THE SOUTH AFRICAN MINERAL CODES

Implications of S-K1300 regulations and disclosures for dual-listed companies on the JSE and NYSE

S-K1300 compared to the ~~other~~ CRIRSCO Codes

Chairperson of SAMREC Committee

Ken Lomberg (Pr.Sci.Nat.)

Director (Geology and Resources)

Pivot Mining Consultants

ken@pivotmining.co.za

38 years experience

Immediate Past Chairman of CRIRSCO

PIVOT MINING CONSULTANTS

SEC and Mining Disclosure

- The SEC was created by the Securities Exchange Act of 1934.
- The SEC cited Herbert Hoover's 1909 definitions of proved and probable ore in 1938 in its first reported mining fraud case (in the matter of Platoro Gold Mines, 3 SEC 872
- Mining disclosure guides were first developed in the old Form S-3 for mining issuers and for Regulation A in 1939.
- The mining disclosure guides were updated in 1981 for the then-fairly new Form S-18 (Release 33-6299).
- The Form S-18 mining disclosure language was re-issued unchanged as Industry Guide 7 in 1992 when S-18 was abandoned.

Basis for the CRIRSCO Family Codes

- USGS Circular 831 (1980)
- • In 1981 the SEC's technical staff realized that they were not in a position to draft what was subsequently published as Table 1 in the SME Guide, JORC Code, CRIRSCO Template, etc

Principles of a Resource/Reserve Classification For Minerals

By the U.S. Bureau of Mines and the U.S. Geological Survey

GEOLOGICAL SURVEY CIRCULAR 831

A revision of the classification system published as U.S. Geological Survey Bulletin 1450-A

- 1989: SME Working Party #79 is formed to assist in answering industry questions
- Working Party #79 used the 1989 JORC Code as its foundation while emphasizing mining and processing as well as geology.
- 1991: First Version of "A Guide for Reporting Exploration Information, Resources and Reserves" (The SME Guide)
- 1992: The SME Guide is approved by SME

SME
Society for Mining, Metallurgy & Exploration

SME Guide and CRIRSCO

- 1997: “The Denver Accord”
- 1999: Second Version of "A Guide for Reporting Exploration Information, Mineral Resources and Mineral Reserves” (SME Guide)
- 2000: Canadian “National Instrument (NI)-43-101- Standards of Disclosure for Mineral Projects”
- 1999: CRIRSCO, The **C**ombined **R**eserves **I**nternational **R**eporting **S**tandards **C**ommittee
- 2006: SME Registered Member
- 2007: Third version of SME Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves.

- 1999-2008: Incorporation of CRIRSCO international standards in country rules and regulations for public reporting
  - Australia (1989)
  - South Africa (2000)
  - Canada (2001)
  - Chile (2007)
  - Pan-European Code (2008) accepted by regulators but not required to be followed
- • Significant exception: USA
  - US-SEC continues to use Industry Guide 7

- SME clearly recognized that international definitions based on the JORC approach were far better than Industry Guide 7.
- 2009-2011: Continued discussions with SEC as to updating/replacing Industry Guide 7 result in no action
- 2012: SME submits a petition for rule making.
  - Key point is that Canadian companies can report mineral resources which couldn't be reported in Industry Guide 7
  - Canadian company market value per contained ounce is much higher than that for non-Canadian companies; relates to NI 43-101 disclosure of mineral resources (accepted by SEC)

Why did the Codes Develop

Good Governance (Self Regulation, Best Practice)

Technical Excellence (Scientific and Engineering Principles)

International Reporting Codes

Reliable Reporting (Financial Sector, Valuations Common Language and Concepts)

Public Reporting (minimum requirements)

Basis for the CRIRSCO Codes

- Individual Codes, standards and guides follow the CRIRSCO Template and
- New members strictly follow Terms of Reference
- Requires professional organisations of Competent Persons to have
  - an ethics code and
  - enforceable disciplinary code.

crirsco

COMMITTEE FOR MINERAL RESERVES
INTERNATIONAL REPORTING STANDARDS

CRIRSCO members

The base map used for this image was obtained from: https://commons.wikimedia.org/wiki/File:Equal_Earth_projection_SW.jpg (Daniel R. Strebe, 2018)

Basis for the development of S-K 1300

- **Objective** was to provide a more comprehensive understanding of a registrant's mining properties to help them make more informed investment decisions.
- S-K1300 is written for Mining Registrants and their attorneys who are required to submit certain SEC filings
- Commissioners reviewed and approved a draft rule proposal for public comment that was released as Securities Act Release 33-10098 on June 16, 2016.
- The rules provide **minimum requirements** with clarification in the proposing and final adopting releases.

- **SEC issues proposed Rule S-K 1300 on June 16, 2018** (Release 33-10098). Approximately 90 comments are received within 60 days. The comments are mainly from SME and other professional organizations, geological and mining engineering consultants, and mining companies ("registrants" located in the US and abroad required to file reports with the SEC).
- **No real comments received from investors** (key stakeholders).

Final S-K 1300 issuing and adoption

- Another 10 years of considerable effort on the part of the SME Resources and Reserves Committee, in coordination with regulators, legislators, NMA, accounting and legal firms.
- New SEC regulations (Release 33-10570, Rule S-K 1300) are issued in 2018, that are essentially compatible with the CRIRSCO guidelines.
- SME comments on 2016 proposed Rule are considered and adopted in releases dated October 31, 2018 and **December 26, 2018**
- Adoption by CY 2021

- Recognition of the value of the CRIRSCO Codes
- Very litigious
- Concern about being sued in the US
- Control of the regulation

THE SOUTH AFRICAN MINERAL CODES

SEC Academic Fellow 2016—2018

Kwame Awuah-Offei

Associate Professor, Mining & Nuclear Engineering

Missouri University of Science and Technology

samcode
THE SOUTH AFRICAN MINERAL CODES

crirsco
COMMITTEE FOR MINERAL RESERVES
INTERNATIONAL REPORTING STANDARDS

To promote International Best Practice in the Reporting of Mineral Exploration Results, Mineral Resources and Mineral Reserves

CRIRSCO Codes - Basis

- Principles of Materiality, Transparency and Competency
- Standard Definitions
- Mineral Resource and Reserve Reporting Code
- Code of Ethics
- Enforceable Disciplinary Code
- Acceptance as a CRIRSCO Code

Competent Person

S-K 1300 vs CRIRSCO Codes

- S-K 1300 is aligned to CRIRSCO definitions and shares similarities with (**but is not equal to**) other reporting codes applicable to the mining industry such as NI 43-101.
- Perhaps the biggest divergence from NI 43-101 is that S-K 1300 does not require Qualified Persons (QPs) to be **independent** of the registrant
- Technical Report Summary (TRS) vs NI 43-101
- S-K 1300 permits third party firms to “single sign-off”, and assume liability for a, Technical Report Summary (TRS) i.e. QPs do not provide individual certificates and consents. QPs are not named!

samcode
THE SOUTH AFRICAN MINERAL CODES

CPR/NI 43-101 $\neq$ TRS

- Different emphasis
- S-K 1300 allows for QPs to divide responsibility for different sections of a TRS
- Under S-K 1300, the definition of a QP is more stringent than other codes, however, under S-K 1300 a QP does not necessarily require a university degree.
- QP vs Firm sign-off
- SEC requires registrants to disclose exploration results and corresponding activities when they are material to investors but disclosure of exploration results is not necessarily by way of a TRS.

CIM ICM

$\neq$

TRS

- The SEC will not publish or maintain a list of Recognised Professional Organisations (RPO´s)
- QP must be attached to an RPO that publishes a list of its membership
- QP must have five years’ relevant experience in the type of mineralisation, deposit type, and activity (e.g. exploration, resource estimation or mineral processing).

SEC Table of Contents (229.601)	
1	Executive Summary
2	Introduction
3	Property Description
4	Accessibility, Climate, Local Resources, Infrastructure and Physiography
5	History
6	Geological Setting, Mineralisation and Deposit
7	Exploration
8	Sample Preparation, Analyses, and Security
9	Data Verification
10	Mineral Processing and Metallurgical Testing
11	Mineral Resource Estimates
12	Mineral Reserve Estimates
13	Mining Methods
14	Process and Recovery Methods
15	Infrastructure
16	Market Studies
17	Environmental Studies, Permitting, and Plans, Megotiations, or Agreements with Local Individuals or Groups
18	Capital and Operating Costs
19	Economic Analysis
20	Adjacent Properties
21	Other Relevant Data and Information
22	Interpretation and Conclusions
23	Recommendations
24	References
25	Reliance on Information Provided by the Registrant

NI43-101F1 Table of Contents	
1	Summary
2	Introduction
3	Reliance on Other Experts
4	Property Description and Location
5	Accessibility, Climate, Local Resources, Infrastructure and Physiography
6	History
7	Geological Setting and Mineralisation
8	Deposit Types
9	Exploration
10	Drilling
11	Sample Preparation, Analyses and Security
12	Data Verification
13	Mineral Processing and Metallurgical Testing
14	Mineral Resource Estimates
15	Mineral Reserve Estimates
16	Mining Methods
17	Recovery Methods
18	Project Infrastructure
19	Market Studies and Contracts
20	Environmental Studies, Permitting and Social or Community Impact
21	Capital and Operating Costs
22	Economic Analysis
23	Adjacent Properties
24	Other Relevant Data and Information
25	Interpretation and Conclusions
26	Recommendations
27	References

Advanced Properties Only

Final Remarks

- S-K1300 is written for Mining Registrants and their attorneys who are required to submit certain SEC filings
- S-K 1300 draws heavily of the principles and technical aspects of the CRIRSCO family of Codes
- S-K 1300 is a regulation of the SEC
- S-K 1300 is **not** a CRIRSCO Code
- Drafting of a TRS is **not equivalent** to an NI 43-101 of a traditional CPR
- If a company is listed on the JSE and SEC, a CPR and TRS will need to be drafted i.e. two different documents

WEBSITE

ALL SLIDES AND NEWS RELEASE

WWW.SAMCODE.CO.ZA