European Securities and Markets Authority

Consultation Paper

Further amendments to ESMA's Recommendations for the consistent implementation of the Prospectus Regulation regarding mineral companies

24 September| ESMA/2012/607

European Securities and Markets Authority

Date: 24 September 2012
ESMA/2012/607

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- indicate the specific question to which the comment relates and respond to the question stated;
- contain a clear rationale, clearly stating the costs and benefits; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **21 December 2012**. All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Legal Notice'.

Who should read this paper?

This document will be of interest to all companies which extract mineral resources (including aggregates) even if they have not made reserves and/or resources disclosures to investors previously. It is also of interest to investors in EU markets, to lawyers, accountants, corporate finance advisors, to mineral resource evaluation professionals and their professional associations.

Table of Contents

Acronyms used

CESR	Committee of European Securities Regulators
CIM	Canadian Institute of Mining
COGE Handbook	Canadian Oil and Gas Evaluation Handbook
COM DR	Commission Delegated Regulation No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements, OJ L 150, 9.6.2012, p. 1
CPR	Competent Person's Report
CRIRSCO	Committee for Mineral Reserves International Reporting Standards
ESMA	European Securities & Markets Authority
EU	The European Union
2011 Feedback Statement	Feedback Statement - Consultation Paper on proposed amendments to CESR's recommendations for the consistent implementation of the Prospectuses Regulation regarding mineral companies, ref. ESMA/2011/67
GKZ	Russian Federal Government State Commission on Mineral Reserves
JORC	Joint Ore Reserves Committee
IPO	Initial Public Offering
MTF	Multi-lateral Trading Facility
NAEN	National Association for Subsoil Examination
NAEN Code	Russian Code for the Public Reporting of Exploration Results, Mineral Resources and Mineral Reserves, published by OERN
OERN	Society of Russian Experts on Subsoil Use
PERC	Pan-European Reserves and Resources Reporting Committee
PRMS	Petroleum Resources Management System
RPO	Recognised Professional Association
SAMREC	South African Mineral Resource Committee
SEC	U.S. Securities and Exchange Commission

SME	Society for Mining, Metallurgy, and Exploration
The CIMVAL	Standards and Guidelines for Valuation of Mineral Properties endorsed by the Canadian Institute of Mining, Metallurgy and Petroleum, as amended.
The Commission/EC	The European Commission
The PD/ Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
The PR /Prospectus Regulation	Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements
The Recommendations	ESMA update of the CESR Recommendations for the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive from March 2011, (ref. ESMA/2011/81), following consultation conducted by ESMA's predecessor organisation CESR, ESMA updated and revised paragraphs 131-133 of the CESR Recommendations on the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive
The SAMVAL Code	South African Code for the Reporting of Mineral Asset Valuation
The VALMIN Committee	The VALMIN Committee is a joint committee of The Australasian Institute of Mining and Metallurgy (AusIMM) and the Australian Institute of Geoscientists.

I. Executive Summary

Reasons for publication

In March 2011 ESMA updated and revised paragraphs 131-133 of the CESR Recommendations on the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (hereinafter the "Recommendations") which address the information that should be disclosed by mineral companies in prospectuses. ESMA's update of these provisions represented a significant reform for this area, harmonising mineral reserves and resources disclosure in prospectuses drawn-up in accordance with the Prospectus Directive for the first time.

The system established in March 2011 provided that reserves and resources disclosure in prospectuses should be in accordance with one of a number of internationally recognised mineral reserves and resources reporting codes endorsed in the ESMA update of the CESR Recommendations. Since the update in March 2011, ESMA has been approached and asked to add additional reporting codes to that list.

ESMA is also taking this opportunity to address a number of issues that have been brought to its attention by Member States since the entry into force of the revised Recommendations.

This consultation is being conducted in accordance with Article 16 (2) of the Regulation (EU) No 1095/2010.

Contents

This Consultation Paper sets out ESMA's proposals for endorsement of a further reporting code, clarifications of and amendments to the Recommendations concerning mineral companies and to align the content with the amended prospectus disclosure regime which entered into force on 1 July 2012.

Section II addresses the issue of endorsement of the NAEN Code as suitable for use in prospectuses, following its alignment with the CRIRSCO template, Section III sets out guidance on the materiality concept by introducing qualitative criteria to be included in the assessment, Section IV proposes changes to the Competent Person's Report (CPR) regime by changing the scope, structure of the exemption to produce CPRs and certain definitions, Section V proposes clarifications on the application of Appendices II and III, on-site inspections, amendments to the thresholds and the relation to the section on risk factors in a prospectus.

Next steps

ESMA will consider the feedback it has received in relation to this consultation in the first quarter of 2013 and expects to publish the revised guidelines during the second quarter of 2013.

ESMA addresses requests for endorsement of reporting codes on a continuous basis and any further proposals for endorsement will be subject to public consultation. ESMA is in the process of addressing a request for the endorsement of SEC rules with regard to oil and gas reporting.

II. Endorsement of the NAEN Code

1. In the March 2011 update of the Recommendations ESMA endorsed 3 oil and gas reporting codes and 6 mining reporting codes as suitable for use in prospectuses. The reporting codes ESMA endorsed were either aligned to the Society of Petroleum Engineers and World Petroleum Council's PRMS system (in the case of oil and gas) or, in the case of mining codes, those aligned to the international mining reporting body CRIRSCO. ESMA adopted this approach in order to foster international convergence of codes. ESMA took the view that the proliferation of many different national mineral reporting codes is generally undesirable and that investors are better served by international convergence of codes, which brings with it the advantages of mutual comparability and comprehensibility. The CRIRSCO and PRMS systems, neither of which is tied to any one jurisdiction, have emerged as the only credible candidate systems around which resources and reserves reporting systems could possibly converge.

2. ESMA's March 2011 update to the Recommendations acknowledged that its approach to recognition of reporting systems omitted both Russian and Chinese codes as they were not (in ESMA's view at the time) aligned to international norms. However, ESMA observed that 'in due course international convergence is likely to be achieved and we may be able to revisit this issue then.'[1]

3. Since the March 2011 update, CRIRSCO has admitted a new member in the form of the Russian professional geologists' association OERN (the "Society of Russian Experts on Subsoil Use) and acknowledged that its reporting code, a new code known in English as the NAEN Code, is aligned to the CRIRSCO template. ESMA has now been asked to add the NAEN Code to the list of reporting codes suitable for use in prospectuses.

4. The NAEN Code was completed in 2011 following four years of collaboration between CRIRSCO and the Russian bodies - initially GKZ (the Russian Federal Government State Commission on Mineral Reserves), and later including also the (non-governmental) professional geologists' association OERN. This joint effort started with development of a set of conversion guidelines to assist Competent Persons in interpreting resources and reserves classified according to the (pre-existing) Russian national system, otherwise known as the GKZ classification, in terms of the CRIRSCO Template classification. These Guidelines were completed and published in 2010, and at the annual CRIRSCO Meeting in 2010 a memorandum of understanding was signed, agreeing the joint intention by CRIRSCO, GKZ, and OERN to develop a new Russian public reporting standard to be fully aligned with the CRIRSCO Template. An international committee led by Russian members of OERN and GKZ, and including also representatives of CRIRSCO, was established for this purpose.

5. The NAEN standard, with parallel Russian and English text, was completed during 2011 and following detailed examination and editing by CRIRSCO members was formally accepted by CRIRSCO at its annual meeting on 31 October 2011. The intention of this new standard is to provide a simpler mechanism for CRIRSCO-compliant reporting by Russian professional geologists both for use on Russian stock exchanges and by Russian companies internationally. OERN is a member of the European Federation of Geologists, which is a Recognised Professional Association (RPO) in other CRIRSCO codes.

6. Given that CRIRSCO has found the the NAEN Code as being aligned with its reporting code template, ESMA is now consulting on the inclusion of the NAEN Code in Appendix I which would mean it is endorsed for use in prospectuses.

Q1 – Should the NAEN Code be added to the list in Appendix I of the Recommendations of mining reporting codes suitable for use in prospectuses? (Please provide reasons for your response)

[1] ESMA/2011/67, 'Feedback Statement: Consultation Paper on proposed amendments to CESR's recommendations for the consistent implementation of the Prospectuses Regulation regarding mineral companies', p 10

III. The materiality test

7. Since the new provisions were adopted in March 2011, the definition of 'mineral companies' has been interpreted as potentially including in scope also large, diversified mineral companies such as cement companies. This would have the effect of requiring such companies to produce a competent person's report of their stone quarries by an independent expert in any prospectus. In some cases, these companies have many hundreds of quarries and it has been argued by stakeholders that such an approach is inappropriate and disproportionate whilst not contributing to effective investor protection. ESMA has published a similar interpretation in an open letter dated 6 January 2012[2]. To address requests for clarification of the scope of mineral companies subject to the obligations in the Recommendations, ESMA is revising its Recommendations on mineral companies.

8. The March 2011 update to the Recommendations changed the definition of mineral company used in these provisions. Previously a company was in scope of the provisions if its minerals activities (as defined) represented its 'principal activity'. Following the above mentioned update, issuers are in scope of the Recommendations if they are 'companies with material mineral projects'.

9. CESR originally proposed the change because, as it observed in its Consultation Document on the proposals, "in the past companies have, based on the 'principal activity' test, argued they are not 'mineral companies' but are (for example) processing or shipping companies which happen to have some extraction activity." It went on to observe that, in its view, "this is irrelevant. It does not matter what else the issuer does and whether the company may have other dominant activities as part of their business portfolio – what matters is whether they are seeking to exploit mineral resources and whether that activity is material to the assessment of their securities. If so, then additional disclosure is warranted."[3]

10. Following the consultation, ESMA decided to proceed with the proposal. It did so notwithstanding the fact that the 'materiality' test definition is broader than a 'principal activity' test. In doing so, ESMA remarked that the: "new test is indeed broader than the 'principal activity' test, as one of the respondents observed. But it is merited because these provisions are about ensuring that prospectuses contain appropriate disclosure of reserves and resources where necessary. And it is necessary where an understanding of a company's minerals activity would be viewed by markets as a component of a company's valuation, not where minerals activity is merely the biggest activity a group pursues. The new test delivers that outcome – which is why we are proceeding with it."

11. ESMA has looked into the issue of diversified cement and aggregate companies and conducted discussions on these particular companies' business models.

12. The Recommendations are not intended to explicitly rule in or out either cement or aggregate companies nor any other specific type of company but establish principles which are applied on a case by case basis. The individual business models companies pursue are inherently dynamic and will vary subtly across sectors.

13. The point of paragraphs 131-133 of the Recommendations is to provide for mineral reserves and resources disclosure where evaluation of those resources is necessary for an informed assessment of the prospects of the issuer. The large cement company and stone aggregates company business model

[2] Open letter dated 6 January 2012 to cement companies exempting them on a interim basis from the obligations detailed in paragraphs 132 and 133 of the Recommendations on Mineral Companies dated March 2011 until a final interpretation on the materiality concept is being elaborated and approved, ref. ESMA/2012/10.

[3] CESR 10-411, 'Proposed amendments to CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses nº 809/2004 (CESR/05-054b) regarding mineral companies (paragraphs 131-133)', p14

ESMA has been discussing clearly involves the exploitation of mineral resources. However, on examination of the business model, ESMA accepts that, in the case of such large highly diversified companies, public evaluation of these resources is neither necessary for an informed assessment of the prospects of the issuer by investors nor expected by the market.

14. It is not necessary for an informed assessment of the prospects of these particular companies because they are large, highly diversified and exploit mineral resources that are, relative to other types of minerals that are exploited, low-cost and abundant. The uncertainty, as to either the existence of the resources in economic quantities or the technical feasibility of its economic recovery that is characteristic of companies like oil exploration and production companies, and which is the ultimate reason why reserves and resources reporting occurs, does exist also in these companies, but only to a far lesser degree. Therefore, ESMA accepts that, in the case of these particular companies, evaluation of their mineral reserves and resources is insufficiently salient for its inclusion to be necessary for an investor's informed assessment of the company.

15. Although ESMA acknowledges that paragraphs 131-133 of the Recommendations in general do not apply in the case of the large, diversified cement and aggregates companies' business models it has reviewed, it is perfectly possible that a cement or aggregates company which does not exhibit the characteristics observed (in particular, is not highly diversified) may face uncertainty as to either the existence of the resources in economic quantities or the technical feasibility of its economic recovery. In such a situation, expert evaluation of such a company's resources may well be necessary for an informed assessment of that particular hypothetical investment opportunity.

16. ESMA accepts that the Recommendations could be clearer in determining that mineral projects are material where evaluation of the resources they exploit is necessary for an informed assessment of the prospects of the issuer by investors. With a view to ensure a consistent and harmonised interpretation of the Mineral Companies Recommendations among the different Member States ESMA believes it to be necessary to amend the Recommendations in order to provide more legal certainty as to how materiality of mineral projects should be assessed.

17. The amendment clarifies that:

    a) materiality should be assessed from the point of view of the investor; and
    b) projects will be material where evaluation of the resources (and, where applicable, the reserves and/or exploration results) the projects seek to exploit is necessary to enable investors to make an informed assessment of the prospects of the issuer. The language used to express the second point is modelled on that used in the Prospectus Directive.

18. Furthermore, ESMA proposes to clarify by establishing a rebuttable presumption within the definition of materiality that mineral projects can be material both where:
    a) the projects seek to extract minerals for their re-sale value as commodities; or
    b) the minerals are extracted to supply (without re-sale to third parties) an input into an industrial production process (which includes but is not limited to the example of stone extracted in the cement and aggregates industry) and there is uncertainty as to either the existence of the resources in the quantities required or the technical feasibility of their recovery (see paragraphs 14&15).

19. The full text of the new provisions on materiality is presented as Annex III of this Consultation Paper and will be contained within paragraph 131 of the Recommendations. The guidance from the March 2011 update establishing that materiality should be assessed having regard to all the company's mineral projects relative to the issuer's group as a whole will be retained. Accordingly the proposed new criteria for an assessment of materiality must be read also with this principle.

20. In furtherance of ESMA's open letter dated 6 January 2012[4], ESMA has also considered the possibility to establish quantitative parameters together with the abovementioned qualitative criteria in order to interpret the concept of materiality of mineral projects. However, in this respect ESMA considers that the use of quantitative criteria is impractical in the current context because of the diversity of the mineral companies' business models.

Q2 – Do you agree with ESMA's proposed recommendations on how the materiality of mineral projects should be assessed?

IV. Competent Person's Report

IV.I. Requirement for a competent person's report for non-equity securities

21. Discussions on the materiality definition have raised the issue of appropriate disclosure by companies issuing non-equity securities. Paragraph 133 i) of the Recommendations establishes the requirement of a CPR for all prospectuses drawn-up by mineral companies within the scope set out in paragraph 131, unless an exemption according to paragraph 133 ii) applies. In particular the current Recommendations do not distinguish between prospectuses for equity and non-equity securities.

22. Such a potential distinction must be viewed in the light of the principle elaborated above that the information requirements for prospectuses of mineral companies should be assessed and defined from an investor's point of view, based on what information investors need to make an informed investment decision on the issuer and specific securities in question in accordance with article 5.1 of the Prospectus Directive. Consideration is also to be given to the general principle that any information requirement should not be disproportionate from a cost-benefit analysis point of view.

23. Against this background, ESMA is of the view that an investor when facing an investment decision does not necessarily require the same extent of information in case of non-equity securities compared to equity securities. In the case of equity securities an investor invests directly in a company; the value of shares is directly linked to the value and prospects of the company. Therefore in the context of mineral companies it appears appropriate that the investor is informed in detail about their resources and reserves, including a valuation thereof by an external expert. The same considerations apply in case of depositary receipts over shares, irrespective of the fact that these securities are qualified formally as non-equity securities[5]. On the other side, investing in non-equity securities other than depositary receipts over shares is generally an investment only for a limited period of time and the value of the securities are more likely to be influenced by other factors such as a company's liquidity situation rather than the value of its resources and reserves. This argument is also supported by the Prospectus Regulation regime itself, which in general requires less information in case of prospectuses for debt and derivative securities compared to equity securities prospectuses.

24. For these reasons ESMA proposes to exempt non-equity securities (other than depositary receipts over shares) from the requirement to include a CPR as set out in paragraph 133. The general information requirements for mineral companies laid down in paragraph 132 of the Recommendations will continue to apply.

Q3 – Do you agree with the proposed approach to generally exempt non-equity securities (other than depositary receipts over shares) from the requirement to produce a competent person's report?

[4] Ref. ESMA/2012/10

[5] Article 2(1)(c) cf. (b) of the Prospectus Directive.

IV.II Proposed changes to the paragraph 133(ii) CPR exemption

IV.II.I Changes to the main exemption criteria

25. Paragraphs 131-133 of the Recommendations address the question of whether a CPR needs to be included in the prospectus. The trigger mechanism is intended to have the effect of ensuring CPRs should be required for all IPO prospectuses in scope but not for further issues where the issuer has been updating the market with reserves and resources data since the admission to trading. The provision is structured to contain a presumption that a CPR will be included. An exemption intended to deliver the proviso that the market has been kept up to date is then set out. There are three conditions to qualify for the exemption:

    - the issuer should have already published a suitable CPR (paragraph 133(ii)(a));
    - the issuer should be admitted to trading on either a regulated market, an 'appropriate MTF' according to the Recommendations, or what the Recommendations call an 'equivalent overseas market' (paragraph 133(ii)(b)); and
    - the issuer has continued to report and publish annually reserves and resources data in accordance with one of the ESMA endorsed codes (paragraph 133(ii)(c)).

26. In addition the second paragraph of 133(ii) sets out a 'grandfathering provision' for issuers admitted to trading before 1 July 2005 who did not publish a suitable CPR and therefore are not able to comply with the exemption criteria in paragraph 133(ii)(a).

27. Since the March 2011 update of the Recommendations, various Member States have fed back that the 'grandfathering' provisions have been difficult to operate in practice and have led to issuers not having the benefit of the paragraph 133(ii)(a) exemption in instances where they had expected no CPR would be required. Some issuers have found it difficult to understand why issuers admitted before 1 July 2005 should be treated differently from those admitted after. In fact, the date in the provision is the date the Prospectus Directive came into force. The PD harmonized prospectus content and procedure across the EU. Before that date, the CPR was required in some EU jurisdictions in some circumstances but it was not consistent EU practice. Therefore there are issuers who did not produce a CPR upon admission to the market at that time.

28. On reflection, ESMA is inclined to agree that the grandfathering provision – in effect an 'exemption from an exemption' – is now somewhat cumbersome. Therefore, ESMA has looked again at the structure of the exemption as a whole and questions whether the paragraph 133(ii)(a) criterion (i.e. having published a CPR on admission to trading) is strictly necessary at all in order to establish whether an listed issuer should prepare a CPR. ESMA concluded that in fact it should not be necessary to establish that a CPR has been published and kept up to date for the entire period since that point, no matter how long ago listing occurred. Instead it is considered more important that the issuer has an appropriate recent track record of reserves and resources reporting.

29. As a result ESMA proposes the following changes:

    - removal of the paragraph 133(ii)(a) – the requirement that a CPR should have been published on admission to trading for the exemption to apply;
    - consequent removal of the transitional provision in the second paragraph of 133(ii) for issuers who could not comply with paragraph 133(ii)(a)
    - amendment of the paragraph 133(ii)(c) requirement that an issuer has reported annually its reserves and resources since admission – instead it will be required to show 3 years of reserves and resources reporting (or the period since admission if admission was less than 3 years ago)

30. This amendment will allow issuers that have a sound track record of published information on their reserves/resources in accordance with one of the reporting standards that is acceptable under the codes and/or organisations set out in Appendix I to benefit from the exemption regime. It also ensures issuers that have been admitted to trading for many years (potentially 10, 15 or 20 years or more) do not have to establish compliance with the reporting requirement for all the years they have been on the market but merely during the last three years.

31. ESMA, however, considered it prudent to include an exception to these arrangements for MTF issuers. An admission to trading on a MTF does not require a PD compliant prospectus unless it is accompanied by a public offer, issuers may well be admitted to trading on a MTF (float) without being subject to the PD and only become subject to the PD later when they carry out a further issue which then constitutes a public offer or seek admission to trading on a regulated market. It is not improbable that MTF issuers (which are often fast growing companies) could float without a CPR (as the PD and therefore these provisions would not apply) and then carry out a further issue and offer to the public or seek admission to trading on a regulated market shortly after. ESMA is of the view that in such instances only showing for example one year of reserves and resources reporting (which would not have been independently assessed) would be insufficient from an investor's point of view and a CPR ought to be included.

32. ESMA therefore proposes to include two new paragraphs addressing issuers who have not been reporting for three years and which deal with MTF issuers differently from regulated market and third country equivalent issuers. MTF issuers should have produced a CPR in connection with their admission to trading in order to have the benefit of the exemption. This is over and above the need to have reported reserves and resources annually since then. Regulated market and third country issuers (who will have been required to draw up a prospectus and therefore would have produced a CPR) carrying out further issues less than three years after float need only have reported reserves and resources annually since float.

33. It should be noted that this amendment does not remove the requirement for a CPR on IPO. Rather, it changes the basis on which exemption from a CPR in further issue situations is assessed.

Q4– Do you agree with our proposed revision of the paragraph 133(ii) exemption regime?

IV.II.II Definition of 'equivalent overseas markets'

34. Member states have also reported difficulties in interpreting the term 'equivalent overseas market' in paragraph 133(ii)(b) as it has no definition and the Recommendations provide no obvious basis by which Member States can make an assessment of equivalence (in this context) in a consistent way.

35. Having considered this issue, ESMA agrees that the term requires elaboration or a basis for Member States to assess equivalence. However, ESMA is of the view that it would not be practical to build a bespoke equivalence assessment procedure. Therefore, the proposal is to apply the existing Article 4.1(e)of the Prospectus Directive as amended by Directive 2010/73/EC (amended Prospectus Directive), which requires a decision on equivalence by the European Commission prior to any application of the Recommendations with regard to a third country market, replacing the term 'equivalent overseas market' with '[equivalent] third country market' which is further defined as a market which the Commission has determined beforehand to be equivalent in accordance with Article 4.1 (e) of the Prospectus Directive.

Q5 – Do you agree with the proposal to replace the term 'equivalent overseas market' with the definition of 'equivalent' third country market'?

Q6 – Do you agree with the proposal to apply the same equivalence assessment regime for third country markets as in Article 4.1 (e) of the amended PD which requires any equivalence assessment to be performed by the European Commission beforehand?

IV.II.III Definition of 'appropriate multi-lateral trading facility'

36. The exemption in paragraph 131(ii) of the Recommendations from the requirement to prepare a CPR extends to issuers quoted on multi-lateral trading facilities ("MTFs") provided those MTFs have appropriate anti-market abuse rules – these are called 'appropriate multi-lateral trading facilities' in the Recommendations' paragraph 131 c).

37. Since the Recommendations in their current form came into force in March 2011 the Prospectus Directive and the Prospectus Regulation (EC) No. 809/2004 (the "Prospectus Regulation") have been amended. A proportionate disclosure regime for rights issues has been established in Article 26a of the Prospectus Regulation by the Commission Delegated Regulation No 486/2012 of 30 March 2012 ("COM DR")[6]. The regime extends to MTFs with appropriate anti-market abuse and transparency rules cf. Article 26a (1) of the Prospectus Regulation, as amended by the COM DR[7].

38. ESMA proposes harmonising the definition of 'appropriate multi-lateral trading facilities' in the Recommendations with that set out in the new Article 26a as this will now become the authoritative source of best practice in terms of anti-market abuse and transparency rules for MTF operators and will therefore likely be what MTF operators in practice will seek to apply to their markets.

Q7 – Do you agree with the proposal to replace the term 'appropriate multi-lateral trading facility' with a definition based on the new Article 26a of the Prospectus Regulation?

V. Other issues in need of clarification or amendment

V.I. Further clarification that the model content in Appendices II and III is not compulsory

39. In the original Consultation Document on the current ESMA Recommendations for mineral companies, it was proposed that adherence to Appendices II and III, which address CPR content, should be compulsory. However, in the March 2011 feedback statement, ESMA concluded, based on feedback in that consultation, that the appendices should instead be set out as recommended content and adherence to them should not be compulsory:

> "The CPR content was developed in order to meet a perceived desire from issuers and advisors planning complex transactions with long lead-in times for greater clarity as to what is expected of them. We therefore feel able to soften our approach in order to address this feedback. As a result we

[6] Commission Delegated Regulation No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements, OJ L 150, 9.6.2012, p. 1.

[7] Article 26a of the Prospectus Regulation, as amended by the COM DR reads: "The proportionate schedules set out in Annexes XXIII and XXIV shall apply to rights issues, provided that the issuer has shares of the same class already admitted to trading on a regulated market or a multilateral trading facility as defined in point 15 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council.". Point 15 of Article 4 (1) of Directive 2004/39 EC reads: " "Multilateral trading facility (MTF)" means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments - in the system and in accordance with non-discretionary rules - in a way that results in a contract in accordance with the provisions of Title II;".

have built in more flexibility by making the content set out in the appendices recommended rather than compulsory content. In particular this will address the concerns of those respondents who argued that compulsory valuation of reserves and resources is excessive. "[8]

40. As a result some amendments to the text of the Recommendations that was consulted upon were made to put that intention into effect. However, since March 2011 additional feedback from stakeholders has indicated that these amendments were incomplete and the Recommendations are still insufficiently clear in stating that the CPR content in the appendices is not compulsory. Paragraph 133(i)(d) is usually cited as the source of the ambiguity due to the wording that the CPR should 'contain as a minimum' the information in Appendices II and III. This should have been corrected and is an error. As a result ESMA proposes to amend paragraph 133(i)(d) so that it is clear that the CPR should contain information prepared 'having regard' to Appendices II and III.

Q8 – Do you agree with the proposed amendments to paragraph 133(i)(d) and Appendices II and III?

V.II Further clarification that on-site inspections are not compulsory for the purposes of the CPR

41. Paragraph iii), item (7) of Appendix II on CPR content for mining projects recommends the inclusion of 'a statement of when and for how long a competent person last visited the property'. This has been interpreted such that on-site inspections should necessarily be conducted in all cases for purposes of the CPR being drawn-up in accordance with this appendix. In fact this is not the case. ESMA considers this to be a matter for the professional judgment of the competent person, guided by the applicable codes ESMA has endorsed. The amendment proposed above in section V.I clarifying that CPR content is recommended but not compulsory will also provide help here.

42. However, ESMA notes that Appendix II on mining differs from the Appendix III on oil and gas which provides that alternatively to the 'statement of when and for how long a competent person last visited the property', the competent person can include 'a statement that no visit has been made if that is the case'. For clarification purposes ESMA believes that the wording in Appendix II should be aligned to the respective wording used in Appendix III. Therefore ESMA proposes adding such a statement to Paragraph iii), item (7) of Appendix II.

Q9 – Do you agree with the proposed clarification for on-site inspections?

V.III Amendments to the scope of application of the Recommendations

43. ESMA proposes to amend paragraph 131 of the Recommendations in order to
    a) specify that these Recommendations on mineral companies do not only apply to shares but more generally to equity securities as defined in the Prospectus Directive and
    b) increase the denomination thresholds upon which the Recommendations are deemed to be applicable from EUR 50,000 to EUR 100,000 as regards debt securities, derivative securities and depositary receipts. This is to ensure consistency with the amendments made in the amended PD and also reflect the fact that the threshold of EUR 50,000 no longer reflects the distinction between retail and professional investors in terms of retail investor's capacity to invest in securities.

[8] Cf. paragraph 25 of the 2011 Feedback Statement.

V.IV. Requirement of a specific risk factor in the Recommendations

44. ESMA's open letter to cement companies dated 6 January 2012 contained the following statement: "ESMA has also decided to include in a new interpretation to the Recommendations, the following statement: if a company is excluded from the materiality concept assessment, it should include as a risk factor, if applicable, the fact that the current level of resources and reserves could create a risk to the company. This is to protect the interests of investors."

45. Having considered this issue further, ESMA however concluded that it would not be appropriate to include the requirement for such a risk factor in the Recommendations. This conclusion is based on the following considerations: Under the now proposed concept of "material mineral projects" no company is as such excluded from the materiality assessment of its mineral projects, but the assessment based on the newly added criteria may have as a result that the issuer is not considered as a mineral company within the scope of the Recommendations. In case a company does not fall within the scope of these Recommendations, a requirement for inclusion of certain risk factors would also not be applicable to such issuer. Furthermore, in case the level of resources and reserves creates a risk to the company, such a risk factor must be included according to the general rules of the PR, irrespective of whether a company is considered a mineral company or not.

Annex I

Summary of Questions

Q1: **Should the NAEN Code be added to the list in Appendix I of the Recommendations of mining reporting codes suitable for use in prospectuses? (Please provide reasons for your response)**

Q2: **Do you agree with ESMA's proposed recommendations on how the materiality of mineral projects should be assessed?**

Q3: **Do you agree with the proposed approach to generally exempt non-equity securities (other than depositary receipts over shares) from the requirement to produce a competent person's report?**

Q4: **Do you agree with our proposed revision of the paragraph 133(ii) exemption regime?**

Q5: **Do you agree with the proposal to replace the term 'equivalent overseas market' with the definition of 'equivalent' third country market'?**

Q6: **Do you agree with the proposal to apply the same equivalence assessment regime for third country markets as in Article 4.1 e) of the amended PD?**

Q7: **Do you agree with the proposal to replace the term 'appropriate multi-lateral trading facility' with a definition based on the new Article 26a of the PD Regulation?**

Q8: **Do you agree with the proposed amendments to paragraph 133(i)(d) and Appendices II and III?**

Q9: **Do you agree with the proposed clarification for on-site inspections?**

Annex II

Cost-benefit analysis

1. Endorsement of the NAEN Code

Risk addressed / Policy objective
- Disclosure Regime / rules on the publication of prospectuses

Scope issues
- Application of a further mining code in prospectuses

Proposal	Benefits	Costs	Evidence
Endorsement of the NAEN Code as suitable for use in EU prospectuses.	Mining companies preparing a prospectus which will contain a competent person's report may choose (but are not required) to use this mineral evaluation code to describe the company's reserves and resources base. Companies which have a need to use the NAEN Code (perhaps due to being subject additionally to the regulation of a non-EU jurisdiction) may use reporting prepared under the NAEN Code without the need to prepare new information.	There are no additional costs to issuers associated with having the option (but not the obligation) to use the NAEN Code for reporting on which would have to happen in any case. There should be no additional costs to investors reading the disclosures as the new code is aligned with the CRIRSCO family of codes and investors should therefore be confident that it will not produce a materially different outcome to other international recognised mining evaluation codes.	Acceptance by CRIRSCO as being aligned with the CRIRSCO Template and feedback from the consultation

2. Materiality test

Risk addressed / Policy objective
- Disclosure regime / rules on publication of prospectuses

Scope issues
- Clarification of the scope of "mineral companies" – the materiality test

Proposal	Benefits	Costs	Evidence
Clarification of the scope of "materiality" in order to asses if a mineral company is covered by the Recommendations by introducing further qualitative criteria.	Mineral companies considering whether they are covered by the definition will have further guidance upon which they can perform their assessment. Companies applying highly diversified business models should feel more comfortable in the evaluation of whether they are covered by the scope of the Recommendations without the need of consulting the Competent Authorities or ESMA. The potential investors receive information that is considered necessary for their assessment of the issuer and its prospects.	No additional costs to the issuers or persons drawing up a prospectus. It is expected that certain companies will no longer have to comply with the Recommendations thereby alleviating them from the costs of such compliance.	Requests for exemption from the scope, ESMA's open letter dated 6 January 2012 (ref. ESMA/2012/10) and feedback from the consultation.
No quantitative criteria.	The benefits of such criteria would be to have a common threshold applicable to all mineral companies thereby providing a clear criterion (on paper) on when a company is covered by the Recommendations.	There is a large diversity in the mineral companies' business models. The aspects to be taken into account when calculating a threshold will therefore vary on a case-by-case situation. Such evaluations are time-consuming and costly for the issuers and persons drawing up the prospectuses as well as for the Competent Authorities that must enforce the rules.	Experience with quantitative criteria from Competent Authorities. Existing quantitative criteria with regard to materiality in mineral companies relate to listing rules that have a different focus than disclosure in prospectuses.

3. Changes to the CPR regime

3.1. Changes to the scope of when to require a CPR

Risk addressed / Policy objective

- Disclosure Regime / rules on publication of prospectuses

Scope issues

- Prospectuses for non-equity securities and CPRs

Proposal	Benefits	Costs	Evidence

Remove non-equity securities from the scope of situations requiring inclusion of a CPR in the prospectus	Issuers or offerors of non-equity securities are exempt from the requirement to include CPRs in a prospectus compared to the current situation where there is no distinction between the types of securities. Such a change is in line with the Prospectus Regulation which in general requires less information in prospectuses for debt securities compared to equity securities	Costs are expected to be alleviated for issuers or persons drawing up prospectuses for non-equity securities as they do not have to include a CPR in the prospectus.	Feedback from the consultation.

3.2. Changes to the main exemption criteria for a CPR (trigger mechanism)

Risk addressed / Policy objective

- Disclosure Regime / Level playing field

Scope issues

- Rules on the publication of prospectuses

Proposal	Benefits	Costs	Evidence
Changing the structure of the exemption criteria to create a more equal access to the exemption of requiring a CPR when the issuer has provided a CPR upon its IPO or reported annually its reserves and resources since admission to trading for a period of three years.	The requirement of a CPR would be linked to whether the market has received recent, on-going reporting of the issuer's reserves and resources prior to the offering of securities at hand rather than requiring companies to show that a CPR was produced at the time of admission to trading as well as a potentially long and outdated track of reporting. The relevant information from the point of view of the issuer is the information provided within the most recent years. Companies that benefitted from the grandfathering clause will generally have been required to report on their reserves and resources on an annual basis. Therefore, the proposal does not disadvantage such companies by now requiring them to produce a CPR when making the first public offering after the entry into force of	No additional costs are expected for the companies who have benefitted from the grandfathering clause. No additional costs are expected for issuers admitted to trading on an appropriate multi-lateral trading facility as the rules for such companies that have not reported on three financial years since its equity securities were admitted to trading remain the same as the current Recommendations.	Feedback from the consultation.

	these Recommendations. An exemption and thereby requiring issuers admitted to trading on an appropriate multi-lateral trading facility that have not published a CPR upon admission to trading on such markets to publish a CPR when making the subsequent public offer benefits the investors by providing adequate information on such an issuer's reserves and resources that the market is not already privy to and ensures that investors are not deprived of information they would otherwise receive on other markets.		

4. Definition of "equivalent overseas markets"

Risk addressed / Policy objective

- Legal clarity / Rules on publication of prospectuses

Scope issues

- Aligning terminology within the prospectus regime and establishing an equivalence regime for third country markets

Proposal	Benefits	Costs	Evidence
Replacing the term "equivalent overseas market" with the definition "equivalent third country market" in the current paragraph 133 (ii)(b) (suggested new paragraph 133 (ii)(a)	Clarification of terminology used as the intention was not to create a new term in the prospectus regime .		
Establishing an equivalence assessment regime for third country markets by applying the regime introduced with the amended Prospectus Directive in Article 4.1 e) (suggested new paragraph 131 (e).	Application of only one equivalence assessment regime for third country markets in the prospectus regime.	No costs to the issuer or person drawing up a prospectus as there has been no equivalence assessments performed in accordance with the current Recommendations. As the equivalence assessment is per-	N/A

		formed by the Commission no cost are expected to be incurred by the issuer or person drawing up a prospectus.	

5. Definition of "appropriate multi-lateral trading facility"

Risk addressed / Policy objective

- Legal clarity / Rules on publication of prospectuses

Scope issues

- Aligning terminology within the prospectus regime

Proposal	Benefits	Costs	Evidence
Replacing the definition of "appropriate multi-lateral trading facility" in current paragraph 131 (c) with the definition set out in Article 26a (1) of the COM DR.	Aligning the terminology ensures legal clarity in what an appropriate multi-trading facility constitutes and ensures the same assessment of such a facility regardless of which part of the prospectus regime is applied.	No costs to the issuers or persons drawing up a prospectus as the rules in Article 26a (1) are expected to become the authoritative source of best practice in terms of anti-market abuse and transparency rules for MTF operators.	Feedback from the consultation.

6. Further clarifications or amendments

6.1. Model content in Appendices II and III is not compulsory

Risk addressed / Policy objective

- Level playing field / rules on publication of prospectuses

Scope issues

- Clarifying intention of the role of the appendices II and III

Proposal	Benefits	Costs	Evidence
Amending the text in current paragraph 132 (i)(d) from "as set out in" to "having regard to".	Clarification of any ambiguity of the initial intention of ESMA that the content of Appendices II and III is not compulsory content in a prospectus but recommended content.	No cost to issuers or persons drawing up a prospectus.	Feedback from the consultation.

6.2. On-site inspections for the purposes of the CPR are not compulsory

Risk addressed / Policy objective

- Level playing field / rules on publication of prospectuses

Scope issues
- Clarifying the role of on-site inspections

Proposal	Benefits	Costs	Evidence
Amending the text in Appendix II (iii)(7) to include the sentence "(or if a statement that no visit has been made if that is the case)".	Aligning the wording of the same requirement in the two appendices. Clarification that on-site inspections are not compulsory for the purpose of the CPR but a matter left to the assessment of the competent person.	No cost to issuers or persons drawing up a prospectus. Potentially an alleviation of costs for issuers that until now have interpreted the requirement as on-site inspections being compulsory.	Feedback from the consultation.

6.3. Amendments to the scope of the Recommendations

Risk addressed / Policy objective
- Level playing field / rules on publication of prospectuses

Scope issues
- Alignment of terminology and alignment with the new thresholds introduced by the amended Prospectus Directive

Proposal	Benefits	Costs	Evidence
Specification that the Recommendations apply more generally to equity securities and not only to shares in paragraph 131.	Aligning the wording with the definition of equity securities in the Prospectus Directive as the reasons for including the information in the Recommendations applies not only to shares but all types of equity securities. This ensures that investors receive all information necessary when facing an investment decision regarding equity securities.	No significant increase in costs expected to issuers or persons drawing up a prospectus as the primary focus for the Recommendations within the equity securities are shares.	Feedback from the consultation.
Amending thresholds to be in line with the amended Prospectus Directive	Clarification that the same thresholds apply in the Recommendations as elsewhere in the prospectus regime.	Expected some additional costs to issuers or persons drawing up a prospectus. However, this cost is primarily due to the fact that all offers of securities between EUR 50.000 – EUR 100.000 that are not exempt by other means in Article 4 of	N/A

		the Prospectus Directive are now subject to the requirements of drawing up a prospectus. When subject to such a requirement the Recommendations are to be complied by as well to ensure consistency.	

6.4. Mention of a specific risk factor when excluded by the materiality test

Risk addressed / Policy objective

- Level playing field / rules on publication of prospectuses

Scope issues

- Need for further information in the prospectus

Proposal	Benefits	Costs	Evidence
No requirement to mention specific risk factors with regard to an issuer's resources and reserves when the issuer is excluded by the materiality assessment.	The Prospectus Regulation as amended already requires disclosure of risk factors relevant to the issuer and the securities being offered regardless of the issuer being a mineral company or not. By not requiring the issuer that has been excluded by the materiality concept assessment to include specific risk factors the disclosure requirements for risk factors in the prospectus regime is not changed or varied according to the type of issuer. Further the potential investor is not put in a situation of doubt as to whether this information is an important risk factor influencing the prospects of the issuer without there being included further information on these elements in the rest of the prospectus itself.	No cost to issuers or persons drawing up a prospectus.	Feedback from the consultation.

Annex III

Draft Recommendations

This section sets the text of the proposed revisions to the Recommendations. For ease of comparison with the existing provisions, new text is shown underlined and text to be struck out is shown in strike through.

1b MINERAL COMPANIES

131. Considering the specific features of minerals and Article 23 of the Regulation, ESMA proposes that mineral companies, when preparing a prospectus for a public offer or admission to trading of ~~shares~~ equity securities, debt securities with a denomination of less than EUR ~~50,000~~ 100,000, depository receipts issued over shares with a denomination of less than EUR ~~50,000~~ 100,000 or derivative securities with a denomination of less than EUR ~~50,000~~ 100,000, should include the information set out in paragraphs 132-133.

For the purposes of these recommendations:

a) 'mineral companies' means companies with material mineral projects. ~~The materiality of mineral projects should be assessed having regard to all the company's mineral projects relative to the issuer and its group taken as a whole.~~

b) 'mineral projects' means exploration, development, planning or production activities (including royalty interests) in respect of minerals including: metallic ore including processed ores such as concentrates and tailings; industrial minerals (otherwise known as non-metallic minerals) including stone such as construction aggregates, fertilisers, abrasives, and insulants; gemstones; hydrocarbons including crude oil, natural gas (whether the hydrocarbon is extracted from conventional or unconventional reservoirs, the latter to include oil shales, oil sands, gas shales and coal bed methane), oil shales; and solid fuels including coal and peat.
~~c) 'appropriate multi-lateral trading facility' means a multi-lateral trading facility whose operator has adopted rules and procedures which are, in the opinion of the home competent authority, equivalent to article 6 (1) (4) and (6) of Directive 2003/6/EC (the Market Abuse Directive).~~

c) Materiality should be assessed from an investor point of view: such projects will be material where evaluation of the resources (and, where applicable, the reserves and/or exploration results) the projects seek to exploit is necessary to enable investors to make an informed assessment of prospects of the issuer.

Evaluation of mineral projects is presumed to be necessary for an informed assessment of the prospects of the issuer in a number of instances:

- where the projects seek to extract minerals for their re-sale value as commodities;
- where the minerals are extracted to supply (without re-sale to third parties) an input into an industrial production process and there exists uncertainty as to either the existence of the resources in the quantities required or the technical feasibility of their recovery.

The materiality of mineral projects should be assessed having regard to all the company's mineral projects relative to the issuer and its group taken as a whole.

d) 'appropriate multi-lateral trading facility' means a multi-lateral trading facility with rules as set out in Article 26a(2)(a)-(c) of Regulation (EC) No 809/2004 as amended by Art 1(13) of Regulation (EU) No 486/2012.
e) 'equivalent third country market' means a third country market which has been recognised by the Commission as equivalent in accordance with Article 4.1 e) of Directive 2003/71/EC as amended by Directive 2010/73/EC (Prospectus Directive).

132. All prospectuses within the scope set out in paragraph 131 by mineral companies should include the following up to date information segmented using a unit of account appropriate to the scale of its operations:

a) details of mineral resources, and where applicable reserves (presented separately) and exploration results/prospects in accordance with one of the reporting standards that is acceptable under the codes and/or organisations set out in Appendix I;
b) anticipated mine life and exploration potential or similar duration of commercial activity in extracting reserves;
c) an indication of duration and main terms of any licenses or concessions and legal, economic and environmental conditions for exploring and developing those licenses or concessions;
d) indications of the current and anticipated progress of mineral exploration and/or extraction and processing including a discussion of the accessibility of the deposit;
e) an explanation of any exceptional factors that have influenced (a) to (d) above;

If the transaction the prospectus describes includes the acquisition of a mineral company or of reserves and/or resources and the acquisition (or acquisitions in aggregate) constitutes a significant gross change (as defined in the 9th Recital of Regulation EC 809/2004 and in item 6 of Article 4a of Regulation EC 211/2007) then the issuer should in addition include the information above on the assets being required. The new assets should be clearly segmented from the existing assets.

If information is included pursuant to this paragraph and it is inconsistent with corresponding information already put into the public domain by the issuer, the inconsistency should be explained in the prospectus.

133. i). In addition, all prospectuses for a public offer or admission to trading of equity securities, and depositary receipts issued over shares with a denomination per unit of less than EUR 100,000 by mineral companies within the scope set out in paragraph 131 should (except where the exemption in paragraph 133(ii) applies) contain a competent person's report which should:

a) be prepared by an individual who:
i) either:
(1) possesses the required competency requirements as prescribed by the relevant codes/organisation (listed in Appendix I); or
(2) if such requirements are not prescribed by the code/organisation, then:
(a) is professionally qualified and a member in good standing of an appropriate recognised professional association, institution or body relevant to the activity being undertaken, and who is subject to the enforceable rules of conduct;
(b) has at least five years' relevant professional experience in the estimation, assessment and evaluation of the type of mineral or fluid deposit being or to be exploited by the company and to the activity which that person is undertaking; and
ii) is independent of the company, its directors, senior management and its other advisers; has no economic or beneficial interest (present or contingent) in the company or in any of the mineral assets being evaluated and is not remunerated by way of a fee that is linked to the admission or value of the issuer;

b) be dated not more than 6 months from the date of the prospectus provided the issuer affirms in the prospectus that no material changes have occurred since the date of the competent person's report the omission of which would make the competent person's report misleading;

c) report mineral resources and where applicable reserves and exploration results/prospects in accordance with one of the reporting standards that is acceptable under the codes and/or organisations set out in Appendix I;

d) contain ~~as a minimum the following~~ information on the company's mineral projects segmented using a unit of account appropriate to the scale of its operations and prepared:

i) in the case of a company with mining projects – ~~as set out in~~ having regard to Appendix II;

ii) in the case of a company with oil and gas projects – ~~as set out in~~ having regard to Appendix III;

133.ii) An issuer is exempt from including the competent person's report required by paragraph 133(i) if the issuer can demonstrate that:

~~a) it has published a competent persons report by a suitably qualified and experienced independent expert which measured its mineral resources and where applicable reserves (presented separately) and exploration results/prospects in accordance with one of the reporting standards set out in Appendix I;~~

~~b) it is~~ a) its equity securities are already admitted to trading on either a regulated market, an equivalent third country ~~overseas~~ market, or an appropriate multi-lateral trading facility; and

b) ~~c)~~ it has ~~continued to~~ reported and published annually details of its mineral resources and where applicable reserves (presented separately) and exploration results/prospects in accordance with one of the reporting standards set out in Appendix I for at least the last three years.

~~If the issuer was admitted to trading before 1 July 2005, the condition in paragraph 133(ii)(a) need not be complied with and the condition in paragraph 133(ii)(c) need only be complied with since 1 July 2005 for the exemption to apply.~~

If an issuer has not reported on three financial years since its equity securities were admitted to trading and it is admitted to trading on a regulated market or an equivalent third country market then the condition in paragraph 133(ii)(b) will be deemed to be met if it has met the criteria in paragraph 133(ii)(b) for each annual reporting period since first admission of its equity securities.

If an issuer has not reported on three financial years since its equity securities were admitted to trading and it is admitted to trading on an appropriate multi-lateral trading facility, then the condition in paragraph 133(ii)(b) will be deemed to be met if:

- it published in connection with its admission a competent person's report by a suitably qualified and experienced independent expert which measured its mineral resources and, where applicable, reserves (presented separately) and exploration results/prospects; and
- it has reported and published annually details of its mineral resources and where applicable reserves (presented separately) and exploration results/prospects in accordance with one of the reporting standards set out in Appendix I for each annual reporting period since the first admission to trading.

If annual reporting of all classes of mineral resources and where applicable reserves and exploration results/prospects has not been possible because it has been prohibited by third country securities laws or regulations then the condition in paragraph ~~133(ii)(c)~~ (b) can be deemed to be met by the annual reporting of those classes that can be reported.

133.iii). Information on mineral resources and where applicable reserves and exploration results/prospects as well as other information of a scientific or technical nature included in prospectuses outside of the competent person's report (if one is included) must not be inconsistent with the information contained in the competent person's report.

133.iv). Information required by any of these recommendations may be omitted if disclosure is prohibited by third country securities laws or regulations provided the issuer identifies the information omitted and laws/regulations that prohibit disclosure.

APPENDIX I

For the purposes of meeting the exemption in paragraph 133(ii) above, predecessors of these standards are acceptable.

Acceptable Internationally Recognised Mineral Standards

Mining Reporting

- The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves published by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia, as amended ('JORC');
- The South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves published by the South African Mineral Resource Committee under the joint auspices of the Southern African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended ('SAMREC');
- The various standards and guidelines published and maintained by the Canadian Institute of Mining, Metallurgy and Petroleum ('CIM Guidelines'), as amended;
- A Guide for Reporting Mineral Exploration Information, Mineral Resources and Mineral Reserves prepared by the US Society for Mining, Metallurgy and Exploration, as amended ('SME');
- The Pan European Resources Code jointly published by the UK Institute of Materials, Minerals, and Mining, the European Federation of Geologists, the Geological Society, and the Institute of Geologists of Ireland, as amended ('PERC');
- Certification Code for Exploration Prospects, Mineral Resources and Ore Reserves as published by the Instituto de Ingenieros de Minas de Chile, as amended; or
- Russian Code for the Public Reporting of Exploration Results, Mineral Resources and Mineral Reserves prepared by the Non-Commercial Partnership Self-Regulating Organization "National Association for Subsoil Examination" (NAEN), 57 members of which represent leading mining companies, industry research centers and regional centers for subsoil survey of Russia, as well as the Society of Russian Experts on Subsoil Use (OERN), with participation of the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) and the Pan-European Reserves and Resources Reporting Committee (PERC) (The NAEN Code)

Oil and Gas Reporting

- The Petroleum Resources Management System jointly published by the Society of Petroleum Engineers, the World Petroleum Council, the American Association of Petroleum Geologists and the Society of Petroleum Evaluation Engineers, as amended;
- Canadian Oil and Gas Evaluation Handbook prepared jointly by The Society of Petroleum Evaluation Engineers and the Canadian Institute of Mining, Metallurgy & Petroleum ("COGE Handbook") and resources and reserves definitions contained in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities; or

- Norwegian Petroleum Directorate classification system for resources and reserves.

Valuation

- The Code for Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports, prepared by a joint committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and the Mineral Industry Consultants Association, as amended ('VALMIN');
- The South African Code for the Reporting of Mineral Asset Valuation, prepared by the South African Mineral Valuation Committee under the joint auspices of the Southern African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended ('SAMVAL');
- Standards and Guidelines for Valuation of Mineral Properties endorsed by the Canadian Institute of Mining, Metallurgy and Petroleum, as amended ('CIMVAL')

APPENDIX II - Mining Competent Person's Report – recommended content

CESR recommends that competent persons should provide competent person's reports structured in accordance with either the model content recommended under the code, statute or regulation the company is reporting under (see Appendix I) or, where there no such model content is set out in the code, CESR recommends the competent person should address the information set out in this appendix. The competent person may, with the agreement of the relevant member state's competent authority, adapt these contents where appropriate for the circumstances of the issuer.

i) Legal and Geological Overview – a description of:

(1) the nature and extent of the company's rights of exploration and extraction and a description of the properties to which the rights attach, with details of the duration and other principal terms and conditions of these rights including environmental obligations, and any necessary licences and consents including planning permission;

(2) any other material terms and conditions of exploration and extraction including host government rights and arrangements with partner companies;

ii) Geological Overview – a description of the geological characteristics of the properties, the type of deposit, its physical characteristics, style of mineralisation, including a discussion of any material geotechnical, hydro-geological/hydrological and geotechnical engineering issues;

iii) Resources and reserves

(1) a table providing data on (to the extent applicable): exploration results inclusive of commentary on the quantity and quality of this, inferred, indicated/measured resources, and proved/probable reserves and a statement regarding the internationally recognised reporting standard used;

(2) a description of the process followed by the competent person in arriving at the published statements and a statement indicating whether the competent person has audited and reproduced the statements, what additional modifications have been included, or whether the authors have reverted to a fundamental re-calculation;

(3) a statement as to whether mineral resources are reported inclusive or exclusive of reserves;

(4) supporting assumptions used in ensuring that mineral resource statements are deemed to be 'potentially economically mineable';

(5) supporting assumptions including commodity prices, operating cost assumptions and other modifying factors used to derive reserve statements;

(6) reconciliations between the proposed and last historic statement;

(7) a statement of when and for how long a competent person last visited the properties (or a statement that no visit has been made if that is the case);

(8) for proved and probable reserves (if any) a discussion of the assumed:

(a) mining method, metallurgical processes and production forecast;

(b) markets for the company's production and commodity price forecasts;

(c) mine life;

(d) capital and operating cost estimates;

iv) Valuation of reserves – taking consideration of internationally recognised valuation codes as set out in Appendix I a valuation of reserves comprising:

(1) an estimate of net present value (or a valuation arrived at on an alternative basis, with an explanation of the basis and of the reasons for adopting it) of reserves;

(2) the principal assumptions on which the valuation of proved and probable reserves is based including those relating to discount factors, commodity prices, exchange rates, realised prices, local fiscal terms and other key economic parameters;

(3) information to demonstrate the sensitivity to changes in the principal assumptions;

v) Environmental, Social and Facilities – an assessment of

(1) environmental closure liabilities inclusive of biophysical and social aspects, including (if appropriate) specific assumptions regarding sale of equipment and/or recovery of commodities on closure, separately identified;

(2) environmental permits and their status including where areas of material non-compliance occur;
(3) commentary on facilities which are of material significance;

vi) Historic Production/Expenditures – an appropriate selection of historic production statistics and operating expenditures over a minimum of a three year period segmented using a unit of account appropriate to the scale of operations of the issuer;

vii) Infrastructure – a discussion of location and accessibility of the properties, availability of power, water, tailings storage facilities, human resources, occupational health and safety;

viii) Maps etc – maps, plans and diagrams showing material details featured in the text; and

ix) Special factors – if applicable a statement setting out any additional information required for a proper appraisal of any special factors affecting the exploration or extraction businesses of the company (for example in the polar regions where seasonality is a special factor).

APPENDIX III - Oil and Gas Competent Person's Report – recommended content

CESR recommends that competent persons should provide competent person's reports structured in accordance with either the model content recommended under the code, statute or regulation the company is reporting under (see Appendix I) or, where there no such model content is set out in the code, CESR recommends the competent person should address the information set out in this appendix. The competent person may, with the agreement of the relevant member state's competent authority, adapt these contents where appropriate for the circumstances of the issuer.

i) Legal Overview – a description of:

(1) the nature and extent of the company's rights of exploration and extraction and a description of the properties to which the rights attach, with details of the duration and other principal terms and conditions of these rights including environmental and abandonment obligations, and any necessary licences and consents including planning permission;

(2) any other material terms and conditions of exploration and extraction including host government rights and arrangements with partner companies;

ii) Geological Overview – a description of the geological characteristics of the properties, the type of deposit, its extent and the nature of the reservoir and its physical characteristics;

iii) Resources and reserves

(1) a table providing data on (to the extent applicable): exploration prospects, prospective resources, contingent resources, possible reserves, probable reserves and proved reserves in accordance with either deterministic or probabilistic techniques of determination and an explanation of the choice of methodology;

(2) a statement as to whether mineral resources are reported inclusive or exclusive of reserves;

(3) reconciliations between the proposed and last historic statement;

(4) a statement of when and for how long a competent person last visited the properties (or a statement that no visit has been made if that is the case);

(5) statement of production plans for proved and probable reserves (if any) including:

(a) a timetable for field development;

(b) time expected to reach peak production;

(c) duration of the plateau;

(d) anticipated field decline and field life;

(e) commentary on prospects for enhanced recovery, if appropriate;

iv) Valuation of reserves – taking consideration of internationally recognised valuation codes as set out in Appendix I a valuation of reserves comprising

(1) an estimate of net present value (or a valuation arrived at on an alternative basis, with an explanation of the basis and of the reasons for adopting it) of reserves;

(2) the principal assumptions on which the valuation of proved and probable reserves is based including those relating to discount factors, commodity prices, exchange rates, realised prices, local fiscal terms and other key economic parameters;

(3) information to demonstrate the sensitivity to changes in the principal assumptions;

v) Environmental and Facilities – commentary on facilities such as offshore platforms which are of material significance in the field abandonment plans and associated environmental protection matters;

vi) Historic Production/Expenditures – an appropriate selection of historic production statistics and operating expenditures over a minimum of a three year period;

vii) Infrastructure – a discussion of location and accessibility of the properties, availability of power, water, human resources, occupational health and safety;

viii) Maps, plans and diagrams showing material details featured in the text; and

ix) Special factors – if applicable a statement setting out any additional information required for a proper appraisal of any special factors affecting the exploration or extraction businesses of the company (for example in the polar regions where seasonality is a special factor)