An example of monitoring compliance JORC ASX and ASIC

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Disclaimer
Peter Stoker is Chairman of the Joint Ore Reserves Committee (JORC).

Peter is also a JORC representative on CRIRSCO (Committee for Mineral Reserves International Reporting Standards).

While Peter Stoker is Chairman of JORC, the views presented are his own and should not be taken as necessarily representing those of the committee.

You may have noticed that this disclaimer is in type face that is readable and that it is given the same prominence as the rest of the presentation.

Not small type face that is impossible to read and only on the screen for a millisecond.

Sorry did you miss that?
Outline

- Some background on JORC
- Operation of The JORC Code
- Relationship with regulatory authorities and professional bodies
- Monitoring – Who is responsible
- Examples
Features of JORC style Reporting

- Non-prescriptive
- Simplicity
- Regulatory backing
- Competent Person system
- Designed with the investor in mind
- Part of a world process (constantly improving)
Principles

The J ORC Code is a principles based Code not a prescriptive Code
JORC Code - Principles based

JORC is a principles based Code – not a prescriptive Code. The principles in Clause 4, 2004 JORC Code are:

- **Transparency**: clear unambiguous presentation
- **Materiality**: all reasonable information expected
- **Competence**: Based on work by Competent Person
Relationship of The JORC Code with Regulatory Authorities

- Australasian Code for Reporting of Mineral Resources and Ore Reserves (The JORC Code) is Appendix 5A of the Australian Securities Exchange (ASX) Listing Rules, the only externally sourced information in the ASX Listing Rules
- This makes The JORC Code enforceable as Law by Australian Securities and Investments Commission (ASIC)
- There is an ASX representative on JORC
- JORC, a voluntary committee meets regularly with ASX and ASIC.

Chapter 5

Additional reporting on mining and exploration activities
ASX Listing Rule 5.6 refers to The JORC Code (Appendix 5A)

Requirements for reports

Reports to comply with Appendix 5A

5.6. A report prepared by a mining entity, or an entity which has or whose child entity has an interest in a mining tenement, must be prepared in accordance with Appendix 5A if the report includes a statement relating to any of the following.

- Exploration results.
- Mineral resources or ore reserves.


Note: This rule is not confined to reports under listing rules 5.1 and 5.2. It also applies to statements in such documents as bidder's statements and in the annual report and in statements made in announcements given to ASX under rule 3.1. Paragraph 13 of the JORC Code says: "A company must disclose any relevant information concerning a mineral deposit that could materially influence the economic value of that deposit to the company. A company must promptly report any material changes in its Mineral Resources or Ore Reserves". Paragraph 14 of the JORC Code says "Companies must review and publicly report on their Mineral Resources and Ore Reserves at least annually".

J ORC Code ASIC’s view

ASIC regards compliance with the JORC Code as necessary to ensure that public statements in prospectuses, take over documents etc., meet the Corporations Law requirement for statements to have a reasonable basis.

In Australia, regulatory responsibility for disclosure of Exploration Results, Mineral Resources and Ore Reserves also arises in connection with the broader Corporations Law requirements for proper disclosure to be made to shareholders and investors in connection with fundraisings, takeovers and other corporate activities, and under the Trade Practices Act 1974.
Professional Bodies

‡ Australasian Code for the Reporting of Exploration Results, Mineral Resources and Ore Reserves (The JORC Code) is prepared by the Joint Committee of The Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia (JORC)

‡ So JORC’s parents include two professional bodies and an industry group. Both the professional bodies require observance of the Code where it is applicable and failure to observe the Code is a breach of the Code of Ethics of these bodies

‡ 24 Recognised Overseas Professional Bodies (ROPOs) have agreed to enforce the Code.

‡ The professional bodies require a written complaint to investigate a complaint and act against a Competent Person.
Australian reporting environment

**Australia**

**Responsible Entities**
- Professional & Industry Organisations: AusIMM, AIG, MCA
- Statutory / Semi-Government Organisations: ROPOs
- Regulatory Organisations: ASIC

**Compliance & Guidance Standards**
- JORC Code: Competent Person
- Incorporated as Appendix

**Those Required to Comply**
- Professionals
- Publicly listed companies

**Corporations Law**

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ASX – the market operator’s role

Concerned to have an orderly and informed market

Monitors Public Reports by companies, can require clarifications, retractions and in rare cases can suspend trading in a stock while clarifications are issued.

Cannot act against company directors or Competent Persons.
Apparent breaches by Companies - ASX

- On 14 May 2009, ASX released a “Review of Compliance with the JORC Code” which noted that 94% of announcements required no action by ASX.

- Of the 6% that required action, the most common breach was a deficient or missing Competent Person statement. Other breaches included; insufficient information on Exploration Results - lack of drill hole information; exploration target statements reported incorrectly and combined or unspecified categories of Resources or Reserves, see:

ASIC’s role:

- ASIC is the regulator – perceived as being able to wield a large stick on disclosure, but the biggest penalty to companies for poor disclosure is more often reflected in the share price, than anything ASIC does.
- ASIC works in partnership with the Exchange
- ASX is at the forefront of regulation with rules, monitoring and advice, but if things go seriously wrong with compliance with the Code ASX tells ASIC
- ASIC has required retractions and clarifications when companies have not been able to demonstrate “reasonable basis” for an announcement
- ASIC regards compliance with JORC and VALMIN as “reasonable basis” under Corporations Law.
"reasonable basis"

JORC Code
As a lot of this activity is occurring with mining/exploration companies, more attention needs to be paid to the Code (and the misleading or deceptive conduct provisions of the Corporations Act) - in particular, where there is no reasonable basis for forward looking statements (they are deemed to be misleading, s1041H). (You are reminded that the Code itself is expressed as a "...minimum standard for Public Reporting").

The estimation of Mineral Resources and Ore Reserves as well as exploration targets and production targets involve the making of forward looking statements. This is made clear in the Code and by the recent (2007) Takeover's Panel decision of Midwest Corporation Ltd.

Extract from an ASIC briefing in 2010
ASIC’s particular powers:

- Infringement notice – for breach of disclosure (a breach of the listing rules), penalties of up to $100,000 if breach of disclosure is serious. 9 infringement notices since 1/07/2004, these notices provide a cost effective and timely remedy for breaches of the Corporations Act.

- Other more serious powers:
  - Civil penalties – pecuniary penalty order from a court of up to $1 million for the company and civil penalties for directors in breach of the corporations law.
  - Criminal offences
Apparent breaches by Professional Bodies

- AIG have run a complaints column in the AIG News for some time keeping people up to date with compliance.


- Note, examples of the Competent Persons not giving consent, and this being a defence in a subsequent ethics action.

- Note the banning of one individual for committing fraud.

- ROPOs have to report annually on any complaints lodged and actions taken.
Guidance on alleged non-compliance with the JORC Code

* JORC is not a policing body and has no authority to monitor compliance with the JORC Code.

* Responsibility for monitoring compliance and for taking action, if required, rests with the ASX or NSX, and with The Australasian Institute of Mining and Metallurgy ("The AusIMM") and Australian Institute of Geoscientists ("AIG").

  See [www.jorc.org](http://www.jorc.org)
Procedure (or what do I do?)

- If the alleged non-compliance involves:
  - an incorrect claim of membership of The AusIMM or AIG by a “Competent Person” or reporting company, notify the AusIMM or AIG together with the ASX.
  - a claim of inappropriate professional or ethical conduct by the Competent Person, The AusIMM or AIG should be notified.
  - the reporting company and does not involve a Competent Person, notify the ASX.
Reporting of Exploration Targets an Example

BHPB issued a PowerPoint in late 2008 which included reference to the Yeelirrie uranium deposit in Western Australia.

What is wrong with this announcement?

Yeelirrie: A large undeveloped resource

Good news
- Australia's second largest undeveloped uranium resource
- 130km North of BHP Billiton's Mount Keith infrastructure
- 100% BHP Billiton owned
- Approximately 35kt U @ 0.15% (~ 70kt U @ 0.05%)
- Discovered in early 1970's
- State agreement still in place

What's Next?
- Upgrade resource to JORC compliance
- Update feasibility study to determine the preferred development path
Reporting of Exploration Targets an Example

BHPB subsequently reissued the slide dealing with Yeelirrie

Could you improve on the subsequent announcement?

Australasian Code for the Reporting of Exploration Results, Mineral Resources and Ore Reserves
Yeelirrie: A large undeveloped resource

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But this blemish in reporting (including not following established internal principles) was addressed at the BHP Billiton Board and resulted in a senior executive loosing their job.
Another example – ASIC’s hand?

Further Clarification - Die Hardy Scoping Study

Radar Iron Ltd (ASX:RAD) refers to the clarifying statement released on 7 September 2011 regarding the results of a scoping study for its Die Hardy Range magnetite project, which were announced on 29 August 2011 (Scoping Study). Those results were subsequently included in a presentation announced to ASX on 31 August 2011.

The purpose of the Scoping Study was to assess the potential viability of the Die Hardy Project specifically providing justification for ongoing studies, identifying key aspects of the forward work programme, infrastructure and transport solutions, and de-risking the Company’s commercial options.

Investors are advised that the Company does not represent that the results of the Scoping Study present an economically viable project as the assumptions used to date may not be considered sufficiently reliable and the results of the Scoping Study were based upon the Company’s previously announced exploration target of 700-1,200 million tonnes of magnetite at 29-33% Fe.

The potential quantity and grade of these iron deposits, reported as exploration targets, is conceptual in nature. There has been insufficient exploration to define a Mineral Resource and it is uncertain if further exploration will result in the determination of a Mineral Resource.

Accordingly, the assumptions used in the Scoping Study might never be realised.
“reasonable basis”

Accordingly, the assumptions used in the Scoping Study might never be realised.

Forward looking statements implying economic viability require a reasonable basis, as of the date of reporting, otherwise they are taken to be misleading under the Corporations Act 2001 (Reasonable Basis Requirement). There is a concern whether the Company has met the Reasonable Basis Requirement, and as such the Scoping Study should not be used as a basis for investment decisions about shares in the Company.

Having concluded the Scoping Study the Company is continuing with its exploration activities with a view to announcing a maiden resource estimate for the Die Hardy Project in November 2011.

Following this, further drilling and project feasibility and development studies will be planned to determine whether the project is economically viable.
Acknowledgements

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The JORC parents are:

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