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

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Introduction

- The purpose of this presentation is to look at **Materiality** from the S-K 1300 point of view and compare it to the CRIRSCO International Reporting Template and SAMREC Code.
- Question - Are the definitions significantly different?
- How can the CP/QP incorporate the definitions to satisfy disclosure in multiple reporting environments?

Definition of Materiality - CRIRSCO

- ***Materiality*** *requires that a Public Report contain all the relevant information which investors and their professional advisers would reasonably require, and reasonably expect to find in a Public Report, for the purpose of making a reasoned and balanced judgement regarding the Exploration Targets, Exploration Results, Mineral Resources and/or Mineral Reserves being reported.*

Definition of Materiality – SAMREC 2016

- *A Public Report contains all the relevant information that investors and their professional advisers would reasonably require, and expect to find in the report, for the purpose of making a reasoned and balanced judgement regarding the Exploration Results, Mineral Resources or Ore Reserves being reported.*

*Under the Glossary of Terms **Material** is defined as: Circumstances are considered material if omission or misstatement of the associated factor, constituent or information could influence the economic decisions of users. As a rule of thumb, this difference would normally be **equal to or exceed 10%.***

Security Exchange Committee Definition of Material

- The term *Material,* when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.

Definition of Materiality – S-K 1300

- The term *Material* has the same meaning as under the Securities Act Rule 405 or Exchange Act Rule 12b-2.
  - *A matter is material if there is a substantial likelihood that a reasonable investor would attach importance to it in determining whether to buy or sell the securities registered.*
- A <u>registrant</u> must consider certain factors when determining the materiality of its mining operations, the ultimate governing considerations in this regard are the general principles as reflected above.

S-K 1300

- It is important to note that S-K 1300 is not including instructions to the materiality provision that a registrant’s mining operations are presumed to be material if they consist of 10% or more of its total assets.
  - SEC is concerned such instruction could become a *de facto* threshold.
- An assessment that takes into consideration all relevant facts and circumstances will lead to better materiality determination.
- SEC is not adopting a quantitative measure of materiality
  - It is appropriate to rely on a more principles-based approach to the materiality provision.

Materiality Considerations – S-K 1300

S-K 1300 Regulation provides provisions that must be considered when determining if a mining operation is material. The registrant must:

- Consider both quantitative and qualitative factors, assessed in the context of the registrant's overall business and financial condition;
- Aggregate mining operations on all mining properties regardless of the stage of mining, size or type of commodity produced; and
- Include, for each property, as applicable, all related activities from exploration through extraction to the first point of material external sale.

Noteworthy to Mention

The SEC doesn’t believe it appropriate to incorporate the CRIRSCO International Reporting Template

Doing so would effectively bind the S-K 1300 both to current and future iterations and interpretations of the CRIRSCO standards, codes or guides, over which the Commission would have little to no control or influence.

It also would ignore the need to adopt mining property disclosure rules that are consistent with the unique purposes and characteristics of the U.S. federal securities laws.

Conclusion and Discussion

- The underlying premise of **materiality** in the S-K 1300 is the same as CRIRSCO and the SAMREC Code
  - **However**, the establishment of Materiality is in more detail as S-K 1300 attempts to deal with the Threshold of Materiality
  - Also, the S-K 1300 clearly states the requirement to assess all relevant facts and circumstances will lead to better materiality determination – both Quantitative and Qualitative
  - Registrants and CPs need to move out of their comfort zone of just applying a 10% consideration. Move to the basic agreed concept of what an investor reasonably needs to know to make a decision
    - What can be tricky is what an investor needs to know, and what is reasonable.
    - Also, clarity is required if materiality is associated to the company or with the specific disclosure
  - Most of the **materiality** aspects can be applied to both SAMREC and TRS reporting

Example of a SEC Query on Materiality

- Mineral companies must report exploration results or estimates of mineral targets if those results are material to the company.
  - The SEC has queried a company’s submissions, which included details on some properties but excluded other properties that it deemed to be immaterial.
  - The SEC were not satisfied that the basis for deciding the immateriality of those properties was clearly stated and asked for more information.
  - The company responded to the effect that the excluded properties had not been explored to a degree sufficient to allow reporting of a Mineral Resource, and therefore they were not material to the company.

Source K2fly: https://k2fly.com/blog/mineral-resource-materiality-and-the-s-k-1300-code/

Example Continued

- This case study prompted the question: *does the absence of a Mineral Resource, as a sole criterion, satisfactorily demonstrate a property is immaterial to the company?*
- S-K 1300 states that a company must report exploration results *or* exploration targets if these are material to the company. It seems clear then, taking the rule at face value, that one cannot argue the absence of a Mineral Resource provides justification to determine immateriality.
- Potential investors will expect companies to provide information on why they thought investing funds in a property was justified and what the exploration potential is for that property.

- Source K2fly: https://k2fly.com/blog/mineral-resource-materiality-and-the-s-k-1300-code/

Example Continued

- This case possibly reflects a sense of unease with the new S-K 1300 rules, which require companies to expose substantially more information than they ever had to in the past (K2fly, 2022)
  - Note the S-K 1300 does provide some guidance on the materiality of exploration targets and results (Under treatment of Exploration Results)
- Public reporting needs to include better justification of materiality decisions than simply stating there has not been enough exploration work completed to define a Mineral Resource (K2fly, 2022)

Example 2 & 3

- Disclose that QA/QC is being undertaken
  - Find that this is no longer the case it would be expected that disclosure of this oversight would be material to an investor

- Social risk that could cause reputational damage to the listed company – should these risks be disclosed?

Risk

Property Descriptions	Disclose any significant factors and risks that may affect access, title, or right or ability to perform work on the property
Mineral Reserve Estimate	QP to provide opinion on how the mineral reserve estimate could be materially affected by risk factors associated with or changes to any aspect of the modifying factors
Capital and Operating Costs	The QP must take into account the risks associated with the specific engineering estimation methods used to arrive at the estimate.
Interpretation and Conclusion	The QP must also discuss any significant risks & uncertainties that could reasonably be expected to affect the reliability or confidence in the exploration results, mineral resource or reserve estimates, or projected economic outcomes

Questions – Discussions – Comments