

8 April 2020

Technical Supplement – working capital statements in prospectuses and circulars during the coronavirus epidemic

In our [Statement of Policy](#) published on 8 April 2020, we explained that we are amending our approach to the disclosure of working capital statements in prospectuses and circulars approved by the FCA during the coronavirus crisis.

In summary, the temporary revision of our approach set out in this Technical Supplement allows, in certain circumstances, issuers to disclose in an unqualified working capital statement their key assumptions in relation to business disruption during the coronavirus crisis underpinning the 'reasonable worst case scenario' that must be modelled in support of the working capital statement. The revised approach permits such assumptions to be disclosed without requiring the inclusion of a qualified working capital statement.

Applicability of the ESMA Recommendations

In determining whether to approve a prospectus, the FCA has regard to the ESMA Recommendations on prospectuses.¹ Paragraphs 113-115 set out ESMA's approach to disclosure in relation to unqualified (or 'clean') working capital statements.

Paragraphs 113-114 explain the overall approach to unqualified working capital statements in the ESMA Recommendations. Among other things, paragraph 114 states the disclosure of assumptions underpinning the working capital statement is 'not normally acceptable'.

Paragraph 115 states:

In making a clean statement there should therefore be no reference to:

- *'Will have' or 'may have' sufficient working capital, rather than 'is sufficient', 'will have' or 'may have' could for example indicate an unidentified future time or event such as debt facilities yet to be agreed, within the next 12 months.*
- *Assumptions, sensitivities, risk factors, or caveats. All working capital statements should be made on the basis of reasonable assumptions - disclosure of these only serves to qualify and confuse the statement for shareholders and investors.*

The revised approach to working capital statements set out in this Technical Supplement departs from paragraph 113-115 in one key respect: subject to the conditions set out in this Technical Supplement, the disclosure of assumptions will be

¹ In this Technical Supplement 'ESMA Recommendations' refers to ESMA/2013/319: The ESMA Recommendations contain guidance for the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive published 20 March 2013, and have been carried over to the Prospectus Regulation regime pending ESMA's finalisation of new revised ESMA Guidelines on prospectuses. The ESMA Recommendations continue to apply in the UK during the transition period (as will any revised ESMA Guidelines adopted before the end of the period). The FCA's approach to EU non-legislative material such as this after the transition period is finished is set out here:

<https://www.fca.org.uk/publication/corporate/brexit-our-approach-to-eu-non-legislative-materials.pdf>

permitted. The explanation for the FCA's approach is set out below and, in further detail, in the Statement of Policy.

We will continue to follow all other aspects of the ESMA Recommendations in determining whether to approve a prospectus. Further, we will still expect to see compliance with the first bullet point of paragraph 115 above.

We continue to agree with the commentary on working capital statements set out in paragraphs 113-114, and, in particular, that disclosure of assumptions in unqualified working capital statement is not *normally* acceptable. The reason for this temporary different approach is that preparers of working capital statements are not working in normal conditions.

Temporary revised approach to clean working capital statements

The coronavirus crisis and the attendant public health interventions to combat the virus have caused considerable disruption to business globally. There is significant uncertainty as to the size and duration of this disruption.

Issuers preparing working capital statements are required to model a 'reasonable worst-case scenario'. The uncertainties created by the coronavirus crisis make the construction of a worst-case scenario uniquely challenging.

We accept that for some issuers it may, therefore, be appropriate to draw the attention of investors to certain specific assumptions concerning the disruption to the issuer's business resulting from the coronavirus crisis in the company's 'reasonable worst-case scenario'. This will allow companies to ensure that investors have all the necessary information to make an informed investment or voting decision.

Therefore, notwithstanding paragraph 115 of the ESMA Recommendations, key assumptions in relation to business disruption during the coronavirus crisis underpinning the company's 'reasonable worst-case scenario' may be disclosed in an unqualified working capital statement.

While we believe that this approach will assist some issuers in providing more accurate information to investors, we recognise that circumstances will vary from issuer to issuer. Hence, the additional disclosure of coronavirus assumptions may not be appropriate for all issuers proposing to include a clean working capital statement in their prospectus.

Equally, a qualified working capital statement may still be appropriate for some issuers. In those cases, where the normal approach to considering the sufficiency of working capital, including the reasonable worst-case scenario, do not allow for sufficient headroom, we expect issuers to comply with the additional disclosure requirements for qualified working capital statements detailed in paragraph 116-123 of the ESMA Recommendations.

Finally, this approach can also be used in shareholder circulars published by premium listed companies where the Listing Rules require a working capital statement to be included.

Scope of this approach

The approach can be applied to the following documents subject to FCA review and approval:

- In equity prospectuses and prospectuses on certificates representing shares published during the coronavirus crisis; and
- In shareholder circulars published during the coronavirus crisis by premium listed companies where the Listing Rules require a working capital statement to be included.

It can be applied to equity prospectuses and prospectuses on certificates representing shares and shareholder circulars that fulfil the following criteria:

- The issuer and its advisors are of the opinion that the issuer and its group have sufficient working capital for the at least the next 12 months from the date of the document. This assessment is supported in the normal way, and the normal standards of preparation for a working capital statement have been observed. This would include the comforts produced by the reporting accountants and other advisors (including, where appropriate, the sponsor) and the ESMA Recommendations have been complied with, but
- The coronavirus-related assumptions underpinning the reasonable worst-case scenario are considered to be subject to significant uncertainty. This may be expressed, for example, as an emphasis of matter paragraph in relation to this uncertainty in an otherwise unqualified comfort letter by the reporting accountants.

What can and should be included in the coronavirus working capital statement?

Where the issuer and its advisors have determined that a clean working capital statement can be provided subject only to the specific coronavirus related modelling uncertainties in connection with the reasonable worst-case scenario, the working capital statement should start with the standard unqualified working capital statement in a form compliant with the ESMA Recommendations.

The statement should then be followed by the additional disclosure this Technical Supplement permits. This should include an explanation of why additional coronavirus-related information on key assumptions has been included. We expect this explanation to centre on the considerable uncertainty in relation to the coronavirus-specific assumptions included in the reasonable worst-case scenario in line with the principles set out in the Statement of Policy and this technical supplement. This additional disclosure may include factors such as:

- Key coronavirus-specific modelling assumptions, for example relating to the length of time the issuer expects its business to be disrupted or the expected speed of recovery; or
- Details of the main sensitivities that have been applied to the key assumptions, for example impact on revenue

Where the approach detailed in this statement is used, the working capital statement must be followed by a statement along the following lines:

'The working capital statement in this [document] has been prepared in accordance with the [ESMA Recommendations], and the technical supplement to the FCA Statement of Policy published on 8 April 2020 relating to the coronavirus crisis.'

The formal title of the ESMA Recommendations is long and various short titles are used to describe it. The FCA has no view which is the right one, provided the one used is clear.

What should not be included in the coronavirus working capital statement

The coronavirus working capital approach can only be used where, absent the coronavirus uncertainties in the modelling of the reasonable worst-case scenario, an issuer can provide a clean working capital statement. We would therefore not expect to see any of the following disclosure in connection with the clean working capital statement:

- A description of the base case;
- References to liquidity shortfalls;
- Description of mitigating actions or factors that are not included in the modelling for the reasonable worst-case scenarios;
- Uncertainties or qualifications regarding the reliability of underwriting commitments, or commitments in relation to existing funding facilities, particularly where these have been relied upon for the clean working capital statement;
- Discussion of alternative worst-case scenarios that have not been considered as the reasonable worst-case scenario;
- Drafting that appears to disclaim the clean working capital statement provided;
- Any other language appearing to qualify the working capital statement that does not relate to the uncertainty around coronavirus assumptions in the reasonable worst-case scenario.

Where such disclosure is included in a draft document submitted to the FCA for review that includes a clean working capital statement (irrespective of the location of the disclosure in the document), we are likely to challenge its inclusion. If the working capital statement cannot be given without such wording then it will be appropriate to include a qualified working capital statement instead.

Other parts of the document

Clearly, issuers will be providing detailed explanations of the rationale for their fundraising, their funding needs and the proposed use of proceeds and it is certainly a clear expectation of investors. Importantly, the disclosure in the whole document

should be consistent. This means that the disclosure in the working capital statement should be consistent with the disclosure in other parts of the prospectus, particularly the sections on risk factors (Annex 1 section 3, Annex 3 section 3, Annex 11 section 2, Annex 13 item 5.3), trend information (Annex 1, section 10, Annex 3 section 6), significant change statements (Annex 1 item 18.7, Annex 3 item 11.4), business overview (Annex 1 section 5, Annex 3 section 5) and capital resources (Annex 1 section 8), or shareholder circular, as applicable.

In most cases, we would expect issuers and their advisors to conclude that a risk factor on coronavirus-related disruption, perhaps addressing risks due to uncertainties as to duration and severity of impact, is necessary. During our review of the document, we will consider this in conjunction with the working capital statement in light of our view that disclaimers should not be included. This consideration will inevitably be case-by-case. The requirement not to disclaim the working capital statement does not rule out the inclusion of appropriate risk factors.

FCA approval

Issuers and other market participants should note that by approving a prospectus containing a working capital statement drafted under the approach described in this technical supplement, the FCA is not endorsing the statements made or assumptions applied, but only approves the prospectus as a whole as meeting the standards of completeness, comprehensibility and consistency imposed by the Prospectus Regulation, as set out in the Commission Delegated Regulation (EU) 2019/980.

Further, issuers and other market participants should note that by approving a circular containing a working capital statement drafted under the approach described in this technical supplement, the FCA is not endorsing the statements made or assumptions applied.

Can the basis of preparation of the working capital statement be disclosed?

Issuers can continue to disclose the basis on which the working capital statement is made, e.g. 'taking into account the existing bank facilities' or 'taking into account the proceeds of the issue', in line with the guidance in our technical note UKLA/TN/320.1 *'Working capital statements – Basis of preparation'*.

However, we remind issuers that this type of disclosure is consistent with a clean working capital statement only to the extent that the proceeds are fully underwritten, or the bank facilities are contractually committed for the period covered by the working capital statement. Underwriting agreements and bank facility agreements typically contain force majeure and material adverse change clauses. Issuers and their advisors should consider whether these clauses can be triggered by events linked to the coronavirus crisis and any risks arising from this impacting the working capital statement.

Supplementary prospectuses and circulars

In the current rapidly changing environment, issuers may find that the assumptions to the working capital statement included in the prospectus are no longer up to date in the period between prospectus publication and the close of the offer and

admission of new shares to trading. If the issuer and its advisors determine that material changes are required to these assumptions as a result of new information coming to light after publication of the prospectus, the issuer should consider its obligations under Article 23 of the Prospectus Regulation in relation to the publication of a supplementary prospectus.

Similarly, issuers should consider their obligations in relation to supplementary circulars under the Listing Rules.