

DRAFT FOR CONSULTATION

[Month Year] / Primary Market / TN / 639.1

Primary Market Technical Note

Preparation of protected forward-looking statements

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules (UKLR), Prospectus Rules: Admission to Trading on a Regulated Market (PRM), Disclosure Guidance and Transparency Rules (DTR), 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

PRM 8.1.3R(1)(b); PRM 8.1.3R(1)(d); PRM 8.1.7R; PRM 8.1.8R; PRM 8.2.5R; Primary Market Technical Notes 340.4 Profit forecasts and estimates; 619.1 Guidelines on disclosure requirements under the Prospectus Regulation; 624.2 Operating and financial reviews; and 625.2 Current trading and trend information.

Definition of protected forward-looking statement

Regulation 30 of the Public Offers and Admissions to Trading Regulations 2024 (POATRs) allow claims for compensation to be made against persons responsible for a prospectus or MTF admission prospectus for losses resulting from untrue or misleading statements

or the omission of information that is required by regulation 23 of the POATRs. There is a conditional exemption from liability in Part 3 of Schedule 2 to the POATRs for “protected forward-looking statements” (PFLS). PRM 8.1.3R specifies the kind of forward-looking statements that can be PFLS. As noted in PRM 8.1.3R(1)(a), PFLS disclosures are forward-looking statements that contain either financial information in accordance with PRM 8.1.7R or operational information in accordance with PRM 8.1.8R. The statement must also meet the other conditions in PRM 8.1.3R.

Financial information

Requirements for financial information

Under PRM 8.1.7R, for a forward-looking statement that contains financial information to be PFLS, the financial information must expressly state, or by implication indicate, a figure or a minimum or maximum figure for the financial information or contain data from which a calculation of such a figure may be made.

Furthermore, the content-specific accompanying statement for the PFLS must include the principal assumptions upon which the PFLS is based, in accordance with the principles set out in PRM 8.2.5R(2)(a) to (c). This includes the principle that the assumptions on which the PFLS is based must be reasonable, readily understandable by investors, specific, precise and not relate to the general accuracy of the estimates underlying the PFLS.

Finally, in accordance with PRM 8.2.5R(3), to the extent that there are disclosures in the prospectus or MTF admission prospectus of historical financial information, which is of the same type as the information included in the PFLS, then the content-specific accompanying statement must confirm that the PFLS is comparable with the historical financial information and consistent with the issuer’s accounting policies.

Operational information

We consider that operational information is information relating to any of the issuer’s activities or assets that are capable of being conducted or managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities.

Information about external factors that have a bearing on the conduct or management of these activities or assets may be considered operational information.

Requirements for operational information

Under PRM 8.1.8R, for a forward-looking statement that contains operational information to be PFLS, that operational information must be one of the following:

- 1.** information that expressly states or by implication indicates a figure or a minimum or maximum figure for the operational information, or contains data from which a calculation of such a figure may be made;
- 2.** information that cannot be expressed in numerical terms, but can be confirmed empirically through direct observation or objective measurements; or
- 3.** a combination of (1) and (2).

PRM 8.2.5R(2) also applies to the content-specific accompanying statement for operational information. This must again include the assumptions on which the PFLS is based and these must be reasonable, readily understandable by investors, specific, precise and not relate to the general accuracy of the estimates underlying the PFLS.

Empirical confirmation through direct observation or objective measurements

With respect to PRM 8.1.8R(2), we expect that PFLS which cannot be expressed numerically but can be confirmed empirically, either through direct observation or objective measurements, will typically relate to achieving observable or measurable milestones by a certain date. Subsequent validation at the time of the expected outcome would confirm whether or not the milestone is achieved.

Applicability to sustainability-related information

Sustainability-related information may be either financial or operational information depending on the nature of the information. To be considered PFLS, sustainability-related information must therefore

meet the requirements of PRM 8.1.3R and either PRM 8.1.7R or PRM 8.1.8R.

Furthermore, where the disclosure is required by the rules in PRM, such as the climate disclosure rule under PRM 4.6.2R, the information disclosed cannot be PFLS unless it is the information referred to in certain parts of the PRM App 2 Annexes as specified in PRM 8.1.4R:

- Item 5.8.2, PRM App 2 Annex 1.5 - A description of the actual and potential impacts of climate-related risks and opportunities.
- Item 5.8.3, PRM App 2 Annex 1.5- If the issuer has published a transition plan, where the contents are material, a summary of key information about the transition plan.
- Item 5.8.5, PRM App 2 Annex 1.5 - If material, a description of the metrics and targets used to assess and manage relevant climate-related risks and opportunities.

Preparation of PFLS

This note provides guidance on the preparation of PFLS. PFLS should be prepared in such a way that it exhibits the following three attributes.

Understandable

PFLS should not be so complex that it cannot be readily understood by investors. There should be reasonable disclosure as to what the PFLS relates to. Also, to comply with PRM 8.2.5R(2), the persons responsible for the prospectus should avoid overly complex and voluminous disclosures about assumptions and uncertainties, because these will have a detrimental effect on the understandability of the PFLS.

Reliable

PFLS that is reliable is more likely to be useful for investors. Reliability does not mean that the event or set of circumstances described in the PFLS will be achieved. To be reliable, the information should be supported by an up-to-date analysis of the issuer's business and represent actual, as opposed to hypothetical, strategies, plans and risk analysis.

The analysis of the issuer's business should consider both internal and external factors that may have an impact on the event or set of circumstances that is described in the PFLS.

Comparable

In accordance with PRM 8.1.3R(1)(b), for information to be considered PFLS, the determination of whether the statement is untrue, misleading, or omits from the prospectus or MTF admission prospectus any matter that is required to be included by regulation 23 of the POATRs, can only be made by reference to events or sets of circumstances that occur after the statement has been published.

To comply with this requirement, the preparers of the information should have regard to whether the PFLS is capable of subsequent validation by comparison with actual future events. For example, in the case of financial information, the PFLS should be comparable with outcomes in the form of subsequent historical financial information.

In addition, to ensure compliance with PRM 8.2.5R(3), PFLS containing financial information should be prepared in a manner that enables the persons responsible for the prospectus to confirm in the content-specific accompanying statement for the PFLS that it is comparable with the historical financial information in the prospectus or MTF admission prospectus, and consistent with the issuer's accounting policies.

Additional information may be relevant for this comparison. For example, if a significant legal dispute has arisen after the date on which historical financial information was prepared, the impact of this uncertainty on the PFLS should be explained, and it should also be made clear that the legal dispute did not exist at the end of the previous period.