



Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

POATR@fca.org.uk

Quoted Companies Alliance

6 Kinghorn Street
London EC1A 7HW

T +44 (0)20 7600 3745
mail@theqca.com

www.theqca.com

Friday 29 September 2023

Dear FCA colleagues,

FCA Engagement Paper 3 - Protected forward-looking statements

We welcome the opportunity to respond to the FCA's Engagement Paper on Protected forward-looking statements.

The Quoted Companies Alliance *Legal Expert Group* and *Primary Markets Expert Group* have examined the proposals and advised on this response from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

Overall, we believe that the FCA should adopt a flexible and less prescriptive approach to defining protected forward-looking statements (PFLS). The FCA should seek to be flexible in terms of what information companies can disclose that are covered under PFLS. We believe that this is particularly important when considering that the new regime represents not only a change in liability, but also a cultural one. This may mean that some companies may initially be reluctant or hesitant to embrace the new regime and benefit from it until there is a broader understanding of how it works in practice, and thus flexibility is especially important.

When preparing a prospectus, companies should be given the choice of how they display and inform users of PFLS in the document. If they decide to label PFLS throughout the prospectus we propose a system of footnotes referring the user to an initial general statement on PFLS.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink that reads "James Ashton".

James Ashton
Chief Executive

The Quoted Companies Alliance champions the UK's community of 1000+ small and mid-sized publicly traded businesses and the firms that advise them.

A company limited by guarantee registered in England
Registration Number: 4025281

Q1 What types of forward-looking statements should we allow as PFLS, and how should we define them (e.g. broadly or more specifically)?

As set out in the introductory section to our response, we believe a flexible and non-prescriptive approach to defining PFLS is important. It is our view, therefore, that the FCA should adopt option (a), as contained in paragraph 13, by setting broad criteria to define PFLS. We believe that being too prescriptive in determining what information is treated as PFLS will not be helpful for companies given the range and diverse nature of business models and sectors that it will cover. Allowing for flexible criteria would help to ensure that the information companies produce is relevant to their particular circumstances.

The FCA could provide guidance as to what is not considered to be PFLS as well as what it considers to be PFLS as this will be important in encouraging issuers to take advantage of the new regime.

Q2 Should we set certain minimum criteria or expectations for how PFLS is produced?

We have concerns around the FCA's consideration of adopting IAS 1 to help set minimum criteria for how PFLS is produced. This is because IAS 1 is focused solely on the presentation of information in the financial statements. While the FCA states that they believe non-financial information can be held to the same standard, it is unclear whether and how this will work in practice.

We recommend the FCA consider expanding the minimum criteria proposed to ensure it covers non-financial measures and provide greater clarity on how this will be achieved.

Q3 Should certain types of forward-looking statements be excluded from the definition of PFLS?

Overall, we are broadly in agreement with what the FCA is proposing with regards to the potential exclusionary criteria. In particular, we agree with the FCA that the working capital statement should be excluded from the definition of PFLS.

There are existing issues with the current approach to working capital statements, as it is already a challenge to provide a clean statement in certain circumstances. In circumstances where a 'qualified' working capital statement is provided there is an expectation that detailed commentary around this is given, and careful thought should be given as to whether the intention is for the existing negligence standard to apply to such explanatory commentary and expectation statements associated with a 'qualified' working capital statement or if these are to be subject to the PFLS regime.

We also believe this Engagement Paper and the other current consultations offer a broader opportunity for the FCA to assess disclosure around the working capital statement, and that the expectations of both the FCA and the users of prospectuses should be specifically considered particularly in light of the proposed changes under the Primary Markets Effectiveness Review. As the FCA is aware, other regulatory bodies have taken positions that robust explanation, even in the circumstances of the 'clean' statement, are preferable.

Q4 Should we consider including sustainability-related disclosures as PFLS and, if so, what types?

Broadly, we are in agreement with sustainability-related disclosures being considered as PFLS. This may encourage more companies to be more forthcoming with setting out information of their sustainability-related goals and impacts, while simultaneously recognising the inherent uncertainty and unpredictability of predicting future events.

It is important that the FCA takes into account specific company circumstances as the suitability of including sustainability disclosures under PFLS will depend on a range of factors including a company's supply chains. It is important that companies have flexibility in this area as well as allowing for longer-term horizons for these disclosures.

In addition, the FCA ought to consider how these disclosures relate to the compensation regime set out in s463 of the Companies Act 2006.

Q5 How should PFLS be presented or labelled within a prospectus document?

We believe that companies should have the option of choosing between option (a) or (b) as set-out in paragraph 39 of this Engagement Paper. If companies opt for option (a), they should be able to footnote each PLFS in the relevant sections of the prospectus. However, we suggest that the footnote would reference a generic disclaimer (as referred to in paragraph 38) at the front of the prospectus which would make the prospectus more readable – this would be similar to the “forward looking statements” paragraph which prospectuses often include at the front.

We agree that the disclaimer should state that that companies are not obliged to update the market if information in the PFLS turns out to be inaccurate as set out in paragraph 42.

The third bullet point in paragraph 39 must take into account that ‘significant factors’ will differ in each statement. Therefore, the particular assumptions underpinning those statements require greater explanation.

Regarding paragraph 40 and the requirement that any key assumptions or inputs are included in the accompanying statement, we believe that companies should be able to display the generic information at the front of the prospectus while more specific information should be included in the general statement on PFLS or in the footnotes as outlined above.

We do not consider that it is necessary for the FCA to specify precise wording or a general description of what a disclaimer should contain. It is important that the FCA avoids being overly prescriptive in this area and instead, leaves this to market practice, with companies and their advisers having the flexibility to decide on precise wording.

Q6 More broadly, we are interested in any data which stakeholders may be able to give us which may provide insight into the likely costs and benefits of any changes which we may consider in this area. An example may be the typical costs of preparing and publishing a prospectus or specific elements of such a document.

We have no comments.

Appendix A

The Quoted Companies Alliance *Legal Expert Group*

Mark Taylor (Chair)	Dorsey & Whitney (Europe) LLP
Stephen Hamilton (Deputy Chair)	Mills & Reeve LLP
Paul Airley	Fladgate LLP
Danette Antao	Hogan Lovells International LLP
Paul Arathoon	Charles Russell Speechlys LLP
Kate Badr	CMS
Naomi Bellingham	Practical Law Company Limited
Ross Bryson	Mishcon De Reya
Philippa Chatterton	CMS
Paul Cliff	Gateley
Matt Cohen	Stifel
Jonathan Deverill	DAC Beachcroft LLP
Sarah Dick	Stifel
Tunji Emanuel	LexisNexis
Kate Francis	Dorsey & Whitney (Europe) LLP
Claudia Gizejewski	LexisNexis
Sarah Hassan	Practical Law Company Limited
David Hicks	Simmons & Simmons LLP
Kate Higgins	Mishcon De Reya
Nichols Jennings	Locke Lord LLP
Martin Kay	Blake Morgan
Jonathan King	Osborne Clarke
Jennifer Lovesy	KPMG
Nicholas McVeigh	Mishcon De Reya
Catherine Moss	Shakespeare Martineau LLP
Hilary Owens Gray	Practical Law Company Limited
Kieran Rayani	Stifel
Jaspal Sekhon	Hill Dickinson LLP
Patrick Sarch	Hogan Lovells LLP
Gary Thorpe	QCA Director
Robert Wieder	Faegre Drinker LLP
Sarah Wild	Practical Law Company Limited
John Young	Kingsley Napley LLP

The Quoted Companies Alliance *Primary Market Expert Group*

Samantha Harrison (Chair)	Grant Thornton UK LLP
Azhic Basirov (Deputy Chair)	Global Alliance Partners Financial Limited
Colin Aaronson	Grant Thornton UK LLP
Stuart Andrews	Zeus Capital
Mark Brady	Spark Advisory Partners Limited
Andrew Buchanan	Peel Hunt LLP
David Coffman	Novum Securities Limited
Richard Crawley	Liberum Capital Ltd
Dru Danford	Liberum Capital Ltd
David Foreman	Zeus Capital
Chris Hardie	W.H. Ireland Group PLC
Stephen Keys	Cenkos Securities PLC
Nick McCarthy	Shoosmiths LLP
Katy Mitchell	W.H. Ireland PLC
Hayley Mullens	Radnor Capital Partners Limited
Nick Naylor	Allenby Capital
Jeremy Osler	Cenkos Securities PLC
Niall Pearson	Hybridan LLP
Mark Percy	Shore Capital Group Ltd
Oliver Pilkington	Shoosmiths LLP
George Sellar	Peel Hunt LLP
James Spinney	Strand Hanson
Stewart Wallace	Stifel