COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Date: 23 April 2010
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CONSULTATION PAPER

CESR proposed amendments to CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses nº 809/2004 (CESR/05-054b) regarding mineral companies (paragraphs 131-133)

Deadline for contributions: CESR invites responses to this consultation paper by **15 July 2010**. All contributions should be submitted online via CESR's website under the heading 'Consultations' at www.cesr.eu. All contributions received will be published following the close of the consultation, unless the respondent requests their submission to be confidential.

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EXECUTIVE SUMMARY

Background

1. On 10th February 2005 CESR adopted CESR/05-054b CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses nº 809/2004 (the 'CESR Recommendations'). 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).

2. In the case of the PD, the Level 3 measures set out in the CESR Recommendations include, among other things, recommendations designed to facilitate co-ordination among competent authorities when applying Article 23 of the PD Regulation. This article gives competent authorities powers to require additional information for certain specialist issuers, including mineral companies. Sections 131-133 of the CESR Recommendations set out those recommendations to competent authorities as to how the PD Regulation should be implemented in the case of mineral companies. These sections provide, in other words, key provisions for mineral companies raising capital on EU regulated markets.

3. On the basis of representation from member state competent authorities on how these provisions have operated in practice since the implementation of the Prospectus Directive, CESR has developed proposals to amend sections 131-133 so as to provide an improved and harmonised approach to mineral company prospectuses.

Purpose

4. The purpose of this consultation document from CESR is to present CESR's proposals to amend its recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses nº 809/2004 as they impact mineral companies and to seek comment on those proposals with a view to issuing revised Level 3 measures.

5. The revision is intended to address an existing need for clear harmonised prospectus disclosure standards for mineral companies in the EU, ensuring in the process that disclosure meets existing international standards. It seeks to do so in a way that will assist the ongoing process of international convergence of standards in these sectors.

Areas covered

6. The consultation deals with mineral company disclosures in prospectuses prepared under the PD. It sets out proposals to revise the additional disclosures to be required by EU competent authorities for prospectuses published by mineral companies in accordance with the PD. The proposals aim to:

   - Establish clear minimum disclosure standards for mineral company prospectuses
   - Change the rules on when a competent persons report (CPR) should be included
   - Clarify which international standards may be used
   - Establish CPR content requirements and competence and independence criteria
   - Replace the existing requirement for a cash flow forecast for certain companies

Consultation period

7. The consultation closes 15th July 2010.

II BACKGROUND TO THE PROPOSAL

1. Following representations from member state competent authorities, CESR has developed proposals to amend CESR/05-054b, its Level 3 recommendations on the Prospective Directive so as to improve the implementation of the Prospectus Directive as it impacts mineral companies.

2. CESR invites responses to this consultation paper on its proposed amendments.

3. Respondents to this consultation paper can post their comments directly on CESR's website (www.cesr-eu.org) under the section "consultations".

Introduction

4. On 10th February 2005 CESR published CESR/05-054b CESR's recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses nº 809/2004 (the 'CESR Recommendations'). 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 the Commission regulation (Level 2), co-operation among regulators to harmonise implementation (Level 3) and enforcement (Level 4).

5. In the case of the PD, the Level 3 measures that are set out in the CESR Recommendations include, among other things, recommendations designed to facilitate co-ordination among competent authorities when applying Article 23 of the PD Regulation. This gives competent authorities powers to require additional information for certain specialist issuers, including mineral companies. Sections 131-133 of the CESR Recommendations set out those recommendations to competent authorities as to how the PD Regulation should be implemented in the case of mineral companies in order to ensure a harmonised approach across Europe. They provide, in other words, key provisions for mineral companies raising capital in on EU regulated markets.

6. Member state competent authorities now have several years of experience of the operation of the CESR Recommendations since the PD was implemented in 2005. On the basis of feedback from member state competent authorities, who have themselves received feedback from stakeholders, CESR has been made aware that there is scope for improvement of the provisions within the existing CESR Recommendations that relate to mineral companies and has as a result developed the proposals to revise sections 131-133. The proposals have been developed following discussions with a range of industry experts, lawyers, bankers, international regulators in non-EU jurisdictions and other stakeholders.

Significance of the sectors

7. Mineral companies, which include both mining and oil and gas companies, account for a significant and growing proportion of the overall market capitalisation of EU share markets. At the time of writing, the sectors represent 14% of the market capitalisation of the DJ Stoxx Euro 600 index, a broad measure of European stock markets. They are also increasingly active in EU primary markets and raised $108bn of new funds in the last 5 years (source: Dealogic). Mineral companies are often among the most substantial enterprises trading in European markets. 11 of the largest 100 European issuers are mineral companies (source: FTSE). Inevitably this makes them trans-national in character, with many of them having non-European heritage.

8. Mineral companies are different from other companies trading on stock markets in that a key factor in the assessment of their value is their reserves and resources. A key challenge for regulators of mineral company securities markets therefore is to ensure appropriate levels of transparency and assurance over the reserves and resources figures they report to the market.

To meet this challenge, securities markets in most jurisdictions with substantial minerals businesses have evolved sophisticated systems to enable reserves and resources to be evaluated by experts and reported to investors. And in recent decades considerable moves have been made towards international convergence of these differing standards. In the case of mining this has led to the formation of the Combined Reserves International Reporting Standards Committee ("CRIRSCO"). In the case of oil and gas, this has led to a reporting code, the Petroleum Resources Management System ("PRMS") being created jointly by the Society of Petroleum Engineers, the World Petroleum Council, the American Association of Petroleum Geologists and the Society of Petroleum Evaluation Engineers in the case of oil and gas. CESR welcomes these developments.

The existing CESR Recommendations as they impact mineral companies

9. The harmonised prospectus regime for the EU created in 2005 by the implementation of the PD dealt with mineral companies in Level 3, in sections 131-131 of the CESR Recommendations. These set out a very basic framework for additional disclosure by mineral companies of reserves and resources information. In summary these provisions provide:

    - a basic definition of 'mineral company' based on the idea that a company comes within scope if its 'principal activity' is that extraction of resources. The definition clarifies that 'exploration-only' minerals companies are excluded from the scope of the provisions. It is silent on which types of securities are within scope which means the provisions apply to all transferable securities including shares, wholesale debt and depositary receipts;
    - a small number of key disclosures on the company's reserves and resources to be included in all prospectuses in scope; and
    - where a company does not have a three year trading track record, an additional requirement to include a competent person's report (CPR) by a suitably qualified independent person and a 2 year cashflow projection reported on by reporting accountants

10. Relative to other markets with significant mineral sectors, the existing provisions in the EU framework that specifically relate to minerals companies are slight. Significantly, they do not address many of the key questions addressed in securities regulations in other jurisdictions with traditional strengths in these sectors. So whilst they include the idea of including a report by an independent person, the 'minerals expert report' as it is called in the current CESR Recommendations or the 'competent person report' as it is called in other jurisdictions, they do not set out a reporting or valuation code against which the report can be prepared. Nor do they set out content requirements, and nor do they establish competency and independence requirements. Rather, the existing recommendations state simply that the content of the report 'should be agreed with the competent authority'. This approach is unique within the PD regime and it means, in effect, that these sectors represent the last sectors where the process launched by the PD of harmonising minimum disclosure for raising capital in the EU is still to be completed.

Difficulties with the existing provisions

11. Market practitioners and industry experts have commented that the existing provisions lack clarity compared to regulatory standards in other markets. Feedback from a practitioners has enabled us to identify a number of difficulties with the existing provisions.

12. In particular, the mechanism in the current CESR Recommendations which delegates back to member states the responsibility for specifying the content and by implication the reporting standard of the CPR (where one is required) is problematic. It means different member states will specify different requirements for mineral company prospectuses which is contrary to the harmonising principle of PD. This also creates considerable practical difficulties for practitioners planning transactions as there is no certainty as to which reserve reporting codes are acceptable and what detailed content requirements should apply. Preparation of a CPR is a substantial exercise and, where one is required, its preparation will represent a relatively significant

proportion of the total amount of work a company will need to do in support of a capital raising exercise. Our soundings suggest practitioners would prefer certainty to the flexibility the existing approach admittedly offers.

13. Another significant issue is the provision that specifies when a CPR is required is not aligned with market practice and expectations. Currently a CPR is required if a company does not have a three year track record. Effectively, this provision provides a rough and ready division of companies between seniors and juniors and then exempts the seniors from production of a CPR whilst requiring one in respect of juniors. This is not in line with market practice and expectations – the market expects a CPR when a company first comes to the market irrespective of whether the company has been established for three years or not. Neither three years of financial accounts nor any other mandatory disclosure requirement in the PD regime delivers the outcome the market needs on every float, that is appropriate transparency and assurance of the company's resources and reserves as well as other supporting information typically contained in a CPR on geology, facilities, and so on. Similarly, however, market expectations do not anticipate a CPR will be produced for a further issue of securities where the issuer has kept the market appraised of developments on an ongoing basis.

14. Stakeholders have also fed back that the requirement for a detailed cash flow forecast accompanied by an accountant's opinion ('due and careful enquiry') is disproportionately onerous and does not provide useful information. Accounting firms argue strongly they are in any case not professionally qualified to offer such an opinion.

15. Finally, our soundings have identified a range of other issues including:

- the competence and independence criteria required of technical experts are not defined, again creating uncertainty for practitioners planning fund raising transactions a considerable time in advance:
- the scope of the provisions give rise to uncertainty as to what companies are and are not minerals companies;
- the provisions apply to wholesale debt issuance, contrary to the expectations of market practitioners in this area; and
- the provisions do not tend to use industry standard terminology.

Q1 – do you agree with our analysis as to the shortcomings of the existing provisions?

Framework for new proposals

16. In seeking to address the shortcomings highlighted by stakeholders and to establish a clearer harmonised approach to prospectus disclosure for mineral companies we have engaged with a range of mineral experts, advisors and regulators in other jurisdictions. And in seeking to establish a new framework for disclosure in prospectuses by mineral companies, we have observed market practice closely and in particular have observed that, despite the fact that the EU regulatory framework for securities markets (ie the PD, TD and MAD) does not address mineral companies in any particular detail and does not lay down prescriptive requirements for disclosure for these companies, there is a considerable level of uniform market practice already in place to build upon.

17. In particular, mineral companies will almost always produce a CPR when the company first comes to market even though in many cases the CESR Recommendations would not require it. Thereafter they continue to update the market with reserves and resources figures as part of

their financial reporting cycle, even though again there is nothing in the relevant EU regime, the Transparency Directive, which would require them to do this. Clearly significant discoveries and other significant changes to reserves and resource figures which may be price sensitive must be (and are) reported on an ad hoc basis as soon under member states' implementations of the Market Abuse Directive.

18. With this in mind we have built a new framework based on the following principles:

- that the new provisions should work in conjunction with and seek to bolster the established market practice we mention above, and in particular retaining the CPR concept as a key component of the regulation but also noting that it can be a costly exercise for companies and should not be imposed unduly;
- that prospectus disclosure for minerals companies should be in line with global standards; and
- that the process of international convergence of the reporting and valuation codes should be encouraged but is not best served by the proliferation of new international codes or the endorsement of any one particular code over another.

19. Taking these principles, the revised framework proposed in this consultation and set out below aims to:

- ***Establish which companies and securities are in scope*** – we propose replacing the 'principal activity' test with a simpler clear test that the company should possess 'material mineral projects'
- ***Clarify when a CPR should be required in a prospectus*** – we propose a mechanism which will have the effect of ensuring CPRs should be required for all IPO prospectuses but not further issues where the issuer has been properly updated the market since float. We also provide for CPRs where the prospectus sets out proposals to acquire significant new projects or where there has been other material change, but only on the projects effected
- ***Set out the basic disclosure requirement for all prospectuses in scope*** – whether or not a CPR is included in the document. This refreshes and updates existing section 132.
- ***Clarify which reporting and valuation standards may be used*** – we have not endorsed any one particular reporting or valuation standard but instead have set out a list of appropriate standards which an issuer may use.
- ***Provide CPR content requirements and competence and independence provisions*** – in response to the desire for clarity and certainty over content requirements, an appendix sets these out in detail. Similarly the main body of the recommendations provide for competence and establish clear independence criteria
- ***Replace the requirement for a cash flow forecast*** – we propose replacing the existing provision with a new requirement to expand the use of proceeds section of the prospectus where new funds are being raised to finance exploration or development.

20. We have also taken the opportunity to ensure the new framework requires consistency in mineral disclosure in prospectuses and to ensure the provisions use more easily recognisable industry terminology.

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?

III FULL TEXT OF THE PROPOSED NEW PROVISIONS

This section sets the text of the proposed new provisions. For the purpose of this consultation draft they are numbered 1-7. However, should these proposals proceed as proposed they will be grouped and inserted as sections 131 (sections 1 and 2), 132 (section 3) and 133 (sections 4, 5, 6 and 7). A detailed explanation follows in the section IV.

1b MINERAL COMPANIES

1) Considering the specific features of minerals and Article 23 of the Regulation, CESR 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 that 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 3-7.

2) For the purposes of these recommendations:

   a) "mineral companies" means companies with material mineral projects.
   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).

3) All prospectuses within the scope set out in paragraph (1) by mineral companies should include the following up to date information:

   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 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.

4) In addition, all prospectuses by mineral companies within the scope set out in paragraph (1) should (except where the exemption in paragraph 5 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 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 per asset and not on a consolidated basis:
   i) in the case of a mining project – as set out in Appendix II;
   ii) in the case of an oil and gas project – as set out in Appendix III;

5) An issuer is exempt from including the competent persons report required by paragraph 4 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 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) 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.

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 1sJuly 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 1sJuly 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.

7) 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.

APPENDIX I
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 lssuers Engaged or to be Engaged in Significant Mining Operations", as amended (İndustry 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 – content

Competent persons should provide competent persons reports structured in accordance with the specific formats required or recommended under the code, statute or regulation the company is reporting under (see Appendix I). Where the code does not include specific requirements or recommendations as to the content of the competent persons report, the CPR should include the information set out in this appendix.

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 that mineral resources are reported 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 – 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 – content

Competent persons should provide competent persons reports structured in accordance with the specific formats required or recommended under the code, statute or regulation the company is reporting under (see Appendix I). Where the code does not include specific requirements or recommendations as to the content of the competent persons report, the CPR should include the information set out in this appendix.

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 that mineral resources are reported 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;
   (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 – 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.

IV EXPLANATORY COMMENTARY ON THE NEW PROVISIONS

1. This chapter sets out an explanation of each of the new provisions proposed in the new framework for mineral companies in order of their appearance.

Section 1 – what companies are in scope

2. Section 1 sets out the scope of these provisions. Compared with the existing recommendations, the scope is altered in two ways. Firstly, wholesale debt is exempted. (Retail debt, depository receipts and derivative securities issuance are not.) This makes the scope of these provisions more consistent with the recommendations on other specialist companies like property and shipping companies. We are aware that the Commission is currently proposing amendments to the PD which would change the denomination threshold for wholesale debt securities. We currently anticipate that our proposed revised framework for mineral companies will be finalised prior to the conclusion of the PD amendment so we have used the current €50,000 denomination here. However, we would anticipate that should the Commission's proposal proceed then this threshold would be altered in the future to conform with the new threshold.

3. The second change is that the revised recommendations do not exempt exploration-only companies, as they do currently. Although such companies are not significant in size terms, on reflection we cannot find any basis why such companies should be exempted. The valuation of exploration-only companies will still be based on the potential of the properties they are exploring or the projects they are developing and will still therefore be subject to the need for appropriate transparency and assurance. Moreover, it is arguable that reliable disclosure of resources/reserves is even more significant for these early stage and often highly speculative businesses.

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

Q5 – should we include exploration only companies?

Section 2 – definitions

4. Section 2 provides the key definitions used in the new framework. The key change is the replacement of the existing 'principal activity' test with a new definition which defines mineral companies as 'companies with material mineral projects'. This is in our view more outcome-focused. In the past companies have, based on the 'principal activity' test, argued they are not 'mineral companies' but are (for example) processing or shipping companies which happen to have some extraction activity. In our view this is irrelevant. It does not matter what else the issuer does and whether the company may have other dominant activities as part of their business portfolio – what matters is whether they are seeking to exploit mineral resources and whether that activity is material to the assessment of their securities. If so, then additional disclosure is warranted.

5. Also important is the new definition of 'mineral projects'. This has been developed with assistance of geological consultants from both the mining and the oil and gas spheres.

6. In framing these proposals we have intentionally decided not to include a definition of what is 'material' within the proposed provisions. Our soundings indicated that some stakeholders would prefer the certainty of a prescriptive and quantitative definition of materiality. However, on reflection we felt it could damage the integrity of the PD regime as a whole to have one specialist area use a definition of materiality that the rest of the regime does not share. The introduction to the CESR Recommendations already includes an acknowledgement of the

materiality principle which is in force under Article 5.1 of the Prospectus Directive and Regulation which will also apply to the CESR Recommendations and therefore to those recommendations which relate to mineral companies.

7. Finally a definition of the defined term 'appropriate multi-lateral trading facility', used in section 5, is provided in the definitions section. This term is discussed and explained below in paragraphs 18-20.

Q6 – do you agree with our proposed definitions?

Q7 – should we define materiality? If so, how?

Section 3 – basic disclosure required in all prospectuses in scope

8. This section contains disclosure requirements that will apply to all prospectuses. Subsections (a) through (e) include a revised list of items currently required by existing section 132. Subsection (f) contains a replacement of the existing section 133(b) cash flow forecasting requirement. We positioned it here because on reflection, and as explained below, we believe they should potentially apply in all situations and the disclosures should come from the issuer not an expert.

Sub-sections (a) – (e): basic disclosure items

9. The list of standard disclosure items contained in sub-sections (a)-(e) and updating existing section 132 has been revised to bring the wording more in line with standard industry terminology and practice. For example we have included a new clarification that resources and reserves figures should be presented separately. We have also required that this information must be up to date and must reflect the current state of development of the issuer's mineral projects. As with the existing provision there is no requirement that the disclosure should come from an independent expert.

Sub-section (f): replacement of cashflow funding statement

10. Removal of existing sections 133(b) is one of the principal objectives of these proposals. Stakeholders argue that forecasting cashflows with the precision required by the existing provision is too difficult and subject to a greater level of uncertainty than is appropriate for a public document such as a prospectus. They also argue accountants are not qualified to opine on the forecasts. But while we accept these points, our soundings indicate support still exists for provision which takes account of the cashflow profiles exhibited by companies undertaking projects that have not started to generate revenue and require expenditures to progress to the production stage. As a result, we are proposing replacing the provision rather than deleting it in its entirety.

11. The replacement provisions we have developed are set out in section 3(f). They require management prepared information with no requirement for an external expert opinion. They only apply where the proceeds are being used to fund exploration and/or the development of mineral resources. They work by requiring issuers to expand the use of proceeds requirement in item 3.4 of Annex III (or the relevant items under the equivalent PD Regulation annexes for retail debt, depository receipts and derivative securities) so that it sets out the objectives of the exploration/development (sub-section (i)) and establishes key milestones ('significant events which must occur for the business objectives…to be accomplished' – sub-section (ii)). They then go on – in sub-section (iii) – to require the inclusion of a management-prepared statement setting out all planned expenditure on the development or exploration and the how it will be funded. We have considered carefully the length of time over which this projection should extend and have attempted to achieve a balanced requirement of 18 months in an attempt to avoid a projection

extending too far into the future (e.g. two or more years) which in many cases is unreasonable and unreliable. In Canada, a similar provision in the Toronto Stock Exchange rules requires an 18 month projection of funds to complete a planned programme of exploration and/or development. Finally sub-section (iv) requires a statement setting out the sources of the funding where additional funding beyond the current net proceeds (eg debt facilities, a second round fund raising) is required to achieve the key milestones.

Final sub-section

12. Finally, section 3 ends with a relatively straightforward proviso that where any inconsistency between the information disclosed pursuant to this section and information that has already been put into the public domain by the issuer exists then that inconsistency should be explained.

Q8 – do you agree with our proposal to update existing section 132?

Q9 – do you agree with our proposal to remove the requirement for a cashflow projection?

Q10 – do you agree with our proposed replacement for section 133(b)?

Section 4 – competent persons reports

13. As noted above a key component of this proposal is retention of the competent person report concept but with revised criteria for inclusion in a prospectus. As we also note above, we have observed that market practice expects a CPR at float but not thereafter in normal circumstances. The new framework seeks to deliver this through an exemption structure. It starts with a presumption that a CPR should be included in all prospectuses within scope but then goes on to set out, in the form of an exemption, the basis for omitting one. The basic requirement that a CPR is required for all prospectuses in scope is set out in section 4. The exemption is set out in section 5 and explained below.

14. Section 4 also provides the key rules governing the preparation of CPRs. The areas addressed are:

- ***the qualifications of the person providing the report*** – section 4(a) provides that the competent person be suitably qualified and independent. This is achieved by either meeting the requirements of the relevant reporting code or the terms of the provision itself. Our preference would have been to rely on the reporting codes issued by the professional bodies but it has been necessary to structure it this way because not all codes address the requirements of competency. The requirement that a competent person be a member of a recognised professional organisation ensures that the individual possesses sufficient professional competence and is subject to disciplinary powers, including the power of the association to suspend or expel a member. We do not consider it necessary to formulate a list of acceptable recognised professional associations. The independency criteria has been defined and will continue to ensure the quality of resources and reserves data disclosure.

- ***the age of the report*** – section 4(b) provides for an effective date for CPR (being the date at which the information included in the CPR is valid) and says it must be within six months from the date of the prospectus and be updated if further material data becomes available after the effective date. This requirement is consistent with the international practice in Canada, South Africa and proposed new Hong Kong mineral rules. CESR considers that CPRs must reflect the current state of development of mineral projects. CESR acknowledges that a CPR may constitute a current CPR even if prepared considerably before the date of the prospectus, provided that the information in the CPR remains accurate and there has been no material change. For example, a change in mineral resources or reserves due to

normal depletion from a producing property generally will not be considered to be a material change to the property as it should be reasonably predictable based on the company's public disclosure record.

- ***reporting and valuation standards*** – section 4(c) requires CPRs to be prepared in accordance with Appendix I. This is explained separately below. .

- ***content*** – section 4(d) specifies the content of the CPR in detail, requiring appendix II to be adhered to in the case of oil and gas and appendix III in the case of mining. These are also explained separately below.

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

Q12 – do you agree with our proposal on how old a CPR should be?

Section 5 – exemption from the requirement to include a CPR

15. Section 5 sets out the exemption from the requirement in section 4 to include a CPR. Taken together with section 4, it represents a revised trigger for a CPR. Under the current CESR Recommendations a CPR is required where the issuer does not have three years of trading. Under the revised trigger, a CPR will always be required for an IPO but in most cases will not be required for a further issue.

16. As noted above, in constructing the revised trigger we have relied on the existence of relatively well entrenched market practices under which publicly traded issuers regularly report movements in their estimated reserves and resources to the market both on an ad hoc basis and as part of their regular reporting cycle. Sections 4 and 5, taken together, are intended to ensure that where this practice has been observed and estimates of resources and reserves have been put into the market in accordance with an internationally recognised reporting code the issuer may rely on reproduction of that information and no new CPR would be needed. In summary, the key conditions for the exemption are therefore that the company published a CPR at admission (condition (a)), is already publicly traded ie is not a new applicant to its market (condition (b)), and has kept its market up to date (condition (c)). Where these conditions have been met, our view is the costs of insisting on a new CPR would outweigh the benefits and therefore it is not warranted. Where however they have not been met, there is unlikely to exist sufficient information available to investors to enable them to invest.

17. The proviso in the final paragraph is a 'grandfathering' provision which deals with companies admitted to trading before existing market practice evolved. Some of these never have published a CPR on admission but nonetheless have over many years continued to update the market on movements in resources/reserves. We have taken the date of the implementation of the PD as the date by which to anchor this provision.

18. It will be noted that the scope of the exemption extends beyond regulated markets and overseas equivalents to companies admitted to certain multi-lateral trading facilities (MTFs). This is on the condition that the MTF has adopted rules and procedures which are, in the opinion of the home competent authority, equivalent to articles 6 (1)-(4) and (6) of the Market Abuse Directive (MAD) which are the core provisions through which MAD ensures that issuers notifiy price sensitive information to markets.

19. We made the provision 'platform neutral' ie available to both regulated market issuers and MTF issuers to cater for the small number of instances in which MTF-traded issuers have to prepare a prospectus for a pre-emptive further issue. MTF-traded issuers are normally outside the scope of

the PD. But where they carry out a pre-emptive further issue these transactions are normally public offers as defined in the PD and as a result a prospectus is normally required. Where this is the case, we believe that provided the MTF has an appropriate price sensitive information disclosure regime in place then there is no reason why they should not be treated the same as a regulated market issuer. This is because we can find no basis within the detail of either regulatory environment for a bias towards regulated markets in this area. Other than the disclosure provisions within article 6 of MAD as they relate to issuer obligations (which we specifically cite in our definition of 'appropriate multi-lateral trading facility'), there are no specific provisions anywhere within the EU regulated market framework that delivers our key criterion for the exemption, that the reserves and resources have already been measured and communicated to the market using an internationally accepted code. Given this, we think that in these very limited circumstances where it is necessary for an MTF issuer to issue a prospectus for a further issue, it would be unfair to require it to report on its reserves and resources in circumstances when we would not require it of a regulated market issuer.

20. Finally, it should also be noted that the current draft of the provisions are dependent on a defined term, 'appropriate multi-lateral trading facility'. This we define as an MTF "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)." We are aware that the Commission and Council is currently considering within the context of a number of currently ongoing Level 1 reviews proposals to extend market abuse rules to MTF-quoted securities. Should such proposals advance then clearly a proviso such as this within the Level 3 framework will be redundant and we will not therefore include it.

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?

Section 6 – additional circumstances in which a CPR will be required

21. Section 6 has been developed in response to concerns that there will be instances where a CPR is merited in a further issue situation notwithstanding the fact that a company has continued to update the market. These instances fall into two categories: firstly, where the further issue is to fund a significant new acquisition of resources; secondly, where there has been other organic change or changes in a company's resource base and that change is significant enough to merit a further CPR.

22. The first instance, where a company is acquiring a significant new resource about which the market generally knows very little, is dealt with in section 6(a). The provision uses the PD's existing 'significant gross change' concept and requires a CPR on the new resources where the acquisition represents a significant gross change as defined in the PD.

23. The second instance is dealt with in sections 6(b) and (c). These provisions have been developed to address concerns from industry participants that significant organic growth in a company's resources base may mean the market will be in need of CPR data on the projects effected in order to be able to properly assess the affairs of the company. Two examples of such changes have been identified and are addressed. Section 6(b) deals with major organic changes in the resource base, defined as a 100% change in either reserves or resources. Section 6(c) deals with first time declarations of either reserves or resources on properties that are material to the issuer. The test for inclusion here is whether the development or developments since the last CPR constitute a material change to the issuer. Both sections take the company's last CPR as a start date of the period over which change should be assessed. However in order to deal with situations where no

CPR has been produced since the PD came into force both include a proviso which limits the start of the applicable period to 1st July 2005.

24. It should be emphasized that if a CPR is triggered by either subsection (a) or (b) of Section 6, then that CPR would only need to cover, in case of (a), the resources/reserves acquired, and, in case of (b), that material mineral project which has undergone the material change as part of the natural exploration/development cycle. In other words, a full CPR on all material properties within the issuer's portfolio would not need to be produced.

Q15 – do you agree with our proposals to require a CPR where there have been significant changes either through acquisitions or organic development?

Section 7 – consistent presentation

25. Section 7 is a new and relatively straightforward provision which sets out a basic standard of preparation which should be observed when handling reserves and resources data in prospectuses. It requires that any reserves/resources and other supporting scientific and technical data included in a prospectus outside the CPR (where one is included) must not be inconsistent with the information provided by a competent person in the CPR. This is a relatively simple provision which has been included in response to feedback from industry experts and which features in the securities regulation of other jurisdictions.

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

Appendix I – reporting and valuation standards

26. Appendix I sets out the list of acceptable reporting and valuation standards. As noted above, one of the principal objectives of this exercise is to address the need for clarity as to which reporting and valuation standards are appropriate in a harmonised European prospectus regime. And as we also note above, a guiding principle in this consultation is that disclosure for minerals companies should be in line with global standards and that the process of international convergence, which should be encouraged, is not best served by the proliferation of new international codes or the endorsement of any one particular code over another. As a result we are proposing what is effectively a 'menu' approach.

27. Significant differences exist between solid minerals on the one hand and oil and gas on the other, both in terms of the technical aspects of appraising the deposits and in terms of how the process of international convergence has occurred in the two industries. As a result it is necessary to split the list of reporting codes between mining and oil and gas. Valuation codes are not split by industry as there are only three set out. The three proposed (VALMIN, SAMVAL and CIMVAL) are consistent with adoption of the corresponding reporting codes (JORC, SAMREC and CIM guidelines). The VALMIN Code is the only one that applies to petroleum assets and would be appropriate for valuation of oil and gas assets.

28. The reporting codes are:

- ***Mining*** – For mining, the list of reporting codes consists of those reporting codes recognised by the Combined Reserves International Reporting Standards Committee ("CRIRSCO"). CRIRSCO, which was formed in 1994 under the auspices of the Council of Mining and Metallurgical Institutes, is a grouping of representatives of organisations that are

responsible for developing mineral reporting codes and guidelines in Australia, Canada, Chile, South Africa, the USA, UK and Western Europe.

- ***Oil and gas*** – For oil and gas, the list of reporting codes comprises the Petroleum Resources Management System developed by the World Petroleum Council and other bodies ("PRMS") together with Canadian and Norwegian provisions (both of which are in broad agreement with PRMS). Therefore, PRMS provides a common reference point for international petroleum industry. CESR is aware of the new SEC Release No. 33-8995, Modernisation of Oil and Gas Reporting, issued on 31 December 2008 and implemented on 1 January 2010, but is not ready to adopt it as an acceptable petroleum code and would like to observe the future whether it will attain widespread international recognition.

29. Notable absences from the list include, in the case of mining, the Russian (GKZ) and the Chinese mining standards. This is because in these cases convergence with international standards is not sufficiently advanced. However, we remain hopeful that this process will in due course advance to a position where these standards can be added to the list. CESR is aware of the CRIRSCO's work to map the existing Russian and Chinese mining standards and make them compatible with CRIRSCO codes. CESR is similarly aware of the Society of Petroleum Engineers' work to converge Russian oil standards and will consider recognising them after that process is complete.

30. It should be noted that all adopted reporting standards (with the exception of the US Industry Guide 7) permit issuers to report their complete portfolios of resources and reserves. This is particularly important to junior mining and oil and gas exploration companies which have immature assets in their portfolios and may not have declared reserves.

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?

Appendices II and III – CPR content

31. Finally, appendices II and III address CPR content. As also noted above, one of the principal objectives of this exercise is to address the need (on the part of issuers planning capital raising exercises and their advisors) for certainty as to what is expected. It is not possible to simply specify that the content requirements set out in any one code should be followed as not all reporting codes do this. As a result appendix II has been developed to address content in respect of mining. Appendix III does the same for oil and gas. Both have been developed with the assistance of geology consultants from both the mining and oil and gas industries and include the minimum items of information that we consider to be essential for the protection of investors and efficiency of the capital markets.

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

V LIST OF QUESTIONS

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

2. Do you agree with our 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?

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

5. Should we include exploration only companies?

6. Do you agree with our proposed definitions?

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

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

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

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

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

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

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

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

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

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

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

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

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