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Dear Mr. Demarigny,

Subject: Comments from UNECE to CESR Consultation on Recommendations for the Consistent Implementation of the European Commission's Regulation on Prospectuses no.809/2004

We are pleased to provide our comments to CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses no.809/2004 in the attached document.

These comments are prepared by the United Nations Economic Commission for Europe (UNECE) Ad Hoc Group of Experts on the Supply of Fossil Fuels, which is following up the work of the Ad Hoc Group of Experts on the Harmonization of Energy Reserves/Resources Terminology.

As you will see from our comments, there are certain important issues that are not yet clarified. Our hope is that this may be done in cooperation with the Extractive Activities Project Team of the International Accounting Standards Board (IASB). In any event, the UNECE Ad Hoc Group of Experts will be delighted to further assist in any way it can to help develop a set of effective recommendations.

Yours sincerely,

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**Comments from United Nations Economic Commission for Europe
(UNECE) Ad Hoc Group of Experts on Supply of Fossil Fuels to CESR's
Recommendations for the Consistent Implementation of the European
Commission's Regulation on Prospectuses No. 809/2004
(Ref: CESR/04-225b)**

1 Introduction

There is legitimate concern over the development of a variety of standards for reporting performance for international mineral companies. Today, they include national and corporate requirements to meet the needs for resources management by Governments and the management business processes by industry. The strength of the United States capital market imposes SEC requirements on those seeking access to that market. This includes most of the major issuers. In addition there is both this EU/CESR initiative and the initiative of the International Accounting Standards Board in creating International Financial Reporting Standards for extractive activities. Introducing rules different from general industry practice, even if they are not necessarily inconsistent with industry-accepted definitions, is very confusing to the market and leads to additional burdens on the company and any independent expert in ensuring compliance. Further, with the IASB currently considering definitions for extractive activities for the purposes of international financial reporting standards, it would be wholly inappropriate not to take this opportunity to be consistent with them.

2 Background

The comments below are offered on the assumption that CESR cannot wait for the results of IASB. They are to a large extent consequences of Resolution 2004/233 of the United Nations Economic and Social Council of the 16th of July 2004. The text of which is as follows:

“United Nations Framework Classification for Fossil Energy and Mineral Resources

At its 42nd plenary meeting, on 16 July 2004, the Economic and Social Council, recalling its decision 1997/226 of 18 July 1997, welcomed the endorsement by the Economic Commission for Europe of the United Nations Framework Classification for Fossil Energy and Mineral Resources and decides to invite the Member States of the United Nations, international organizations and regional commissions to consider taking appropriate measures for ensuring worldwide application of the Framework Classification. The Council notes that this new classification for fossil energy and mineral resources, which

now includes energy commodities (for example, natural gas, oil and uranium), is an extension of the earlier framework developed for solid fuels and mineral commodities, on which the Council took similar action in 1997 upon endorsement and recommendation by the Economic Commission for Europe.”

The text of the United Nations Framework Classification for Energy and Mineral Resources (UNFC) with definitions supplementary to those quoted in the comments below is found on the UNECE web site at: <http://www.unece.org/ie/se/pdfs/UNFC/UNFCemr.pdf>.

Although the Recommendations apply to the European regulations, it is important that they take the needs of global finance and industry into account, seeking unified definitions and procedures. The UNECE has paid special attention to this when designing the UNFC. The European Reporting Code that is in use in some, but not all, EU countries reflects the CMMI/CRIRSCO classification. It is designed primarily for coal and solid mineral resources. It is incorporated as one of the bases for the UNFC in a form that was agreed between the UNECE and CMMI in 1999.

The details of the UNFC codification and classification provide a three-digit numerical reference code to reserves and resources definitions. This is important, as it overcomes the semantic difficulties inherent in classifications that are based on a single string of definitions. These are considerable in multi-language environments such as the EU with its 20 official languages. For a further account of our efforts in this respect, reference is made to the World Energy Council (2004 Survey of Energy resources, 20th Edition 2004: Foreword and the Article: “Reserves/Resources Terminology – Recent Developments” on page 439).

3 Question of §142

Question: *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?*

Answer: Detailed regulations are justified for mineral companies. A large proportion of their value is represented by the commercially recoverable mineral quantities that they have access to. This is a special feature requiring adapted information set out in detailed recommendations, in addition to the schedules and building blocks of the Regulation.

4 Question of § 164

Question: *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.*

Answer: It is useful to request a valuation report. From a financial reporting perspective, commercially recoverable mineral quantity and value disclosures provide the investors, creditors and other potential and current financial statement users with relevant information. Under appropriate recommendations, such supplemental disclosures provide meaningful and

useful information in assessing future cash flows – which represents a primary objective of financial reporting.

The content and scope defined in §§162 and 163 reads:

162. The prospectus should refer to:

1. Details of reserves:

- a. a description of the company's principal mineral interests together with a statement in respect of the company's reserves giving an estimate of the volume, tonnage in place and grades, as appropriate, each split between proven and probable reserves;*
- b. the expected period of working of those reserves;*
- c. an indication of the periods and main terms of any licences or concessions and the economic conditions for working those licences or concessions;*
- d. indications of the progress of actual working; and*
- e. an explanation of any exceptional factors that have influenced (a) to (d) above.*

2. An issuer that has not been a mineral company for at least the three preceding years is expected to include the following information:

- a) Where the issuer does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested, confirmation that it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.*

b) Financial matters:

- (i) an estimate of the funding requirements of the company for at least two years following publication of the prospectus;*
- (ii) 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 financial year in which extraction of mineral resources is expected to be conducted on a commercial scale; such particulars must include details of the relevant mineral resources to be extracted, the expected prices and grade structures of the saleable resources, mineral concentrates or products, the expected extraction costs of the various extraction stages and the evidence and assumptions on which this information is based; and*
- (iii) confirmation by an independent accountant or auditor that the cash flow estimate has been properly prepared on the basis of the assumptions stated and that the basis of accounting used for the estimate is consistent with the accounting standards and policies of the issuer.*

c) Expert's report:

A report from a suitably qualified and experienced independent expert.

The report must be dated within six months of the prospectus and updated if there have been material developments since that date. The report must state that the existence of natural resources is substantiated by evidence obtained from site visits and observation acceptable to the expert and is supported by details of drilling results, analyses or other evidence and takes account of all relevant information supplied to the expert by the directors.

The expert's report should include:

- a) *Split according to proven and probable reserves, a description of the value, nature and extent, characteristics, methods of exploration or extraction of, and recovery estimates of reserves;*
- b) *Maps and plans showing the nature, extent and principal geological characteristics of workings and a surface location plan showing wells, platforms, pipelines, bore holes, sample pits, trenches and other evidence;*
- c) *Details of any other mineral resources relevant to the long term future of the company;*
- d) *Details of any geophysical and geological evidence used in the estimation of reserves, including information on quality control procedures, the results of drilling and sampling, and the names of the organisations that carried out the investigation and analysis;*
- e) *Production schedule.*
- f) *The date(s) on which commercial extraction by the applicant was commenced, or is expected to commence, on each major property.*
- g) *An indication of the progress of actual working.*
- h) *Commentary on the reasonableness of the directors' forecasts (if any in the document) of the rate(s) of extraction of the major properties or fields;*
- i) *Commentary on the type, extent, condition and value of plant and equipment which is of material significance to the company's operations which is currently in use on the company's major properties or fields or which will be required to achieve the forecast rates of extraction.*
- j) *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.*

163. Definitions:

- "proven reserves" mean:
 - (i) *in respect of mineral companies primarily involved in the extraction of oil and gas resources, those reserves which on the available evidence and taking into account current technical and current economic conditions have a better than 90% chance of being produced; and*
 - (ii) *in respect of mineral companies other than those primarily involved in the extraction of oil and gas resources, those measured mineral resources (see below) of which detailed technical and economic studies have demonstrated that extraction can be justified at the time of the determination and under specified economic conditions.*
- "probable reserves" mean:
 - (i) *in respect of mineral companies primarily involved in the extraction of oil and gas resources, those reserves which are not yet "proven" but which on the available evidence and taking into account current technical and current economic conditions have a better than 50% chance of being produced; and*
 - (ii) *in respect of mineral companies other than those primarily involved in the extraction of oil and gas resources, those measured and/or indicated mineral resources (see below), which are not yet "proven" but of which detailed technical and economic studies have demonstrated that extraction can be justified at the time of the determination and under specified economic conditions.*
- "measured mineral resource" is that portion of a mineral resource for which tonnage or volume can be calculated from outcrops, pits, trenches, drill-holes or mine workings,

supported where appropriate by other exploration techniques. The sites used for inspection, sampling and measurement must be so spaced that the geological character, continuity, grades and nature of the material are so well defined that the physical character, size, shape, quality and mineral content will be established with a high degree of certainty.

– “indicated mineral resource” is that portion of a mineral resource for which quantity and quality can only be estimated with a lower degree of certainty than for a measured mineral resource because the sites used for inspection, sampling and measurement are too widely or inappropriately spaced to enable the material or its continuity to be defined or its grade throughout to be established.

The paragraphs should be changed to:

162. The prospectus should refer to:

1. Details of reserves:

- a. a description of the company’s principal mineral interests together with a statement in respect of the company’s reserves each split between developed reserves, additional reserves to be recovered through committed projects (committed reserves) and additional reserves to be recovered through projects that are justified but not yet committed (uncommitted reserves). In addition, an estimate shall be given of proven and probable reserves.
- b. particulars of the value of developed reserves, committed reserves and uncommitted reserves (including environmental considerations).
- c. a list of the main licenses, concessions and other arrangements regulating the recovery of reserves, indicating the main terms and conditions that apply to each; and
- d. an explanation of any exceptional factors that have influenced (a) to (c) above.

The valuation of reserves shall be accompanied by:

- an estimate of net present value (or a valuation arrived at on an alternative basis);
- the tax effect should be clearly explained;
- the principal assumptions on which the valuation of reserves is based including those relating to discount factors, exchange rates and economic conditions; and
- information to demonstrate the sensitivity to changes in the principal assumptions.

2. An issuer that has not been a mineral company for at least the three preceding years is expected to include the following information:

- a) Where the issuer does not hold controlling interests in a majority (by value) of the properties, fields, mines, companies or other assets in which it has invested, confirmation that it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.
- b) Financial matters:
 - (i) an estimate of the funding requirements of the company for at least two years following publication of the prospectus;

- (ii) 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 financial year in which extraction of mineral resources is expected to be conducted on a commercial scale; such particulars must include details of the relevant mineral resources to be extracted, the expected prices and grade structures of the saleable resources, mineral concentrates or products, the expected extraction costs of the various extraction stages and the evidence and assumptions on which this information is based; and
- c) Expert's report:
 - A report from a suitably qualified and experienced independent expert confirming the information provided;
 - where site visits have not been made, the reasons;
 - a commentary on the reasonableness of the directors' forecasts (if any in the document); and
 - 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.

5 Question of 165

Question: *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.*

163. Definitions:

The proposed petroleum reserve definitions of the CESR should not be adopted, as they are not identical to any current international industry-accepted definitions. However, if the CESR cannot wait for the IASB to finalise its position, it should at least ensure that it adopts definitions that reflect current international consensus on appropriate definitions. The UNFC definitions provide, to the best of our knowledge, the only internationally recognised reporting system that can be applied to energy and mineral reserves and resources, as well as being closely aligned to the widely-used petroleum definitions and classification system of the Society of Petroleum Engineers, World Petroleum Congress and American Association of Petroleum Geologists for oil and gas, with the IAEA/NEA system for uranium, and with the CMMI/CRIRSCO system (also known as the European Reporting Code) for other solid minerals and coal. The definitions take account of differences in recovery processes between solids and fluids, and of differences in commonly used terminology.

The following definitions comply with UN Economic and Social Council resolution 2004/233.

– “Reserves”:

- (i) in respect of oil and gas resources, reserves are recoverable quantities whose production is justified under the technological, economic, environmental and other relevant commercial conditions, realistically assumed or specified at the time of the estimation; where development and/or production plans have demonstrated production of the

reported quantities to be justified from sources of reasonably assured, estimated and inferred geological conditions.

- (ii) in respect of coal, uranium and other solid minerals, reserves are quantities, reported in tonnes/volume with grade/quality, demonstrated by means of a prefeasibility study, feasibility study or mining report, in order of increasing accuracy, that justify extraction under the technological, economic, environmental and other relevant commercial conditions, realistically assumed at the time of the determination. The Mining Report and/or feasibility Study has demonstrated extraction of the reported quantities to be justified. Cost data must be reasonably accurate, and no further investigations should be necessary to make the investment decision. The information basis associated with this level of accuracy comprises the reserve figures based on the results of detailed exploration, technological pilot tests and capital and operating cost calculations such as quotations of equipment suppliers. A Pre-feasibility Study provides a preliminary assessment of the economic viability of a deposit and forms the basis for justifying further investigations (detailed exploration and feasibility study). It usually follows a successful exploration campaign, and summarizes all geological, engineering, environmental, legal and economic information accumulated to date on the project. The pre-feasibility study addresses the items listed under the feasibility study, although not in as much detail. However, reserves are limited to the quantities produced from sources with detailed exploration that involves the detailed three-dimensional delineation of a known deposit achieved through sampling, such as from outcrops, trenches, boreholes, shafts and tunnels. Sampling grids are closely spaced such that size, shape, structure, grade, and other relevant characteristics of the deposit are established with a high degree of accuracy. Processing tests involving bulk sampling may be required. A decision on whether to conduct a feasibility study can be made from the information provided by detailed exploration.

– “proven reserves” mean:

- (i) in respect of oil and gas resources, Proven reserves are a specifically defined subset of committed reserves. Proven reserves are those quantities of petroleum which, by analysis of geological and engineering data, can be estimated with reasonable certainty to be commercially recoverable, from a given date forward, from known accumulations and under current economic conditions, operating methods, and government regulations. Proven reserves can be categorized as developed or undeveloped. If deterministic methods are used, the term reasonable certainty is intended to express a high degree of confidence that the quantities will be recovered. If probabilistic methods are used, there should be at least a 90% probability that the quantities actually recovered will equal or exceed the estimate.

Proven developed reserves are a particularly important subset of proved reserves. They allow the recognition of reserves for which the investments have been made and are accounted for.

They are defined as follows:

Proven developed reserves are quantities of proven reserves that are estimated to be recovered from existing wells and which will be processed and transported to market using facilities and infrastructure that exist at the date of the estimate; and

- (ii) in respect of mineral commodities other than oil and gas resources, a proven mineral reserve is the economically mineable part of a recoverable quantity assessed by a feasibility study or actual mining activity usually undertaken in areas of detailed exploration (measured recoverable quantity). It includes diluting materials and allowances for losses which may occur when material is mined and milled. Appropriate assessments, which 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, with a high degree of confidence at the time of reporting, that extraction is justified. A feasibility study or actual mining activity, usually undertaken at the detailed exploration stage, may demonstrate a proved mineral reserve to be economically mineable.

– “probable reserves” mean:

- (i) in respect of oil and gas resources, those quantities which together with the proven reserves represent the best estimate (to be defined in the statement, usually as the mean, the mode or an equivalent measure in the case of deterministic estimates) of the committed reserves. Probable developed reserves are quantities of probable reserves that are estimated to be recovered from existing wells and which will be processed and transported to market using facilities and infrastructure that exist at the date of the estimate.
- (ii) in respect of mineral resources other than oil and gas, those quantities in addition to the proven reserves, reported in tonnes/volume with grade/quality, demonstrated by means of a prefeasibility study, feasibility study or mining report, in order of increasing accuracy, that justify extraction under the technological, economic, environmental and other relevant commercial conditions, realistically assumed at the time of the determination. The quantities shall be known through detailed or general exploration. Detailed exploration involves the detailed three-dimensional delineation of a known deposit achieved through sampling, such as from outcrops, trenches, boreholes, shafts and tunnels. Sampling grids are closely spaced such that size, shape, structure, grade, and other relevant characteristics of the deposit are established with a high degree of accuracy. Processing tests involving bulk sampling may be required. A decision on whether to conduct a feasibility study can be made from the information provided by detailed exploration. General Exploration involves the initial delineation of an identified deposit. Methods used include surface mapping, widely spaced sampling, trenching and drilling for preliminary evaluation of mineral quantity and quality (including mineralogical tests on laboratory scale if required), and limited interpolation based on indirect methods of investigation. The objective is to establish the main geological features of a deposit, giving a reasonable indication of continuity and providing an initial estimate of size, shape, structure and grade. The degree of accuracy should be sufficient for deciding whether a Prefeasibility Study and detailed exploration are warranted.

6 Question of §166

Question: *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.*

On document CESR/02-185b, CESR consulted on mineral companies considering mineral companies those which principal activity is or is planned to be the extraction of mineral resources. Issuers that are involved only in exploration of mineral resources and are not undertaking or propose to undertake their extraction on a commercial scale (i.e. as a business activity) would not be classed as mineral companies. CESR considered that the specific characteristics of mineral companies should be dealt by requiring additional information.

Answer: These companies should be classed as mineral companies, but only if a suitable Independent Expert's report can be provided. Such a report would be more difficult to provide, as there would be a lot less information for them to base their report upon. By not including such companies as mineral companies, you are requiring them to have a three-year track record, which might be unduly harsh.

7 Question of §167

Question: *Do you agree with the proposed recommendations? If not, please state your reasons.*

The changes are suggested for the following reasons:

1. Definitions comply with UN ECOSOC resolution 2004/233.
2. The changes avoid certain weaknesses inherent in the proposed text, namely:
 - a. Reserves are now defined;
 - b. A number of specific rules are replaced by functional requirements for identifying value. This avoids a series of amendments necessary in the proposed text to translate the wealth created through mining activities to value to the reporter, going through the many variations found under legislated fiscal systems (concessions), negotiated fiscal systems (production or income sharing agreements, service contracts etc...) and other arrangements that have grown in importance over the last two decades. Some of these arrangements split the value between stakeholders by splitting the income, others by splitting the produced quantities. Combinations of these are also encountered. For these and other reasons there is not a direct relationship between reserves of the reporter and value to the reporter. In practice, a number of issues need to be resolved in order to define the issuer's entitlement to reserves for the purposes of financial reporting. This process is simplified by addressing the value of reserves directly. The issue of reserves valuation and ownership is not elaborated in the UNFC. It was recognised to be essential for financial reporting, and foreseen to be developed in conjunction with other financial reporting standards. We presume that this will be done, and that this process will identify circumstances when valuation may not be required. The wording in § 162 above is a general, but not exhaustive, statement consistent with that in the listing rules of the London Stock Exchange.
 - c. In §162.2a, a reference to companies is added in order to allow inclusion of equity accounted affiliates;
 - d. The work of the expert is defined in functional terms. This will make it easier for multi-asset issuers to register. It is not suggested to make the details of the expert's report public, as this in many cases may be unacceptable. Further clarification is required to define the qualification that an expert must have in each circumstance, in order to provide investor protection.

- e. Definitions in the consultation paper are replaced with those of the UNFC for Energy and Mineral Resources. The UNFC should be a reference for further detailed definitions.

Although not directly related to the reserves issue paragraph 162.b(iii) introduces a report on the two-year cash flow. This is not a current requirement in the United Kingdom and seems rather strange that it has been singled out hence the following comment:

We have two comments in respect of paragraph 162.b(iii). Firstly a cash flow estimate is not dependent upon the issuer's accounting standards and policies so we do not see how an independent accountant or auditor could give the opinion envisaged. Secondly we do not understand why this statement has been singled out for being reported on when, for example, a working capital statement is not. The inclusion of the word "properly" in the form of opinion will also give rise to considerable uncertainty as to what it means.