

## REPORTING ON MINING ACTIVITIES

<b>The purpose of this Guidance Note</b>	<ul style="list-style-type: none"> <li>To assist listed entities to understand and comply with the reporting requirements for mining activities in Chapter 5 of the Listing Rules</li> </ul>
<b>The main points it covers</b>	<ul style="list-style-type: none"> <li>The quarterly reporting obligations that apply to mining entities</li> <li>The general requirements that apply to all public reports of ore reserves or mineral resources</li> <li>The requirements that apply to public reports with information about a geophysical survey</li> <li>The reporting requirements that apply to public reports of exploration results for material mining projects</li> <li>The requirements that apply to public reports with an estimate of mineral resources or ore reserves for material mining projects</li> <li>The requirements that apply to public reports of historical and foreign estimates of mineralisation for material mining projects</li> <li>The requirements that apply to public reports of certain production targets and forecast financial information derived from those production targets</li> <li>The interaction between Chapter 5 and other reporting obligations, including the obligation to give market sensitive information to ASX immediately</li> <li>The requirement for mining exploration entities to include a list of mining tenements in their annual report</li> <li>The requirement for mining entities to include a mineral resources and ore reserves statement in their annual report</li> <li>Competent person requirements</li> </ul>
<b>Related materials you should read</b>	<ul style="list-style-type: none"> <li>Appendix 5A of the Listing Rules (the JORC Code)</li> <li>Guidance Note 8: <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i></li> </ul>

**History:** Guidance Note 31 introduced 01/12/13.

**Important notice:** ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published to assist listed entities to comply with the reporting requirements in Chapter 5 of the Listing Rules<sup>1</sup> for mining activities. These requirements are intended to align ASX's framework for reporting mining activities with recognised industry standards and to promote greater consistency in, and quality of, the public reporting of such activities.

The reporting framework for mining entities in Chapter 5 is underpinned by the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the JORC Code) prepared by The Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals

<sup>1</sup> More specifically, with Listing Rules 5.1, 5.3, 5.5 and 5.6 - 5.24.

Council of Australia.<sup>2</sup> The objective of Chapter 5 is to be consistent with the JORC Code, however if there are any inconsistencies between the two, Chapter 5 prevails.

## 2. Some common concepts that apply to the public reporting of mining activities

### 2.1. What is a 'mining entity'?

'Mining entities' are subject to certain quarterly<sup>3</sup> and annual<sup>4</sup> reporting obligations under the Listing Rules.

There are two types of mining entities under the Listing Rules – a 'mining exploration entity' and a 'mining producing entity'.<sup>5</sup>

The former is an entity whose main undertaking consists of *exploration*<sup>6</sup> for minerals<sup>7</sup> or which has been advised by ASX that it is a mining exploration entity for the purposes of the Listing Rules. The latter is an entity whose main undertaking consists of the *extraction*<sup>8</sup> of minerals or which has been advised by ASX that it is a mining producing entity for the purposes of the Listing Rules.

ASX may exercise its power to advise an entity that it is a mining exploration entity or a mining producing entity for the purposes of the Listing Rules if, in ASX's opinion, that activity comprises, or over time is likely to comprise, such a significant part of the overall business activities of the entity and its child entities (on a consolidated basis) that it is appropriate for the entity to be subject to the quarterly and annual reporting obligations in Chapter 5.

### 2.2. What is a 'material mining project'?

The requirements for reporting:

- exploration results in Listing Rule 5.7;
- estimates of mineral resources in Listing Rule 5.8;
- estimates of ore reserves in Listing Rule 5.9; and
- historical estimates or foreign estimates of mineralisation in Listing Rules 5.10 – 5.14,

only apply to material mining projects. The requirements for reporting production targets in Listing Rule 5.16 – 5.19 can also apply if the target relates to a material mining project.<sup>9</sup>

A 'mining project' is defined in the Listing Rules as a project to explore for or extract minerals from a mining tenement or tenements.<sup>10</sup>

The boundaries that define a project will often be determined by commercial considerations, including development decisions, budget allocations and how particular mining activities are presented in the entity's public disclosures, including in its annual report and on its website. A project for these purposes may include the development of a

<sup>2</sup> The JORC Code is reprinted in Appendix 5A of the Listing Rules.

<sup>3</sup> See '3.1. The quarterly reports that must be given to ASX by mining entities' on page 7.

<sup>4</sup> See '10. Requirements applicable to the annual reports of mining entities' on page 16.

<sup>5</sup> These terms, and many of the other mining related terms used in this Guidance Note, are defined in Listing Rule 19.12.

<sup>6</sup> The term "exploration" is defined in Listing Rule 19.12 to include geophysical surveys.

<sup>7</sup> The term "minerals" is defined in Listing Rule 19.12 to include all solid minerals, including diamonds, other gemstones, industrial minerals and coal but not to include petroleum.

<sup>8</sup> The term "extraction" is defined in Listing Rule 19.12 to include developing the infrastructure needed to extract minerals.

<sup>9</sup> They may also apply to a production forecast that relates to two or more mining projects that together are material to the entity or to an entity level production forecast.

<sup>10</sup> Listing Rule 19.12.

single mine, an incremental development in a producing mine, or an integrated development of a group of several mines and associated facilities with common ownership.

A 'material mining project' is one in which a listed entity or a child entity has an economic interest (whether alone or jointly with others), where that interest is, or is likely to be, material in the context of the overall business operations or financial results of the entity and its child entities (on a consolidated basis).

These definitions are intended to be applied in a sensible and commercial manner. In many cases, it will be readily apparent that a particular mining activity is a material mining project for the purposes of the Listing Rules and therefore the disclosure requirements in Listing Rules 5.7 - 5.19 will apply to any disclosures of exploration results, estimates of mineral resources or ore reserves, historical estimates or foreign estimates of mineralisation, or production targets for that project. Judgment however may need to be exercised where an entity has multiple mining projects or where it has a mix of mining projects and other business activities.

The factors which an entity should consider in determining whether a particular mining project is a material one for these purposes include:

- its market capitalisation;
- whether it would expect the disclosure of information about the project to have a material effect on the price or value of its securities;<sup>11</sup>
- whether its actual and projected expenditure on the project is, or is likely to be, material in the context of its expenditure on other mining projects and other (non-mining) business activities;
- whether its actual and projected revenue from the project is, or is likely to be, material in the context of its revenue from other mining projects and other (non-mining) business activities;
- whether it considers the project will be a material asset in the medium to long term;
- whether it has made specific announcements in relation to the project which suggest that the project is a significant or important one for the entity; and
- the prominence given to the project on its website, in its annual report and in other promotional material it has distributed.

Entities may also wish to have regard to the materiality guidelines in the Australian Accounting and International Financial Reporting Standards<sup>12</sup> when applying these factors to work out whether or not a mining project is a material one.

An assessment of the materiality of a project has to be made at a point in time, having regard to the entity's business activities and financial position at the time. It may change over time. A project that is not considered material today may become a material one in the future because of the discovery of new mineral resources or other information. Similarly, a project that is considered material today may not be a material one in the future because it is abandoned or exhausted or because the entity has embarked upon other more significant projects.

### 2.3. What is a material change in estimates?

The requirements for an entity to include certain information in a report of:

- estimates of mineral resources for material mining projects in Listing Rule 5.8; and
- estimates of ore reserves for material mining projects in Listing Rule 5.9,

<sup>11</sup> Guidance Note 8: *Continuous Disclosure: Listing Rules 3.1 – 3.1B* has further guidance on what is meant by a material effect on the price or value of an entity's securities.

<sup>12</sup> Under paragraph 15 of Accounting Standard AASB 1031 *Materiality*, an amount which is equal to or greater than 10% of the applicable base amount is generally presumed to be material, and an amount which is equal to or less than 5% of the applicable base amount is generally presumed not to be material, unless, in either case, there is evidence or convincing argument to the contrary.

can be triggered if there is a material change (upwards or downwards) in those estimates from the time they were last reported to the market in accordance with Listing Rule 5.8 or 5.9 (as the case may be). A material change could be in estimates tonnages or in the grade or quality of the mineralisation.

Whether there has been a material change in estimates of mineral resources or ore reserves in relation to a material mining project must be tested by reference to the last reported estimates of those items. These may have been the initial estimates first announced by the entity or some subsequent announcement of materially changed estimates.

An entity must determine whether a change in estimates of mineral resources or ore reserves is material or not taking into account all of the surrounding circumstances, including the style of mineralisation. This includes considering whether the change in estimates is likely to have a material effect on the price or value of its securities.<sup>13</sup>

### 2.4. Disclosure against Table 1 of the JORC Code

The requirements for an entity to report:

- exploration results for material mining projects in Listing Rule 5.7;
- estimates of mineral resources for material mining projects in Listing Rule 5.8; and
- estimates of ore reserves for material mining projects in Listing Rule 5.9,

include an obligation for the entity to disclose against Table 1 of the JORC Code on an “if not, why not” basis.<sup>14</sup> That is, if the entity determines that one or more of the criteria in Table 1 is not information material to understanding its exploration results or estimates of mineral resources or ore reserves (as the case may be), the entity must identify those criteria and include a description in the disclosure as to why it considers the information is not material to understanding those results or estimates.

This means that an entity cannot leave a criterion in Table 1 blank or insert “not applicable” or “not relevant” because it does not think that the information is material to understanding its exploration results or estimates of mineral resources or ore reserves. It must include a clear statement as to why it is not material. For example, under the “Exploration done by other parties” criterion of the “Reporting of Exploration Results” section of Table 1 of the JORC Code, if no other parties have undertaken exploration activities in relation to the relevant mining tenement, the entity must state that fact and any other relevant details.

ASX notes that Table 1 requires the disclosure of mining and metallurgical factors and assumptions when estimating and reporting mineral resources and the disclosure of cost and revenue factors and assumptions and a market assessment when estimating and reporting ore reserves. ASX would not usually expect an entity to have to disclose trade secrets (for example, proprietary mining technology or metallurgical processes) or other commercially sensitive information (for example, pricing or volumes under long term contractual commitments) to meet these particular requirements (although an entity should carefully consider whether this information needs to be disclosed to meet other disclosure requirements<sup>15</sup>). However, in such cases, the entity:

- should explain why the information is considered a trade secret or commercially sensitive; and
- must disclose sufficient information (perhaps in narrative rather than numerical form, where the numbers are commercially sensitive) for investors to understand the methodology it has used to determine these factors and assumptions and the basis on which it is estimating its mineral resources and ore reserves.

Entities should be careful not to claim that information is commercially sensitive when that is not so. For example, if an entity is not a producing entity and it has not yet entered into any commercially sensitive contracts that underpin

<sup>13</sup> See Listing Rule 3.1.

<sup>14</sup> See Listing Rules 5.7.2, 5.8.2 and 5.9.2 respectively.

<sup>15</sup> For example, if the entity is issuing a prospectus, the requirement in section 710 of the Corporations Act for the prospectus to include all information that investors and their professional advisers would reasonably require to make an informed investment decision and would reasonably expect to find in the prospectus, or the requirement in Listing Rule 3.1 to disclose information that a reasonable person would expect it to have a material effect on the price or value of the entity's securities, where the information does not fall within the exceptions to immediate disclosure in Listing Rule 3.1A.

its price, capital expenditure or operational expenditure assumptions, it is difficult to see how information about those assumptions could be commercially sensitive.

ASX also notes that to the extent that an estimate of mineral resources or ore reserves involves a representation about future matters, it must be based on reasonable grounds – meaning that the price, capital expenditure and operational expenditure assumptions used to calculate the estimates must also be objectively reasonable – or else the representation could be deemed to be misleading and the entity could face serious legal consequences as a result.<sup>16</sup>

### 2.5. Competent person requirements

The requirements for an entity to report:

- exploration results for material mining projects in Listing Rule 5.7;
- estimates of mineral resources for material mining projects in Listing Rule 5.8; and
- estimates of ore reserves for material mining projects in Listing Rule 5.9,

include an obligation for the entity to include various statements and obtain various consents from a “competent person”.<sup>17</sup>

A market announcement by an entity reporting explorations results or estimates of mineral resources or ore reserves (original or updated) for a material mining project for the first time must state:

- that it is based on, and fairly represents, information and supporting documentation prepared by a named competent person or persons;
- whether the competent person is an employee of the entity or a related entity and, if not, the name of the competent person’s employer; and
- the name of the professional organisation of which the competent person is a member,

and it must only be issued with the prior written consent of the competent person or persons as to the form and context in which the exploration results or estimates of mineral resources or ore reserves (as the case may be) and supporting information are presented in the report.<sup>18</sup>

Subsequent public reports of the same exploration results or estimates of mineral resources or ore reserves are not required to include the above statements or consent provided the following conditions are met:<sup>19</sup>

- the subsequent report cross-references the relevant market announcement given to ASX for release to the market containing the exploration results or estimates and the required statements and consent referred to above; and
- the entity confirms in the subsequent report that it is not aware of any new information or data that materially affects the information included in the relevant market announcement and, in the case of estimates of mineral resources or ore reserves, that all the material assumptions and technical parameters underpinning the estimates in the relevant market announcement continue to apply and have not materially changed.

<sup>16</sup> See section 769C of the Corporations Act 2001 (Cth) and section 12BB(1) of the Australian Securities and Investments Commission Act 2001 (Cth), both of which provide that if a person makes a representation with respect to any future matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading. Note that under the latter Act, a person making a representation as to the future is taken not to have had reasonable grounds for making the representation unless they adduce evidence to the contrary (section 12BB(2)).

<sup>17</sup> The term “competent person” is defined in Listing Rule 19.12.

<sup>18</sup> Listing Rule 5.22.

<sup>19</sup> Listing Rule 5.23.

If an entity is not able to meet these conditions then the subsequent report must include the statements and consent referred to above.<sup>20</sup>

### 2.6. Proximate cautionary statements

The requirements for reporting:

- historical estimates or foreign estimates of mineralisation in Listing Rules 5.10 – 5.14; and
- production targets in Listing Rules 5.15 – 5.19,

in some cases require the inclusion of a prescribed cautionary statement that is proximate to, and has equal prominence as, certain information.<sup>21</sup>

Proximate, for this purpose, means on the same page, and in the same paragraph or in the immediately preceding or following paragraph, as the relevant information. Except as set out below, putting the cautionary statement in a footnote or endnote, or in a general disclaimer elsewhere in the report, does not meet the requirement for proximity.

Equal prominence, for this purpose, means being in the same font type, size and colour as the relevant information. Hence, if the relevant information is included in a heading, the cautionary statement must be in the same font type, size and colour as the heading. Similarly, if relevant information is highlighted or emphasised in any way (for example, by being printed in bold, italics or a different colour to the surrounding text), the cautionary statement must be similarly highlighted or emphasised.

In ASX's view, where a public report includes multiple references to the relevant information, the required cautionary statement need only appear once with the prescribed proximity and prominence. This should be wherever the relevant information first appears in the report.<sup>22</sup> After the first mention in the report, it is sufficient for any subsequent reference to the relevant information to include a footnote or endnote that cross-refers clearly to the cautionary statement and gives the page number where the cautionary statement appears.<sup>23</sup>

## 3. Quarterly reporting of mining activities

### 3.1. The quarterly reports that must be given to ASX by mining entities

A mining exploration entity is required to give to ASX a quarterly report giving *details* of its and its child entities' activities relating to mining exploration, as well as a *summary* of its and its child entities' activities relating to mining production and development, and a summary of the expenditure it and they have incurred on both types of activities.<sup>24</sup>

A mining producing entity is required to give to ASX a quarterly report giving *details* of its and its child entities' activities relating to mining production and development, as well as a *summary* of its and its child entities' activities

<sup>20</sup> Listing Rule 5.22.

<sup>21</sup> See Listing Rules 5.12.9, 5.13.4, 5.16.4, 5.16.5, 5.19.3 and 5.19.4.

<sup>22</sup> If an entity uses a smaller or less legible font when it first refers to the relevant information than in subsequent references, so that its cautionary statement is correspondingly smaller or less legible than those subsequent references, it will be regarded by ASX as not complying with the spirit and intent of the relevant Listing Rule and therefore in breach of Listing Rule 19.2. Similarly, if an entity first refers to the relevant information in plain font so that its cautionary statement is also in plain font but then uses text with highlight or emphasis for subsequent references to the relevant information, it will be regarded by ASX as not complying with the spirit and intent of the relevant Listing Rule and therefore in breach of Listing Rule 19.2.

<sup>23</sup> For example, in the case of a cautionary statement about a production target based on inferred mineral resources (Listing Rule 5.17.4), a suitable cross-reference would be:

"This production target must be read in conjunction with the cautionary statement on page [insert page number] that "there is a low level of geological confidence associated with inferred mineral resources and there is no certainty that further exploration work will result in the determination of indicated mineral resources or that the production target itself will be realised."

<sup>24</sup> Listing Rule 5.3.

relating to mining exploration, and a summary of the expenditure it and they have incurred on both types of activities.<sup>25</sup>

In each case:

- if there have been no such activities in the relevant quarter, the report must state that fact;
- the report must include information about the mining tenements and the beneficial interests in farm-in and farm-out agreements held by the entity and its child entities as at the end of the quarter and any changes to those over the quarter; and
- the report must be given to ASX for release to the market no later than one month after the end of the relevant quarter.

A mining exploration entity is also required to give to ASX a quarterly cash flow statement in the form set out in Appendix 5B.<sup>26</sup> Again, this must be given to ASX for release to the market no later than one month after the end of the relevant quarter.

Mining exploration entities are not required to give to ASX an Appendix 4D (half yearly report)<sup>27</sup> or Appendix 4E (preliminary final report).<sup>28</sup> This recognises that their main business activity is expending funds on mining exploration and that they are unlikely to have material revenues from that or other activities and so their quarterly report and quarterly cash flow statement, along with any other disclosures they may make under Chapters 3 and 4 of the Listing Rules, will usually provide the market with sufficient financial information to value the entity's securities.

### **3.2. Quarterly reporting of mining activities by other entities**

Some entities that have mining activities but are not mining entities for the purposes of the Listing Rules have a practice of providing quarterly reports on those activities to the market, on the basis that investors will find this information helpful in assessing the value of their securities. ASX has no objection to this practice, provided the reports comply with any applicable requirements in Chapter 5 (see below).

## **4. Requirements applicable to all public reporting of mining activities**

Listing Rule 5.6 requires all public reports that include a statement relating to an exploration target, exploration results, mineral resources or ore reserves to comply with the JORC Code. This rule applies to all listed entities reporting such matters and not just to mining entities within the meaning of the Listing Rules. Unlike some of the other reporting obligations in Chapter 5, it also applies regardless of whether the project being reported on is a 'material mining project' or not.

## **5. Reporting of exploration results for material mining projects**

Listing Rule 5.7 requires an entity publicly reporting exploration results for a material mining project for the first time, and any new exploration results for that project thereafter, to disclose certain information with the exploration results. The disclosure of this information is intended to improve the ability of investors to assess the significance of the exploration results and the likelihood of mineral resources being identified following further work.

Listing Rule 5.7 applies to all listed entities reporting exploration results for a material mining project and not just to mining entities within the meaning of the Listing Rules.

The information required to be disclosed includes a drill-hole table for all material drill-holes, if the information is material to understanding the reported exploration results. The drill-hole table must include the easting and northing, elevation or RL, dip and azimuth, down hole width and depth and end of hole, in tabular form. If the entity determines

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<sup>25</sup> Listing Rule 5.1.

<sup>26</sup> Listing Rule 5.5.

<sup>27</sup> Listing Rule 4.2A.3.

<sup>28</sup> Listing Rule 4.3A.



that the information in the drill-hole table is not material to understanding its exploration results, it must include a clear and accurate explanation as to why that is so.

It should be noted that clauses 16 and 17 of the JORC Code set out additional requirements for reporting exploration results. Unlike Listing Rule 5.7, these apply to the reporting of all exploration results and not just to the reporting of exploration results for material mining projects.

## 6. Reporting of mineral resources and ore reserves for material mining projects

Listing Rules 5.8 and 5.9 require an entity publicly reporting estimates of mineral resources or ore reserves for a material mining project for the first time, or that have materially changed from when they were last reported to the market, to disclose certain information in a market announcement and give it to ASX for release to the market.

The information included in the market announcement must be a fair and balanced representation of the information contained in the separate report prepared in accordance with the relevant sections of Table 1 of Appendix 5A (JORC Code), which must be annexed to the market announcement<sup>29</sup>. In complying with this obligation, ASX does not expect an entity to prepare a summary of all the information contained in the separate report, rather this requirement is intended to capture only information which is material to understanding the estimates of mineral resources or ore reserves contained in the separate report, that is not otherwise included in the body of the market announcement.

An entity reporting estimates of mineral resources is required to include in the market announcement, amongst other information, a summary of all information material to understanding the reported estimates in relation to mining and metallurgical methods and parameters, and other material modifying factors considered by the entity to date.<sup>30</sup> In complying with this requirement, ASX does not require entities to complete a comprehensive study of the mining and metallurgical methods and parameters. Instead, the disclosure should be of the mining and metallurgical methods and parameters and material modifying factors considered in the estimation of the mineral resources.

An entity reporting estimates of ore reserves is required to include the material assumptions and outcomes from the relevant preliminary feasibility study or feasibility study.<sup>31</sup> ASX would not expect an entity to have to disclose commercially sensitive information (for example, pricing or volumes under long term contractual commitments) to meet this particular requirement (although an entity should carefully consider whether this information needs to be disclosed to meet other disclosure requirements<sup>32</sup>). However, in such cases, the entity:

- should explain why the information is considered a trade secret or commercially sensitive; and
- must disclose sufficient information (perhaps in narrative rather than numerical form, where the numbers are commercially sensitive) for investors to understand the methodology it has used to determine these factors and assumptions and the basis on which it is estimating its mineral resources and ore reserves.

Entities should be careful not to claim that information is commercially sensitive when that is not so. For example, if an entity is not a producing entity and it has not yet entered into any commercially sensitive contracts that underpin its price, capital expenditure or operational expenditure assumptions, it is difficult to see how information about those assumptions could be commercially sensitive.

It should be noted that clauses 19 to 35 of the JORC Code set out additional requirements for the classification and reporting of mineral resources and ore reserves. Unlike Listing Rules 5.8 and 5.9, these requirements apply to the reporting of all estimates of mineral resources and ore reserves and not just to material mining projects.

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<sup>29</sup> Listing Rules 5.8.1 and 5.9.1.

<sup>30</sup> Listing Rule 5.8.1.

<sup>31</sup> Listing Rule 5.9.1.

<sup>32</sup> For example, if the entity is issuing a prospectus, the requirement in section 710 of the Corporations Act for the prospectus to include all information that investors and their professional advisers would reasonably require to make an informed investment decision and would reasonably expect to find in the prospectus, or the requirement in Listing Rule 3.1 to disclose information that a reasonable person would expect it to have a material effect on the price or value of the entity's securities, where the information does not fall within the exceptions to immediate disclosure in Listing Rule 3.1A.

### 7. Reporting of historical and foreign estimates of mineralisation for material mining projects

Listing Rule 5.6 generally requires any public report that includes a statement relating to exploration targets, exploration results, mineral resources or ore reserves to be prepared in accordance with the JORC Code.

Listing Rule 5.10 provides an exception to Listing Rule 5.6 for an entity reporting historical estimates or foreign estimates of mineralisation for a material mining project. Historical estimates in this context are those prepared pre-1989, which is when the JORC Code was introduced as Appendix 5A to the Listing Rules. Foreign estimates are those estimates classified under the requirements of a foreign jurisdiction and which do not comply with the JORC Code.

Prior to the introduction of Listing Rule 5.10, if an entity wanted, or believed it was required, to disclose historical estimates or foreign estimates of mineralisation (for example, because it considered the estimates were information that a reasonable person would expect to have a material effect on the price or value of its securities and therefore required to be disclosed under Listing Rule 3.1), it had to apply for a waiver from the requirement in the Listing Rules for all statements relating to mineral resources or ore reserves to comply with the JORC Code. ASX Companies Update 11/07<sup>33</sup> set out the circumstances in which the ASX would consider granting such a waiver. The intention of Listing Rule 5.10 is to codify these circumstances and remove the requirement to apply for a waiver.

The ability to report historical estimates or foreign estimates of mineralisation under Listing Rule 5.10 does not apply to the reporting of historical or foreign estimates for something which is not a material mining project. Nor does it apply to information that does not fall within the letter or the spirit of the definition of “historical estimate” or “foreign estimate” in the Listing Rules.<sup>34</sup> This includes:

- situations where the relevant exploration and evaluation programs are incomplete and entities are trying to report “preliminary resources”;
- situations where entities are trying to report reserves when the appropriate studies that would be required under the JORC Code to allow the conversion of mineral resources to ore reserves have not yet been completed; and
- referring to historical or foreign estimates of mineralisation for areas adjacent to or near to the entity’s mining tenements.

An entity wishing to publicly report historical estimates or foreign estimates of mineralisation under Listing Rule 5.10 must comply with the requirements in Listing Rules 5.12, 5.13 and 5.14. If it is not able to comply with those requirements, it cannot report the estimate.

#### 7.1. Historical and foreign estimates not to be included in an economic analysis of mineral resources or ore reserves

An entity is prohibited from including any historical estimates or foreign estimates (other than qualifying foreign estimates) of mineralisation in an economic analysis of the entity’s mineral resources and ore reserve holdings.<sup>35</sup> This includes any scoping study, preliminary feasibility study or feasibility study.

Qualifying foreign estimates are estimates that have been prepared in accordance with either the SAMREC Code, NI 43-101 and CIM standards or the PERC Code, and is otherwise acceptable to ASX. ASX may not consider a foreign estimate prepared in accordance with one of the abovementioned reporting codes acceptable if, for example, the estimate was prepared at a time when, in ASX’s view, that reporting code was not substantially equivalent to the requirements currently applicable in Appendix 5A (JORC Code).

<sup>33</sup> ASX and JORC joint Companies Update 11/07 released on 5 December 2007. See also Companies Update 05/04 released on 25 March 2004.

<sup>34</sup> These definitions can be found in Listing Rule 19.12.

<sup>35</sup> Listing Rule 5.11.

### 7.2. Disclosure requirements

Listing Rule 5.12 sets out the disclosure requirements for a public report relating to historical estimates or foreign estimates of mineralisation. They are largely self-explanatory.

One requirement is to identify the source and the date of the estimate.<sup>36</sup> This must be the original source and date of the estimate and not a summary or restatement of that information that has, for example, been obtained from a government or other third party database.

### 7.3. Annual reporting requirements

An entity that has publicly reported historical estimates or foreign estimates of mineralisation under Listing Rules 5.12 and 5.13 which have not subsequently been verified and reported as mineral resources or ore reserves in accordance with the JORC Code must include certain disclosures in its annual report.<sup>37</sup> These include:

- a statement on its progress in evaluating the previously reported historical estimates or foreign estimates and the status of any further exploration work required to verify the historical estimates or foreign estimates as mineral resources or ore reserves in accordance with the JORC Code; and
- if the historical estimates or foreign estimates have not been verified as mineral resources or ore reserves in accordance with the JORC Code after 3 years from the date they were initially reported, a statement:
  - explaining why the historical estimates or foreign estimates have not been verified as mineral resources or ore reserves in accordance with the JORC Code; and
  - disclosing the entity's intention with regard to verifying the historical estimates or foreign estimates as mineral resources or ore reserves in accordance with the JORC Code.

If the entity is a mining entity and it has a mineral resources and ore reserves statement in its annual report, the disclosures above should be made in that statement. However, save for making these disclosures, historical estimates and foreign estimates of mineralisation must not be included in the entity's mineral resources and ore reserves holdings in that statement, as they do not meet the requirement to be classified as mineral resources or ore reserves under the JORC Code.

ASX would encourage a listed entity that has publicly reported historical estimates or foreign estimates of mineralisation under Listing Rules 5.12 and 5.13 to undertake the work required to verify them as mineral resources or ore reserves in accordance with the JORC Code as quickly as it reasonably can.

### 7.4. Competent person requirements

A public report containing historical estimates or foreign estimates of mineralisation for a material mining project must include a statement by a competent person or persons that certain information in the report<sup>38</sup> is an accurate representation of the available data and studies for the mining project. The statement must disclose whether the competent person is an employee of the entity or a related entity and, if not, the name of the competent person's employer. It must also disclose the name of the professional organisation of which the competent person is a member.<sup>39</sup>

## 8. Reporting of production targets

Listing Rules 5.15 and 5.17 set out the requirements for reporting certain types of production targets and forecast financial information which is derived from those production targets, respectively.

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<sup>36</sup> Listing Rule 5.12.1.

<sup>37</sup> Listing Rule 5.14.

<sup>38</sup> Being the information provided under Listing Rules 5.12.2 to 5.12.7.

<sup>39</sup> Listing Rule 5.12.10.

At the outset, it should be emphasised that production targets, and forecast financial information derived from production targets, are both forward looking statements. As such, they must be based on reasonable grounds or else they will be deemed to be misleading,<sup>40</sup> with all the significant legal consequences that entails.<sup>41</sup> For this reason, an appropriate level of due diligence needs to be applied to the preparation of a production target. The underlying figures and assumptions should be carefully vetted and signed off at a suitably senior level before the production target is released.

### 8.1. What is a 'production target'?

The term "production target" is defined for the purposes of Chapter 5 of the Listing Rules to mean a projection or forecast of the amount of minerals to be extracted from a particular mining tenement or tenements for a period that extends past the current year and the forthcoming year.<sup>42</sup>

### 8.2. The types of production targets that are covered

The reporting requirements in Listing Rule 5.16 apply to production targets, as defined above, for:

- the mineral resource and ore reserves holdings<sup>43</sup> of an entity (an 'entity level production target'); or
- a material mining project of the entity (or two or more mining projects which together are material to the entity),

The reporting requirements in Listing Rule 5.17 apply to forecast financial information derived from these types of production targets.

### 8.3. Near-term production guidance and aspirational statements are excluded

The reporting requirements in Listing Rules 5.16 and 5.17 do not apply to the disclosure of near-term production forecasts or guidance, and any forecast financial information derived from near-term production forecasts or guidance, that relate to the current or forthcoming year.<sup>44</sup>

They also do not apply to general aspirational statements of prospective production, such as:

*"X Ltd aims to be a global gold producer by [date]";*

*"X Ltd aims to be a significant gold producer doubling production over the next 5 years"; or*

*"X Ltd aims to be a 500,000 plus ounces per annum gold producer in 5 years".<sup>45</sup>*

### 8.4. Production targets for operating mines where the production target is underpinned by ore reserves or by ore reserves and measured mineral resources and/or indicated mineral resources are excluded

The reporting requirements in Listing Rules 5.16.1 and 5.17.1 do not apply to the disclosure of a production target, or forecast financial information derived from a production target, that relates to an operating mine(s) that is underpinned solely by ore reserves, or solely by a combination of ore reserves and measured mineral resources, or solely by a combination of ore reserves and measured mineral resources and/or indicated mineral resources (provided in the latter case that the indicated mineral resources are not the determining factor in project viability).<sup>46</sup>

<sup>40</sup> See note 16 above. See also ASIC Regulatory Guide 170 *Prospective financial information*.

<sup>41</sup> These legal consequences are summarised in Annexure B of Guidance Note 8: *Continuous Disclosure: Listing Rules 3.1 – 3.1B* under the heading "The statutory prohibitions against false or misleading disclosures".

<sup>42</sup> Listing Rule 19.12.

<sup>43</sup> These include mineral resources and ore reserves held by a child entity.

<sup>44</sup> Listing Rule 19.12.

<sup>45</sup> ASX does not regard these types of aspirational statements as falling within the description of a "projection or forecast of the amount of minerals to be extracted from a particular mining tenement or tenements for a period".

<sup>46</sup> Listing Rule 5.18.

### 8.5. Production targets based solely on exploration targets or solely or partly on historical estimates or foreign estimates of mineralisation are prohibited

The disclosure of a production target:

- based solely on an exploration target or solely on a combination of inferred mineral resources and an exploration target;<sup>47</sup> or
- based solely or partly on historical estimates or foreign estimates (other than qualifying foreign estimates) of mineralisation,

is prohibited.<sup>48</sup> With no confirmed ore reserves or measured and indicated mineral resources in the former case, and mineralisation that has not been confirmed to the standards required by the JORC Code in the latter case, there will be significant uncertainty regarding the entity's ability to achieve the production target. The disclosure of a production target in these circumstances is therefore likely to be misleading.<sup>49</sup>

However, an entity may report a production target that is based on a combination of ore reserves and/or mineral resources and an exploration target, provided it does so in accordance with Listing Rule 5.16 and it has a reasonable grounds for doing so.<sup>50</sup>

Listing Rule 5.16.3 requires that the relevant proportions of probable and proved ore reserves, inferred, indicated and measured mineral resources and an exploration target underpinning a production target be disclosed. Where a mining entity is reporting a production target that is based on a portion of inferred mineral resources and/or an exploration target in addition to ore reserves and/or measured and indicated mineral resources, the reporting entity must be satisfied that the respective proportions of inferred mineral resources and the exploration target are not the determining factors in project viability. In addition, the inferred mineral resources and exploration target should not feature as a significant proportion early in the mine plan.

### 8.6. The disclosure requirements for production targets and financial forecasts

Each of the matters required to be reported for a production target in Listing Rule 5.16 must be disclosed at the same time as the headline production target is disclosed to the market and in the same document.

Similarly, each of the matters required to be reported for forecast financial information derived from a production target in Listing Rule 5.17 must be disclosed at the same time as the headline forecast is disclosed to the market and in the same document.

Listing Rules 5.16 and 5.17 require an entity to disclose the material assumptions underpinning the production target or the forecast financial information the first time the entity reports that information. The aim of this disclosure is to facilitate greater transparency of the basis for the production target or forecast.

Again, ASX would not usually expect an entity to have to disclose commercially sensitive information (for example, pricing or volumes under long term contractual commitments) to meet this particular requirement (although an entity should carefully consider whether this information needs to be disclosed to meet other disclosure requirements, such as prospectus or continuous disclosure requirements<sup>51</sup>). However, in such cases, the entity:

- should explain why the information is considered commercially sensitive; and

<sup>47</sup> The term "exploration target" is defined in Listing Rule 19.12.

<sup>48</sup> Listing Rule 5.15.

<sup>49</sup> See notes 40 and 41 above and the accompanying text.

<sup>50</sup> See notes 40 and 41 above and the accompanying text.

<sup>51</sup> If the entity is issuing a prospectus, the requirement in section 710 of the Corporations Act for the prospectus to include all information that investors and their professional advisers would reasonably require to make an informed investment decision and would reasonably expect to find in the prospectus, or the requirement in Listing Rule 3.1 to disclose information that a reasonable person would expect it to have a material effect on the price or value of the entity's securities, where the information does not fall within the exceptions to immediate disclosure in Listing Rule 3.1A.

- must disclose sufficient information (perhaps in narrative rather than numerical form, where the numbers are commercially sensitive) for investors to understand the methodology it has used to determine these assumptions and the basis on which it is calculating its production target or financial forecast.

Entities should be careful not to claim that information is commercially sensitive when that is not so. For example, if an entity is not a producing entity and it has not yet entered into any commercially sensitive contracts that underpin its price, capital expenditure or operational expenditure assumptions, it is difficult to see how information about those assumptions could be commercially sensitive.

ASX also notes that as a production target or forecast financial information derived from a production target involves a representation about future matters, it must be based on reasonable grounds – meaning that the assumptions underpinning it must also be objectively reasonable – or else the representation could be deemed to be misleading and the entity could face serious legal consequences as a result.<sup>52</sup>

Subsequent public reports by an entity that refer to a previously reported production target, or forecast financial information derived from a production target, do not have to provide all the information set out in Listing Rules 5.17 and 5.18 provided certain conditions are satisfied. One of these conditions is that the subsequent report must cross refer the report containing the production target or forecast and all the supporting information.<sup>53</sup>

Where a proportion of the production target is based on inferred mineral resources or an exploration target, the disclosure document containing the production target must include a prescribed cautionary statement that is proximate to the reported production target.<sup>54</sup>

Where a proportion of a production target is based on an exploration target, the disclosure document containing the production target must also include a statement of the factors that lead the entity to believe that it has a reasonable basis for reporting a production target in that context.<sup>55</sup>

If the entity has published forecast financial information derived from a production target where a significant proportion of the production target is based on an exploration target, the implications on the forecast financial information of not including the exploration target in the production target must also be disclosed.<sup>56</sup> For these purposes, ASX interprets the phrase “significant proportion” to mean 25% or more of the mineralisation underpinning the production target is generated from an exploration target.

### 8.7. Production targets based solely on inferred mineral resources

As noted previously, under the Corporations Act, a statement about a production target will be deemed to be misleading unless the person making the statement has reasonable grounds for making the statement.<sup>57</sup>

ASX considers that it is only in exceptional circumstances that an entity might form the view that it has reasonable grounds for a production target, or a financial forecast derived from a production target, when that production target, or forecast financial information, is based solely on inferred mineral resources.

Where a production target is based solely on inferred mineral resources, the following additional requirements must be satisfied:<sup>58</sup>

- disclosure of a statement of the factors that lead the entity to believe that it has a reasonable basis for reporting a production target based solely on inferred mineral resources. This factors should be limited to

<sup>52</sup> See notes 40 and 41 above and the accompanying text.

<sup>53</sup> It would be helpful in this case if the entity includes a copy of the original report containing all the supporting information available on its website and includes a hyper link to that report in the subsequent report.

<sup>54</sup> Listing Rules 5.16.4 and 5.16.5 respectively. See also ‘2.6. Proximate cautionary statements’ on page 7.

<sup>55</sup> Listing Rule 5.16.5.

<sup>56</sup> Listing Rule 5.17.3.

<sup>57</sup> See notes 40 and 41 above and the accompanying text.

<sup>58</sup> Listing Rule 5.16.6.

types of mineralisation where the project cannot be progressed through to a higher confidence level of mineralisation by conventional exploration alone prior to release of a production target;

- disclosure of the level of confidence associated with the estimates of inferred mineral resources and the basis for the level of confidence. The basis for the level of confidence should be described in narrative form and be descriptive enough to inform the market of the reasons why the entity holds this confidence level;
- completion and public release of an independent technical report that supports the production target. The technical report must be prepared by, or under the supervision of a competent person or persons and include the name of the competent person or persons and their employer; and
- a cautionary statement in the terms set out in Listing Rule 5.16.6.

A technical report produced by an independent competent person or persons for purposes of Listing Rule 5.16.6 should be a technical assessment report prepared in accordance with the VALMIN Code. In preparing the technical report, the competent person or persons should have regard to the guidelines for independent experts' reports in ASIC Regulatory Guides 111 ('Content of expert reports') and 112 ('Independence of experts') to the extent those guidelines are applicable.

Under Listing Rule 5.17.2, an entity reporting forecast financial information derived from a production target must include the underlying production target and all the information contained in Listing Rule 5.16 in the public report. For the avoidance of doubt, this requires an entity reporting forecast financial information based solely on inferred mineral resources to satisfy the additional requirements (which are outlined above) in relation to that forecast financial information that it would have been required to satisfy if it was reporting the underlying production target<sup>59</sup>.

### 8.8. Updating production targets

If an entity becomes aware that its production results for a period will differ materially (downwards or upwards) from any target it has published, it may have a legal obligation to notify the market of that fact. This obligation may arise under Listing Rule 3.1 and section 674 of the Corporations Act,<sup>60</sup> if the difference is of such magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity's securities. It may also arise under section 1041H of the Corporations Act, because failing to inform the market that its published target is no longer accurate could constitute misleading conduct on its part.

## 9. The interaction between Chapter 5 and other reporting obligations

The reporting requirements for mining activities in Chapter 5 are an adjunct to, and operate in tandem with, the reporting and disclosure requirements in Chapter 3 (continuous disclosure) and Chapter 4 (periodic disclosure) of the Listing Rules.

For example, where an entity is required to disclose market sensitive information<sup>61</sup> involving mining activities to ASX under Listing Rule 3.1, the information disclosed must comply not only with that rule but also with any applicable requirements in Chapter 5.

It should be noted that information required to be disclosed under Listing Rule 3.1 must be disclosed immediately. ASX has given guidance in Guidance Note 8: *Continuous Disclosure: Listing Rules 3.1 – 3.1B* that:

- "Immediately" does not mean "instantaneously", but rather "promptly and without delay".

<sup>59</sup> Additional requirements are contained in Listing Rule 5.16.6.

<sup>60</sup> See ASIC Advisory 10-198AD, involving an infringement notice against a listed entity for not informing the market about a material reduction in its gold production compared to a production forecast it had released earlier. It should be noted that the fact that a listed entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

<sup>61</sup> 'Market sensitive information' is a short-hand expression referring to information of the type required to be disclosed under Listing Rule 3.1 (namely, information that a reasonable person would expect it to have a material effect on the price or value of an entity's securities). For further guidance on the meaning of the term, see Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

- ASX recognises that the speed with which an entity can disclose information under Listing Rule 3.1 will vary, depending on factors such as where and when the information originated, the forewarning (if any) the entity had of the information, the amount and complexity of the information concerned, the need in some cases to verify the accuracy or bona fides of the information, and (importantly in this context):

*“the need in some cases to comply with specific legal and Listing Rule requirements, such as the requirement for an announcement that relates to mining or oil and gas activities to comply with Chapter 5 of the Listing Rules.”*

- ASX will take these factors into account, as well as whether or not the entity has promptly requested a trading halt to minimise the period that the market is trading on an uninformed basis, in assessing whether an entity has complied with its obligation to disclose information in a timely manner under Listing Rule 3.1.

All other things being equal, ASX considers that the requirement for an entity to disclose market sensitive information about a mining activity under Listing Rule 3.1, which is also subject to the reporting requirements in Chapter 5, will generally only be triggered when the entity is in possession of all of the information that it is required to include in a market announcement about that activity under Chapter 5. Prior to it having all of that information, ASX considers that whatever market sensitive information it may have about the activity will generally be insufficiently definite to warrant disclosure. Therefore, provided the market sensitive information is and remains confidential, ASX has not formed the view that it has ceased to be confidential, and a reasonable person would not otherwise expect it to be disclosed, it will generally fall within the carve-out to immediate disclosure in Listing Rule 3.1A.

Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* has more detailed guidance on when information is confidential, when ASX may form the view that information has ceased to be confidential, and when a reasonable person would expect information to be disclosed for purposes Listing Rule 3.1A.

As mentioned in that Guidance Note, ASX may form the view that information about a mining activity has lost confidentiality if there is:

- a media or analyst report about the matter;
- a rumour known to be circulating the market about the matter; or
- a sudden and significant movement in the market price or traded volumes of the entity's securities that cannot be explained by other events or circumstances.

Each of these is evidence that the matter is no longer confidential and therefore Listing Rule 3.1A no longer applies.

An entity which has potentially market sensitive information about a mining activity and which is in the process of compiling the information that it is required to include in a market announcement about that activity under Chapter 5 should therefore as a matter of course be monitoring:

- the market price of its securities;
- major national and local newspapers;
- news wire services; and
- enquiries from analysts or journalists.

If the entity detects signs that the information may no longer be confidential, it may need to request a trading halt to stop trading in its securities while it completes an announcement about the matter that meets the requirements of both Listing Rule 3.1 and Chapter 5.



## 10. Requirements applicable to the annual reports of mining entities

### 10.1. List of tenements

A mining exploration entity is required to include in its annual report:

- the mining tenements held by it and its child entities and their location; and
- the percentage interest it or they hold in each mining tenement.<sup>62</sup>

### 10.2. Annual mineral resources and ore reserves statement

A mining entity that has any mineral resources or ore reserves is required to include an annual mineral resources and ore reserves statement in its annual report.<sup>63</sup>

This information includes the mining entity's (and any child entity's<sup>64</sup>) mineral resource and ore reserve holdings in tabular form with that information broken down into each commodity type (including the grade or quality), the mineral resource category (inferred, indicated and measured) and ore reserve category (probable and proved), and by project (if material) or geographical area, based on the materiality of the mineral resource and ore reserve holdings to the mining entity.<sup>65</sup>

The geographical areas by which a mining entity chooses to report its aggregated mineral resources and ore reserves holdings is a matter for it to determine, having regard to its individual circumstances and the materiality of the mineral resources and ore reserves in question. For example, some entities may choose to report by continent, by country, by state/territory or by other regions. Others may choose to report holdings for a particular property, project or deposit, if that is material, with a mix of other geographical areas.

The date at which a mining entity must report its mineral resource and ore reserve holdings in the annual mineral resources and ore reserves statement can be either its end of financial year balance date or another appropriate date (such as a date that aligns with its annual review of mineral resources and ore reserves and corporate planning cycle). Whatever the date is, it must be disclosed in the annual mineral resources and ore reserves statement.<sup>66</sup> If it is a date other than its end of financial year balance date, the annual mineral resources and ore reserves statement must include a brief explanation of any material changes to its mineral resource and ore reserve holdings between the date of the review and its end of financial year balance date.

A mining entity should report its mineral resource and ore reserve holdings as at the same time each year to promote effective year-on-year comparisons.

The annual mineral resources and ore reserves statement must include a comparison of the entity's reported aggregated mineral resource and ore reserve holdings for the current year against the corresponding aggregated mineral resource and ore reserve holdings for the previous year, with an explanation of material changes between the two.<sup>67</sup> For the purposes of this comparison, ASX does not require the mining entity to disclose the previous year holdings broken down into each mineral resource category and ore reserve category (such as probable ore reserves and proved ore reserves). The comparison only needs to be provided by commodity (including grade or quality) for total ore reserves and total mineral resources and by project (if material) or geographic region based on materiality.

The annual mineral resources and ore reserves statement in a mining entity's annual report must include:

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<sup>62</sup> Listing Rule 5.20.

<sup>63</sup> Listing Rule 5.21.

<sup>64</sup> The definition of "mineral resources and ore reserves holdings" in Listing Rule 19.12 includes the holdings of the mining entity and its child entities.

<sup>65</sup> Listing Rule 5.21.2.

<sup>66</sup> Listing Rule 5.21.2.

<sup>67</sup> Listing Rule 5.21.4.

- a statement that it is based on, and fairly represents, information and supporting documentation prepared by a competent person or persons; and
- a statement that the mineral resources and ore reserves statement as a whole has been approved by a named competent person or persons (who may be different competent persons to the ones referred to in the previous bullet point), as well as information about their employer and the professional organisation of which they are a member.<sup>68</sup>

The annual mineral resources and ore reserves statement must only be issued with the prior written consent of the named competent person or persons who have approved the statement as a whole as to the form and context in which it appears in the annual report.

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<sup>68</sup> Being the information referred to in Listing Rule 5.22(b) and (c).