LR 8.6.6R,
LR 8.6.7R,
LR 8.6.12R,
LR 8.6.16AR,
LR 8.6.16BG,
LR 8.6.16CG,
LR 8.7.1AR,
LR 8.7.7R,
LR 8.7.8R

Sponsor's record keeping obligations

LR 8.6.16A R requires a sponsor to create and retain accessible records which are capable of demonstrating that it has provided sponsor services and otherwise complied with its obligations under LR 8, including:

- the basis of each sponsor declaration given pursuant to LR 8.4.3R (1), LR 8.4.9R (1), LR 8.4.13R (1), LR 8.4.14R (2), or LR 8.4.17R, or pursuant to an appointment under LR 8.2.1R (5)
- the basis of any opinion, assurance or confirmation given by the sponsor to the FCA or to a company with or applying for a premium listing in relation to a sponsor service
- the basis upon which the sponsor gives guidance to a company with or applying for a premium listing under LR 8.2.2R, LR 8.2.3R or LR 8.3.1R (2), 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 LR 8.3.7BR, LR 8.3.9R and LR 8.3.11R (which all relate to conflicts identification and management), and LR 8.6.6R (ongoing compliance with approval criteria).

The record keeping obligations in LR 8.6.16AR 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 LR 8.

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 LR 8, 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 LR 8.6.16AR 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.

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 six years, and can be provided to us for review if required, in accordance with LR 8.6.16AR and LR 8.7.1AR), 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

LR 8.6.16CG 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 but no specific knowledge of the actual sponsor service undertaken 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 in relation to the particular judgements arising during sponsor services. 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 LR 8.6.16BG (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 UKLA department for a sponsor service review (under LR 8.7.1AR), 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 six years in an accessible form (LR 8.6.16AR). 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 six 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.

Records of meetings and calls

As for written correspondence, the guidance in LR 8.6.16BG (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 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.

We expect these records to record the material points of the discussion, such that a person with general knowledge of the sponsor regime but no specific knowledge of the actual sponsor service 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

LR 8.6.16AR (4) requires a sponsor to have effective arrangements to create and retain for six years accessible records sufficient to be capable of demonstrating it complies, at all times, with the approval criteria in LR 8.6.5R. This includes the systems and controls requirements in LR 8.6.5R (3) and LR 8.6.12R. 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 LR 8.6.12R (2)). 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 (LR 8.6.16AR (4)). This will ensure that sponsors have the information required to monitor their compliance with their obligations under LR 8 and to demonstrate to us when required that they are in compliance with their obligations. Without limiting the application of LR 8.6.16AR, 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 LR 8.3.7BR to LR 8.3.12A G, LR 8.6.12R (8) and LR 8.6.13AG
- maintaining appropriately documented procedures, systems and controls that comply with LR 8.6.12R, 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 LR 8.6.7R
- ensuring the sponsor has access to all information necessary to complete its annual notification on time in line with LR 8.7.7R and LR 8.7.7AR
- ensuring the sponsor is able to identify matters that require notification, and make notifications, under LR 8.7.8 R, and
- recording the basis upon which documents and information are compiled or prepared and provided to the FCA under LR 8.7.1AR