

# COMPLIANCE & REPORTING FOR LISTED RESOURCE COMPANIES

Understanding how the changes to the  
JORC Code & ASX Listing Rules will impact  
on already listed resource companies

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## JORC 2012 v the ASX Listing Rules: They are different

### JORC 2012

- *'Material Change'* under Clause 5 of the JORC Code 2012
- *'Significant project'*
- Can use Competent Person JORC 2012 sign-off for JORC 2004 statements
- New JORC 2012 Competent Person consent is not necessary
- Competent Person need not be Independent

### Listing Rules

- Listing Rule 5.6 requires all public reports to comply with the JORC Code.
- *'Material Change'* Listing Rules 3.1, 5.8 & 5.9; Guidance Note 31
- *'Material mining project'*
- Can *not* use Competent Person JORC 2012 sign-off for JORC 2004 statements
- New JORC 2012 Competent Person consent is necessary
- Competent Person might need to be Independent

## Your Continuous Disclosure Obligations

### It is never simple!

- Whether or not there has been a material change in information reported pre-transition requiring an updated report under the new disclosure rules must be tested by reference to the new disclosure rules.
- If an entity considers that a post-transition change to information about an existing project warrants an announcement under the continuous disclosure requirements in Listing Rule 3.1, then that announcement should conform to the new disclosure rules.
- Among other things, this means that if the original pre-transition announcement did not include the disclosures against Table 1 required under the new disclosure rules, then it must be updated to conform to the new disclosure rules.
- The fact that an entity continues to report information about a project prepared under the 2004 Code suggests to the market that there has been little activity undertaken on the project.

## PART A:

### The impact of the new Disclosure and Continuous Disclosure requirements

- What must be reported?
- When must it be reported?
- To whom must it be reported?
- Informal disclosures verses formal reports: the dangers and the disciplines



## What must be reported?

- The new disclosure rules in Clauses 4, 5 and 35 of the JORC Code 2012 and Listing Rule 5.9
- Clause 29 of the JORC Code *does not* require a formal Pre-Feasibility or Feasibility Study
- Table 1 and “If not why not”
- Reasonable prospects for eventual economic extraction
- Life of Mine Plan may contain information at better than Pre-Feasibility or Feasibility level and meet the requirement in Clause 29 for the Ore Reserve
- Lack of studies at Pre-feasibility level by 01 December 2014 will result in a downgrade from Ore Reserve to Mineral Resource



## When must it be reported?

### 01 December 2013

The new disclosure rules apply for a 'significant project' (JORC 2012) or 'material mining project' (ASX) when:

- new results or estimates are reported for the first time; or
- there are material changes to previously reported results or estimates

### 01 December 2014

- Studies at the Pre-Feasibility or Feasibility level for Ore Reserves or downgrade to Mineral Resource



## To whom must it be reported?

- The ASX

Other stakeholders may include:

- Banks,
- Debenture holders and other secured creditors,
- Major shareholders,
- Directors and executives

Consider the duties and responsibilities of the listed entity and the duties and responsibilities of those making reports



## Informal disclosures verses formal reports: the dangers and the disciplines

- Keeping the market fully informed but not selectively (Newcrest).
- “Investor presentations” given selectively to brokers, analysts or even to industry forums such as this conference
- Recipients of the ‘selective briefing’ have information not generally available to the wider market
- Media Releases: Twiggy Forrest and “legally binding”. The High Court has spoken: [Forrest v Australian Securities and Investments Commission \[2012\] HCA 39 \(2 October 2012\)](#)





## **PART B:**

### **The duty to revisit and report again on matters covered in historic reports**

- Revisiting reports for mining under Guidance Notes 31
- Revisiting reports for oil and gas activities under Guidance Notes 32
- Incorporating the 'if not, why not' rule in new reports
- Revisiting the reporting of material exploration and drilling results
- Revisiting the reporting of Mineral Resources and Ore Reserves
- Revisiting historical estimates or foreign estimates of mineralisation
- The new responsibilities and duties for Boards of Directors & for Competent Persons
- Revisiting reporting of production targets
- Revisiting the list of tenements
- Revisiting the reporting of geophysical survey information
- Revisiting the reports of petroleum reserves
- Revisiting the annual reserves statement for mining

## Revisiting reports for mining activities Guidance Note 31

‘Mining exploration entities’

‘Mining producing entities’

‘Mining projects’

‘Material mining projects’

The reporting requirements for ‘material mining projects’ for:

- exploration results in Listing Rule 5.7;
- estimates of mineral resources in Listing Rule 5.8;
- estimates of ore reserves in Listing Rule 5.9; and
- historical estimates or foreign estimates of mineralisation in Listing Rules 5.10 – 5.14,

The requirements for reporting production targets in Listing Rule 5.16 – 5.19 can also apply if the target relates to a material mining project.

## Revisiting reports for oil and gas activities

### Guidance Note 32

- Chapter 5 of the Listing Rules for oil and gas activities is underpinned by the Petroleum Resources Management System (**SPE-PRMS**) an industry-sponsored set of guidelines for petroleum resources and not JORC 2012
- Coal seam gas (now to be called 'natural gas from coal seams') is governed by the *Petroleum and Gas (Production and Safety) Act 2004* (Qld), not by the coal mining legislation. In NSW, the *Petroleum Onshore Act 1991* (NSW) administered by the new Office of Coal Seam Gas. Why? Because methane (CH<sub>4</sub>) is a hydrocarbon.
- 'Oil and gas entities' (including NGCS) are subject to certain quarterly and annual reporting obligations under the Listing Rules.
- 'Oil and gas projects'
- 'Material oil and gas projects'
- material change in estimates

## Incorporating the ‘if not, why not’ rule in new reports

- Many JORC 2004 reports can be upgraded to JORC 2012, ‘on the papers’ without having to redo drilling, core samples and the underpinning geological work
- An entity cannot leave a criterion in Table 1 blank or insert “not applicable” or “not relevant” because it does not think that the information is material to understanding its exploration results or estimates of mineral resources or ore reserves. It must include a clear statement as to why it is not material.
- Table 1 requires the disclosure of mining and metallurgical factors and assumptions when estimating and reporting mineral resources and the disclosure of cost and revenue factors and assumptions and a market assessment when estimating and reporting ore reserves
- However, the ASX does not expect an entity to disclose trade secrets or other commercially sensitive information to meet these particular requirements

## Revisiting the reporting of material exploration and drilling results

- Listing Rule 5.7 applies to an entity (not just mining entities) publicly reporting exploration results for a 'material mining project' for the first time and new exploration results for that project thereafter
- The information required to be disclosed includes a drill-hole table for all material drill-holes, if the information is material to understanding the reported exploration results. The drill-hole table must include the easting and northing, elevation or RL, dip and azimuth, down hole width and depth and end of hole, in tabular form. If the entity determines that the information in the drill-hole table is not material to understanding its exploration results, it must include a clear and accurate explanation as to why that is so
- Clauses 16 and 17 of the JORC 2012 set out additional requirements for reporting exploration results. Unlike Listing Rule 5.7, these apply to the reporting of all exploration results and not just to the reporting of exploration results for material mining projects
- Mention JORC 2004 Exploration Results at your peril!

## Revisiting the reporting of Mineral Resources and Ore Reserves

- Listing Rules 5.8 and 5.9 applies to an entity (not just mining entities) publicly reporting estimates of mineral resources or ore reserve for a 'material mining project' for the first time and when those estimates have materially changed
- The information required included in the market announcement must be a fair and balanced representation of the information contained in the separate report prepared in accordance with the relevant sections of Table 1 of Appendix 5A of JORC 2012
- It should be noted that clauses 19 to 35 of JORC 2012 set out additional requirements for the classification and reporting of mineral resources and ore reserves. Unlike Listing Rules 5.8 and 5.9, these requirements apply to the reporting of all estimates of mineral resources and ore reserves and not just to material mining projects.
- Again, mention JORC 2004 estimates at your peril!

## Revisiting historical estimates or foreign estimates of mineralisation

- Listing Rule 5.10 provides an exception to Listing Rule 5.6 for an entity reporting historical estimates or foreign estimates of mineralisation for a material mining project.
- Historical estimates in this context are those prepared pre-1989, which is when the JORC Code was introduced as Appendix 5A to the Listing Rules.
- Foreign estimates are those estimates classified under the requirements of a foreign jurisdiction and which do not comply with the JORC Code.
- Historical estimates and foreign estimates of mineralisation must not be included in the entity's mineral resources and ore reserves holdings, as they do not meet the requirement to be classified as mineral resources or ore reserves under JORC 2912.
- A public report containing historical estimates or foreign estimates of mineralisation for a material mining project must include a statement by a competent person or persons that certain information in the report is an accurate representation of the available data and studies for the mining project.

## The new responsibilities and duties for Boards of Directors & for Competent Persons

- Forward looking statements must be based on reasonable grounds or will be deemed to be misleading, with all the significant legal consequences
- The underlying figures and assumptions should be carefully vetted and signed off at a suitably senior level before the production target is released. Ultimately the directors are responsible
- The Centro decisions show that Courts are not enamoured with the 'I did not know what it meant' defence
- Reverse onus provisions of the ASIC Act may make Competent Persons liable for making representations as to the future and they taken not to have had reasonable grounds for making the representation unless they adduce evidence to the contrary





## Revisiting reporting of production targets

- Most production targets are 'market sensitive information' of the type required to be disclosed under Listing Rule 3.1
- Duty to inform the market about a material change (increase or reduction) in actual and forecast production compared to production forecasts earlier released
- Continuous disclosure duties force compliance with JORC 2012



## Revisiting the list of tenements

A mining exploration entity is required to include in its annual report:

- the mining tenements held by it and its child entities and their location; and
- the percentage interest it or they hold in each mining tenement.



## Revisiting the reporting of geophysical survey information

- The term “exploration” is defined in Listing Rule 19.12 to include geophysical surveys
- An Exploration Target is a statement or estimate in a Public Report of the exploration potential of a mineral deposit in a defined geological setting there has been insufficient exploration to estimate a Mineral Resource
- If a Public Report includes an Exploration Target, it is a requirement to detail proposed exploration activities designed to test the validity of the exploration target and to specify a timeframe for those activities to be completed.
- A Public Report which includes an Exploration Target must be accompanied by a Competent Person statement taking responsibility for the form and context in which the Exploration Target appears.
- Portions of a deposit that do not have reasonable prospects for eventual economic extraction must not be included in a Mineral Resource.
- A mining exploration entity is required to give to ASX a quarterly activity report and quarterly cash flow statement.

## Revisiting the reports of petroleum reserves

- An oil and gas exploration entity is required to include in its annual report the petroleum tenements held by it and its child entities and their location; and the percentage interest it or they hold in each petroleum tenement.
- An oil and gas entity that has any petroleum reserves and that does not file US SEC compliant Forms 10-K and 20-F with the SEC annually is required to include an annual reserves statement in its annual report.
- If the oil and gas entity has material unconventional petroleum resources (Natural Gas from Coal Seams), it must separately identify the portion of the total 1P petroleum reserves and 2P petroleum reserves reported at the group level that are based on unconventional petroleum resources (Listing Rule 5.39.2).

## Revisiting the annual reserves statement in mining

- A mining entity that has any mineral resources or ore reserves is required to include an annual mineral resources and ore reserves statement in its annual report
- The annual mineral resources and ore reserves statement must include a comparison of the entity's reported aggregated mineral resource and ore reserve holdings for the current year against the corresponding aggregated mineral resource and ore reserve holdings for the previous year, with an explanation of material changes between the two
- The annual mineral resources and ore reserves statement must include a competent person statement and must only be issued with the prior written consent of the named competent person or persons who have approved the statement as a whole as to the form and context in which it appears in the annual report.

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Thank you

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