

Definition of the net financial position according to the ESMA Guidelines: interpretative aspects

On 4 March 2021, the European Securities and Markets Authority (ESMA) published guidelines on disclosure requirements arising from the new Prospectus Regulation (Regulation EU 2017/1129 and Delegated Regulations EU 2019/980 and 2019/979), which update the previous CESR Recommendations (ESMA/2013/319, as revised on 20 March 2013).

Consequently, in its Notice No. 5/21 of 29 April 2021 "Compliance with ESMA Guidelines on Disclosure Requirements under the Prospectus Regulation" Consob clarified that as of 5 May 2021, all references contained in the previous notices are replaced with the aforementioned ESMA Guidelines, including those relating to the net financial position, in order to relate the new concepts introduced to elements already present in IAS/IFRS.

Specifically, issuers with securities traded on regulated markets and those with dispersed financial instruments (other than banking and insurance) must refer to the new definition of net financial position:

A	Disponibilità liquide
B	Mezzi equivalenti a disponibilità liquide
C	Altre attività finanziarie correnti
D	Liquidità (A + B + C).....
E	Debito finanziario corrente (Inclusi gli strumenti di debito, ma esclusa la parte corrente del debito finanziario non corrente).....
F	Parte corrente del debito finanziario non corrente
G	Indebitamento finanziario corrente (E + F)
H	Indebitamento finanziario corrente netto (G - D).....
I	Debito finanziario non corrente (esclusi la parte corrente e gli strumenti di debito).....
J	Strumenti di debito
K	Debiti commerciali e altri debiti non correnti
L	Indebitamento finanziario non corrente (I + J + K)
M	Totale indebitamento finanziario (H + L).....

Among other guidance in this regard, ESMA clarifies that "trade payables" and "other non-current payables" should also fall within the scope of non-current financial liabilities and, therefore, in the determination of the issuer's net financial position.

However, some interpretation problems persist in relation to the classification of items that are no longer directly attributable, such as past due trade payables on which interest is accrued, social security liabilities beyond 12 months, and liabilities recognised in the balance sheet following business combinations for deferred payment of consideration (earn-outs).

In addition, paragraph 185 of the document requires issuers to disclose 'indirect and conditional debt' at the bottom of the statement of net financial indebtedness in order to provide investors with an overview of any material debt not reflected in the debt statement.

More specifically, the definition of indirect or conditional indebtedness should include any material obligation that has not been directly recognised by the issuer on a consolidated basis, but which the issuer may have to satisfy in certain circumstances, and the maximum total amount payable in respect of any obligation that has arisen on the part of the issuer but the final amount of which has not yet been determined with certainty regardless of the likely actual amount payable under that obligation at any point in time.

Although the revision of the net financial position following the entry into force of the new ESMA guidelines allows for a better assessment of the financial position of a company or a group, its soundness and its ability to repay the loans received, several interpretation gaps remain, which inevitably limit its effectiveness in the context of financial reporting to the issuer's stakeholders.