



ASIC

Australian Securities & Investments Commission

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Australian Securities Exchange
PO Box H224
Australia Square
SYDNEY NSW 1215
By email: diane.lewis@asx.com.au

66 St Georges Terrace, Perth
GPO Box 9827 Perth WA 6001
DX 158 Perth

Telephone: (08) 9261 4000
Facsimile: (08) 9261 4010

Australasian Joint Ore Reserves Committee
PO Box 660
CARLTON SOUTH VIC 3053
By email: jorc@ausimm.com.au

Dear Sirs

ASX Listing Rules Review Issues Paper: Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies (ASX Issues Paper) Part A Issue 5, Disclosure of production targets (Issue 5)

2011 JORC Code Review Issues Paper (JORC Issues Paper) Issue 6, Disclosure of production targets (Issue 6)

We commend you on the ASX and JORC Issues Papers which canvas important regulatory issues. We have engaged previously with you on resources disclosure, but provide this submission to contribute to the public discussion and ensure the market understands our viewpoint on some specific issues. This letter reflects policy propositions on which we have been dealing with the market in recent years.

As a general comment, we recognise the importance of access to equity capital markets by companies. In particular, the needs of junior mining companies in accessing equity capital and their importance to Australia's equity capital markets are recognised.

At the same time, we need to ensure market integrity - the market should be fully informed at all relevant times and investors should be fully informed before they decide to buy or sell securities.

To this end, we particularly commend the discussion in relation to the need to disclose material underlying assumptions in both issues papers.

Material underlying information and assumptions concerning Exploration Results, exploration targets under clause 18 of the JORC Code, Mineral Resources and Ore

Reserves in Public Reports under the JORC Code must be disclosed, not merely on an exceptional reporting basis. (The above defined terms and others used in this letter have the same meaning as in the JORC Code.)

The purpose of this letter is to comment publicly on Issue 5 of the ASX Issues Paper and Issue 6 of the JORC Issues Paper in relation to disclosure of production targets.

We also raise for consideration the requirement for Competent Person consent and independence in relation to production targets and other statements about future matters implying economic viability. This issue has not been raised by the JORC or ASX Issues Papers.

We may make further submissions in relation to the JORC Issues Paper and the ASX Issues Paper (including in relation to Part B 'Oil and Gas Company Petroleum Reserves and Resources Reporting') at a later stage.

1. Disclosure of production targets

ASX & JORC

- 1.1 Issue 5 of Part A of the ASX Issues Paper includes Option 5A, which is the ASX's preferred option. If adopted, this option would allow issuers to report a production target and financial information derived from the production target based on Inferred Mineral Resources and exploration targets under clause 18 of the JORC Code where companies, having regard to their own circumstances, determine that they have reasonable grounds for this information. ASIC is concerned that if Option 5A were adopted, it could lead to the market being not fully informed and possibly investors being misled and ultimately to a sub-optimal use of scarce capital.
- 1.2 Issue 6 of the JORC Issues Paper raises for consideration what are appropriate levels of Mineral Resources and/or Ore Reserves to report production targets and forecast financial information.

Discussion

- 1.3 Production targets imply that at some point in the future the company believes that it will be economically viable to produce the projected tonnages stated. To be able to make this statement, a company must have reasonable grounds for doing so. Central to having reasonable grounds will be the company's Mineral Resources and Ore Reserves.
- 1.4 The vast majority of production targets and forward-looking financial information disclosures we see are made by companies:
 - a) in or close to production;
 - b) which have at least Indicated Mineral Resources where sufficient work has been done on the Modifying Factors, which include mining, metallurgical, economic, marketing, legal, environmental, social and governmental factors; or
 - c) which have a mixture of Ore Reserves and Mineral Resources where the use of Inferred Mineral Resources is not substantial.

- 1.5 These disclosures do not usually cause us any concern. It is only where production targets and forward-looking financial information are based **only** on Inferred Mineral Resources or exploration targets under clause 18 of the JORC Code that we are concerned. This is because, by definition under the JORC Code, Inferred Mineral Resources and exploration targets are too uncertain to support reasonable grounds for production targets and forward-looking financial information. To allow companies to report on this basis could lead to the market being misinformed because people would likely infer that the target/prospect will be achieved, despite the underlying low level of geological certainty of the Inferred Mineral Resource and the conceptual nature of an exploration target.
- 1.6 Where a company has Ore Reserves, reasonable grounds for production targets will be demonstrated, as, by definition, an Ore Reserve is the "*economically mineable part of a Measured and/or Indicated Mineral Resource...at the time of reporting*". As you are aware, to estimate an Ore Reserve a company will not only have to be satisfied with the geological certainty of its mineralisation, but will also have to have considered the Modifying Factors.
- 1.7 Where a company estimates a Mineral Resource, it is not required to have considered the Modifying Factors fully, however there must be reasonable prospects for eventual economic extraction. '*Reasonable prospects for eventual economic extraction*' is not a test involving the same rigour as the reasonable grounds test that needs to be met to support a production target. Where a company has done sufficient work applying the Modifying Factors to Mineral Resources, (other than where there are Inferred Mineral Resources only), it may well be able to demonstrate reasonable grounds for a production target and other forward-looking financial information.
- 1.8 The movement from an Inferred through to an Indicated and then a Measured Mineral Resource reflects a shift in increasing geological certainty. By definition under the JORC Code, Inferred Mineral Resources have "*a low level of confidence*". Due to the largely hypothetical nature and low level of confidence of an Inferred Mineral Resource, there is no provision under the JORC Code (geologically and from the perspective of applying, with sufficient certainty, some of the Modifying Factors), to upgrade it to an Ore Reserve. An Inferred Mineral Resource would first need to be upgraded to an Indicated or Measured Mineral Resource.
- 1.9 Cautionary language has an important role to play in highlighting risks but will not, of itself, affect the requirement for there to be reasonable grounds for the statement about future matters: see eg *Digi-Tech (Australia) Ltd v Brand* [2004] NSWCA 58, *Australian Securities Commission v McLeod* [2000] WASCA 101, ASIC Regulatory Guide 170 *Prospective Financial Information* RG 170.94. Therefore, if reasonable grounds for a production target cannot be demonstrated, for example, where a company only has an Inferred Mineral Resource, cautionary language will not cure the lack of reasonable grounds.
- 1.10 Exploration targets are even more tenuous as a basis for statements about future matters implying economic viability. This is evident from the definition in clause 18 of the JORC Code - exploration targets are conceptual in nature only and there is no basis to assume that any part of the exploration target will convert into an Inferred Mineral Resource.

1.11 For the avoidance of doubt, and following on from the above:

- a) Indicated and Measured Mineral Resources may provide reasonable grounds for a statement about future matters where sufficient work has been done on the Modifying Factors; and
- b) Inferred Mineral Resources may provide reasonable grounds in part for a statement about future matters implying economic viability where the viability of the company's project is based on Indicated or Measured Mineral Resources, where sufficient work has been done on the Modifying Factors, or Ore Reserves (or a combination of all) and where the use of Inferred Mineral Resources is not substantial.

2. International comparison

2.1 We have considered the equivalent reporting obligations in Canada, South Africa and Europe. In each case the requirements are more rigorous than proposed by Option 5A in the ASX Issues Paper. In particular, the South African SAMREC Code and the European PERC Code do not allow production targets or statements about future matters implying economic viability based on Inferred Mineral Resources only. At least some Ore Reserves are required. And, in the case of Canada which does allow this with appropriate cautionary language, companies are also required to make full disclosure by way of technical reports written and consented to by qualified persons who, in many instances, have to be independent of the company.

3. Competent Person consent

- 3.1 ASIC considers that production targets and other statements about future matters implying economic viability, such as scoping studies, should be consented to by a Competent Person under the JORC Code as clause 8 of the JORC Code requires all Public Reports concerning Mineral Resources or Ore Reserves to be based on and fairly reflect the information and supporting documentation prepared by the Competent Person. To upgrade a Mineral Resource to an Ore Reserve, a Competent Person must consider the Modifying Factors. Production targets and scoping studies can only be generated by the application of the Modifying Factors at least to some degree.
- 3.2 In Canada, production targets and other statements about future matters implying economic viability, such as scoping studies, concerning a mineral project on a property (material to the issuer) have to be based on information prepared by or under the supervision of a qualified person or approved by a qualified person. A technical report must be prepared and signed by a qualified person who must, in many instances, be independent of the issuer.
- 3.3 The issue of independence of the Competent Person where a production target or other statement about future matters implying economic viability is made, is not addressed by either the ASX or JORC Issues Papers. We consider this an issue that needs consideration.

We welcome your comments on the issues raised in this letter.

As this is a public submission, any person who may wish to provide comments directly to us in relation to any of the issues raised is asked to do so by way of email to Stefan Pfeifle (stefan.pfeifle@asic.gov.au).

Yours sincerely



Bruce Dodd

Regional Commissioner, WA

Senior Executive Leader, Emerging Mining & Resources