

DRAFT FOR CONSULTATION (section II.8 only)

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II.8 Working capital statements

Determining whether the working capital statement should be clean or qualified

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3 Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3 Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1 Item 1.1) stipulates that the working capital statement can either reflect that the issuer has sufficient working capital to meet its present requirements or if not, how it proposes to provide the additional working capital needed, read in light of the duration of the validity of the prospectus established in PRM 11.1.1R.

128. Guideline 29: Where an issuer can state without qualifying wording that it has sufficient working capital to meet its present requirements, it should provide a 'clean' working capital statement. Where the issuer cannot state without qualifying wording that it has sufficient working capital to meet its present requirements, it should provide a 'qualified' working capital statement.

- 129.** The persons responsible for the prospectus can meet the requirement to include a working capital statement in the prospectus either:
- (i) by including a clean working capital statement, stating that the issuer, in its own opinion and in line with the duration of the validity of the prospectus established in PRM 11.1.1R, has sufficient working capital for a period of at least 12 months; or
 - (ii) by including a qualified working capital statement, stating that the issuer, in its own opinion, does not have sufficient working capital and explaining how it proposes to provide the additional working capital needed.

- 130.** When considering whether its working capital statement should be clean or qualified, the issuer should assess whether it is able to access cash and other available liquid resources ~~in order to meet its liabilities as they fall due.~~ requirements for at least the next 12 months after the prospectus date.
- 131.** The working capital statement should be consistent with the other parts of the prospectus. Where other parts of the prospectus, for example the risk factors, describe elements that could adversely impact the issuer's ability to meet its present requirements, the issuer should not make a clean working capital statement. ~~Where the auditor's report is modified, contains an emphasis of matter, or other disclosure on a material uncertainty in relation to going concern, and the working capital statement is clean, the persons responsible for the prospectus should provide an explanation for this in the prospectus.~~
- 132.** An issuer may consider that it has sufficient working capital and that its working capital statement should therefore be clean, but at the same time wish to include qualifying wording such as assumptions, sensitivities, risk factors or potential caveats in the statement. If an issuer finds it necessary to include such qualifying wording, this implies that it cannot firmly state that it has sufficient working capital to meet its present requirements, and it should therefore provide a qualified working capital statement instead of a clean one.
- 133.** A non-exhaustive list of examples of qualifying wording includes:
- (i) a description of a base case, reasonable worst-case or alternative scenarios, including their underlying assumptions relating to forecast financial performance and available liquidity;
 - (ii) references to liquidity shortfalls;
 - (iii) a description of mitigating actions or factors that are included in the modelling for any sensitivity analyses undertaken;
 - (iv) uncertainties or qualifications regarding the reliability of underwriting commitments or irrevocable commitments in relation to an offering;
 - (v) drafting that appears to disclaim the clean working capital statement; or
 - (vi) any other language appearing to qualify the clean working capital statement.

134. Where an issuer includes a clean working capital statement, disclosure explaining the basis of preparation of the statement will be necessary in the circumstances set out in Guideline 33.1. Notwithstanding paragraph 132, any disclosures provided in accordance with Guideline 33.1 are acceptable for the purposes of giving a clean working capital statement, as information on the basis of preparation of the working capital statement that is necessary for an investor to make an informed assessment.

~~**133.** When providing a clean working capital statement that is reliant on the receipt of the net proceeds of an offer, an issuer should disclose that such proceeds have been included in the calculation of its working capital. For the avoidance of doubt, such disclosure is not considered a qualification or a caveat, but information on the basis of preparation of the working capital statement that is necessary for an investor to make an informed assessment.~~

~~**134.**~~**135.** It is not acceptable for the issuer to state that it is unable to confirm whether it has sufficient working capital. In such cases, the issuer should provide a qualified working capital statement.

Robust procedures

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

~~**135.**~~**136.** **Guideline 30: The issuer should prepare its working capital statement based on robust procedures such that there is very little risk that the statement is challenged and in accordance with the Guidelines set out in this Technical Note.**

~~**136.**~~**137.** The issuer should follow procedures appropriate to ensure the robustness of the statement. Such procedures will normally include:

- (i) preparing unpublished supporting prospective financial information in the form of internally consistent cash flow, profit and loss and balance sheet information;
- (ii) conducting business analysis covering both the issuer's cash flows and the terms and conditions and commercial considerations associated with banking and other financing relationships;

- (iii) considering the issuer's strategy and plans and the related implementation risks together with checks against evidence and analysis; and
- (iv) assessing whether there are sufficient resources to cover a reasonable worst-case scenario (sensitivity analysis). Where there is insufficient headroom between required and available funding to cover reasonable alternative scenarios, the issuer will need to reconsider its business plans or arrange additional financing if it wishes to provide a clean working capital statement.

138. In preparing a working capital statement based on the procedures set out above the persons responsible for the prospectus should note that a clean working capital statement provides necessary information which is material to an investor for making an informed assessment of the issuer's financial position and prospects which may extend beyond disclosure required by accounting standards of an assessment that an issuer is able to continue operating for the foreseeable future. This is because it communicates the issuer's opinion that it does not require additional capital within the period covered by the statement.

Guidance for calculation of present requirements

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

139. Guideline ~~34~~-31: For the purpose of the working capital statement and in line with the duration of the validity of the prospectus established in PRM 11.1.1R, the issuer should count in its working capital all amounts which are reasonably expected to be received or fall due to be paid for a minimum of the next 12 months from the date of approval of the prospectus when calculating its present requirements. If it has made a firm commitment to acquire another entity within the 12 months following the date of approval of the prospectus, it should include the impact of the acquisition when calculating its present requirements.

~~137~~-140. When calculating its present requirements, the issuer should take into account the actions foreseen in its strategy (for

example, the issuer's strategy foresees expenditures relating to research and development or equipment).

~~138-141.~~ 141. Where the issuer is aware of working capital difficulties that may arise more than 12 months after the date of approval of the prospectus, the persons responsible for the prospectus should consider including supplementary disclosure in the prospectus.

Preparation on a consolidated basis

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1), read in light of the principle of including consolidated information in the prospectus in accordance with PRM 4.2.1R (PRM App 2 Annex 1.18R Item 18.1.6) and PRM 4.2.8R (PRM App 2 Annex 6.11R Item 11.1.5).

~~139-142.~~ 142. **Guideline 35-32: In line with the requirement to include consolidated financial statements in the prospectus where such statements are prepared, when an issuer prepares its working capital statement, it should determine the working capital and the present requirements on a consolidated basis.**

143. For an issuer which is the parent company of a group, the investor is in substance investing in the business of the whole group and this is the basis on which information in the prospectus is presented. As such, financial information in the prospectus is presented on a consolidated basis, and this principle should also apply to the working capital statement. When determining its working capital and present requirements, the issuer should consider, among other things, the nature of group arrangements and any restrictions on the transfer of funds between subsidiaries (for example, where overseas subsidiaries are involved).

Reverse takeovers

144. Where listed issuers are undertaking a transaction that is a 'reverse takeover' within the meaning of UKLR 7.1.4R or an 'initial transaction' within the meaning of UKLR 13.4.2R, a requirement for a prospectus will generally be triggered by the admission of the shares of the new enlarged group to trading on a regulated market.

In circumstances where this prospectus is required only to admit the existing and newly issued shares of the new group (often referred to as the Enlarged Group) and any accompanying share issuance is conditional on admission it would appear reasonable that the working capital statement should refer to this new group. This is because if the transaction were to fall away, the new group would not be admitted to trading and therefore no prospectus would be required. This would not be the case, however, where the reverse takeover or initial transaction was accompanied by a fundraising which would proceed even if the acquisition did not complete. In this situation the working capital statement should be provided on a 'Group' basis to ensure that all possible scenarios faced by the issuer are covered.

Not open to more than one interpretation

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

~~140.~~145. Guideline 3133: The issuer should ensure that the working capital statement is not open to more than one interpretation.

~~141.~~146. Regardless of whether the working capital statement is clean or qualified, the issuer should ~~make sure it sends a clear message,~~ ensure clear disclosure in a prospectus is provided so that it is obvious to investors whether in the issuer's opinion there is sufficient working capital.

~~142.~~147. In the case of a clean working capital statement, issuers should say that their working capital 'is sufficient'. They should avoid saying that they 'will' or 'may have' sufficient working capital or that they 'believe' they have sufficient working capital, as these latter terms could create confusion regarding when the working capital will be sufficient and which events would have to occur for the working capital to be sufficient. A clean working capital statement could for example have the following wording: 'In the company's opinion, its working capital is sufficient to meet its present requirements over at least the next twelve months.'

Basis of preparation disclosures

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

148. Guideline 33.1: Where an issuer includes a clean working capital statement, in certain circumstances disclosure explaining the basis of preparation of the statement should be included.

149. When providing a clean working statement, persons responsible for the prospectus should consider the applicability of the disclosures set out in paragraphs 150 to 152, which explain the basis on which the working capital statement is prepared. For the avoidance of doubt, such disclosures are acceptable for the purposes of giving a clean working capital statement, as information on the basis of preparation of the working capital statement that is necessary for an investor to make an informed assessment. Nevertheless, disclosures should be concise and not detract from the clarity of the message sent by a clean working capital statement.

Consistency with other parts of the prospectus

150. Where the report of the auditor or reporting accountant on the most recent audited financial statements presented in the prospectus is modified, contains an emphasis of matter, or other disclosure on a material uncertainty in relation to going concern, and the working capital statement is clean, the persons responsible for the prospectus should provide an explanation for this in the prospectus.

Sources of capital

151. When providing a clean working capital statement that is reliant on the receipt of the net proceeds of an offer, an issuer should disclose that such proceeds have been taken into account in the calculation of working capital.

152. Where the calculation of working capital takes into account financing in respect of borrowing facilities that are not committed for the entirety of the period covered by the working capital statement, the inclusion of a clean working capital statement is limited to the scenario set out in paragraph 156 of Guideline 33.2. In this scenario, the issuer should disclose after the clean working capital statement the significant financing assumption. Such

disclosure should not include wording on any other judgements or other assumptions made and should be limited to:

- (i) identifying the relevant borrowing facility;
- (ii) explaining that the relevant financing is not committed for the entirety of the period covered by the working capital statement; and
- (iii) explaining that the financing is taken into account in the calculation of the issuer's working capital in accordance with Guideline 33.2 because it is assessed as available for the purposes of making the working capital statement.

153. Basis of preparation disclosures made in accordance with Guideline 33.1 should not detract from the clarity of the message sent by a clean working capital statement. Other than as provided for in paragraph 152, disclosures made relating to the sources of capital under this Guideline should not include assumptions, sensitivities or other qualifying wording nor caveat the clean working capital statement.

Uncommitted financing

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

154. **Guideline 33.2: When the issuer calculates its working capital, it should only rely on the availability of borrowing facilities and other similar arrangements where they are committed, or in the certain limited circumstances set out within this Guideline.**

155. Generally, borrowing facilities considered as available for the purposes of the working capital statement should be limited to those that are committed. Committed facilities are those that are in place during the working capital period, which cannot be withdrawn or reduced by the lender (subject to normal explicit conditions such as covenant compliance) and do not need to be renewed during the working capital period.

156. However, there may be limited circumstances where financing in respect of borrowing facilities which would generally be considered as uncommitted for all or part of the period covered by the working capital statement – such as commercial paper facilities, factoring or

supplier financing arrangements, overdraft facilities, term loan facilities which are due to mature during the working capital period or committed facilities where a change of control clause is triggered but not cured – may be assessed by the persons responsible for the prospectus as available for the entirety of the working capital period for the purposes of making the working capital statement.

157. A determination that financing in respect of uncommitted borrowing facilities is available for the entirety of the working capital period for the purposes of the working capital statement will require the exercise of judgement. In accordance with Guideline 30, persons responsible for the prospectus should carefully consider all evidence, including counter-evidence, available to support their determination. Consideration may include, but is not limited to:

- (i) past practice with respect to the relevant facilities;
- (ii) recent discussions with, and/or documentation from, lenders;
- (iii) alternative financing offered and terms thereof;
- (iv) the significance of the financing assessed as available by value and materiality in the context of the issuer's financial position and prospects; and
- (v) discussions with an auditor or reporting accountant, including any circumstances which would cast significant doubt on a determination that such financing is available.

158. Where the persons responsible for the prospectus determine that financing under an uncommitted borrowing facility is available for the purposes of the working capital statement, and the prospectus includes any of the following disclosures because such disclosures are likely to constitute necessary information under regulation 23 POATR:

- (i) a significant doubt in relation to that determination; or
- (ii) the implications of such financing no longer being available; or
- (iii) further information about the determination which goes beyond the basis of preparation disclosures set out in paragraph 152 of Guideline 33.1,

then a qualified working capital statement must be provided.

Guidance for the calculation of working capital

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

~~143-159.~~ Guideline 33-34: When the issuer calculates its working capital, it should only count the proceeds of an offering if the offering is underwritten on a firm commitment basis or if irrevocable undertakings have been given. If only a portion of an offering is underwritten or covered by irrevocable undertakings, only that portion of the offering may be included in the calculation of the working capital. The issuer should not count such proceeds when calculating its working capital if investors will be exposed to the risk that the issuer continues with an offer after the underwriting agreement has been cancelled or the irrevocable undertakings are withdrawn.

~~144-160.~~ Investors should not be confronted with uncertainty about the quality of the underwriting when subscribing for their shares. This is particularly the case when the issuer counts proceeds of the offering when calculating its working capital. As such, the issuer should consider any conditionality in the underwriting agreement or irrevocable undertakings that would allow the cancellation of the underwriting agreement or the irrevocable undertakings.

~~145-161.~~ The issuer should not include the proceeds of an offer when calculating its working capital if it is necessary to make any significant assumptions concerning whether the offering will be underwritten or whether any irrevocable undertakings will be withdrawn. Furthermore, if an issuer includes any of the proceeds of an offering in the calculation of its working capital, it should be clear in the disclosure provided in accordance with PRM App 2 Annex 8.5R Item 5.1.9 that the offer will not continue if it is no longer underwritten or the irrevocable undertakings are withdrawn.

~~146-162.~~ As mentioned above, investors should also not be confronted by any uncertainty in relation to the quality of the underwriting and any irrevocable undertakings. Such uncertainty also includes any credit risk in relation to any party underwriting the offering or providing irrevocable undertakings. In order to limit such uncertainty, the issuer should assess the credit risk associated with the parties underwriting the offering or providing irrevocable undertakings. If the outcome of this assessment is that there is a

material risk that one or more of the parties underwriting the offering or providing irrevocable undertakings will not be able to meet its obligations, the issuer should not include the proceeds of the offering in the calculation of its working capital.

~~147.163.~~ Only offerings that are underwritten on a firm commitment basis and irrevocable undertakings should be included in the calculation of an issuer's working capital. This ensures that there is certainty about the proceeds of an offering. For the avoidance of doubt, an intention or agreement to subscribe to an offering of securities is not a firm commitment or an irrevocable undertaking.

~~148.164.~~ In order to take the proceeds of an offering into account in the calculation of an issuer's working capital, the issuer should know the minimum amount of proceeds of the offering that will be underwritten or placed via irrevocable undertakings. The proceeds of the offering should not be included in the calculation of the issuer's working capital if the issuer cannot calculate the net proceeds of the offer (for example under the circumstances that there is no minimum price or the underwriting agreement does not guarantee a minimum amount of proceeds).

~~149.165.~~ Notwithstanding the guidance set out in paragraphs ~~146-151~~~~160-164~~ above, new issuers that are closed-ended investment funds may count the minimum net proceeds of an offer that is not underwritten when calculating their working capital, but only if:

- (i) it is an explicit condition of the offer that the minimum net proceeds are raised, and
- (ii) if that condition is not met, the offer will lapse, admission will not take place and the proceeds will be returned to investors.

Content of a qualified working capital statement

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

~~150.166.~~ **Guideline ~~32-35~~: In a qualified working capital statement, the issuer should state that it does not have sufficient working capital for its present requirements. Furthermore, it should describe the following factors:**

- (i) timing;**

- (ii) **shortfall;**
- (iii) **action plan; and**
- (iv) **implications.**

~~151.~~**167.** In making the working capital statement the issuer should explicitly state that in its opinion it does not have sufficient working capital to meet its present requirements.

~~152.~~**168.** After this statement, it should provide information on the factors referred to in paragraph 166 in order to ensure that investors are fully informed as regards the issuer's working capital position.

~~153.~~**169.** Timing: The working capital shortfall could arise immediately or sometime in the future, and investors need information on the timing to assess the urgency of the problem. The issuer should therefore state when it expects to run out of working capital.

~~154.~~**170.** Shortfall: To allow investors to understand the magnitude of the problem, the issuer should state the approximate amount of the working capital shortfall.

~~155.~~**171.** Action plan: The issuer should describe how it plans to rectify the working capital shortfall. The description should include details of specific proposed actions, for example refinancing, renegotiation of or new credit terms / facilities, decrease in discretionary capital expenditure, revised strategy / acquisition programme or asset sales. The issuer should explain the timing of the proposed actions and how confident it is that they will be successful.

~~156.~~**172.** Implications: Where relevant, the issuer should state the consequences of any of the actions proposed in the action plan being unsuccessful (for example whether the issuer is likely to enter into administration or receivership and, if so, when).

Credit institutions

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

~~157.~~**173.** **Guideline 36: When determining its working capital, an issuer which is a 'credit institution'¹⁴ should take its**

¹⁴ As defined in Article 2(1)(19) of the of The Markets in Financial Instruments Regulation

liquidity metrics and relevant applicable prudential requirements as the starting point. The issuer should take into account all available information which may have a material impact on its liquidity risk and its projected capital adequacy ratios.

~~158.~~174. Issuers which are credit institutions should provide a working capital statement in line with the guidance set out in Guidelines 29-35 when issuing equity securities. However, this statement should be drawn up on a basis that reflects the specificities of their business model by relying on the relevant applicable prudential requirements, except where relying on such requirements would render the working capital statement misleading. UK credit institutions should use the applicable ratios required by UK legislation¹⁵ to calculate liquidity. In particular, these institutions should consider the use of the Liquidity Coverage Ratio and Net Stable Funding Ratio (or any applicable national stable funding provisions before the Net Stable Funding Ratio is required by UK legislation) to calculate liquidity. The same applies to third country credit institutions which calculate those ratios. Third country credit institutions which do not calculate those ratios should instead use ratios consistent with the applicable legal framework within their jurisdictions to calculate liquidity.

~~159.~~175. Additionally, UK credit institutions should consider their projected capital adequacy ratios. In particular, these institutions should consider their projected ratios at the Common Equity Tier 1 and Total Capital Ratio levels and projected leverage ratios under a base case and reasonable worst case scenario. The same applies to third country credit institutions which calculate those ratios. Third country credit institutions which do not calculate those ratios should instead use ratios consistent with the applicable legal framework within their jurisdictions.

~~160.~~176. When taking its metrics as the starting point for determining its working capital, the issuer should make use of the most recently calculated ratio(s). Where a ratio is calculated several months before the date of approval of the prospectus, the issuer should take into account all events since the date of calculation which could have affected its liquidity and its regulatory capital requirements. The issuer should also take into account the effect of any expected change to the applicable liquidity metrics and

¹⁵ The UK version of Capital Requirements Regulation; Commission Delegated Regulation (EU) 2015/61; and Commission Implementing Regulation (EU) No 680/2014.

prudential requirements during the period covered by the working capital statement.

~~161.177.~~ The requirement to use applicable prudential ratios for preparing the working capital statement does not in and of itself mean that credit institutions are required to disclose these ratios in the prospectus.

Insurance and reinsurance undertakings

PRM 4.3.1R to PRM 4.3.2R (PRM App 2 Annex 8.3R Item 3.1), PRM 4.3.3R to PRM 4.3.4R (PRM App 2 Annex 9.3R Item 3.3) and PRM 4.3.5R (PRM App 2 Annex 10.1R Item 1.1).

~~162.178.~~ **Guideline 37: When determining its working capital, an issuer which is an 'insurance undertaking' or 'reinsurance undertaking'¹⁶ should take the liquidity metrics (if applicable, those that were agreed with the supervisory authority) and regulatory capital requirements as the starting point.**

~~163.179.~~ Issuers which are insurance or reinsurance undertakings should provide a working capital statement in line with the guidance set out in Guidelines 29-36 when issuing equity securities. However, this statement should be drawn up on a basis that reflects the specificities of their business model by relying on the relevant applicable prudential requirements, except where relying on such requirements would render the working capital statement misleading. UK insurance or reinsurance undertakings should use the metrics which they have adopted and submitted to the supervisory authority for monitoring their liquidity risk pursuant to the Solvency II regime,¹⁷ including Minimum Capital Requirement, as well as its capital adequacy ratios. Third country insurance and reinsurance undertakings should use metrics consistent with the applicable legal framework on prudential supervision within their jurisdictions.

~~164.180.~~ The issuer should make use of the most recently calculated metrics when determining its working capital. Where a metric is calculated several months before the date of approval of the prospectus, the issuer should take into account all events since the

¹⁶ As defined in Article 13(1) and (4) of the UK version of the Solvency II Directive 2009/138/EC.

¹⁷ Solvency II Directive; the UK version of Commission Delegated Regulation (EU) 2015/35 and related implementing measures.

date of the calculation which could have affected its liquidity risk and regulatory capital requirements. The issuer should also take into account the effect of any expected change to the applicable liquidity metrics and prudential requirements during the period covered by the working capital statement.

~~165-181.~~ 181. The requirement to use applicable prudential metrics for preparing the working capital statement does not in and of itself mean that insurance and reinsurance undertakings are required to disclose these metrics in the prospectus.