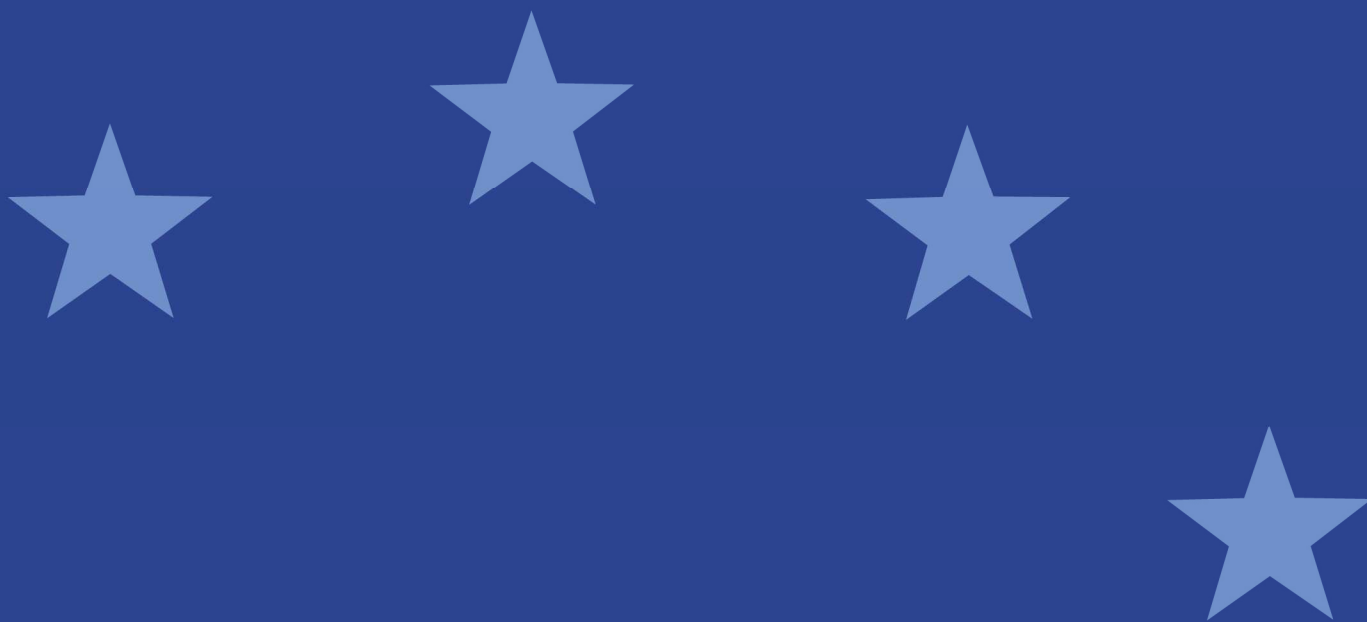




European Securities and
Markets Authority

Feedback Statement

Consultation Paper on proposed amendments to CESR's recommendations for the consistent implementation of the Prospectuses Regulation regarding mineral companies





European Securities and
Markets Authority

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Table of Contents

I	Background	3
II	Results of the consultation	3
III	Summary of the feedback and our responses	5
IV	Full text of the new provisions	12

I Background

1. On 23 April 2010 CESR published CESR/10-411, which set out a proposed set of amendments to CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses no 809/2004 (CESR/05-054b) (the 'CESR Recommendations') relating specifically to mineral companies.
2. The CESR Recommendations are the Level 3 measures which accompany Directive 2003/71/EC (the 'Prospectus Directive' or 'PD') as provided for under the Lamfalussy approach to EU securities markets regulation, an approach which comprises four levels: framework principles set out in European legislation (Level 1), implementing measures adopted by Commission regulation (Level 2), co-operation among regulators to harmonise implementation (Level 3) and enforcement (Level 4). In the case of the PD, the Level 3 measures are set out in the CESR Recommendations, which are recommendations that facilitate the consistent implementation of the Commission's Regulation on Prospectuses n° 809/2004 (the 'Prospectus Regulation') without imposing further obligations on issuers. When producing a prospectus, issuers and their advisers may have doubts about the extent of the information to be supplied under a certain item in the schedule. The purpose of the CESR Recommendations is to help issuers and their advisers to make such judgements and to assist consistency across Europe in the way in which these schedules are implemented. The CESR Recommendations also facilitate co-ordination among competent authorities when applying Article 23 of the Prospectus Regulation, the provision which gives competent authorities powers to require additional information for certain specialist issuers including mineral companies. Mineral companies are addressed in sections 131 and so these provisions are, as the CESR/10-411 consultation document observed, key provisions for mineral companies raising capital on EU regulated markets. The CESR Recommendations do not constitute European Union legislation.
3. As of 1st January 2011 a new European Supervisory Authority (European Securities and Markets Authority, ESMA) was established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010. In accordance with Articles 8(1)(l) and 76(4) of the ESMA Regulation, ESMA took over, as appropriate, all existing and on-going tasks from the Committee of European Securities Regulators (CESR) and is the legal successor of CESR. In particular, guidelines, recommendations, standards and any other Level 3 material issued by CESR continue in force until such time as they are readopted, replaced or revoked, having the status provided for under the Charter of the Committee of European Securities Regulators.
4. The CESR/10-411 consultation document argued that there is scope to improve the provisions that relate to mineral companies. It identified a range of concerns stakeholders had brought to our attention and set out proposals aimed at addressing these concerns, providing instead a new framework designed to provide clear harmonised prospectus disclosure standards for mineral companies in the EU and ensuring in the process that disclosure meets existing international standards. It sought to do so in a way that will assist the ongoing process of international convergence of standards in these sectors.
5. The consultation closed on 15 July 2010 and we received feedback from a range of participants including mineral companies, industry bodies, law firms and market practitioners. The feedback we received, except that from participants who requested we keep their feedback confidential, is available on the ESMA website at <http://www.esma.europa.eu/index.php?page=responses&id=163>. We are most grateful to all who took the time to participate.

II Results of the consultation

1. Participants in the consultation were broadly supportive of the proposals and we are on the whole proceeding as we proposed. However, having regard to the feedback we received, we have made a small number of changes. There are:
 - Although we have decided to proceed with our proposal to remove the current requirement for an externally-validated cashflow projection for mineral companies without a three year trading history, we have decided not to implement the replacement provision we proposed, an 18 month forward looking management-prepared projection which was to have been applied in all situations where the fundraising proceeds were to be applied towards exploration or development projects.
 - We have amended the list of reserves and reporting codes endorsed as suitable for use in EU prospectuses. It now only includes oil and gas codes derived from the Society of Petroleum Engineers' PRMS system and mining codes aligned with the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) standards.
 - We have amended the appendices setting out Competent Persons Report (CPR) minimum content to make it clear it is recommended rather than compulsory content. We have also made some smaller changes to the detail of these appendices. These are described below in paragraph 25.
 - We have dropped proposals to require CPRs in three other instances: on new assets being acquired where the acquisition is a significant gross change, where there has been a (material) first time declaration of new reserves, or where there has been a significant (100%) change in reserves levels. We have replaced the requirement for a CPR on the target assets in significant acquisition situations with a requirement to extend the 'overview disclosure' of the issuer's reserves/resources (set out in paragraph 132 of the new provisions) to the target assets/business.
 - We have made amendments allowing an issuer to omit items required by the CESR Recommendations where third country securities laws prohibit disclosure of the items.
2. One area where we received feedback but on which we have decided not to act is on the question of whether we should adopt a single code for reserves and resources reporting or whether we should pursue the 'menu approach' we proposed in our consultation. Under the 'menu approach' the CESR recommendations would contain a list of codes endorsed as suitable for reserves and resources reporting in prospectuses. A minority of respondents, all mining reserves reporting bodies, argued we should adopt a single code for reporting of mining reserves and resources, the Pan-European Code for Reporting of Exploration Results, Mineral Resources and Reserves (the 'Perc Code'). For reasons set out below in paragraphs 20-22, we have decided, notwithstanding the views of the minority of respondents, to proceed with our original proposal.
3. A high level summary of the feedback we received is set out in section III of this document and final text, marked up to show changes since the consultation draft, is set out in section IV.

III Summary of the feedback and our responses

1. Set out below is a summary of the feedback we received on our consultation proposals together with our responses. It is not intended to be an exhaustive account of every point made. The questions have been grouped into broad topics.

Q1: Do you agree with CESR's analysis as to the shortcomings of the existing provisions?

Q2: Do you agree with our observations on market practice in EU markets?

Q3: Do you agree we should have regard to these factors in framing the proposal to revise the CESR Recommendations?

2. There was broad agreement from respondents with our analysis as to the shortcomings of the existing provisions. Respondents agreed that although the competent person's report (CPR) concept should be retained within the regime, producing a CPR is a significant and time consuming exercise and too onerous a requirement for all instances where a prospectus is produced. So there was agreement that the question of when a CPR should be included is important and that the existing determining provision (whether the issuer has a three year trading record or not) is unsatisfactory as it is simply not a relevant factor. One law firm observed that competent authorities in different member states had not interpreted the provision consistently, making the position yet more unsatisfactory.
3. There was also agreement that the current provision addressing CPR content (effectively delegating the decision back to a member state's competent authority) is contrary to the harmonizing principle of the PD and again led to inconsistency and lack of certainty on the part of issuers planning transactions.
4. Of those respondents that answered question 2 on market practice, all were in agreement with the observations we made in our paper – essentially that the market expects a CPR at float and thereafter that it expects issuers to update the market regularly on reserves and resources and if this is done then a CPR on a further issue is unnecessary. There was broad agreement that these factors that should drive the design of the proposals to revise the existing minerals provision.

Our response: Given this support, and as we note above, we are proceeding broadly on the lines proposed in the consultation subject to a small number of specific change outlined below.

Q4: Do you agree with our proposal to exempt wholesale debt in line with other specialist companies?

Q5: Should we include exploration only companies?

5. Respondents concurred with both questions: that we should exempt wholesale debt issuance from the provisions but include exploration-only companies.

Our response: we are proceeding as proposed.

Q6: Do you agree with our proposed definitions?

Q7: Should we define materiality? If so, how?

6. Most respondents agreed with CESR's proposed revision of the key definition determining which companies are within scope of these provisions, the definition being based around the idea of a company 'having material mineral projects'. Currently the test is that mineral activities were the company's 'principal activity.' One law firm was concerned that the change broadens the scope of the definition and would catch diversified industrial conglomerates with mining or oil and gas business not caught currently as the businesses are not the 'principal activity' and felt this was a retrograde step.

7. We also received alternative versions of the definition, written from a range of perspectives. For example, one respondent believed that ‘mineral company’ should be defined not in terms of the company’s activities but by the company’s need to report mineral assets as a part of its valuation. Another respondent thought that ‘mineral projects’ should be reworded as ‘exploration, development or production activities (including royalty interests), or planning of such activities, in respect of minerals ...’
8. On the question of whether to define materiality, opinion was mixed. For example one respondent argued that it may prove difficult and unduly prescriptive to provide guidance on this; another said they preferred the certainty and that any numerical guidance be prescribed by local regulators and not CESR. More agreed than not with our approach. Amongst those that had concerns, two respondents thought that it should be made clear materiality is in relation to the issuer’s group and that group’s business taken as a whole.

Our response: we have reflected carefully on the feedback and after thought we remain comfortable with the basis new test. 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. Clearly the test depends on an understanding of what is ‘material’ and on this matter we have concluded that numeric guidance on materiality is impractical and would be, as one respondent put, ‘inconsistent with the rest of the Prospectus Directive regime’. But on reflection we do agree with those respondents who thought that a clarification as to how to assess materiality is merited. So in line with these respondents’ feedback we have introduced a new section which makes it clear that materiality is to be assessed by reference to the all an issuer’s mineral activity relative to the issuer and its group taken as a whole.

Q8: Do you agree with our proposal to update existing section 132?

9. The vast majority of respondents agreed in principle to our proposal to update existing section 132.

Our response: We will proceed as proposed.

Q9: Do you agree with our proposal to remove the requirement for a cash flow projection?

Q10: Do you agree with our proposed replacement for section 133(b)?

10. All but one of the respondents who responded on this one welcomed the proposal to replace the existing requirement to include in certain circumstances estimates of cash flow and an accountant's report thereon. Indeed it was agreed that estimations of cash flow are of limited value because they quickly become out of date, there is often a large number of potentially very different outcomes – and outcomes tend to be highly dependent on the commodity price assumption used, which by its nature is uncertain. Estimates teamed with an accountant's report gives investors a false sense of accuracy.
11. There were mixed views on our proposed replacement of the cashflow projection, a requirement that where companies are raising funds for development and/or exploration they include a forward looking management-prepared statement on their capital expenditure plans. More agreed with it than not. One respondent suggested it did not go far enough and should be supplemented by a supporting expert's opinion. Others felt it was unduly onerous: one, for example, argued that in the case of large diversified groups with many projects it would make it impracticable to provide the proposed level of detail; another suggested large diversified groups with complex funding policies do not necessarily raise funds earmarked for specific projects but instead seek to finance their activities without linking issues of new securities to specific costs, investments or projects.

Our response: given the broad support for removing the cashflow projection requirement, we are proceeding as proposed and we have deleted the provision. However, after reflection on the more mixed feedback on its proposed replacement, we have decided not to proceed with the replacement provision we consulted on. We have deleted the relevant paragraphs from the final provisions. Clearly investors require disclosure on the application of the funds issuers raise when they issue new shares. But on reflection we believe the generality of the PD is sufficient to ensure this happens and we do not think that new provisions specifically for mineral companies are necessary to deliver this.

Q11: Do you agree with our proposals to establish minimum competence requirements for reporting mineral experts?

12. All respondents agreed with the proposed requirements. Two mining bodies and a large mining company added comments to the effect that although it is sensible to have a requirement that the expert producing a CPR for inclusion in a prospectus is independent, it does not necessarily follow that an independent expert must be used for ongoing or routine reporting.

Our response: we are proceeding as proposed. We agree with the observation on independence above and our original proposal was compatible with it: these provisions require that an independent expert produces a CPR when one must be included in a prospectus. Obviously these provisions address prospectus disclosure and only touch on ongoing reporting in as much as it is required to meet the exemption from the need to produce a CPR we have crafted for most further issue situations. But it should be noted that there is no stipulation in the exemption in paragraph 133(ii) of the provisions that the ongoing reporting of reserves and resources referred has been validated by an independent expert. We have not amended the provision further as we think this is clear.

Q12: Do you agree with our proposal on how old a CPR should be?

13. There was broad agreement with the proposal set out by CESR with only a few explicit objections. One respondent argued for 12 months rather than 6. Another, a law firm, argued that the age of the estimates and valuations within the CPR, not the CPR itself, should be dated to within 6 months of the document.

Our response: we are proceeding as proposed.

Q13: Do you agree in principle with our revised trigger for a CPR?

Q14: Do you agree with how we have structured our proposed exemption including our proposal to extend the exemption to MTF-quoted securities?

14. There was broad agreement with the revised trigger for a CPR and the reasoning behind it. There was also broad agreement that the exemption from producing a CPR in further issue situations (provided the issuer meets certain conditions) should be extended to include certain MTF-quoted securities. One respondent advocated that the exemption should be applied on an asset by asset basis with regards to public offers and mergers. However this was not a view shared by any other respondent. Separately, another respondent asked that the exemption be extended to previous versions of the codes and reporting in other standards in place other than those in Appendix 1.

Our response: we are proceeding as proposed. We have included a small amendment making it clear that historic reporting under predecessors of the codes we endorse under these provisions also meets the terms of the exemption. As noted above in our response to the feedback on question 11, it should be noted that there is no requirement here that the ongoing reporting be validated by an external expert in order for the terms of the exemption to be met – this would go beyond market practice as we observe it. We have not amended the provision however: it is already clear that there is no requirement that the person prepared the numbers is independent for the exemption to apply.

Q15: Do you agree with our proposals to require a CPR where there have been significant changes either through acquisition or organic development?

15. There was some support for these proposals, some of it unequivocal, and some participants agreed with the logic of the proposal. But there were a range of qualified or outright objections to our proposals in this area too. Notably, two large oil & gas companies expressed specific concerns that the proposals are too burdensome and more onerous than those imposed in other jurisdictions. For example, in the case of an acquisition in which a high level of detail would be required to be included in a CPR, one of the respondents argued that the CPR requirement could place European issuers at a significant competitive disadvantage to their non-European peers in the context of potential transactions.
16. Two respondents, one a large mining firm, argued that in particular the provisions would preclude large hostile transactions as it would clearly be impossible to produce a CPR on the target assets.
17. Another respondent, a law firm, suggested more guidance is required as to what constitutes a significant gross change and expressed concern that in general EU competent authorities tend to be inconsistent in their approach to declaring a transaction a significant gross change and, more specifically, one particular authority focuses too much on profit, which being volatile under IFRS is not an appropriate measure of whether a transaction is actually a significant gross change.
18. Respondents also questioned the other circumstances in which a CPR would be required. For example a large mining firm said it was not clear when the provision dealing with first time declaration of reserves on a property would apply in practice. And an accounting firm had feedback on the drafting of the provision which picks up major (100%) changes in existing fields which it also found ambiguous.

Our response: in the light of the feedback we have reflected on this particular aspect of the proposals, particularly on the feedback that the rule might place European issuers at a competitive disadvantage to non-European issuers, we have made significant amendments to our proposals. We have removed the requirement for a CPR where the transaction the prospectus is describing includes the acquisition of new reserves/resources and that acquisition is a 'significant gross change' as defined in the PD regime. We have replaced it with an additional requirement in paragraph 132, the rule which requires an overview of the company's reserves and resources in all prospectuses within the scope of these provisions. This extends that overview disclosure to any new assets acquired in the transactions described in the prospectus. This we feel strikes the right balance between costs and benefits and is, we understand, broadly equivalent to the type of disclosure an issuer would make under US rules. In hostile situations, we would anticipate that issuers preparing prospectuses would apply the same procedures as they do now when they describe their target business in the prospectus, that is use publicly available information. The new procedure continues to rely on the concept of 'significant gross change'. We feel this is a fairly robust and well understood concept within the PD regime and while we understand the concerns from participants that EU authorities are not consistent in their approach to this idea, we feel the best way to address this is through dialogue between EU authorities. We do not think specific guidance on this concept just for one specialist area of the market is merited.

Regarding the other instances we identified in our consultation proposals where a CPR might additionally be required (first time declarations of new reserves or significant changes in the resources base), again we are dropping these proposals. Again this is in the light of feedback that European issuers might be placed at a competitive disadvantage to non-European issuers. And although we think the proposals addressed plausible scenarios in which normal reporting within the ordinary reporting cycle might prove inadequate, on reflection we no longer think prospectus regime is the right place for regulation addressing this issue.

Q16: Do you agree with our proposed new rule on consistent presentation of scientific and technical information?

19. All respondents agreed with our proposed rule on consistency when presenting scientific and technical information. One respondent agreed but stated that CESR could be more specific on what the types of scientific or technical information that may be covered by the rule and also said that member states could have more discretion where appropriate in order to ensure meaningful disclosure. Similarly, another respondent agreed with the CESR stance on this but suggested that if other scientific/technical information is inconsistent with the competent persons report, there should be the option to reconcile or explain. Another respondent, a law firm, was concerned that the provision might be interpreted as preventing Russian companies from even mentioning Russian versions of reserves figures in a prospectus, which would cause problems because although it is generally market practice for Russian mining companies to restate reserves figures using a CRIRSCO-aligned reporting code for the purposes of the capital markets, there is still a home state requirement for them to be measured using Russian systems and on occasion it is necessary for these to be mentioned in the prospectus.

Our response: we are proceeding as proposed. Although in our question we called the provision a 'rule on consistent presentation' the actual standard applied is 'must not be inconsistent' and this we think represents the right test to deliver the outcome we want which is to ensure presentation is not misleading. We think this test will, in individual cases, give member state competent authorities all the discretion they need to ensure that disclosure is not misleading. It should not necessarily prevent Russian companies in individual cases from mentioning additionally reserves figures measured using Russian standards where it is necessary and appropriate to do so, providing the position is very clearly explained and reconciled.

Q17: Do you agree with our 'menu' approach to reporting and valuation codes?

Q18: Are there other codes we should include? Should we remove some of the codes we have included from the list?

20. Opinion was divided between a group of mining reserves and resources reporting bodies and the rest. The mining reserves and resources bodies, all members of the international umbrella body the Committee for Mineral Reserves International Reporting Standards (CRIRSCO), backed the recommendation of the Pan-European Reserves and Resources Reporting Committee (PERC) that their own code be adopted as the benchmark for mining companies listed on European stock exchanges in the same way, for example, that the JORC code is the benchmark code for companies listed on the Australian Stock Exchange. In addition, the mining bodies cautioned us, we should not expect securities regulators based in the jurisdictions from where a particular reporting code originates to pursue breaches if the company is not listed on their stock market or based in their country. All other respondents supported the menu approach we outlined in our consultation.
21. On the matter of which codes should be on the menu, most agreed with our overall approach though one law firm criticised our omission of Russian and Chinese reporting standards from the list of acceptable codes, arguing they are well regarded. The respondent in question felt that the Russian code in particular is technically advanced and reliable and would be doubly and unnecessarily onerous for Russian companies to report in two codes. There were however a range of respondents who questioned the inclusion of US mining reporting standards on the list of acceptable reporting codes, arguing that US mining reporting standards (SEC Industry Guide 7 in particular) are not aligned with global norms, as embodied by convergence with CRIRSCO standards. The consultation had argued that non-compliance with CRIRSCO standards should represent grounds for excluding Russian and Chinese standards. Respondents argued the same logic should apply to US reporting standards.
22. Finally one respondent also added that the 'menu' should include references to previous versions of such standards and codes in force from July 1, 2005 as well as other reporting standards and codes that from July 1, 2005 have been replaced by those outlined in Appendix 1 of the consultation paper.

Our response: we have given careful thought to the feedback we have received arguing we should adopt a code for mining reporting in prospectuses. But in our view the case for this has not been made. We do not think that it necessarily follows that because some other jurisdictions have insisted

on their own exclusive reserves and resources reporting standard, the EU should follow suit. And in framing these proposals, we have not assumed that third country regulators based in the country where a particular case originated would enforce breaches where they had no other interest in the case: we are of the view that member states have the ability to put in place all the tools they need to enforce breaches should they occur. In short, we do not see how the benefits of the measure would outweigh the costs. As a result, and in the light of overall positive feedback on our proposal, we are therefore proceeding with the menu approach we proposed.

We have however altered the codes on the list. In the light of feedback we are proceeding on the basis that US mining reporting standards are excluded from the list. This is on the basis that they are not compliant with the CRIRSCO family of codes. It means the CESR Recommendations only recognise CRIRSCO aligned mining code and PRMS-aligned oil and gas code. In doing this we are also aligned with the approach proposed by the IASB in its recent discussion paper on ongoing reporting within the IFRS framework (DP/2010/1).

With regards the question of inclusion of the Russian and Chinese codes, we welcome the fact that its view is shared by the vast majority of respondents and, at this time, will proceed as proposed, omitting both codes. In due course international convergence is likely to be achieved and we may be able to revisit this issue then.

Q19: Do you agree with our proposed CPR content requirements set in Appendices II and III?

23. In the main, respondents broadly agreed with the proposed CPR content. However, there was some concern expressed that the content set out in Appendices II and III of the proposed new provisions were too detailed and could often be inapplicable. In particular, there were concerns that such a requirement could place European issuers at a competitive disadvantage; that disclosure of such information would likely distort competition, in particular between those companies subject to these provisions and those that are not; and that some disclosures – relating to pricing assumptions – may be commercially sensitive. Respondents were particularly worried by mandatory disclosure of valuation information.
24. Thus it was suggested by a small number of respondents that the proposed CPR content requirements should be a recommended table of contents, rather than a prescriptive, mandatory set of criteria.
25. There were also some suggestions for more detailed revision, including:
 - Three different respondents recommended that in mining the competent person should have discretion to report resources inclusive or exclusive of reserves (as is the case in CRIRSCO codes)
 - One respondent wrote regarding the requirement to report on ‘special factors’ that the requirement to make a negative statement where none are identified would be difficult to verify.
 - Finally, the same respondent also questioned an inference in the oil and gas content provided that it was expected that the expert conduct a site visit.

Our response: 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 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. We have also changed the requirement (or recommendation, as it has now become) to segment disclosure on a ‘per asset’ basis, recognising that this could prove excessive onerous for very large diversified companies. We have instead recommended that content is segmented ‘using a unit of account appropriate to the scale of its operations’ which should ensure that on the rare occasions these provisions will apply to such companies the competent person exercise is not excessive.

We have also:

- amended the recommended CPR content to give competent persons the discretion to report resources inclusive or exclusive of reserves;
- deleted the requirement for a negative statement on ‘special factors’; and
- added the option to the oil & gas content for the competent person to state no site visit has been made.

Other feedback

26. Respondents expressed concern that these provisions might require disclosure of lower certainty categories of resources. Some jurisdictions prohibit disclosure of these categories and there was concern that these provisions might create conflicts between different regulatory regimes.
27. There were general concerns that the proposals, taken as a whole, might not be appropriate for very large multi-national issuers – either through the requirement that disclosure should be on a ‘per asset’ basis, which would represent disproportionately onerous disclosure requirements for some very large issuers, or because aspects of the proposals contained disclosure requirements that were more onerous than those applied to non-European peers.

Our response: we have addressed this concern about conflicts between different regimes with a new provision in paragraph 133(iv) which says that information required by any of these recommendations may be omitted if disclosure is prohibited by third country securities laws or regulations. It contains the proviso that the issuer identifies the information omitted and laws/regulations that prohibit disclosure.

Regarding the concern expressed that the provisions do not cater adequately for very large issuers, we have introduced an amendment into paragraph 133(i) giving the issuer flexibility to select a unit of account for the purpose of segmenting its reserves/resources disclosure ‘appropriate to the scale of its operations’. In practice we anticipate this can be alighted on through discussion between issuer and the respective member state’s competent authority. Other changes mentioned above also address these concerns, specifically:

- Deleting the requirement for a CPR on a ‘significant gross changes’; and
- Making the CPR content appendices recommended rather than voluntary.

IV Full text of the new provisions

This section sets the text of the proposed new provisions. For ease of comparison between consultation draft text and final draft text, new text introduced following consultation is underlined and text 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, debt securities with a denomination of less than EUR 50,000, depository receipts issued over shares with a denomination of less than EUR 50,000 or derivative securities with a denomination of less than EUR 50,000, 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).

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 per asset and not on a consolidated basis:

- 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;
- f) ~~where the proceeds will fund exploration and/or development costs the use of proceeds discussion required by Item 3.4 of Annex III, Item 3.2 of Annex V, Item 31.1.1 of Annex X, or Item 3.2 of Annex XII of the Regulation, as applicable, should include:~~
 - ~~i) business objectives that the issuer expects to accomplish in respect of the proposed exploration and/or development;~~
 - ~~ii) each significant event that must occur for the business objectives described under subsection i) to be accomplished and target time period in which each event is expected to occur;~~
 - ~~iii) all planned and required expenditure in respect of each event for at least 18 months following the publication of the prospectus; and~~

~~iv) where additional funding beyond the net proceeds of the offer is required to achieve the business objectives set out in response to (f)(i) above, the planned sources of funding of the expenditure.~~

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 acquired. 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.

133.i). In addition, all prospectuses by mineral companies within the scope set out in paragraph 131 should (except where the exemption in paragraph 133(ii) applies) contain a competent persons 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 persons report the omission to ~~disclose~~ disclose of which would make the competent persons 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 segmented using a unit of account appropriate to the scale of its operations per asset and not on a consolidated basis:

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

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

133.ii) An issuer is exempt from including the competent persons 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 sepa-

rately) 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) it is already admitted to trading on either a regulated market, an equivalent overseas market, or an appropriate multi-lateral trading facility; and

c) it has continued to report and publish 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.

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

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 (c) can be deemed to be met by the annual reporting of those classes that can be reported.

6) If:

a) reserves and/or resources have been or are being acquired at the time the prospectus is drawn up 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)

b) the issuer has, since it published its last competent persons report (or since 1st July 2005 if it has not published a competent persons report since 1 July 2005), announced changes in its mineral resources and where applicable reserves which would in aggregate constitute at least 100% change in one of these respective categories; or

c) the issuer has, since it published its last competent persons report (or since 1st July 2005 if it has not published a competent persons report since 1st July 2005), made a first time declaration of mineral resources or reserves on a property that is material to the issuer and which constitutes a material change in the affairs of the issuer

then a competent persons report on those respective mineral resources and where applicable reserves should be included even if the exemption in paragraph 5 applies.

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 persons report (if one is included) must not be inconsistent with the information contained in the competent persons 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;

~~United States Securities and Exchange Commission Industry Guide 7 'Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations', as amended (Industry Guide 7);~~

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'); or

Certification Code for Exploration Prospects, Mineral Resources and Ore Reserves as published by the Instituto de Ingenieros de Minas de Chile, as amended;

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 Persons Report – recommended content

CESR recommends that competent persons should provide competent persons reports structured in accordance with either the model content specific formats required or 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, the code does not include specific requirements or recommendations as to the content of the competent persons report, CESR recommends the competent person the CPR should address include the information set out in this appendix. The competent person may, with the agreement of member state 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 ~~that~~ 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 property;
 - (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 per operating asset;
- vii) Infrastructure – a discussion of location and accessibility of the property, 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) ~~or an appropriate negative statement;~~

APPENDIX III Oil and Gas Competent Persons Report – recommended content

CESR recommends that competent persons should provide competent persons reports structured in accordance with either the model content specific formats required or 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, the code does not include specific requirements or recommendations as to the content of the competent persons report, CESR recommends the competent person the CPR should address include the information set out in this appendix. The competent person may, with the agreement of member state 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 ~~that~~ 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 property (or a statement 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 property, 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) ~~or an appropriate negative statement.~~