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## **PERC response to ESMA Consultation 2012 / 607**

We welcome this consultation paper, and are in general agreement on most points raised.

### **Q1 – Should the NAEN Code be added to the list in Appendix I of the Recommendations of mining reporting codes suitable for use in prospectuses? (Please provide reasons for your response)**

YES. The NAEN Code is fully compliant with the CRIRSCO Template and NAEN itself is a full member of CRIRSCO.

Furthermore, this reporting standard is the only one with complete up-to-date Russian-language text, and recognition by ESMA will encourage Russian and other FSU minerals companies to follow the reporting standards. Also, if used in conjunction with the Guidelines on conversion from the Russian national reporting system (developed jointly by CRIRSCO and the Russian State Commission on Reserves, GKZ) this will provide a much simpler and more usable method for such companies to report using an internationally standardised system.

### **Q2 – Do you agree with ESMA's proposed recommendations on how the materiality of mineral projects should be assessed?**

YES. Detailed comments as follows:

III(7) It appears that the temporary relief from compliance with the 2011 recommendations granted by ESMA in January 2012 will continue subject to a business being able to demonstrate that it is indeed large and diversified. We expect that this position should be included and confirmed in the revised recommendations and in essence could be taken to comprise part of the materiality test when considered in the round.

III(8-14) At paragraph 12, ESMA indicate that there is no presumption that cement/aggregate business are out of the scope of the recommendations and that disclosure and reporting must be assessed on a case by case basis. We take this to mean that each time a prospectus is issued, there must be a 'test' made **in the business** to determine whether the proposals are captured as a 'material mining project' or not. In the majority of situations this is unlikely to be the case, except perhaps if a prospectus is used for a specific project, e.g. the development of a new cement plant with associated quarry or the development of a new region in which no significant assets are otherwise held that will develop new quarry operations. The test will presumably be the responsibility of a Competent Person as defined in PERC.

III(16-19) – The suggestions in the consultation generally support the position that for most circumstances, the recommendations will not apply to large diversified construction materials companies. The ability to frame the assessment of materiality in the context of the all of the mineral assets in the relevant company is one of the key points made in the pleadings to ESMA last year. Again, the decision relating to materiality is one for the Competent Person to make.

III(20) – It is encouraging to see that ESMA do not seek to prescribe any quantitative tests and the assessment of materiality will comprise a qualitative test, which a Competent Person should be able

to satisfy taking account of the size and diversity of operations and locations available to the company in question.

In our view, all points in the ESMA proposals are fully consistent with the wording of the guideline on materiality as set out in Clause 60 of the proposed 2013 update of the PERC standard currently being prepared.

In this context assuming that ESMA are satisfied with the responses received and follow their proposals described in the consultation, Clause 60 should be satisfactory in providing sufficient and suitable guidance. The key point is that a Competent Person is responsible for determining whether a site/operation is material and therefore requires further disclosure in any reporting.

**Q3 – Do you agree with the proposed approach to generally exempt non-equity securities (other than depositary receipts over shares) from the requirement to produce a competent person's report?**

YES.

If a company is not required to report having satisfied the materiality test, no Competent Person's Report is necessary to support any reserves and resources information provided. However, what is made clear in the consultation document and in the recommendations already published (including the proposed amendments set out in the consultation document) is that ESMA expects any reserves and resources estimates to be reported in a style consistent with international standards. This point is made at Section IV(IV.1 24) where it is stated that even where there is no requirement to produce a CPR in accordance with paragraph 133 of the recommendations, '*...the general information requirements for mineral companies laid down in paragraph 132 of the Recommendations will continue to apply.*' Revised Paragraphs 132 and 133 of the Recommendations are included in the consultation document at Annex III, where they refer to reporting and exemptions from the need for a Competent Person's Report.

There are numerous references to reporting '*...in accordance with one of the reporting standards that is acceptable under the codes...*' which suggests that irrespective of whether a Competent Person's Report is prepared for an individual site (or group of sites), any reported resources and reserves estimates must themselves have been prepared in accordance with one of the accepted reporting codes

**Q4– Do you agree with our proposed revision of the paragraph 133(ii) exemption regime?**

YES

**Q5 – Do you agree with the proposal to replace the term 'equivalent overseas market' with the definition of 'equivalent' third country market'?**

YES

**Q6 – Do you agree with the proposal to apply the same equivalence assessment regime for third country markets as in Article 4.1 (e) of the amended PD which requires any equivalence assessment to be performed by the European Commission beforehand?**

YES

**Q7 – Do you agree with the proposal to replace the term 'appropriate multi-lateral trading facility' with a definition based on the new Article 26a of the Prospectus Regulation?**

YES

**Q8 – Do you agree with the proposed amendments to paragraph 133(i)(d) and Appendices II and III?**

YES.

Paragraphs 39 and 40 deal with the content of Competent Persons Reports where these are required. In the recommendations as published, these were particularly onerous and in many instances not directly relevant to the operations of construction materials companies. ESMA has recognised the difficulties in the wording that they had included previously and have suggested changes that make it clearer that the requirements are not absolute. In circumstances where construction materials companies have to produce a Competent Persons Report, there is now much greater flexibility in the structure and content of the report.

**Q9 – Do you agree with the proposed clarification for on-site inspections?**

YES

Paragraphs 41 and 42 also remove the absolute need for a site inspection by the Competent Person in circumstances where a Competent Persons Report is necessary. This is welcomed since it had already been argued that this was not particularly relevant for quarry operations (or indeed prospect sites) for construction materials companies and indeed may not even be necessary. Leaving it to the discretion of the Competent Person is a far more pragmatic solution.

The new version of the PERC Reporting Standard currently being prepared for publication includes new guidelines on the information to be reported from site inspections, but it does not make site visits mandatory, and it is thus complementary to the ESMA proposals.



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