

ASX MINING REPORTING RULES FOR MINING ENTITIES: FREQUENTLY ASKED QUESTIONS

Transition to new disclosure rules

Reference material: ASX Listing Rules Guidance Note 31.

1. When do the JORC Code 2012 and the new rules relating to the reporting of mining activities in Chapter 5 of the ASX Listing Rules (together, the “new disclosure rules”) come into effect?

With one exception, the JORC Code 2012 and the new disclosure rules in Chapter 5 of the Listing Rules come into effect on 1 December 2013.

The one exception relates to the requirements for a study at the Pre-Feasibility or Feasibility level to be completed in order to declare an Ore Reserve in clause 29 of the JORC Code 2012 and Listing Rule 5.9.1, which do not come into effect until 1 December 2014.

2. Can entities continue to report Exploration Results, Mineral Resource or Ore Reserve estimates prepared under the JORC Code 2004 post-transition (ie, after 1 December 2013) or do they need to update the information to comply with the new disclosure rules?

The new disclosure rules establish an enhanced ‘if not, why not’ disclosure regime based around Table 1 of the JORC Code. They apply whenever:

- *new results or estimates are reported for the first time post-transition; or*
- *there are material changes post-transition to previously reported results or estimates,*

in the case of the JORC Code 2012 for a ‘significant project’ and, in the case of the ASX Listing Rules, for a ‘material mining project’ (see below).

Accordingly, results or estimates that were prepared in accordance with the 2004 Code and reported pre-transition can continue to be referred to in Public Reports post-transition without being updated to comply with the new disclosure rules, provided there has been no material change in those results or estimates.

However, as soon as there is a material change in those results or estimates, if they relate to a ‘significant project’ (JORC) or ‘material mining project’ (ASX), the information will need to be updated to comply with the new disclosure rules.

To avoid misleading readers, an entity that reports results or estimates post-transition for a significant/material mining project that were originally reported under the 2004 JORC Code and have not been updated since to comply with the new disclosure rules should make it clear that the information has been prepared in accordance with the 2004 Code rather than the new disclosure rules. A statement along the following lines should suffice:

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“This information was prepared and first disclosed under the JORC Code 2004. It has not been updated since to comply with the JORC Code 2012 on the basis that the information has not materially changed since it was last reported.”

3. What is a ‘significant project’ (JORC) or ‘material mining project’ (ASX) that attracts the enhanced ‘if not, why not’ disclosure regime in the new disclosure rules?

The JORC Code 2012 defines a ‘significant project’ as an exploration or mineral development project that has or could have a significant influence on the market value or operations of a listed company, and/or has specific prominence in Public Reports and announcements.

The new Listing Rules define ‘material mining project’ for a listed entity as one that meets the following criteria:

- *the entity or a child entity has an economic interest in the mining project (whether alone or jointly with others); and*
- *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).*

Appendix 1 to the JORC Code 2012 makes it clear that the term ‘significant project’ is synonymous with ‘material project’. Section 2.2 of Guidance Note 31 has further guidance on the meaning of ‘material mining project’ under the Listing Rules.

4. What sort of “material change” might trigger an obligation post-transition for an entity to update estimates that were first prepared and disclosed pre-transition in accordance with the JORC Code 2004?

Whether or not there has been a material change in information reported pre-transition requiring an updated report under the new disclosure rules must be tested by reference to the new disclosure rules. In this regard, Clause 5 of the JORC Code 2012 provides the following guidance:

“A material change could be a change in the estimated tonnage or grade or in the classification of the Mineral Resources or Ore Reserves. Whether there has been a material change in relation to a significant project must be considered by taking into account all of the relevant 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 the company’s securities.”

Guidance Note 31 also notes that whether there has been a material change in the estimates of mineral resources or ore reserves for a material mining project that will trigger an obligation to update those estimates under Listing Rule 5.8 or 5.9 respectively, 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 a subsequent announcement of materially changed estimates.

Ultimately, this must come down to a matter of judgment by the entity concerned. As a guide, however, if an entity considers that a post-transition change to information about an existing project warrants an announcement under the continuous disclosure requirements in Listing Rule 3.1, then that announcement should conform to the new disclosure rules. Among other things, this means that if the original pre-transition announcement did not include the disclosures against Table 1 required under the new disclosure rules, then it must be updated to conform to the new disclosure rules.

5. What are JORC and ASX’s expectations regarding the time listed entities will take to switch over to reporting under the new disclosure rules?

There is no specific time frame. For existing projects, an entity is only required to transition to the new disclosure rules as material developments occur in relation to those projects.

That said, commercial factors will usually lead entities to adopting the new disclosure requirements sooner rather than later. The market will understand that, post-transition, an entity can only continue reporting

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information previously reported under the 2004 Code if there has been no material change to that information that triggers the new disclosure requirements. The fact that an entity continues to report information about a project prepared under the 2004 Code is therefore likely to suggest to the market that there has been very little activity undertaken on the project.

6. What should mining entities be doing to prepare themselves for transition?

Mining entities should be thoroughly familiarising themselves with the new disclosure rules. They should be identifying their 'significant projects' to which the JORC Code 2012 will apply and their 'material mining projects' to which the new requirements in Chapter 5 of the Listing Rules will apply. They should also be keeping a watchful eye on whether there are any material changes to information previously reported under the JORC Code 2004 that might require an announcement that conforms to the new disclosure rules.

7. If an entity reports information about a material project in accordance with the JORC Code 2012 and the new ASX Listing Rules ahead of the transition date of 1 December 2013, can it go back to reporting information about that project under the JORC Code 2004 and the former ASX Listing Rules?

No. If an entity voluntarily adopts the new reporting rules in respect of a material project before those rules formally come into effect on 1 December 2013, it is expected to continue to apply those rules to all Public Reports in respect of that project from that point. It should not go back to reporting information about that project under the JORC Code 2004 and the former ASX Listing Rules.

8. During the transition period, does an entity still need to apply for a waiver under Listing Rule 5.6 to report Foreign or Historic Estimates?

Yes, unless the entity has chosen voluntarily to report the Foreign or Historic Estimate in accordance with the requirements in new ASX Listing Rules 5.10 – 5.15. Otherwise, the entity must apply for a waiver from Listing Rule 5.6 and address the matters set out in joint ASX and JORC Companies Update 11/07 released on 5 December 2007.

9. Do companies with an operating mine need to undertake a Pre-feasibility study in order to continue reporting Ore Reserves after the end of the extended transition period (1 December 2014) applicable to the requirement for at least a Pre-Feasibility study to declare an Ore Reserve?

From 1 December 2014, clause 29 of the JORC Code 2012 will require Ore Reserves to be "defined by studies at Pre-Feasibility or Feasibility level as appropriate that include application of Modifying Factors".

It should be noted that Clause 29 of the JORC Code does not require a formal Pre-Feasibility or Feasibility Study, but rather "studies at Pre-Feasibility or Feasibility level". That is, the information related to the Modifying Factors must be at "Pre-Feasibility or Feasibility level".

Where an entity has an operating mine for an Ore Reserve, its Life of Mine Plan would generally be expected to contain information at better than Pre-Feasibility or Feasibility level for the whole range of inputs normally required for a Pre-Feasibility or Feasibility study and this would meet the requirement in Clause 29 for the Ore Reserve to continue that classification. Where, however, its Life of Mine Plan does not contain information at Pre-Feasibility or Feasibility level, it will have to upgrade its Life of Mine Plan to Pre-Feasibility or Feasibility level before 1 December 2014 or else downgrade the Ore Reserve to a Mineral Resource.

Where an entity does not have an operating mine and it has not undertaken studies at the Pre-Feasibility or Feasibility level as appropriate before declaring an Ore Reserve, it will need to do so before 1 December 2014 or else downgrade the Ore Reserve to a Mineral Resource.

It should be noted that any material change to an Ore Reserve on or after 1 December 2013 will need to comply with the new disclosure rules, in particular, clauses 4, 5 and 35 of the JORC Code 2012 and Listing Rule 5.9 (other than those specific requirements related to studies as the Pre-Feasibility or Feasibility level" that do not come into effect until 1 December 2014). Amongst other things, this will require the publication of a brief summary of the information in relevant sections of Table 1 or, if a particular criterion is not relevant or material, a disclosure that it is not relevant or material and a brief explanation of why this is the case.

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Competent Persons Statements

Reference material: Clauses 9-11 of the JORC Code 2012; Listing Rules 5.16 and 5.22-5.24; ASX Listing Rules Guidance Note 31; ASIC Regulatory Guides 111 *Content of expert reports*, 112 *Independence of experts* and 170 *Prospective financial information*.

10. Post transition (1 December 2013), can a mining entity rely on the streamlined Competent Person sign-off regime in the new disclosure rules when referring to previously disclosed Exploration Results, Mineral Resources or Ore Reserves prepared and reported in accordance with the JORC Code 2004?

As far as the JORC Code is concerned, the answer is yes.

However, as far as the Listing Rules are concerned, the answer is no, unless:

- *the information does not relate to a material mining project (because the Competent Person sign-off requirements in the Listing Rules only apply to material mining projects); or*
- *if the information does relate to a material mining project, it has been updated to conform to the new disclosure requirements in Listing Rules 5.7 (exploration results), 5.8 (mineral resources) or 5.9 (ore reserves), as applicable.*

The streamlined Competent Person sign-off requirements in Listing Rule 5.23 only apply to information reported "in accordance with" Listing Rules 5.7, 5.8 or 5.9. This effectively requires the information to have been updated to conform to the requirements of those Listing Rules.

If the relevant information has not been updated to be "in accordance with" Listing Rules 5.7, 5.8 or 5.9 (as applicable), the Competent Person sign-off requirements in Listing Rule 5.22 apply. This rule requires each market announcement by an entity containing Exploration Results or estimates of Mineral Resources or Ore Reserves in relation to a material mining project to state:

- a) that it is based on, and fairly represents, information and supporting documentation prepared by a named Competent Person or Persons;*
- b) in each case, whether the Competent Person is an employee of the mining entity or a related party and, if not, the name of the Competent Person's employer; and*
- c) in each case, the name of the professional organisation of which the Competent Person is a member.*

It also states that the market announcement 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 the supporting information are presented in the market announcement.

In relation to paragraph (b) above, it should also be noted that clause 9 of the JORC Code provides that:

"Any potential for a conflict of interest by the Competent Person or a related party must be disclosed in accordance with the Transparency principle. Any other relationship of the Competent Person with the Company making the report must also be disclosed in the Public Report."

11. If a Competent Person previously provided consent to a report prepared in accordance with JORC Code 2004, can the entity repeat the information post-1 December 2013 without obtaining a consent from that Competent Person?

As far as the JORC Code is concerned, the answer is yes.

However, as far as the Listing Rules are concerned, the answer is no, unless:

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- the information does not relate to a material mining project (because the Competent Person sign-off requirements in the Listing Rules only apply to material mining projects); or
- if the information does relate to a material mining project, it has been updated to conform to the new disclosure requirements in Listing Rules 5.7 (exploration results), 5.8 (mineral resources) or 5.9 (ore reserves), as applicable.

As mentioned in the previous answer, the streamlined Competent Person sign-off requirements in Listing Rule 5.23 only apply to information reported “in accordance with” Listing Rules 5.7, 5.8 or 5.9. This effectively requires the information to have been updated to conform to the requirements of those Listing Rules.

12. Is there a requirement for a Competent Person to be independent?

There is no requirement in the new disclosure rules for a Competent Person to be independent except in the circumstances set out in Listing Rule 5.16.6 - the disclosure of a production target based solely on inferred mineral resources. Entities should however be aware that under the Corporations Act, an independent expert may be required for certain reports. Entities should refer to ASIC Regulatory Guides 111, 112 and 170 for further details, which can be viewed at:

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument>

13. What should be disclosed under Clause 9 of the JORC Code 2012 with regard to potential conflicts of interest?

Clause 9 of the JORC Code 2012 requires any potential conflict of interest by the Competent Person or a related party to be disclosed in accordance with the Transparency principle of the JORC Code.

An entity issuing a Public Report is required to disclose the name(s) of the Competent Person(s) on whose information and supporting documentation the report is based, and to state whether the Competent Person is a full-time employee of the entity and, if not, name the Competent Person's employer. Any other relationship of the Competent Person with the entity which may give rise to a potential conflict must also be disclosed. For instance, if a Competent Person is a shareholder or optionholder in, part-time employee of, or personal consultant to, the entity, then this fact should be disclosed, as should any incentive payment dependent on the results of the information being reported based on the work of, or supervised by, the Competent Person.

14. Can there be multiple Competent Persons for a project?

Yes. Indeed, for some projects it is likely that there will be multiple Competent Persons whose information and supporting documentation forms the basis of a Public Report, reflecting the different technical knowledge and expertise that may be required to opine on the mineralisation and modifying factors involved.

If there is one Competent Person who assumes responsibility for the Public Report for a project who relies on information from other Competent Persons for matters outside their knowledge and expertise, he or she should at least obtain appropriate sign-offs from those other Competent Persons. Where this occurs, as stated in the guidelines to clause 11 of the JORC Code 2012:

“If only one Competent Person signs the Mineral Resource or Ore Reserve documentation, that person is responsible and accountable for the whole of the documentation under the Code. It is important in this situation that the Competent Person accepting overall responsibility for a Mineral Resource or Ore Reserve estimate and supporting documentation prepared in whole or in part by others, is satisfied that the work of the other contributors is acceptable.”

The guidelines to clause 11 also note that:

“Estimation of Mineral Resources may be a team effort (for example, involving one person or team collecting the data and another person or team preparing the estimate). Estimation of Ore Reserves is very commonly a team effort involving several technical disciplines. It is recommended that, where there is clear division of responsibility within a team, each Competent

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Person and his or her contribution should be identified, and responsibility accepted for that particular contribution.”

Under clause 9, the entity should also obtain, and keep a copy of, the written consent from each Competent Person consenting to the inclusion of their information and supporting documentation in the Public Report in the form and context in which it appears. A pro forma Competent Person's consent form is available on the JORC website (see http://www.jorc.org/docs/2012_edition_consent_form.docx.)

Exploration Targets

Reference Material: Clauses 17 and 38 of the JORC Code 2012; Listing Rules 5.7, 5.12 & 5.16; ASX Listing Rules Guidance Note 31.

15. Does an Exploration Target in a Public Report require a Competent Person statement?

Yes. Clause 17 of the JORC Code 2012 expressly states that a Public Report that includes an Exploration Target must be accompanied by a Competent Person statement taking responsibility for the form and context in which the Exploration Target appears.

16. Does an Exploration Target in a Public Report require a cautionary statement?

Yes. Clause 17 of the JORC Code 2012 expressly requires a cautionary statement whenever an Exploration Target first appears in a Public Report.

17. How should cautionary statements be included in a Public Report?

The JORC Code and Listing Rules require the cautionary statements to be proximate to, and have equal prominence as, the information requiring the cautionary statement.

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. A 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.

See section 2.6, ASX Guidance Note 31.

18. In addition to a Competent Person statement and a cautionary statement, what additional information is required for reporting an Exploration Target?

Clause 17 of the JORC Code 2012 sets out the detailed requirements that must be satisfied when reporting an Exploration Target. Among other things, it requires:

“In any statement referring to potential quantity and grade of the target, these must be expressed as ranges and must include:

- a detailed explanation of the basis for the statement, including specific description of the level of exploration activity already completed, and*
- a clarification statement within the same paragraph as the first reference of the Exploration Target in the Public Report, stating that the potential quantity and grade is conceptual in nature, that there has been insufficient exploration to estimate a Mineral Resource and that it is uncertain if further exploration will result in the estimation of a Mineral Resource.*

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If a Public Report includes an Exploration Target the proposed exploration activities designed to test the validity of the exploration target must be detailed and the timeframe within which those activities are expected to be completed must be specified.

If an Exploration Target is shown pictorially (for instance as cross sections or maps) or with a graph, it must be accompanied by text that meets the requirements above. ...

All disclosures of an Exploration Target must clarify whether the target is based on actual Exploration Results or on proposed exploration programmes. Where the Exploration Target statement includes information relating to ranges of tonnages and grades these must be represented as approximations. The explanatory text must include a description of the process used to determine the grade and tonnage ranges used to describe the Exploration Target.”

The Guidelines to Clause 17 of the JORC Code 2012 also state:

“For an Exploration Target based on Exploration Results, a summary of the relevant exploration data available and the nature of the results should also be stated, including a disclosure of the current drill hole or sampling spacing and relevant plans or sections. In any subsequent upgraded or modified statements on the Exploration Target, the Competent Person should discuss any material changes to potential scale or quality arising from completed exploration activities.”

19. Is a report based on Table 1 of the JORC Code 2012 required to be disclosed when reporting an Exploration Target?

There is no specific requirement to include a report based on Table 1 when disclosing an Exploration Target. However, to the extent the Exploration Target is based on Exploration Results for a material mining project, Listing Rule 5.7 and Clause 19 of the JORC Code 2012 require the public report that first announced those results to have included as an appendix a separate report providing all information that is material to understanding the Exploration Results, in relation to each of the criteria in section 1 (sampling techniques and data) and section 2 (reporting of exploration results) of Table 1.

20. Can a headline statement in a public report include an Exploration Target?

No, clause 17 of the JORC Code 2012 17 states:

“Given the level of uncertainty surrounding the supporting data, an Exploration Target tonnage or grade must not be reported as a ‘headline statement’ in a Public Report ...”

21. Can an entity include in an Exploration Target mineralisation that has no prospects of eventual economic extraction as a Mineral Resource?

No. Clause 17 of the JORC Code 2012 defines an Exploration Target as “a statement or estimate of the exploration potential of a mineral deposit in a defined geological setting where the statement or estimate, quoted as a range of tonnes and a range of grade (or quality), relates to mineralisation for which there has been insufficient exploration to estimate a Mineral Resource”. It also provides that:

“Any such information relating to an Exploration Target must be expressed so that it cannot be misrepresented or misconstrued as an estimate of a Mineral Resource or Ore Reserve. The terms Resource or Reserve must not be used in this context. In any statement referring to potential quantity and grade of the target, these must both be expressed as ranges and must include:

- a detailed explanation of the basis for the statement, including specific description of the level of exploration activity already completed, and*
- a clarification statement within the same paragraph as the first reference of the Exploration Target in the Public Report, stating that the potential quantity and grade is conceptual in nature, that there has been insufficient exploration to estimate a Mineral Resource and that it is uncertain if further exploration will result in the estimation of a Mineral Resource.”*

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It is implicit in the definition of the term that subsequent exploration of an Exploration Target must be directed towards the estimation of a Mineral Resource. Under the JORC Code, an entity may not report a Mineral Resource which has no prospects of eventual economic extraction. This means that an entity cannot include within a reported Exploration Target, for example, mineralisation where it is apparent that the tonnage and/or grade is so low or so deep, or otherwise not extractable, that the mineralisation has no prospects of being economically mined within a reasonable time frame. It would be misleading, and in breach of the JORC Code and the Corporations Act for an entity to do otherwise.

The clarification statement referenced above is designed to put investors on notice that the Exploration Target is conceptual and that there has been insufficient exploration to date to estimate a Mineral Resource, as well as uncertainty whether further exploration will yield a Mineral Resource. It is not designed to caution investors that irrespective of achieving the exploration results, the entity has no prospects of economically extracting the mineralisation.

Production Targets

Reference Material: ASX Listing Rules Guidance Notes 31 and 8; ASIC Regulatory Guides 111 Content of expert reports and 170 Prospective financial information.

Note: *While ASX Listing Rule Chapter 5 and the JORC Code 2012 do not come into operation until 1 December 2013, the requirement in the Corporations Act and the Australian Securities and Investments Commission Act that a Production Target or forecast financial information derived from a Production Target must be based on reasonable grounds has been in force for some time. Some of the following answers to frequently asked questions may therefore be relevant to Production Targets and forecast financial information derived from Production Targets that pre-date the transition date for the new disclosure rules in ASX Listing Rule Chapter 5 and the JORC Code 2012.*

It should be noted that the provisions of the Corporations Act and Australian Securities and Investments Commission Act referred to in these FAQs are administered by ASIC and any queries in relation to those Acts should be directed to ASIC. The provisions of the Listing Rules referred to in these FAQs are administered by ASX and any queries in relation to those rules should be directed to ASX.

22. What types of Production Targets and forecast financial information derived from a Production Target will be subject to the new reporting requirements in Chapter 5 that come into effect on 1 December 2013?

The term "Production Target" is defined in Listing Rule 19.12 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.

Forecast financial information derived from a Production Target refers to any type of financial information that is obtained or deduced from an underlying Production Target.

The reporting requirements for Production Targets in Listing Rules 5.16 and 5.17 therefore do not apply to the disclosure of near-term production forecasts or guidance relating to the current or forthcoming year, and any forecast financial information derived from such near-term production forecasts or guidance.

Under Listing Rule 5.18, the requirement to disclose material assumptions in Listing Rules 5.16.1 and 5.17.1 also do not apply to a Production Target, or forecast financial information derived from a Production Target, relating to an operating mine or mines and that is underpinned:

- solely by Ore Reserves; or
- solely by a combination of Ore Reserves and Measured Mineral Resources; or

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- solely by a combination of Ore Reserves and:
 - Measured Mineral Resources; and/or
 - Indicated Mineral Resources (provided in this case that the Indicated Mineral Resources are not the determining factor in project viability).

23. What considerations should an entity bear in mind before publishing a Production Target or forecast financial information derived from a Production Target?

Production Targets and forecast financial information derived from them are statements about future matters. Sections 670A(2), 728(2) and 769C of the Corporations Act and section 12BB of the Australian Securities and Investments Commission (“ASIC”) Act require statements as to future matters to be based on reasonable grounds or else they are taken to be misleading. The test for whether reasonable grounds exist is an objective one.

The publication of a Production Target or forecast financial information derived from a Production Target for a project carries with it an implication that the publisher believes that the project will be economically viable at some point in the future and that the target or forecast is achievable. The publisher must have reasonable grounds for that belief as of the date of publishing the target or forecast. If they do not, then they may breach various provisions of the law (see, for example, sections 670A(1), 728(1), 1041H and 1309 of the Corporations Act and section 12DA of the ASIC Act). They may also be liable to compensate anyone who suffers loss or damage as a result (see, for example, sections 670B, 729, 1041I, 1317HA and 1325(1) of the Corporations Act and section 12GF of the ASIC Act).

ASX Guidance Note 31 recommends, therefore, that an appropriate level of due diligence needs to be applied to the preparation of a Production Target or forecast financial information derived from a Production Target. The underlying figures and assumptions should be carefully vetted and signed off at a suitably senior level before they are released.

24. What are reasonable grounds for a Production Target or forecast financial information derived from a Production Target?

It is the responsibility of the entity publishing a Production Target or forecast financial information derived from a Production Target to ensure that it has reasonable grounds for it.

Listing Rules 5.15 to 5.19 address the circumstances and disclosure obligations for reporting Production Targets and forecast financial information, depending on whether they are based on Ore Reserves, Mineral Resources, Exploration Targets and Qualifying Foreign Estimates. These Listing Rules:

- *require, among other things, the disclosure of all material assumptions on which the Production Target is based, and a statement that the estimated Ore Reserves and/or Mineral Resources underpinning the Production Target have been prepared by a Competent Person or Persons in accordance with the requirements the JORC Code 2012;*
- *prohibit the disclosure of a Production Target that is based solely on an Exploration Target or solely or partly on Historical Estimates or Foreign Estimates (other than Qualifying Foreign Estimates) of mineralisation; and*
- *if a proportion of a Production Target is based partly on an exploration target or solely on Inferred Mineral Resources, require that the entity include a statement of the factors that lead it to believe that it has a reasonable basis for reporting a Production Target in that context.*

Even where disclosure of a Production Target or forecast financial information derived from a Production Target is made in accordance with these Listing Rules, for the reasons outlined in the answer to question 2 above, it must still be based on reasonable grounds existing as at the date of the disclosure or else it will be taken to be misleading under the Corporations Act.

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Reasonable grounds extend not only to the mineralisation underpinning the Production Target or forecast financial information but also to any assumptions regarding the 'Modifying Factors' in Table 1 of the JORC Code.

What constitutes 'reasonable grounds' for a Production Target or forecast financial information derived from a Production Target must be judged according to the facts and circumstances of each case and the requirements of the Corporations Act. The following general observations may, however, be helpful:

- *Probable or Proved Ore Reserves (properly declared) will generally provide a reasonable basis for a Production Target or forecast financial information derived from a Production Target, given the level of geological knowledge and confidence and the consideration of the Modifying Factors they involve.*
- *Indicated or Measured Mineral Resources (properly declared) may provide a reasonable basis for a Production Target or forecast financial information derived from a Production Target provided the entity has given sufficient consideration to the Modifying Factors in order to have reasonable grounds and it clearly outlines the material assumptions it has made in this regard.*
- *Where an entity has Ore Reserves or Indicated or Measured Mineral Resources, it may have reasonable grounds for including some level of Inferred Mineral Resources or an Exploration Target in a Production Target or forecast financial information derived from a Production Target, subject to the following caveat in section 8.5 of ASX Guidance Note 31:*

"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."

The proportion of Inferred Mineral Resources and Exploration Targets that may be added to the end of a mine plan depends on the maturity of the project. For example, a greater proportion may be justified for a producing mine with a history of converting Exploration Targets and Mineral Resources into Ore Reserves, than an exploration entity that has Indicated Mineral Resources as the highest confidence Mineral Resource.

- *A Production Target or forecast financial information derived from a Production Target may only be based on an Inferred Mineral Resource alone if the entity complies with Listing Rule 5.16.6 and section 8.7 of ASX Guidance Note 31.*

The general observations above assume, of course, that the relevant Ore Reserve, Mineral Resource or Exploration Target is a genuine one that would withstand scrutiny by a Competent Person's peers (see clause 11 of the JORC Code).

25. An entity has received a Scoping Study (or a study of a more preliminary nature) that it wishes to disclose to the market and that includes a Production Target or forecast financial information derived from a Production Target. Can it do so?

We recommend that an entity in this position obtain legal advice about their particular situation.

A Scoping Study is defined in clause 38 of the JORC Code 2012 as;

"...an order of magnitude technical and economic study of the potential viability of Mineral Resources. It includes appropriate assessments of realistically assumed Modifying Factors together with any other relevant operational factors that are necessary to demonstrate at the time of reporting that progress to a Pre-Feasibility Study can be reasonably justified."

Entities develop or engage others to develop Scoping Studies (or studies of a more preliminary nature) for internal management purposes and, in particular, to help inform a decision on whether to commit the entity to

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the next stage of exploration or development. For the purposes of these FAQs, Scoping Studies or studies of a more preliminary nature are referred to as preliminary studies.

Generally speaking, an entity can publish the results of a preliminary study provided it conforms to the requirements of the Listing Rules and is not misleading. This means that where the entity intends to report the results of a preliminary study which happens to include a Production Target or forecast financial information derived from a Production Target, it must comply with Listing Rules 5.15– 5.19 and there must be a reasonable basis for it – see the answer to question 2 above.

Where the entity does not have a reasonable basis for a Production Target or forecast financial information derived from a Production Target, this information must not be released to the market.

Before publishing a preliminary study that contains a Production Target or forecast financial information derived from it, an entity should therefore satisfy itself that there is a reasonable basis for the Production Target or forecast financial information derived from a Production Target.

If the entity is concerned that there may not be a reasonable basis for the Production Target or forecast financial information included in a preliminary study but it wishes nonetheless to publish the general outcome of the preliminary study, then it can publish a summary of the preliminary study that does not mention the Production Target or forecast financial information.

The entity can still say, if this is the case, that the results of the preliminary study were positive and that the results justify the entity to commit to the next stage of exploration and development by progressing through to a Scoping, Pre-feasibility or other study.

26. What type of forward looking target can an entity disclose in circumstances where it does not yet have sufficient information to have a reasonable basis to disclose a Production Target or forecast financial information derived from a Production Target?

An entity in these circumstances can:

- publish an aspirational statement of the type envisaged by section 8.3 of ASX Guidance Note 31, provided it is clear that it is an aspirational statement rather than a Production Target or forecast financial information derived from a Production Target and it is not otherwise misleading; or*
- disclose an Exploration Target (as opposed to a Production Target) provided it complies with clause 17 of the JORC Code, it has a reasonable basis for it and it is not otherwise misleading.*

Beyond that, an entity can only publish information that is accurate and not misleading.

27. An entity has received a Scoping Study (or study of a more preliminary nature) which includes a Production Target or forecast financial information derived from a Production Target that may not be based on reasonable grounds. If it believes that the information included in a study could be “market sensitive” (ie a reasonable person would expect it to have a material effect on the price or value of its securities), doesn’t it have an obligation to publish that information immediately under Listing Rule 3.1 and/or to include it as material information in any bidder’s statement, target’s statement, fund-raising prospectus or cleansing notice it may be about to publish?

No, not if the entity does not have a reasonable basis for the Production Target or forecast financial information included in the study.

In the first place, depending on the circumstances, where a Production Target or forecast financial information derived from a Production Target is not supported by reasonable grounds, it may well be so speculative or hypothetical that a reasonable person would not expect it to have a material effect on the price or value of an entity’s securities (as acknowledged in ASIC Regulatory Guide 170 Prospective financial information, at paragraphs 11 and 18).

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In any event, Listing Rule 3.1 is subject to the carve-outs in Listing Rule 3.1A, a number of which potentially apply in this circumstance. These include carve-outs for matters of supposition, information that is insufficiently definite to warrant disclosure and information that is generated for internal management purposes. Importantly, it also includes a carve-out for information where it would be a breach of law to disclose the information.

If an entity doesn't have a reasonable basis for a Production Target or forecast financial information derived from a Production Target then, as mentioned in the answer to question 2 above, it is likely to be a breach of law for it to disclose that information.

An entity issuing a bidder's statement or target's statement in relation to a takeover or engaging in fundraising activities through a prospectus or a 'cleansing notice' under sections 708AA or 708A of the Corporations Act is also effectively prohibited from disclosing a Production Target or financial information derived from one that is not supported by reasonable grounds by virtue of sections 670A, 728, 769C and 1041H of the Corporations Act and section 12DA of the Australian Securities and Investments Commission Act.

Further, in the case of target's statements, prospectuses and cleansing notices, information need only be included in such documents to the extent to which it is reasonable for investors and their professional advisors to expect to find the information in the document (see sections 638(1A), 710(1) and 708AA(9) of the Corporations Act). No investor or professional adviser could reasonably expect to find information in such a document that is misleading and that would give rise to a breach of law by being disclosed.

Entities have to ensure that they keep a Production Target or financial information derived from a Production Target that is not supported by reasonable grounds strictly confidential so that they can continue to attract the carve-out from immediate disclosure under Listing Rule 3.1A.2. If the information leaks, it may expose the entity to civil and criminal penalties and civil claims for compensation – see further the discussion in question 2 above. ASX or ASIC may also require the entity to issue a retraction in relation to the Production Target or financial information.

28. May an officer or employee of an entity or other person who is aware of a Production Target or forecast financial information derived from a Production Target that has not been announced to the market because the entity does not consider it to be supported by reasonable grounds, subscribe for, buy or sell securities in the entity or give this information to existing or prospective retail or institutional shareholders or brokers and analysts?

We recommend that a person in this position obtain legal advice about their particular situation.

Subject to certain exceptions in the Corporations Act (see below for an example), if:

- *the Production Target or forecast financial information is information that, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of the entity's securities; and*
- *the person knows or ought reasonably to know that a reasonable person would expect the information to have a material effect on the price or value of the entity's securities,*
- *the person may not subscribe for, buy or sell securities in the entity, or procure others to do so, as this would breach the insider trading prohibition in section 1043A(1) of the Corporations Act. The person also may not give the information to existing or prospective retail or institutional shareholders or brokers and analysts, if they know or ought reasonably to know that the recipient is likely deal or procure a dealing in the securities, as that would breach the tipping prohibition in section 1043A(2) of the Corporations Act.*

The test for whether a reasonable person would expect a Production Target or forecast financial information derived from it to have a material effect on the price or value of the entity's securities is whether the information would, or would be likely to, influence persons who commonly acquire securities in deciding whether or not to acquire or dispose of the securities (section 1042D of the Corporations Act).

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Depending on the circumstances, it may well be that a Production Target or forecast financial information derived from a Production Target that is not supported by reasonable grounds is so speculative or hypothetical that a reasonable person would not expect it to have a material effect on the price or value of an entity's securities (as acknowledged in ASIC Regulatory Guide 170 Prospective financial information, at paragraphs 11 and 18). However, that depends on the circumstances and hence the suggestion that a person in this position obtain legal advice about their particular situation.

There are also certain exceptions to the insider trading prohibitions in the Corporations Act that may be relevant – for example, the exception that permits underwriters to apply for or acquire shares under section 1043C of the Act.

29. Does a listed entity have to disclose commercially sensitive information or assumptions when disclosing a Production Target or forecast financial information derived from a Production Target?

This issue is addressed in detail in section 8.6 of ASX Guidance Note 31. As that section notes:

“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.

... 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). However, in such cases, the entity:

- should explain why the information is considered 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 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.”

Further guidance on this issue is also available in sections 4.20 and 5.7 of ASX Guidance Note 8. As the former section notes:

“Issues can sometimes arise under Listing Rule 3.1 in relation to the disclosure of commercially sensitive matters, such as the pricing given to a major customer or supplier under a material contract. ASX recognises that the disclosure of such information could be used by the entity's competitors or by other customers or suppliers, to the detriment of the entity and investors in the entity.

Some commercially sensitive information may be a trade secret and therefore protected from disclosure under Listing Rule 3.1A. Some commercially sensitive information, however, may be difficult to characterise in that manner.

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ASX has no issue with a listed entity structuring an announcement about a particular transaction to avoid disclosing commercially sensitive matters, provided it includes sufficient information in the announcement to enable the market to assess the impact of the transaction on the price or value of the entity's securities. For example, in many cases, it will be sufficient to disclose the expected impact of a material contract on the entity's revenues (in the case of a customer), expenses (in the case of a supplier) or profit (in either case), without having to disclose the unit prices receivable or payable, or the volumes to be delivered or received, under the contract.

If an announcement is structured in this manner, care must be taken to ensure that it is accurate, includes all material information that would influence investors in deciding whether to buy or sell the entity's securities and is not misleading. If the announcement is not capable of being drafted to meet these requirements without including the commercially sensitive information, then Listing Rule 3.1 will require the commercially sensitive information to be disclosed."

30. Can an entity or Competent Person qualify a Production Target or forecast financial information derived from a Production Target by stating that they do not have reasonable grounds for it or disclaim liability for not having reasonable grounds?

Entities and other persons involved in publishing a Production Target or forecast financial information derived from a Production Target (such as Competent Persons, directors and senior executives), need to be clear in their disclosure that the Production Target or forecast financial information is based on reasonable grounds - see ASIC Regulatory Guide 170 Prospective financial information, at paragraphs 30 to 34.

They must not seek to qualify the Production Target or forecast financial information in a way that might suggest it is not based on reasonable grounds, nor attempt to disclaim liability if the Production Target or forecast financial information is found not to be based on reasonable grounds – see ASIC Regulatory Guide 170, paragraph 30(c) and ASIC Regulatory Guide 111 Content of expert reports, at paragraph 107. This applies even where the Production Target or forecast financial information is based solely or partly on an Inferred Mineral Resource or partly on an Exploration Target (being, in each case, information that is acknowledged to have a low level of confidence).

It should be noted that any "cautionary language" required to be disclosed under the Listing Rules or the JORC Code does not detract from the requirement under the Corporations Act and ASIC Act to have reasonable grounds for a forward looking statement. The cautionary language is not a disclaimer; it is merely designed to inform readers that there are risks associated with the Production Target or forecast financial information being achieved.