

UKLA FCA Technical Note

Sponsor Services: Principles for Sponsors

LR 8
UKLR 4;
UKLR 24;
LR 3.3.3R
UKLR 20.4.4R;
LR 3.3.4R
UKLR 20.4.5R;
LR 10.8.3G(2);
UKLR 13.4.15R;
LR 11.1.10R;
LR 13.6.1(5)R

The definition of 'sponsor services' was introduced in February 2009 and amended in December 2012 following CP12/2. It states that a sponsor service is defined as:

'a service relating to a matter referred to in LR 8.2 UKLR 4.2 that a sponsor provides or is requested or appointed to provide including preparatory work that a sponsor may undertake before a decision is taken as to whether or not it will act as sponsor for a *listed company issuer or applicant* or in relation to a particular transaction, and including all the sponsor's communications with the *FSA FCA* in connection with the service. But nothing in this definition is to be taken as requiring a sponsor; when requested; to agree to act as a sponsor for a company or in relation to a transaction.'

Commentary on the inclusion of preparatory work was provided in PS8/12 in December 2008 to help sponsors determine what initial work is part of the provision of a sponsor service. We also provided guidance on applying the definition in CP12/2 in relation to matters such as communications on class tests.

We have set out below further guidance, with examples where appropriate, about applying the above definition.

Notification of appointment

LR 8.5.1R UKLR 4.3.1R requires an applicant for premium listing or a premium listed company a listed issuer or applicant to inform the FCA of the contact details of an appointed sponsor. However, if a sponsor is in discussion with the FCA concerning a matter that is a sponsor service, the sponsor will still be carrying out a sponsor service, notwithstanding any lack of formal confirmation of appointment, and will be subject to the Principles for Sponsors set out in LR 8.3 UKLR 24.2.

Role of the sponsor following document approval

Listing and transfer of listing category

Sponsors should be aware that the sponsor service required to be provided under ~~LR8.2.1R(1)~~ UKLR 4.2.1R(1) or ~~LR8.2.1AR~~ UKLR 4.2.2R continues after the approval of the prospectus or equivalent document used for the purposes of ~~listing premium equity~~ seeking admission to the equity shares (commercial companies) category, the equity shares (closed-ended investment funds) category or the equity shares (shell companies) category, or a circular relating to a transfer to ~~premium listing~~ one of these categories, until the effective date of admission or transfer. Sponsors should therefore be aware of the following issues:

1. On an application for listing, or transfer of listing category, a sponsor is required to submit a sponsor declaration on the matters set out in the relevant section of ~~LR8.4~~ UKLR 24.3. Therefore, those declarations must meet the required standards of care until the effective date of admission or transfer.
2. Furthermore, a sponsor is under an obligation to inform the FCA of any further information known to it before the date of the admission to listing or the effective date of transfer that, in its reasonable opinion, could fall under ~~LR8.4.3R(3)~~ UKLR 24.3.3R(3), ~~LR8.4.9R(3)~~ UKLR 24.3.7R(3) or ~~LR8.4.14R(3)~~ UKLR 24.3.12R(3). Sponsors will therefore need to consider how information received from third parties, or matters otherwise within their knowledge, which relates to the listing or transfer, is dealt with, so that relevant information is provided to the FCA in accordance with these rules.
3. Where a sponsor is acting for an applicant requesting the admission to listing, for the first time, of equity shares to ~~premium listing for the first time~~, a listing category to which the sponsor regime applies, it is also required to submit a Shareholder Statement and Pricing Statement in accordance with ~~LR8.4.3R(2)~~ UKLR 24.3.3R(2) (the underlying requirement being set out in ~~LR3.3.3R~~ UKLR 20.4.4R (1) and (2)). The submission of these documents forms part of the sponsor service being carried out by the sponsor as it is done in connection with the admission to listing or transfer of listing which requires the appointment of a sponsor.
4. Where the exact number of shares to be allotted cannot be confirmed two days before the listing hearing, a sponsor, if one is appointed, must submit in writing confirmation of the exact number of shares to be listed as required by ~~LR3.3.4R~~ UKLR 20.4.5R. Sponsors are reminded of this requirement in ~~LR8.4.4G~~ UKLR 24.3.4G (for new admissions) and ~~LR8.4.10G~~ UKLR 24.3.8G (for further issues of equity shares). Again, the submission of this confirmation forms part of the sponsor service being carried out in connection with the admission to listing or transfer of listing which requires the appointment of a sponsor.

On admission to listing or transfer of listing becoming effective, the sponsor service will cease in relation to that transaction. However, a sponsor is subject at all times to the principles of cooperation set out in LR8.3.5R UKLR 24.2.9R.

Circulars and shareholder approval

LR8.2.1R(2), (3) and (4) UKLR 4.2.1R (3) and (4) require the appointment of a sponsor where a listed company is producing a circular seeking shareholder approval. LR10.5.4R UKLR 7.5.5R requires an issuer to publish a supplementary circular in relation to a class 1 transaction reverse takeover should a significant material new matter arise or a material change to the transaction occur following the publication of a circular to shareholders but before the shareholder vote. The production of a supplementary circular for a class 1 transaction reverse takeover will require the appointment of a sponsor as it is a circular relating to a class 1 transaction.

Sponsors will continue to be subject to the principles for sponsors set out in LR8.3 UKLR 24.2 following the publication of a circular required by LR8.2.1R(2), (3) or (4) UKLR 4.2.1R (3) or (4). On completion of a transaction under LR8.2.1R(2), (3) or (4) UKLR 4.2.1R (3) or (4), the sponsor service ceases. Completion can take place some time after shareholders have voted on the resolutions in general meeting.

A sponsor will need to be mindful of its responsibilities up to completion, such as continuing to manage conflicts of interest in respect of the transaction. Where a sponsor is asked to give guidance or advice to their client during this period it will need to take reasonable steps to satisfy itself that the directors understand their responsibilities and obligations under the UKLRs and DTRs. More specifically, a sponsor may need to provide guidance to a listed company on the application of LR10.5.2R UKLR 7.5.3R and/or LR10.4.2R UKLR 7.3.11R.

As the period between the publication of the circular and completion may stretch into a number of months, a sponsor should put in place arrangements with its clients that will allow the sponsor to be notified of possible issues that may affect the sponsor role during the period between publication of the circular and completion and that will allow clients access to guidance from sponsors on their UKLR and DTR obligations.

Following completion, a sponsor will remain subject to the principles of cooperation set out in LR8.3.5R UKLR 24.2.9R.

Role of the sponsor following the making of a submission

Other sponsor services required under ~~LR8.2~~UKLR 4.2 may result in a sponsor making a particular submission to the FCA, such as an eligibility letter (~~LR8.2.1R(8)~~ UKLR 4.2.1R(8)) or a letter confirming a company is in severe financial difficulty (~~LR8.2.1R(13)~~). All correspondence entered into by a sponsor with the FCA in relation to making that submission will fall within the definition of sponsor service and the Principles for Sponsors set out in ~~LR8.3~~ UKLR 24.2 will apply to that correspondence. The sponsor service will continue only while the submission continues to be relevant to the transaction. ~~The following examples are intended to illustrate this point:~~ for instance:

1. a sponsor's letter confirming eligibility of a new applicant will be relevant until the date of admission to listing (unless that sponsor ceases to be appointed by its client) and;
- ~~2. a letter submitted to the FCA by a sponsor for the purposes of LR10.8.3G(2) confirming that in its opinion the listed company is in severe financial difficulty will be relevant until a modification of LR10.5 is granted and an announcement is released by the listed company complying with LR10.8.4G and LR10.8.5G; and~~
2. a confirmation provided by a sponsor for the purposes of UKLR 13.4.15R (that it is reasonable for the issuer to make the declarations required by ~~LR5.6.15G~~ UKLR 13.4.13G(3) and (4) given to satisfy the FCA that a suspension of the company's shares is not required) will be relevant until the publication of the approved documentation by the issuer.

FCA communications entered into by a sponsor

The definition of sponsor service includes services "provided" as well as "services... [it]...is requested or appointed to provide". Therefore, if a sponsor voluntarily provides guidance on the UKLRs or DTRs or enters into communications with the FSA FCA in relation to an event which requires a listed company to appoint or obtain guidance from a sponsor, this guidance and or communication falls within the definition of sponsor services and the requirements set out in ~~LR8.3~~ UKLR 24.2 applies.

~~To clarify the application of the definition of sponsor services in this area further, it is worth considering the role of a sponsor in the context of a related party transaction. We do not intend to require sponsors to provide advice on the content of related party circulars or the requirements of LR11.1.10R(2)(a) and (c).~~

~~The Listing Rules have been drafted to require premium listed companies to seek sponsor guidance on the application of the LRs and DTRs where a transaction could amount to a related party transaction. Once it is ascertained what rules will apply, should the listed company then be under an obligation to publish a circular seeking shareholder approval, or be required to comply with LR11.1.10R, the listed company is only required by LR11.1.10R(2) and LR13.6.1R(5) to appoint a sponsor for the provision of a fair and reasonable opinion in each circumstance. Neither LR8.2.3R nor LR8.3.1R(2) are intended to create a requirement for a sponsor to be appointed pursuant to~~

LR8.2.1R(6) or (7) to advise the company on the content of the circular as part of the sponsor service. Nevertheless, sponsors may find themselves also appointed as financial adviser and, as such, required to advise the listed company on the content of the circular. It is not uncommon for sponsors to submit draft related party circulars to the FCA for approval. Should an approved sponsor firm accept these roles, providing advice on the application of the LRs and DTRs as to the contents and publication of the circular or the contents of the annual report and accounts for the next publication period, or entering into correspondence with the FCA regarding these, the FCA would treat this advice as falling outside the definition of sponsor services. However, such advice will be treated as any other ad hoc advice on the LRs and DTRs, such as corporate broking advice, and may still be relevant to the FCA's assessment of a sponsor's competence pursuant to LR8.6.9BG.

Aborted transactions

Should a transaction abort, we would still expect a sponsor to have complied with the requirements of ~~LR8.3~~ UKLR 24.2 in relation to the carrying out of any sponsor services which will include guidance provided to a new applicant or ~~premium a~~ listed company issuer and any explanations or confirmations provided to us in carrying out this service. We make periodic visits to sponsors in accordance with ~~LR8.7.3G~~ UKLR 24.5.6G and ~~LR8.7.4G~~ UKLR 24.5.7G during which aborted transactions requiring the appointment of or guidance from a sponsor may be reviewed.