

# UKLA Primary Market Technical Note

## Working capital statement - basis of preparation

The information in this note is designed to help issuers and practitioners interpret our 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.

FCA Guidelines,  
PR Regulation  
Annexes  
ESMA  
Recommendations and PR  
Appendix 3 Annexes  
December 2012

### Disclosures of the basis of preparation of a clean working capital statement

The ESMA update of the CESR Recommendations (ESMA Recommendations paragraphs 114-115) states, in relation to clean working capital statements, that disclosure of the assumptions underlying the statement are not normally acceptable.

However, the market practice of disclosing the basis on which a working capital statement is made, e.g. "taking into account existing bank facilities" or "taking into account the proceeds of the issue" is acceptable under the ESMA recommendations. We do not regard such disclosure as "assumptions".

FCA Guideline 29 states where an issuer finds it necessary to include qualifying wording, such as assumptions, in a clean working capital statement, this implies that it cannot firmly state that it has sufficient working capital to meet its present requirements, and therefore a qualified working capital statement should be provided (para 132).

However, Guideline 29 also states that in a clean working capital statement issuers should disclose whether the proceeds of an offer have been included in the calculation. We would therefore expect that where net proceeds have been counted in the calculation of working capital, that the working capital statement will reflect this. Such disclosure is not considered a qualification or a caveat, but constitutes information on the basis of preparation of the working capital statement that is necessary for an investor to make an informed assessment (para 133).

Similarly, we consider that a statement such as "taking into account existing bank facilities", which we also see included in working capital statements, also relates to the basis of the statement being prepared rather than underlying assumptions. These disclosures relate to the basis of the statement being prepared rather than underlying assumptions. In merger situations reference may also be made to new facilities available to the issuer's enlarged group where the only condition is merger completion.

In addition, in a class 1 disposal circular, where the requirement for a statement is triggered by the transaction, it may also be appropriate to include the net proceeds of the transaction.

## Acceptable basis of preparation for working capital statements

Under the Listing Rules, issuers are required to prepare a working capital statement on the basis that the relevant transaction has completed, e.g. the enlarged group basis. However, the scope of a working capital statement made under the Prospectus Directive (PD) Regulation is far wider. We have set out below how these requirements interact in the context of particular transactions.

### *Class 1 acquisitions*

In preparing a working capital statement, the ESMA Recommendations FCA Guideline 30 requires that the issuer should consider its strategy and plans in its working capital procedures. In relation to strategy Guideline 34 explains that the issuer should take into account the actions foreseen in its strategy. In particular, if the issuer has made a firm commitment to acquire another entity, it should include the impact of the acquisition when calculating its present requirements. ~~suggest that issuers should take into account future plans in their forecasts, and therefore~~ Any planned acquisition is therefore automatically covered, as are sensitivities surrounding a planned acquisition not taking place.

Where issuers are preparing a prospectus in addition to undertaking a significant acquisition, for the purposes of the prospectus, it would not therefore be appropriate to include a working capital statement limited to an enlarged group basis. This is because it does not cover eventualities such as the acquisition not taking place. However, the issuer may wish to include a single PD Prospectus Regulation compliant working capital statement, which in a combined document would also satisfy the Class 1 requirements or, if the issuer prefers, two statements, one prepared on a Prospectus Regulation basis and one on an enlarged group basis.

### *Reverse takeovers*

Where issuers are undertaking a transaction that is classified as a reverse takeover, a requirement for a prospectus will generally be triggered by the admission of the shares of the enlarged group to the Official List (or more specifically by their admission to trading on a regulated market). Additionally, the requirement for a prospectus may be triggered by a share issue in connection with the transaction if this involves a public offer. In circumstances where this prospectus is required only to admit the new group (often referred to as the Enlarged Group) 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 listing and therefore no prospectus would be required. This would not be the case, however, where the reverse takeover was accompanied by a fundraising which would proceed even if the acquisition did not complete, or which constituted a public offer. In this situation the working capital statement must be provided on a 'Group' basis to ensure that all possible scenarios faced by the issuer are covered.

***Where the net proceeds of the issue are taken into account***

Taking into account the net proceeds of an issue is a basis of preparation that is consistent with a clean working capital statement only to the extent that the proceeds of an offering are fully underwritten on a firm commitment basis or if irrevocable undertakings have been given (FCA Guideline 33). New issuers that are closed-ended investment entities may, in accordance with FCA Guideline 33 para 151A, count the minimum net proceeds of an offer when calculating working capital, but only if the conditions set out in Guideline 33, para 151A have been complied with.