

Private and Confidential

Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

8 July 2010

Our ref: CS/CAR/CESR -
comments on CP
re mineral
companies

Dear Sirs

**Consultation paper: CESR proposed amendment to CESR's recommendations (CESR/05-054b)
regarding mineral companies (paragraphs 131 - 133)**

We welcome the opportunity to respond to the above consultation paper and attach our detailed response.

BDO LLP is the United Kingdom member firm of the BDO international network, the world's fifth largest accountancy organisation. We have acted as reporting accountant in connection with numerous prospectuses and have many mineral companies as clients.

Please contact me or my colleague, Charles Romaine, if you wish to discuss further any matters contained in this response. Our contact details are as follows:

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Yours faithfully



Chris Searle
Partner
For and on behalf of BDO LLP

1. Do you agree with our analysis as to the shortcomings of the existing provisions?

We agree with your analysis as to the shortcomings of the existing provisions, in particular the current requirement for a detailed cash flow forecast accompanied by an accountant's report.

2. Do you agree with our observations on market practice in EU markets?

We agree with your observations on market practice in EU markets.

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

We agree that you should have regard to these factors in framing the proposal to revise the CESR Recommendations

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

We agree with the proposal that the additional information for mineral companies should only apply to debt securities with a denominations 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. It is logical to treat mineral companies in line with other specialist companies as to the requirements when issuing a prospectus. Furthermore, if the issuer and its advisers consider that the market would want to see certain additional information for a specific issue of wholesale debt and other wholesale securities, then such information could still be provided on a voluntary basis to meet those market expectations in the circumstances of a particular issuer.

5. Should we include exploration only companies?

Exploration companies should be included. The additional information is no less important for an investor in an exploration company as for an investor in a company at a later stage in its development. In our experience, this would also accord with market practice.

6. Do you agree with our proposed definitions?

We agree with the proposed definitions.

7. Should we define materiality? If so, how?

We agree with your reasons in paragraph 6 of Part IV of the consultation paper as to why you have not included a definition of material. We consider that a careful assessment of materiality in the specific circumstances of a particular issue is the appropriate approach. An attempt to introduce a definition of "materiality" just for this one specialist area is inconsistent with the rest of the Prospectus Directive regime. In addition, it might result in something being deemed not to be material under a prescriptive "checklist" definition when, in the specific circumstances, a more considered (though less prescriptive) assessment would sensibly deem it to be material.

8. Do you agree with our proposal to update existing section 132?

We agree with your proposal to update the existing section 132.

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

Paragraph 133 (b)(ii) requires “particulars of estimated cash flow for either the two years following publication of the prospectus or, if greater, the period until the end of the first full year in which extraction of mineral resources is expected to be conducted on a commercial scale.”

We agree with the observations made in the consultation paper that stakeholders argue that forecasting cash flows with the precision required by the existing provision is too difficult and subject to a greater degree of uncertainty than is appropriate for a public document such as a prospectus.

The uncertainties, combined with the requirement for accountants to opine on the forecasts, typically necessitates the inclusion of contingencies and caveats, such that the output would likely be of reduced value to investors.

In addition, the point at which extraction of mineral resources is “expected to be conducted on a commercial scale” can sometimes extend a long time into the future. We are aware of at least one regulator which considers “conducted on a commercial scale” to be achieved when the majority of the mineral company’s assets by value are producing at full capacity.

For those developers which have ownership/rights to a number of fields, but only initially exploiting a few of these, with the intention of exploiting others if the first are commercially successful (perhaps using cash flows generated from successful fields to exploit others), this may lead to long lead times until the majority of all owned fields are producing at full capacity.

In addition, for certain types of mineral resource companies (eg coal based methane (“CBM”) developers), due to the nature of those businesses, there is a relatively slow ramp up in production levels in each asset compared with other mineral companies. Whilst normal fields in the wider oil and gas sector will typically have an initial production peak, production profiles for CBM are typically more flat across a more sustained period. This may result in long lead times until operating at full capacity.

As a result of a combination of these factors, we have encountered clients which are already producing gas on a commercial basis from one field, but where it is very unlikely that it will be producing gas on a commercial scale from a majority of their assets by value until more than ten years into the future.

Cash flow forecasts for such lengths of time are highly uncertain and therefore of little value for investors. In order for an independent accountant to be comfortable with publicly reporting on such long term cash flows they will have to include so many caveats and contingencies that the output would likely be of no value to investors.

We therefore agree with the proposal to remove the requirement for a cash flow projection.

10. Do you agree with our proposed replacement for section 133(b)?

We agree with the proposal to replace section 133(b) with a new section (3(f) in the consultation paper). In particular, we consider that the requirement to include a management statement of “all planned and required expenditure in respect of each event for at least 18 months following publication of the prospectus” to be a reasonable and practicable requirement for that period of time.

To clarify what is required (if that is what is intended), in 3(f)(iii) we suggest replacing “each event” with “at least each significant event set out in 3(f)(ii).”

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

We agree with the proposals. There is little point in requiring a “competent persons report” if no minimum competence requirement is established. We do not comment on the appropriateness of the proposed minimum competence requirements as it is outside our area of expertise as a reporting accountant.

12. Do you agree with our proposal on how old a CPR should be?

We agree with the proposal that a CPR should not be more than six months old. Although other valuations for specialist companies (property and shipping) require the valuation to be not more than one year old, we note the point made in the consultation paper that the proposed requirement is consistent with other international practices.

13. Do you agree in principle with our revised trigger for a CPR?

We agree in principle with the revised trigger for a CPR (being always required on an IPO and in most cases not required for a further issue, provided that the listed company has kept its market up to date). Market practice has already developed whereby a CPR is a requirement for an IPO and we are not aware of any strong arguments against making a CPR available to investors. The current position whereby a CPR is required by a listed company issuing a prospectus can sometimes make it impractical, because of the time taken to commission a new CPR, to undertake some transactions (for example an acquisition opportunity where the consideration is to be settled in shares of the listed entity, requiring a prospectus).

14. Do you agree with how we have structured our proposed exemption?

We agree with the structure of the proposed exemption. A minor drafting point: should the word “and” be added to the end of 5(a)?

15. Do you agree with our proposals to require a CPR where there have been significant changes either through acquisitions or organic development?

We agree with the proposals to require a CPR where there have been significant changes either through acquisitions or organic development.

Section 6(b) refers to, "...announced changes in its mineral resources and where applicable reserves which would in aggregate constitute 100% change in one of these respective categories;" We assume from your question that this is referring to acquisitions where a 100% change implies a doubling of resource. However, we are not clear if section 6(b) is also supposed to be covering a "change" which is a reduction rather than an increase, in which case the percentage would need to be, say, 50% to cover a halving of resources.

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

We agree with the proposed new rule that presentation of scientific and technical information must not be inconsistent with the information contained in the CPR, and cannot think of any circumstances where "inconsistency" would be preferable or acceptable.

17. Do you agree with our menu approach to reporting and valuation codes?

We agree with the principles which you set out in the consultation paper behind adopting a menu approach.

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

We have no comments on this question, as it is outside our area of expertise as a reporting accountant.

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

We have no comments on this question, as it is outside our area of expertise as a reporting accountant.