

UKLA Technical Note

Working capital statements – Basis of preparation

Ref: UKLA / TN / 320.1

ESMA Recommendations and PR Appendix 3 Annexes

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'.

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) 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 suggest that issuers should take into account future plans in their forecasts, and therefore any planned acquisition is 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 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 PD 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 are fully underwritten.