

FCA Technical Note

Sponsors' duty regarding directors of listed companies

UKLR 7.2.1AR
2.2.1R and
UKLR 8.24

Under UKLR 8.3.424.2.8R, where, in relation to a sponsor service, a sponsor gives any guidance or advice to a listed company issuer or applicant on the application or interpretation of the listing rules, disclosure guidance or transparency rules, the sponsor must take reasonable steps to satisfy itself that the director or directors of the listed company issuer understand their responsibilities and obligations under the listing rules, disclosure guidance and transparency rules.

Premium Listing Principle 13¹ 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 listed 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 UKLR 8.3.424.2.8R sponsor duty sits alongside (and should be read in conjunction with) Premium Listing Principle 13¹.

This technical note is intended to help sponsors understand how we expect them to approach their work in order to comply with the UKLR 8.3.424.2.8R 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'

UKLR 8.3.424.2.8R requires a sponsor to take 'reasonable steps' to satisfy itself that the director or directors of the listed company issuer 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 a stage of the sponsor service which will allow sufficient time for the sponsor to carry out any required actions.

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~~ UKLR 4.2.4R or UKLR 4.2.6R.

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 such as requesting a waiver, modification or substitution of the operation of UKLR 7, UKLR 8 or UKLR 11 from the FCA. 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~~ issuer 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 characteristics of the listed ~~company~~ issuer or applicant:

The sponsor should take into account the characteristics of the listed ~~company~~ issuer or applicant when deciding what reasonable steps it should take. Sponsors should consider whether particular focus should be placed on certain responsibilities.

- 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 the published FCA Technical Note – Sponsors: Record Keeping Requirements for further guidance on the application of record-keeping requirements.

UKLR 8-3-424.2.8R 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 UKLR 8-3-424.2.8R if it provides guidance or advice to the listed company issuer 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 UKLR 8-3-424.2.8R 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. UKLR 8-3-424.2.8R requires a sponsor to take action rather than rely on the work of third parties; or the listed company issuer or applicant itself. In other words, the sponsor's role is in addition to other parties involved in the sponsor service. As stated in UKLR 8-3-2A24.2.5G, a sponsor remains responsible for meeting its responsibilities even where reliance is placed on a listed company issuer, 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 UKLR 8-3-424.2.8R, 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 issuer 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 13¹. In order to satisfy its own obligations under UKLR 8.3.424.2.8R, 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 issuer during the IPO, for example by attending relevant board meetings.

In providing its confirmation under UKLR 8.3.424.2.8R, we would expect the sponsor to apply its own knowledge and experience of the listed company issuer or applicant and take into account other factors that it may consider relevant. These factors could include the company's issuer's operating environment and any particular knowledge or experience the sponsor may have of the approach taken by companies issuers of a similar size, with a similar corporate structure or operating in the same 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 corporate finance transactions 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 a director has limited knowledge or experience of the relevant rules, carrying out one-to-one director training

¹ References to Listing Principle 3 in this TN assume the proposals in Table 5 of CP 23/31 (Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms) to combine the current Listing Principles and the current Premium Listing Principles set out in current LR 7.2 have been implemented.

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 issuer or its lawyers is, without an appropriate level of enquiry, consideration and challenge (where appropriate) 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 issuer, 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 issuer or applicant are unwilling or unable to understand their responsibilities and obligations, these concerns should be highlighted to the company issuer at the earliest opportunity. In this instance, the listed company issuer or applicant should have regard to its responsibility to cooperate with the sponsor under UKLR 8-5-64.5.1R by providing all information reasonably requested by the sponsor for the purpose of carrying out the sponsor service in accordance with UKLR 8-24. 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 UKLR 8-3-5A-24.2.10R.