FINANCIAL CONDUCT AUTHORITY

Technical Note

Sponsors' duty regarding directors of listed companies

LR 7.2.1AR and LR 8

Under LR 8.3.4R, where, in relation to a sponsor service, a sponsor gives any guidance or advice to a listed company or applicant on the application or interpretation of the listing rules or disclosure requirements and transparency rules, the sponsor must take reasonable steps to satisfy itself that the director or directors of the listed company understand their responsibilities and obligations under the listing rules and disclosure requirements and transparency rules.

Premium Listing Principle 1 requires a premium listed company to take reasonable steps to enable its directors to understand their responsibilities and obligations as directors. The Listing Principles and Premium Listing Principles are general statements of the fundamental obligations of companies with a premium listing of their equity shares. Issuers should therefore be aware of the importance we place on compliance with these principles on an ongoing basis. The LR 8.3.4R sponsor duty sits alongside (and should be read in conjunction with) Premium Listing Principle 1.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with the LR 8.3.4R duty. This guidance is not intended to be exhaustive and a sponsor should exercise professional judgement when it decides what steps it should take to comply with the rule.

The meaning of 'reasonable steps'

LR 8.3.4R requires a sponsor to take 'reasonable steps' to satisfy itself that the director or directors of the listed company understand their responsibilities and obligations. The sponsor should assess the circumstances in which the guidance or advice will be given to determine what action (if any) to take. This assessment should take place at an ~~early~~appropriate stage of the sponsor service in order to provide sufficient time for the sponsor to ~~carry out~~ ensure any required actions are carried out before a sponsor provides its declaration.

Reasonable steps will vary depending on the circumstances but typically a sponsor should consider:

1) The type of sponsor service being provided

   The nature and degree of a sponsor's interaction with the directors is likely to differ according to the type of sponsor service.

For example, a sponsor service may entail providing guidance to a listed company on the application of the class tests under LR 8.2.2R or LR 8.2.3R.

In such a case, we would expect a sponsor to have satisfied itself that the directors understand which transactions need to be classified, how they should be classified using the class tests and, depending on the result of the classification, whether any further obligations arise. In some circumstances, a sponsor may choose to interact only with the director who has the relevant responsibility for the sponsor service within the listed company and/ or senior management. Those interactions may be sufficient for the sponsor to be reasonably assured in relation to its obligations if, in the sponsor's judgement, those interactions will lead to the director or directors understanding their responsibilities and obligations. That is, it will not be necessary for a sponsor to interact directly with all directors in all circumstances. In the instance of an IPO, where the sponsor is providing guidance to a new applicant, the relevant listing rules, disclosure requirements and transparency rules to be covered will be wider in scope. The sponsor may therefore need to interact directly with all of the directors.

2) The nature and experience of the listed company or applicant

   The sponsor should take into account the characteristics of the listed company or applicant when deciding what reasonable steps it should take. Sponsors should consider whether particular focus should be placed on certain responsibilities and obligations; for example, those relevant where the company operates in a specialist industry sector (such as property or mineral companies), has a controlling shareholder, is of an acquisitive nature or has multiple related parties. Sponsors should also consider the corporate history and experience of the listed company or applicant, for example, whether the applicant has pursued an attempted listing in the past (or is a new holding company for an existing listed company), whether the listed company is a frequent issuer of securities and/or whether the listed company has recent experience of significant or related party transactions.

3) The directors' level of understanding and their experience of complying with their responsibilities and obligations under the listing rules and disclosure requirements and transparency rules.

   As a starting point the sponsor will need to assess the directors' level of understanding of the relevant rules. In order to carry out this assessment, the sponsor should review the nature and extent of each director's experience of complying with their responsibilities and obligations, for example, in their current or previous role as a director of a premium listed company. Issuers may have also undertaken induction programmes and provided ongoing training to assist the directors in understanding their responsibilities and obligations. If a director does not have recent, relevant experience or has recently been appointed, the sponsor will need to consider tailoring its approach to the requirements of that director.

Other factors are likely to be relevant depending on the particular circumstances. We would expect the sponsor to record the steps taken to satisfy itself that the directors understand their responsibilities and obligations. Records should include the facts and circumstances the sponsor has taken into account in forming its reasonable opinion and the sponsor should retain any documentary evidence it has relied upon. Sponsors should refer to UKLA/TN/717.1 for further guidance on the application of record-keeping requirements.

LR 8.3.4R applies to all sponsor services and sponsors should be aware that this can

include preparatory work that a sponsor may undertake before a decision is taken as to whether or not it will act. The sponsor should consider the implications of complying with LR 8.3.4R if it provides guidance or advice to the listed company or applicant during the preparatory stage of any sponsor service. In such circumstances, it should recognise the fact that, for an IPO, not all directors may have been appointed at that point in time.

A sponsor will also need to be mindful of satisfying LR 8.3.4R up to completion of a sponsor service. Depending on the type of transaction, this can include the period between publication of a circular and completion of the relevant transaction or the period between publication of a prospectus and admission to the Official List. As this period may stretch into a number of months, a sponsor should ensure directors understand under what circumstances they may need to obtain guidance or advice from the sponsor on their responsibilities and obligations during this period and ensure it is available to provide such advice if required.

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 directors understand their responsibilities and obligations under the listing rules, disclosure requirements and transparency rules. LR 8.3.4R requires a sponsor to take action rather than rely on the work of third parties, the listed company or applicant itself. In other words, the sponsor's role is in addition to other parties involved in the sponsor service. As stated in LR 8.3.2AG, a sponsor remains responsible for meeting its responsibilities even where reliance is placed on a listed company, applicant or third party. Therefore, where a sponsor relies on the work of a third party such as its or the company's lawyers, to satisfy LR 8.3.4R, we would expect the sponsor to form a judgement as to whether the third party's work is sufficient for the purpose of the sponsor forming its reasonable opinion.

For example, for certain sponsor services such as an IPO, the listed company or applicant's lawyers or other advisers may provide memoranda or training to the directors on their responsibilities and obligations in order to assist the directors to comply with Premium Listing Principle 1. In order to satisfy its own obligations under LR 8.3.4R, we would expect the sponsor, typically in conjunction with its legal advisers, to review any memoranda or training materials. The sponsor should come to a reasonable opinion that the scope and content of these documents is sufficient and has been understood by the directors. In this regard, the sponsor will need to interact directly with the directors of a company during the IPO, for example by attending relevant board meetings.

In providing its confirmation under LR 8.3.4R, ~~W~~we would expect the sponsor to ~~enhance the work undertaken by the listed company or applicant and its lawyers or advisers by using~~ apply its own knowledge~~, judgement and expertise~~ and experience of the listed company or applicant and take into account such other factors that it may consider relevant including~~, as well as~~ the company's operating environment and any particular knowledge or experience it may have of the approach taken by companies of a similar size, with a similar corporate structure or operating in the same sector~~other companies in its sector~~. Further, the sponsor should recognise its unique role among the parties involved in the process by drawing on its experiences of advising on other sponsor services and its interaction with the FCA on matters

concerning the application of the listing rules and disclosure requirements and transparency rules.

If the sponsor determines there are gaps in the directors' understanding of the relevant rules, the sponsor will need to decide upon the most effective way of addressing the gaps.

Examples of actions a sponsor could take include:

- attending and participating at board meetings where presentations and memoranda are used to educate the directors on their responsibilities and obligations
- discussing with the directors examples of good practice and highlighting pitfalls by referring to FCA publications and guidance, as well as FCA Final Notices in relation to breaches of FCA rules by listed companies
- working through illustrative scenarios with the directors to assist them in understanding the application of their responsibilities and obligations
- in certain circumstances such as where the director has limited knowledge or experience of the relevant rules, carrying out one-to-one director training

Sponsors should ensure directors are provided with an opportunity to ask questions and, where it is apparent that further work is necessary, an appropriate follow-up should take place. We would expect the sponsor to record the steps taken to come to its view including retaining any materials used such as presentations or training aids, minutes of meetings and signed letters/statements.

Where the sponsor comes to the view that there are no material gaps in the directors' understanding such that limited (or no) action is required on behalf of the sponsor, we would expect the sponsor to be able to demonstrate how it came to this view. In this regard, reliance on a director's questionnaire or comfort letters provided by the listed company or its lawyers is, without an appropriate level of enquiry and challenge by the sponsor, unlikely to be sufficient evidence to demonstrate that a sponsor has taken reasonable steps. Where reliance is placed by a sponsor on its previous experience of advising the directors of the listed company, we would expect the sponsor to record the basis of its judgement that there is limited or no requirement to carry out further steps.

Should a sponsor be of the opinion that a director or directors of the listed company or applicant are unwilling or unable to understand their responsibilities and obligations, these concerns should be highlighted to the company at the earliest opportunity. In this instance, the listed company or applicant should have regard to its responsibility to cooperate with the sponsor under LR 8.5.6R by providing all information reasonably requested by the sponsor for the purpose of carrying out the sponsor service in accordance with LR 8. This is likely to include providing access to relevant meetings with directors, and, where applicable, senior management. The sponsor should also have regard to its obligation to promptly notify the FCA of the company's failure to comply with its obligations under LR 8.3.5AR.

FINANCIAL CONDUCT AUTHORITY

Technical Note

Sponsors' obligations on established procedures

LR 7.2.1R and LR 8

Under LR 8.4.2R(3), 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 enable the applicant to comply with the listing rules and the disclosure requirements and transparency rules on an ongoing basis'.

A similar obligation exists under LR 8.4.15R(3) where an issuer applies to transfer its category of equity shares' listing to a premium listing.

Listing Principle 1 requires a listed company to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations. The Listing Principles and Premium Listing Principles are general statements of the fundamental obligations of companies with a premium listing of their equity shares. Issuers should therefore be aware of the importance we place on complying with these principles on an ongoing basis. The LR 8.4.2R(3) sponsor requirement sits alongside (and should be read in conjunction with) Listing Principle 1. In forming its opinion on whether the applicant has established procedures, a sponsor should have regard to the systems and controls that are relevant to the operation of such procedures.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with LR 8.4.2R(3). This guidance is not exhaustive and a sponsor should exercise professional judgement when it decides what steps are necessary for it to comply with the rule.

The scope of LR 8.4.2R(3)

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(3) declaration and that required in order to make the LR 8.4.2R(4) declaration in relation to financial position and prospects. For example, an applicant will need to ensure it has adequate procedures, systems and controls to make proper judgements as to 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(3) is a separate declaration. It requires

broader consideration of the applicant's procedures, systems and controls than those which affect 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/708.3 for guidance on their obligations under LR 8.4.2R(4).

A sponsor's obligation to take reasonable steps to satisfy itself that the directors understand their responsibilities and obligations under the listing rules and disclosure requirements and transparency rules as set out in LR 8.3.4R is also a separate obligation. While, in fulfilling this obligation, the sponsor may be involved with educating directors on their ongoing obligations, this exercise is unlikely to involve the applicant ~~result in the~~ designing~~-~~ and establishing~~ment of~~ specific procedures, systems and controls to ensure compliance on an ongoing basis~~ by the applicant~~. Therefore the provision of advice in this regard, by itself, will be insufficient to underpin any sponsor confirmation for the purposes of LR 8.4.2R(3). Sponsors should refer to UKLA/TN/718.1 for guidance on their obligations under LR 8.3.4R.

Listing Principle 1 and LR 8.4.2R(3) encompass all ongoing obligations of the issuer under the listing rules, disclosure requirements, transparency rules and corporate governance rules. This includes the provisions set out in the following chapters:

- LR 9 (Continuing obligations)
- LR 10 (Significant transactions)
- LR 11 (Related party transactions)
- Disclosure Requirements (Articles 17-19 of the Market Abuse Regulation as referred to in DTR 2 and DTR 3)
- DTR 4 (Periodic financial reporting)
- DTR 5 (Vote holder and issuer notification rules)
- DTR 6 (Continuing obligations and access to information)
- DTR 7 (Corporate governance)

A sponsor should consider other provisions of the listing rules and the disclosure requirements and transparency rules that may impose obligations on the listed company.

LR 7.2.2G provides guidance on Listing Principle 1 and states that listed companies should place particular emphasis on ensuring they have adequate procedures, systems and controls in relation to identifying whether any obligations arise under LR 10, LR 11 and the timely and accurate disclosure of information to the market. LR 7.2.3G states a listed company should have adequate systems and controls to be able to:

- ensure that it can properly identify information that requires disclosure under the listing rules, disclosure requirements, transparency rules or corporate governance rules in a timely manner; and

- ensure that any information identified above is properly considered by the directors and that such a consideration encompasses whether the information should be disclosed

Therefore, when undertaking its work with respect to LR 8.4.2R(3), we would expect a sponsor to have particular focus on the adequacy of procedures, systems and controls that allow a listed company to comply with these obligations.

The meaning of 'established'

Listing Principle 1 requires a listed company 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 outset, ie, from the point it becomes a listed company. Accordingly, while at the time the sponsor declaration is given not all necessary procedures, systems and controls may have been operated, they should have taken reasonable steps to have designed, documented, approved and communicated to those responsible for their implementation and use at the point of admission to the Official List. The applicant should commit to implementing those procedures, systems and controls in a timescale that will ensure it will be able to comply with its ongoing obligations when required. 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(3).

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(3), it is important to note that the sponsor's role is in addition to the part played directly by the directors of the applicant and by any reporting accountant, lawyer or other adviser appointed by the applicant or 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. 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.

Reliance on the work of a reporting accountant or other adviser or comfort provided by ~~the listed company~~an applicant or its lawyers 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 ~~listedcompany, or~~applicant and its advisers. In providing its confirmation under LR 8.4.2R(3), we would expect the sponsor to apply~~, using~~ its own knowledge and experience of the applicant and take into account other factors that it may consider relevant including ~~its~~ the company's operating environment and any particular knowledge or experience it may have of the approach taken by~~other~~ companies of a similar size, with a similar corporate structure or operating ~~in its~~ in the same sector.

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 advisers' work and reviewing their observations and recommendations in order to identify which procedures, systems and controls should be established. 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 our record keeping requirements.

A sponsor should be able to demonstrate that it has taken a systematic approach to its assessment. This should cover whether the applicant has designed, documented, approved and communicated the required procedures, systems and controls to comply with each ongoing obligation. As a starting point, sponsors may wish to understand which procedures, systems and controls are already in place to enable the company to meet Listing Principle 1 and to assess whether they remain appropriate. Where a sponsor identifies omissions or gaps, it should take steps to ensure that procedures, systems and controls to address those omissions or gaps will be established at the point of admission.

Appropriate procedures, systems and controls

LR 8.4.2R(3) requires a sponsor to come to a reasonable opinion and, accordingly, we would not expect a sponsor to take a 'one size fits all' approach. A sponsor should assess the circumstances and characteristics of the applicant in order to form a reasonable opinion of what procedures, systems and controls are appropriate for the applicant to comply with its obligations on an ongoing basis.

Factors that we would expect a sponsor to take into account in forming its opinion could include:

- the extent to which the applicant has complex operations, is part of a large group of companies and/or is operating in a specialist industry sector (such as property or mineral companies)
- the extent to which the applicant has significant operations overseas
- the extent to which the applicant has particular features such as a controlling or substantial shareholder
- the extent to which the applicant utilises the services of third parties to fulfil its ongoing obligations such as the outsourcing of its Secretariat or Investor Relations functions

- whether there are jurisdictional risks pertaining to the countries where the applicant operates
- whether the applicant was a previously listed company and therefore has a track record of complying with its regulatory obligations

We would expect the sponsor to record its assessment and retain any documentary evidence it has relied upon.

The sponsor will then need to assess whether the procedures, systems and controls put in place by the applicant are established. Examples of actions a sponsor could take to do this include:

- reviewing documents setting out relevant policies and procedures and assessing the appropriateness of their design and documentation in the context of both the characteristics and circumstances of the applicant and the requirement of the obligation
- speaking with the management ~~employees~~and senior employees of the company who will be responsible for the operation of the procedures to understand how they will be operated on a practical basis (this could include speaking with the Chief Financial Officer, Financial Controller, Company Secretary, Head of Legal and Head of Investor Relations) or, in some circumstances, it may be appropriate to examine the effectiveness of procedures by presenting an illustrative scenario and assessing how the procedures would work in practice
- confirming that the procedures have been approved by the applicant and communicated to other relevant employees
- confirming that systems are in place (such as those to capture and maintain insider lists and strategic projects and to allow the company to disseminate information via a RIS) and assessing their appropriateness in the context of both the characteristics and circumstances of the applicant and the requirement of the obligation
- reviewing the controls in place (such as arrangements to review compliance with procedures on a regular basis) and assessing their appropriateness in the context of both the characteristics and circumstances of the applicant and the requirement of the obligation

Review of board memoranda

Should the applicant prepare board memoranda setting out its procedures, systems and controls to enable it to comply with its obligations on an ongoing basis, we would expect to see evidence that the content of this document has been reviewed and challenged by the sponsor. In our view, placing reliance solely on a review of board memoranda without an appropriate degree of enquiry as illustrated above, is unlikely to be sufficient evidence to demonstrate that a sponsor has performed due and careful enquiry for the purpose of LR 8.4.2R(3).

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, systems and controls for the purpose of complying with Listing Principle 1. Should a sponsor be subsequently engaged, we would expect to see evidence that it has reviewed the work undertaken by the adviser(s) and applicant, and assessed the appropriateness and timing of any work outstanding.

FINANCIAL CONDUCT AUTHORITY

Technical Note

Sponsors' obligations on no adverse impact

LR 7.2.1R and LR 8

Under LR 8.4.12R, where a sponsor submits a circular to the FCA on behalf of a listed company, in relation to a transaction that requires a circular under LR 8.4.11R (namely a class 1 circular, a circular that proposes a reconstruction or re-financing, or a circular for the proposed purchase of own shares that is required to include a working capital statement):

'the sponsor must come to a reasonable opinion, after having made due and careful enquiry, that the transaction will not have an adverse impact on the listed company's ability to comply with the listing rules or the disclosure requirements and transparency rules'.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with LR 8.4.12R(2). This guidance is not exhaustive and a sponsor should exercise professional judgement when it decides what steps it should take to comply with the rule.

The scope of LR 8.4.12R(2)

The sponsor's declaration under LR 8.4.12R(2) is concerned with ensuring that the transaction will not have an adverse impact on the listed company's ability to comply with the listing rules or the disclosure requirements and transparency rules. In order to do this, the sponsor will need to satisfy itself that, after taking into account the impact of the relevant transaction, the listed company has effective procedures, systems and controls in place at the point of completion that will enable it to meet the requirements of Listing Principle 1.

Listing Principle 1 covers all obligations under the listing rules, disclosure requirements, transparency rules and corporate governance rules. This includes the provisions set out in the following chapters:

- LR 9 (Continuing obligations)
- LR 10 (Significant transactions)
- LR 11 (Related party transactions)
- Disclosure Requirements Articles 17-19 of the Market Abuse Regulation (as referred to in DTR 2 and DTR 3)

- DTR 4 (Periodic financial reporting)DTR 5 (Vote holder and issuer notification rules)
- DTR 6 (Continuing obligations and access to information)
- DTR 7 (Corporate governance)

A sponsor should consider other provisions of the listing rules and the disclosure requirements and transparency rules that may impose obligations on the listed company.

Although LR 8.4.12R(2) does not contain a specific reference to the directors' ability to make judgements on an ongoing basis about the financial position and prospects of the listed company and its group, we would expect a sponsor to assess this as an integral part of its work under LR 8.4.12R(2).

Sponsors should be mindful that a sponsor service continues to the point of completion. For some sponsor services, such as a class 1 acquisition or disposal or a reverse takeover, there may be a period of time between the publication of the circular for shareholders to approve the transaction and the completion of the transaction. Under LR 8.3.1AR, for so long as it provides a sponsor service, the sponsor has an obligation as soon as possible to provide to the FCA any information of which it becomes aware that materially affects the accuracy or completeness of information it has previously provided. Therefore, if the sponsor becomes aware of information that compromises the sponsor's declaration given under LR 8.4.12R(2) during the period between making its declaration and completion of the transaction, the sponsor should notify the FCA as soon as possible.

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 premium listed companies undertaking certain transactions will continue to be able to comply with their obligations under the listing rules, disclosure requirements and transparency rules.

In respect of LR 8.4.12R(2), it is important to note that the sponsor's role is in addition to that part played by the directors of the listed company and by any adviser appointed by the listed company or 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. 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.

Typically, a sponsor will be an addressee of a comfort letter provided by the listed company or adviser that effectively mirrors the language of the sponsor declaration required under LR 8.4.12R(2). In our view, reliance on a written confirmation, without an appropriate level of enquiry and challenge by the sponsor, is unlikely 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, ~~satisfy LR 8.4.12R(2),~~ we expect the sponsor to review and challenge the work done by the listed company ~~or~~ and its adviser~~s~~. In providing its confirmation under LR 8.4.12R(2), we would expect the sponsor to ~~, using~~ apply its own knowledge and experience of the listed company and take into account other factors that it may consider relevant including the company's~~, its~~ operating environment and any particular knowledge or experience it may have of the approach taken by~~other~~ companies of a similar size, with a similar corporate structure or operating in ~~its~~the same sector.

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 an adviser's work and reviewing its observations and recommendations in order to identify which (if any) procedures, systems and controls require enhancements to be made prior to completion. 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. Clearly, a review of a company's existing procedures, systems and controls may highlight a need for enhancements to be made or for new procedures, systems and controls to be put in place. Where this is the case, due consideration must be given to ensure that, at the point of the sponsor declaration, the listed company has appropriate plans to ensure these procedures, systems and controls to be designed, documented, approved and communicated by completion of the transaction.

Determining due and careful enquiry

In assessing the impact of the transaction on the listed company's ability to comply with the listing rules or the disclosure requirements and transparency rules, the sponsor should have regard to the type of transaction being undertaken and the circumstances, ~~and~~ characteristics and experience of signifcant and related party transactions of the listed company and, if applicable, the subject of the transaction. The sponsor should also have regard to its prior relationship with the listed company and whether it has previously provided sponsor services to the lsited company. This will allow the sponsor to determine the due and careful enquiry required to form its reasonable opinion. For example, the sponsor may determine that the due and careful enquiry required to come to its reasonable opinion in relation to the purchase by a listed company of its own shares (where a working capital statement is required) or a class 1 disposal of non-core assets is materially different to the due and careful enquiry that would be required when a company is undertaking a different class 1 acquisition.

Factors that may be relevant for a sponsor to consider could include:

- in the case of a class 1 acquisition:
  - whether the target is a premium listed company (or listed in a jurisdiction with similar obligations) and therefore has established procedures, systems and

controls to comply with Listing Principle 1 (or the equivalent) on a standalone basis

- whether the directors of the listed company have experience of integrating businesses or assets of a similar size and nature
- the degree to which the listed company and the target have complex operations, operate in a specialist industry sector (such as property or mineral companies), have significant operations overseas and/or are part of a large or complex group of companies

- in the case of a class 1 disposal, the extent to which the listed company relies on the business, assets or personnel that are the subject of the disposal to comply with its obligations
- whether the transaction will result in new controlling shareholders, related parties and/or permanent insiders
- whether the transaction will result in changes to directors, PDMRs and/or other employees of the listed company who are responsible for performing the procedures, systems and controls for the purpose of Listing Principle 1.

We would expect the sponsor to record its assessment and retain any documentary evidence it has relied upon.

Appropriate procedures, systems and controls

In carrying out its work for LR 8.4.12R(2), the sponsor should first understand the listed company's existing procedures, systems and controls in order to assess the extent to which they will be impacted by the transaction. In gaining this understanding, a sponsor would not ordinarily be required to carry out the same level of enquiry as would be required in fulfilling its obligations under LR 8.4.2R(3). If the transaction involves the acquisition or disposal of a company or business, then the sponsor should also understand the relevant procedures, systems and controls of the subject of the transaction in order to assess the impact it may have on the listed company.

Should the listed company prepare a board memorandum or integration plan, we would expect to see evidence that the content of these documents have been reviewed and challenged by the sponsor. This includes defining the scope of these documents to ensure that they deal with issues that might arise in relation to the listed company's ability to comply with all aspects of the listing rules or the disclosure requirements and transparency rules. We would also expect the sponsor to be present at key meetings with the listed company where the content of the documents are discussed and approved. In the absence of a board memorandum or integration plan, the sponsor will still need to demonstrate it has undertaken due and careful enquiry to come to its reasonable view that the transaction will not have an adverse impact on the listed company's ability to comply with the listing rules or the disclosure requirements and transparency rules.

We accept that it is possible, at the time the sponsor declaration is given, that not all necessary enhancements to procedures, systems and controls will have been effected. If this is the case, we would expect the sponsor to have formed a reasonable opinion that the directors have formally committed to implementing

the enhancements on a timescale that will ensure the listed company will, following completion, be able to comply with its obligations when required. The commitment should be appropriately detailed such that the directors have identified, for each enhancement to be made, the individual at the listed company who will be responsible for its implementation, a plan of action and a timetable for when the enhancement will be completed. The sponsor should review the listed company's commitment and plan in order to form a view on whether is it sufficient for the purpose of enabling the sponsor to meet LR 8.4.12R(2).

Takeovers with accelerated timetables

Takeovers may be subject to accelerated timetables where there is a short period of time between the listed company approaching the target and the publication of the circular for shareholders to approve the takeover. We recognise that transactions are often conducted in circumstances where speed of execution and confidentiality of information is of paramount importance. In such circumstances a listed company may have not yet formed a detailed integration plan and the sponsor may not be able to perform the same degree of due diligence that it could otherwise undertake.

The listed company should be mindful of its obligation to comply with Listing Principle 1. It may be appropriate to put into place interim arrangements with the target to ensure that it can comply with its immediate obligations upon completion, with full and formal integration occurring at a later date. In this event, we would expect the sponsor to have particular focus on the operational effectiveness of the interim arrangements. In particular this should include those procedures, systems and controls relating to identifying whether any obligations arise under LR 10 (Significant transactions) and LR 11 (Related party transactions) as well as the timely and accurate disclosure of information to the market under the Market Abuse Regulation (as referred to in DTR 2).

Takeovers with limited access

In certain types of takeovers, access to information regarding the target will be limited. In this instance, we would expect the sponsor to seek out and assess the best information available to it for the purpose of forming its reasonable opinion with respect to LR 8.4.12R(2).

In some instances, no access to non-public information on the target will be given to the listed company and its advisers prior to the sponsor making its declaration. When this occurs, the sponsor should consider what due diligence can practically be undertaken and whether this is sufficient for the purpose of meeting LR 8.4.12R(2). For example, this could include:

- reviewing the target's published accounts and comparing them with the listed company's accounting policies, reporting currency, reporting frequency and financial year-end

- reviewing any published details on corporate governance arrangements
- reviewing public announcements for adequacy of compliance with the listing rules, disclosure requirements and transparency rules

In forming its reasonable opinion, the sponsor may also wish to take into account any relevant factors outlined above under 'Determining due and careful enquiry'.

The sponsor should be mindful that, even where it has no access to non-public information on the target, it must be comfortable that it has had access to sufficient information to satisfy its obligation under LR 8.4.12R(2).

FINANCIAL CONDUCT AUTHORITY

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 applicant and its advisers~~the listed company or third party~~. In providing its confirmation under LR 8.4.2R(2), we would expect ~~doing so,~~ the sponsor ~~should use~~ to apply its own knowledge and experience of the applicant~~,~~ and take into account other factors that it may consider relevant including the company's ~~its~~ operating environment and any particular knowledge or experience it may have of the approach taken by companies of a similar size, with a similar corporate structure or~~, other companies~~ opertaing in the same~~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 throughout~~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, the sponsor~~s~~ may wish to understand from the applicant the ~~necessary~~ procedures, systems and controls that the directors of the applicant have established or propose to establish ahead of admission in order to enable them~~should be in place at admission to generate the information required~~ to make proper judgements on an ongoing basis as to the financial position and prospects of the applicant and its group. The sponsor may also wish to understand the extent to which the applicant's reporting accountants or auditors have been involved in reviewing the design of such procedures, systems and controls and the extent to which any recommendations on the same have been taken into account.The sponsor should assess the appropriateness of the ~~quality and extent of those~~ procedures, systems and controls ~~that are already~~ in place or proposed to be put in place ahead of admission and identify any gaps in, or recommendations in relation to, the same. Where the sponsor identifies ~~, and whether there are~~ any such gaps or recommendations, the sponsor should ensure that the applicant and its directors have taken or have undertaken to take necessary steps to address the same before the sponsor provides its declaration~~. 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.