# UKLA Technical Note

## Profit forecasts and estimates

Ref: UKLA / TN / 340.1

ESMA update of the CESR recommendations (subsection II. 4); PR Appendix 3 Annex 1 item 13; LR 13.5.32R

### Definition of a Profit Forecast

The requirements on profit forecasts and estimates are set out in PR Appendix 3 Annex I 13.1 – 13.4, the ESMA update of the CESR recommendations (subsection II. 4) (the ESMA Recommendations) and LR 13.5.32R – 13.5.35G (for Class 1 acquisitions). Both the Listing Rules and Prospectus Rules incorporate the Prospectus Regulation definition of a profit forecast, which is: 'Profit Forecast – a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used'. In addition, the ESMA Recommendations provide issuers with some broad guidance on how they could determine whether or not they have made a profit forecast for the purposes of a prospectus.

Companies should bear in mind the requirements of LR13.5.32R to 13.5.35G and PR Appendix 3 Annex I 13.1 to 13.4 when making any public announcement that contains statements about their future performance. This is because the requirements apply to any outstanding and previously published forecast or estimate. Issuers should make sure that any statement they publish about their future performance is not a forecast if it is not intended to be one. Often, statements made by companies in previous announcements are caught by the profit forecast requirements when the companies come to prepare prospectuses or class 1 circulars.

In practice this covers a broad range of statements of future performance. In particular it should be noted that the definition covers statements about 'losses' as well as about 'profits', and that neither word needs to be used at all. For example, where the words 'results' or 'earnings' are used, the UKLA may still take the view that there is a forecast or estimate if it is apparent that the market interprets this as profit. It is also possible, depending on the context, that a forecast of earnings per share will be viewed as a profit forecast. Revenue figures may also be a profit forecast if that allows a calculation of profit. This is most likely to be the case where an issuer has previously published details of its profit margins.

Statements of performance against market expectations may also be forecasts if there is a clear market consensus of expectation that allows a calculation of a floor or ceiling on forecast profits.

It should also be noted that the definition refers to a 'financial period', and not to a reporting period or other defined length of time. So it is possible that a comment limited to a quarter/half year may be still construed as a forecast.

It is also worth noting that in a class 1 acquisition situation, a forecast by the target would also fall under LR 13.5.32R. The reporting requirement is extended to the target by LR 13.5.33R.

## Basis on which profit forecasts are prepared

Paragraph 47 of the ESMA recommendations states that a profit forecast should normally reflect profit before tax (with separate disclosure regarding any non-recurrent items and tax charges if these are expected to be abnormally high or low). More importantly, the ESMA Recommendations indicates that, where a forecast is made on any basis other than profit before tax, the reasons for presenting another profit line (such as operating profit or EBITDA) must be disclosed and clearly explained. We reiterate that we would expect issuers to clearly outline the reasons for presenting forecast figures on a basis other than profit before tax. The premise behind this requirement is that it provides shareholders with the ability to compare the forecast with an issuer's published results.