

# Primary Market Technical Note

## FCA reviews of sponsor services

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

### **Rules and guidance**

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UKLR24; UKLR 24.4.25R; UKLR 24.5.1G; UKLR 24.5.2R; UKLR 24.5.3G; UKLR 24.5.6G; UKLR 24.5.7G

### **Our overall approach to supervising sponsors**

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Sponsors have an essential role to play in assisting us to meet our objectives of enhancing the integrity of the market and protecting consumers. We hold sponsor firms to high standards because a failure by a sponsor could harm both market integrity and the interests of consumers.

Given the value we place on the sponsor regime and the critical work of sponsors in providing expert guidance to issuers and providing assurance to the FCA so that it can fulfil its own functions efficiently, it is important that the regime is capable of being properly supervised by the FCA.

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The regulation of sponsors is governed by the UK Listing Rules. The supervision of sponsors is distinct from our supervision of authorised firms and is specifically focused on ensuring sponsors discharge their responsibilities under UKLR 24. The Primary Market Specialist Supervision team is responsible for sponsor supervision, and uses a range of supervisory methods, including:

- Each sponsor is allocated a relationship manager who monitors the sponsor's activities and maintains the line of communication with the firm.
- We monitor sponsors' performance on transactions, taking action where performance falls short of our expectations.
- We review the confirmations that all sponsors submit on an annual basis in relation to them continuing to satisfy the criteria for approval as a sponsor.
- We review sponsor firms on both a periodic and ad-hoc basis to carry out supervisory work to gain insight into whether the firm is meeting the requirements of the sponsor regime and to share best practice.
- We scrutinise, challenge and intervene in relation to sponsor conflicts of interest.
- We maintain the rules and guidance for sponsors and actively engage in policy initiatives affecting sponsor firms.
- We hold briefing sessions and communications meetings with sponsors where we provide feedback, share good practice and provide information on our latest policy initiatives.

One of the most important tools we use to supervise sponsors is to review sponsor services performed by a sponsor.

### Why we perform reviews

Sponsor reviews are a key tool through which we can test whether sponsors are meeting our requirements. They provide an opportunity to look closely at the approach a sponsor has taken through analysing the records the sponsor has kept and discussing the sponsor's approach with them. This allows us to build experience of sponsor practices and to share these where appropriate. Typically, we provide feedback to a sponsor. In some cases, we require measures to be put in place to prevent the likelihood of future breaches of our rules. In most cases our feedback will help a sponsor to understand if its systems and controls are effective and if the judgements of its staff

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are in line with the expectations of the FCA. The sponsor can then consider if any changes are needed in its sponsor operations. Very occasionally, we identify potential breaches of our rules, and depending on the seriousness, we may refer these cases to our Enforcement team for investigation.

### Our choice of reviews

Primary Market Specialist Supervision takes a risk-based approach to its review work. Reviews can take a number of different forms and it would not be possible or appropriate to define an exhaustive list of the different types of review or what each type of review may entail. However, there are some types of review that we perform more routinely. In some cases, we will perform reviews on a proactive basis, using our assessment of the relative risks posed by a sponsor to determine if a review is warranted. In some cases, we may review a sponsor because it is highly active on complex transactions, warranting particular oversight. In others, we may review a sponsor where we haven't conducted a review for some time and wish to refresh our understanding of how the firm approaches its work as a sponsor. Other reviews we perform are reactive. This happens when we are responding to events. For example, where a newly listed issuer seeks to raise new capital within 12 months of its IPO, we may seek to probe the sponsor's work when providing the working capital assurance at the time of the IPO prospectus.

Given the varying drivers for our review work, the focus of our review may also vary considerably. Some reviews will focus on one transaction, or even a specific part of a transaction. This may be the case where we are performing a reactive review, seeking to understand whether a sponsor complied fully with the rules in circumstances where there is reason to suggest that it may not have or where its work would have been subject to particular stresses. Other reviews may focus on specific workstreams across multiple transactions, for example where we are seeking to understand more generally how a sponsor approaches certain aspect of its work. We will aim to scope our review to address the risks we perceive or the issues we've identified. From time to time, we will also perform thematic reviews. In these cases, we may choose to explore a particular aspect of sponsor's work, across a sample of firms, usually with the intention of sharing our findings on a no-names basis with all sponsors.

### How we perform reviews

After we have conducted our initial planning, we will normally write to firms to provide notice of our intention to perform the review. Our letter will set out the scope of our review and the information we are requesting. We will request information to be provided by a reasonable deadline and encourage firms to contact us if this will not be possible. We will also explain if we would like to meet the firm during the course of the review and provide reasonable notice if such meetings are required. The number and nature of meetings will vary according to the type of review. In some cases, our work will be largely desk based and we may not require a meeting (although we are generally happy to meet firms if they request this). In other cases, we may wish to meet the firm early in the review, to familiarise ourselves with the firm's approach and the transaction(s) the subject of the review and/or later in the review, to ask questions flowing from our detailed review of the records provided. Typically, we ask firms to deliver presentations providing an overview of their compliance and governance arrangements and overviews of the transactions to be reviewed.

The nature and extent of the records we request will vary according to the type of review we are performing. In most cases, we will ask to be provided with copies of all material records relating to the matters the review aims to cover. For a review that is wider in scope, this would include copies of sponsor procedures in force at the time of the transaction(s) the subject of the review, any deal 'bible' documents, committee papers and minutes, board meeting papers and notes, due diligence records including draft and final reports by third party experts and material meeting notes and correspondence. We will typically ask for documents to be uploaded to a secure filing system. The FCA currently uses Egress workspace. We will make mutually agreeable arrangements with sponsor compliance contacts at the time of our review in relation to the provision of records and will also deal with any questions that a sponsor may have in relation to our request. Often it is helpful for us to discuss the form and extent of the records to be provided so that the sponsor is able to provide the right records at the first time of asking.

Sometimes, a sponsor firm may struggle to meet our deadline for providing its records. In this situation we welcome discussing this with firms at their earliest opportunity, so we can consider if it is reasonable to extend the deadline.

Once we have received the records from a sponsor, we will review them in line with our procedures and the specific plans for the review

in question. Where we are reviewing a sponsor's work in relation to the core workstreams relating to the sponsor assurances, for example working capital or financial position and prospects procedures, we will normally use a work plan to ensure a degree of consistency in our work from one review to the next. However, it is common for us to adapt our workplans on a case-by-case basis. Following our review of records, and after holding any meetings with the sponsor, we may provide an oral or written request for further information. This allows a sponsor an opportunity to provide all records relevant to our areas of focus and specifically in relation to any emerging area of focus following our review of the records previously submitted.

If appropriate, and subject to legal requirements protecting personal data and confidentiality, we may pass information to other regulators to enable them to discharge their functions. More typically, and where appropriate, we may share information received during the course of our review with an FCA supervisor of the sponsor firm for the purposes of its authorisation under Part IV FSMA.

### What we look for

The focus of our review will depend on the circumstances. Generally, we are seeking to understand if the sponsor appears to have complied fully with the rules for sponsors. Most typically, we are looking for evidence to provide confidence in our ability to continue to rely on the sponsor. In some cases, the reason for doing this may be because we already have concerns in relation to the sponsor's performance on a transaction.

Depending on the focus of the review this will mean considering, amongst other things, whether the firm has:

- taken care and considered regulatory risks when taking the client/transaction on.
- properly identified and managed conflicts of interest.
- been open and cooperative with the FCA.
- applied due care and skill when forming its opinions to support submissions/representations made to the FCA and assurances provided to the FCA.
- kept appropriate records.

Our assessment of a sponsor's work is necessarily based on what the sponsor tells us and what the records provided by the sponsor show. Discussions with sponsors about their work are extremely helpful. But

they are a less reliable and objective form of evidence than contemporaneous records that show the sponsor's work and the basis for its judgements. Our ability to supervise the regime is hampered where sponsors haven't kept records that allow us to assess their work. In this context, it is also important to recognise the responsibilities of issuers as regards their sponsor. Our rules require an issuer to cooperate with its sponsor, providing all information reasonably requested by the sponsor for the purpose of carrying out a sponsor service in accordance with the relevant rules. A sponsor may reasonably need to evidence that it has discussed certain matters with the issuer, or had the opportunity to consider relevant information owned by the issuer. This may be relevant to achieving effective and efficient interactions with the FCA during the course of the FCA's consideration of a live listing transaction. It may also be necessary in the context of a review of a sponsor service by the FCA. Issuers should therefore recognise the sponsor's general duties and responsibilities to the FCA, including to demonstrate that it acted with care and skill in the context of a review of sponsor records.

The records necessary to satisfy a reviewer that the rules were met will vary case by case. In some circumstances, high level descriptions of the bases of a sponsor's opinions at the time may be sufficient. In others, a specific record, even an individual email, may be considered critical, for example, where it is key to, or perhaps the only record, showing how the sponsor reached a conclusion in relation to an important aspect of the working capital analysis. Given the importance of sponsor records to our ability to supervise the sponsor regime we have produced more detailed practical guidance in a separate technical note TN717.

### How we make our assessments

In considering the past performance of a sponsor on a transaction, it is important that we consider whether the sponsor acted reasonably at the time. Our reviews will often consider a sponsor's performance from two perspectives.

Firstly, was the process the sponsor followed reasonable? In this case, we will look for evidence to support that the sponsor followed its own procedures, and took reasonable steps in guiding the issuer and performing its due diligence to support the assurances it provided us. As an example, if a sponsor discovers that a proposed director of a new applicant has been the subject of previous regulatory criticism, we would expect to see evidence that the sponsor performed additional background checks on the person in question and whether any issues

identified were the subject of a sufficiently rigorous process of internal debate before forming an opinion.

Secondly, were the judgements made by the sponsor reasonable? In this case, we will consider the internal and external information available to the sponsor at the time, the context of the transaction and the decisions made, and the rationale provided by the sponsor for its judgements. This can sometimes be difficult and, where relevant, we may seek expert opinion to help us form our own assessment. In other cases, appropriate judgement of the sponsor will be more self-evident from the facts of the case. For example, in relation to a sponsor's obligation to ensure that the directors of a listed company understand their obligations, where a sponsor has discussed the listing rules and the disclosure requirements and transparency rules with a single director, and where it is clear that the remaining members of the board are already experienced operators at board level in UK listed companies, a sponsor's assessment that this obligation has been satisfied would likely be reasonable, in the absence of any other circumstances pointing to the contrary.

Inevitably, some matters that we review have received significant attention in the media or been the subject of detailed complaints. This can be helpful in identifying issues relating to transactions that may indeed warrant additional scrutiny. However, it is important that a sponsor's actions are not judged with hindsight. As reviewers, we will attempt to consider the issues in the context of the information that was reasonably available at the time. We recognise that the importance of matters relating to transactions can change over time. For example, a short conversation early in a transaction that may not have warranted a written file note by the sponsor, can subsequently become an important factor as events unfold and circumstances change. We exercise judgement when forming views on matters of this sort in the context of supervisory reviews. To assist with this, our reviews involve peer review processes and managerial oversight and challenge. We will always offer sponsors the opportunity to provide any explanations or evidence that they feel is relevant during the course of our reviews. Sponsors can also reply to our review feedback letter if they disagree with our assessments.

### Our feedback

We will always aim to conclude reviews and provide feedback as quickly as possible, although the nature, scope and complexity of the review, and the information to be considered can vary significantly. In some cases, we will recognise that pursuing a detailed review would be costly to the FCA and the sponsor and it will be better to provide less



precise feedback, promptly. In other cases, it will be important to establish a very clear view of the facts and present our feedback much more carefully at the cost of a faster outcome.

We typically report our feedback to a sponsor in the form of a letter. A written feedback letter will usually describe the focus of our review, the work we performed and our feedback on the matters we considered. Our aim in providing feedback is generally to provide a relatively fulsome account of what we observed, so sponsors have sufficient information to reply and/or consider how to address anything of concern. Occasionally, for shorter and more focused reviews we will provide high level feedback orally. We share feedback from our reviews with relevant FCA stakeholders e.g. Wholesale Supervision.

In some cases, our feedback letter will contain details of actions we require the sponsor to take. This will usually occur where what we have observed does not appear to meet our requirements. The wording of the action will vary. In some cases, it will direct the firm to take a particular action. In others, it may ask a firm to consider whether any action is required to remedy deficiencies. In these cases, we feel it appropriate to draw attention to what we observed whilst leaving the firm to consider its response. This may be the case where we are less concerned about basic compliance with our rules but wish to prompt the sponsor to consider implementing best practices that we have seen at other firms. We believe our reviews add most value where we can report comprehensively. But, doing so needn't imply widespread or serious concerns. Importantly, feedback of this sort should not be considered by the firm to constitute a regulatory finding or censure. Rather, we expect to have an open and cooperative relationship with sponsors to share good and bad practices and believe that reporting fully allows for a more open and constructive dialogue.

Who we address our feedback to, and the overall tone of our letter will depend on the nature and extent of what we have observed during our review. Often, we will report to our regular compliance contacts, leaving them to consider a variety of considerations or actions arising. Occasionally, where we are providing feedback about serious concerns or what appear to be repeated failures following previous feedback, we will address our letter to senior management, with the expectation that they 'sponsor' and oversee a focused remediation exercise. As noted earlier in this technical note, very occasionally, we identify potential breaches of our rules, and depending on the seriousness, we may refer these cases to our Enforcement team for investigation.



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Where possible, and particularly where we identify themes in our reviews, we will communicate this to sponsors through our regular engagement and/or the FCA's Primary Market Bulletin publication. Where we believe guidance would be helpful, we will also consider producing technical notes.

### What we expect in response to our reviews

We expect sponsors to review our feedback letters carefully. Where a sponsor considers our feedback to be fair, we expect them to act in line with any actions or recommendations accordingly. If we have simply indicated that a sponsor should consider a particular point, we expect them to do so, giving proper thought to the point and arriving at their own conclusions on whether action is appropriate.

Where a sponsor considers our feedback to be unfair or factually inaccurate, we expect the sponsor to tell us promptly, providing adequate supporting evidence. Typically, during the course of a review, we will have indicated to sponsors if we are probing particular issues or seeking evidence to support a particular opinion. This helps sponsors to provide their views and evidence during the course of the review rather than after our feedback letter, which is preferable.

We will ask sponsors to reply to our feedback letter. This helps us understand how the sponsor is responding to the matters raised. In cases where we have more serious concerns and have directed that certain actions are appropriate, we will ask for more detailed action plans, with information on who is responsible for delivering the action and over what timescale. In these cases, we will expect the sponsor to update us on progress and we may agree with the sponsor a more formal schedule of regular progress updates.

We understand that being reviewed by the FCA can create some anxiety for sponsor teams and their wider organisational regulatory and compliance functions. Our aim is to work quickly and fairly, keeping the sponsor updated at all times. We also understand that FCA reviews are typically communicated internally to compliance, senior business management and (in bigger firms) regulatory affairs teams. We would like to emphasise that the receipt of a feedback letter from the FCA following a sponsor review does not in itself indicate a regulatory concern or a requirement for action. We will be proportionate where we believe action is required and clear on the basis for any such feedback. We would also encourage sponsors to be proportionate and to carefully challenge themselves on the appropriate type of action to address any issues the FCA draws attention to. We recognise the risk that disproportionate market practices may evolve

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in response to the risk of regulatory action as a result of our reviews. Where a firm wishes to discuss the proportionality of its response to our feedback, we would welcome this. It is for firms to design and operate their own systems and controls, but the FCA is happy to discuss proposed remediation steps in the context of the review feedback.

### Conclusion

We are grateful to sponsors for the role they play and for their cooperation during our reviews. We believe an effective sponsor regime is a key part of the UK listing regime, both in protecting consumers and maintaining market integrity. Our reviews are designed to ensure we understand how sponsors are operating, that high standards are maintained and that we can have a reasonable basis for our own reliance on sponsors. We also recognise that the sponsor role presents significant risks to firms and individuals undertaking it, particularly where its function is not well understood by other parties. We aim to be fair and open in relation to how we perform reviews and clear and proportionate in relation to our feedback.

Should sponsors have questions on anything raised in this note, they should contact their relationship manager in the Primary Market Specialist Supervision Team.