



16 October 2004

**RESPONSE BY THE INTERNATIONAL VALUATION STANDARDS COMMITTEE TO  
CESR'S RECOMMENDATIONS FOR THE CONSISTENT IMPLEMENTATION OF THE  
EUROPEAN COMMISSION'S REGULATION ON PROSPECTUSES NO. 809/2004 –  
CONSULTATION PAPER**

Thank you for the opportunity to comment on the recommendations for the consistent implement of the Regulation on Prospectuses.

We first provide some background information on the IVSC before addressing the specific questions in the Consultation Paper that fall within the competence of the IVSC.

**International Valuation Standards Committee (IVSC).**

1. The IVSC is a not-for-profit organisation incorporated in the State of Illinois, USA. Members of the IVSC are the leading professional valuation institutes from some 50 countries. The IVSC is an NGO (Non Government Organisation) member of the United Nations. IVSC maintains liaison with international agencies such as the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation for Economic Co-operation and Development (OECD), the European Commission, and the Bank for International Settlements. The IVSC also maintains a close relationship with other international organisations that promulgate international standards and best practice guidance, notably the International Accounting Standards Board, the International Federation of Accountants, and the Basel Committee for Banking Supervision.
2. The IVSC has published International Valuation Standards (IVS) since 1985. The Standards, and accompanying Guidance, reflect the collective thoughts, experiences, and professional judgments of Valuers from some 50 countries. A number of national valuation standard setters have announced their intention to adopt the International Valuation Standards in place of current national standards and supplemented only by national specific guidance. This decision has been driven by the growing acceptance of International Financial Reporting Standards (IFRSs) within the countries concerned. The International Valuation Standards are available to view on the IVSC web site - [www.ivsc.org](http://www.ivsc.org)
3. International valuation and accounting standards are inextricably linked through the recent IAS 40, *Investment Property*. The 'fair value' as it relates to property is defined in substantial detail in IAS 40. In the appendix to IAS 40 the IASB states that it considers its concept of fair value to be similar to the IVSC concept of

market value. It also acknowledges that the guidance on the measurement of fair value was developed with the assistance of the IVSC and that the guidance is in substance (and largely in wording as well) identical with guidance in International Valuation Standards.

4. Many auditing practices recommend use of IVS in their published guidance on the implementation of IFRSs. For example:

**Deloitte Touche Tohmatsu: Model IAS Financial Statements** (Dec 2003)

*“Land and buildings were revalued at 31 December 2002 by Messrs. Lacey & King, independent valuers not connected with the Group, on the basis of market value. The valuation conforms to International Valuation Standards.”*

**PricewaterhouseCoopers: IFRS Manual of Accounting**

*“The International Valuation Standards Committee (IVSC) is the leading international authority on valuation methods to be adopted in relation to IFRS.”*

5. In January 2004 the European Public Real Estate Association (EPRA) issued Best Practices Policy Recommendations. The Recommendations assist European real estate companies with compliance with IFRS and are intended to make the financial statements of public real estate companies in Europe clearer, more transparent and comparable across Europe. EPRA's members include most of the leading real estate companies and investment institutions in Europe. In partnership with Euronext, EPRA operates the EPRA Index, created in response to demands from investment managers for a representative, real-time, and independently managed pan-European real estate equity benchmark. EPRA recommends in its Best Practices Policy Recommendations *“that the valuation of investments property held by real estate companies should be at market value, assessed in accordance with International Valuation Standards (IVS), as set out by the IVSC”*. A copy of the Recommendations are available on EPRA's web site - [www.epra.com](http://www.epra.com)
6. The European Commission has recently adopted the IVSC definition of Market Value in its proposal for the amendment of the Consolidated Banking Directive (2000/12/EC) and the Capital Adequacy Directive (93/6/EEC) to introduce a new capital requirements framework for banks and investment firms issued 14 July 2004. This amends the definition of market value in the current directive.

## **Response to the Consultation Paper**

The IVSC comments relate to the proposed requirements for two categories of specialist issuers – property companies and mineral companies.

142. Q: *Recital 22 of the Prospectus Regulation invites CESR to produce recommendations on the adapted information that competent authorities might require to the categories of issuers set out in Annex XIX of the Regulation. Do you think detailed recommendations are needed for specialist issuers or do you think the special features of these issuers could be addressed mainly by the disclosure requirements set out in the schedules and building blocks of the Regulation?*

The IVSC believes that to achieve the CESR's objective of consistent implementation of the Regulation and to avoid any ambiguity that could lead to different interpretations of the rules, more detailed recommendations are required. The development of the valuation profession and of valuation standards varies greatly across the Member States. This was acknowledged, for example by the European Central Bank in its report **Asset Prices and Banking Stability** (April 2000) in which it stated "*It appears that (valuation) practices are highly country-specific .. and, because of the different valuation criteria, the loan-to-value ratios cannot be compared directly across countries, unless the specifics of valuation procedures are also addressed*".

### ***1a PROPERTY COMPANIES***

150. Q: *Do you agree with the usefulness of requesting a valuation report in general? Please state your reasons.*

We note that the need for an experts' or valuation report was confirmed in the Feedback Statement of July 2003 (CESR/03-209) following earlier consultation on the Prospectus Regulation. The IVSC supports this position.

151. Q: *What rules do you think the report should comply with (such as those of the country of the competent authority that approves the prospectus or other different rules)? Please state your reasons.*

Respondents to earlier consultations called for additional guidance to ensure that there was consistent application of the information requirement to provide a valuation report across Member States.

The IVSC notes that following CESR's technical advice, the Regulation established a dual approach for issuers that are subject to IAS/IFRS, and for those issuers that are not subject to IAS requirements.

The adoption of IAS/IFRS throughout the European Union and the move towards a common prospectus prompts the need for consistent valuation. Standardisation of accounting methods is of limited use if the figures that go into those accounts are produced on different bases and come up with very different answers for a broadly similar asset. It is therefore vital that the standardisation of valuation methods should march hand in hand with the standardisation of the accounting rules.

Similarly the prospectuses that companies issue before launching their shares on a stock exchange and offering them to the investing public include accounts that will show the company's properties. These properties must be measured on a consistent and universally understood basis.

The IVSC recommends that for those companies that report under IAS/IFRS, the CESR should recommend that valuation reports are subject to the requirements of the International Valuation Standards. This will assist in both ensuring comparability of a prospectus throughout the EU and that the valuation meets the requirements of IAS/IFRS.

## ***1b MINERAL COMPANIES***

### **General comments**

In general, the proposed recommendations appear to be an adaptation of several sections of the requirements of the UK Listing Authority, Chapter 19 - Mineral Companies. Some sections are identical and some are abbreviated from Chapter 19. Under Section 163 - Definitions, the definitions of Proven Reserve, Probable Reserves, Measured Mineral Resources and Indicated Mineral Resources are identical to those in Chapter 19. CESR has followed Chapter 19's lead in not including any reference to Inferred Mineral Resources. Although not recognized in Chapter 19 or in the US SEC Industry Guide 7, Inferred Mineral Resources are required to be reported in other jurisdictions including Australia, Canada and South Africa.

There are a number of references to value, valuation reports, appraisal, and cash flow estimates: Sections 159, 162.2(a), (b)(ii), (b)(iii), (c); under expert's report: (a), (i), and (j). The last refers to a "proper appraisal". None of these terms appear to be defined and may to some extent be used interchangeably. There should be some clarification of the terms and their intended purpose as well as definitions. There may be an opportunity to refer to IVS for definitions of value, valuation report, and appraisal. The use of "cash flow estimates" should be clarified so as not to be confused with value.

Under Section 161, CESR notes that issuers that are involved only in exploration of mineral resources and are in production or proposing production are not called mineral companies. This is in contrast to the Chapter 19 definition of a mineral company which may include exploration. CESR should clarify where exploration companies fit in.

In reference to expert's report, Section 162 (c) refers to an expert as "a suitably qualified and experienced independent expert". There is no definition of expert, nor is there a distinction between a technical expert and a qualified or competent valuator/valuer. A stronger statement could be made here on the distinction and on what qualifications and experience are needed, even if only it is stated that they depend on the jurisdiction. Perhaps IVS could be referenced. It is not stated whether the report is to be a technical report or the valuation report required by Section 159. The list of required information in the report is much abbreviated from Chapter 19 and should be reconsidered for completeness.

164. *Q: Do you agree with the usefulness of requesting a valuation report? If yes, do you agree with the content and scope of the reports proposed above? If not, please state your reasons.*

We are not clear on the purpose of the valuation report. Is there a minimum value contemplated for listing? If required the purpose should be stated. Chapter 19 under Section 19.3(d) requires the aggregate value of the issuer's proven and probable reserves as estimated in the competent person's report to be not less than 50% of the expected aggregate market value if its equity share capital. If this is the intent of the CESR valuation, it should be stated clearly. Unless there is some valid purpose for the valuation report, it may not be necessary.

165. *Q: Do you consider the definitions provided in these recommendations to be adequate? If not, please give your reasons and provide new definitions, explaining the benefits of the change.*

As noted above, definitions are needed for value, valuation report, expert report, technical expert, valuation expert, cash flow estimates, inferred mineral resources and possibly other items. Definitions can be found in IVS, including the Extractive Industries Guidance Note.

The section 163 definitions for reserves and resources **must** be changed so that they are on a deposit type rather company level basis for determining whether the oil and gas classifications or solid minerals classifications are used. It is inappropriate to force mining industry professionals to classify a gold or limestone deposit using the oil and gas classification system when the reporting company is primarily involved in the extraction of oil and gas.

We strongly recommend against the CESR providing its own definitions for reserve and resource categories. This practice will continue the proliferation of incompatible definitions in the world and resulting difficulties for companies that must apply them. The developers of the United Nations Framework Classification for Energy and Mineral Resources identified approximately 200 classification systems in the world for reserves and resources. Instead, we recommend that CESR follow IVSC's approach of including by reference definitions widely adopted throughout the world in the minerals and petroleum industry. CESR should also be prepared to make adjustments in this regard to be compatible with the IFRS that will be developed from the IASB's current Stage 2 Extractive Activities Project.

Below are the definitions for *Mineral Reserve*, *Mineral Resource*, and *Petroleum Reserve* included in the IVS Extractive Industries Guidance Note. We observe that the proposed CESR definitions exclude the category, *Inferred Mineral Resources*. This category is required to be reported in other jurisdictions, including Australia, Canada and South Africa. We recommend it be included. However, IVSC is not opposed at this time to CESR's proposed exclusion of the reporting of the *Possible Reserve* category of *Petroleum Reserves* within prospectus filings.

The IVS definitions for *Mineral Reserve*, *Mineral Resource*, and *Petroleum Reserve* are as follows:

A *Mineral Reserve* is defined by the Combined [Mineral] Reserves International Reporting Standard Committee (CRIRSCO) as “the economically mineable part of a Measured and/or Indicated Mineral Resource. It includes diluting materials and allowances for losses, which may occur when the material is mined. Appropriate assessments that may include Feasibility Studies, have been carried out, and include consideration of, and modification by, realistically assumed mining, metallurgical, economic, marketing, legal, environmental, social and governmental factors. These assessments demonstrate at the time of reporting that extraction is justified. Mineral Reserves are subdivided in order of increasing confidence into Probable Mineral Reserves and Proved Mineral Reserves.”

The United Nations Framework Classification (UNFC) similarly defines a Mineral Reserve and its subdivisions, applying the UNFC coding system. Entities electing to adopt the UNFC or other definitions of Mineral Reserve for public financial reporting or statutory reporting purposes must reconcile the Mineral Reserves to the CRIRSCO Proved and Probable Mineral Reserve categories for valuation purposes.

A *Mineral Resource* is defined by CRIRSCO as “a concentration or occurrence of material of intrinsic economic interest in or on the earth’s crust (a deposit) in such form and quantity that there are reasonable prospects for eventual economic extraction. The location, quantity, grade, geological characteristics and continuity of a Mineral Resource are known, estimated or interpreted from specific geological evidence and knowledge. Mineral Resources are subdivided, in order of increasing geological confidence, into Inferred, Indicated and Measured categories. Portions of a deposit that do not have reasonable prospects for eventual economic extraction must not be included in a Mineral Resource.”

The United Nations Framework Classification (UNFC) similarly defines a Mineral Resource and its subdivisions, applying the UNFC coding system. For the purposes of this GN, mineralization classified into the UNFC’s G4 (“Reconnaissance Study”) category, is excluded from a Mineral Resource. Entities electing to adopt the UNFC or other definitions of Mineral Resources for public financial reporting or statutory reporting purposes must reconcile the Mineral Resources to the CRIRSCO Measured, Indicated and Inferred Mineral Resource categories for valuation purposes

*Petroleum Reserves* are defined by the Society of Petroleum Engineers (SPE) and the World Petroleum Congress (WPC), as “those quantities of Petroleum which are anticipated to be commercially recovered from known accumulations from a given date forward. All (Petroleum) Reserve estimates involve some degree of uncertainty. The uncertainty depends chiefly on the amount of reliable geologic and engineering data available at the time of the estimate and the interpretation of these data. The relative degree of uncertainty may be conveyed by placing reserves into one of two principal classifications, either Proved or Unproved. Unproved Reserves are less certain to be recovered than Proved Reserves and may be further sub-classified as Probable and Possible Reserves

to denote progressively increasing uncertainty in their recoverability.” Proved Reserves can be categorised as Developed or Undeveloped.

The United Nations Framework Classification (UNFC) similarly defines Petroleum Reserves and their subdivisions, applying the UNFC coding system.

166. *Q: Do you think that issuers that are involved only in exploration of mineral resources and are not undertaking or propose to undertake their extraction on a commercial scale should also be classed as mineral companies? Please state your reasons.*

Yes, exploration companies should be included and classed as mineral companies, as per Chapter 19. In other jurisdictions, such as Canada’s National Instrument 43-101, a distinction is made between exploration companies and production companies, or junior mining companies and senior mining companies. The listing reporting requirements are different for the two classes. The distinction is important for potential investors to assess the relative risks associated with exploration companies, with no cash flow, and production companies, with cash flow or proposed cash flow.

END