



Resources and Reserve Reporting: ASIC perspective



ASIC

Australian Securities &
Investments Commission

April 2013

ASIC's remit and priorities

Corporations Act 2001 and Australian Securities and Investments Commission Act 2001

ASIC's strategic priorities are to focus on three key outcomes:

- Confident and informed investors and financial consumers
- Fair and efficient financial markets
- Efficient registration and licensing

ASIC's involvement

Extensive consultations with industry groups, professional associations, advisers, ASX, JORC and SPE

ASIC's concerns were to ensure:

- Market integrity
- Compliance with the Corporations Act, including the general continuous disclosure regime and requirements regarding forward looking statements

ASIC's involvement

Control transactions

- e.g. takeover, schemes of arrangement

Fundraising transactions

- primary / secondary

'Public reports' by mineral and energy companies:

- 2012 JORC Code (minerals)
- 2007 SPE PRMS (oil & gas)
- ASX Listing Rules

General disclosure principles

1. Context

ASIC considers disclosures made in lodged documents in the context of other disclosures – eg ASIC also reviews disclosures made by the entity in continuous disclosure announcements: RG 228.173.

2. Underlying assumptions

Disclosure of underlying assumptions is necessary to ensure investors are able to weigh up the reliability of forward looking information: RG 170.61-70; 85-86.

3. Reasonable basis

As a starting point, forward looking statements must have a reasonable basis: note RG 170.94.

Forward looking statements

Corporations Act provisions derive from *Trade Practices Act 1974* s51A (now s4 of the Australian Consumer Law)

Corporations Act:

- s670A(2) (takeovers/ control transactions)
- s728(2) (fundraising)
- s769C (financial products and services)

ASIC Act:

- s12BB(1) (Consumer protection)

ASIC Regulatory Guides 111, 112, 170, 228

Forward looking statements

- Classic concern: hypothetical estimates of raw production or future economic value of production
- *ASC v McLeod* (2000) 18 ACLC 424
- New rules on disclosure of production targets: LRs 5.15-5.19 and section 8 of Guidance Note 31.
- Prohibition on production targets based solely on an exploration target / combination of exploration target and inferred resources

International Comparisons

Other jurisdictions considered – Canada, South Africa, USA, Hong Kong, Singapore and Europe

Greater international comity, given emphasis on:

- “if not, why not” disclosure
- disclosure of JORC Table 1
- definitions of scoping, pre-feasibility, feasibility studies
- incorporation of SPE PRMS as the oil & gas reporting framework

ASIC endorses the 2012 JORC Code and the revised ASX Listing Rules

ASIC's regulatory tool-kit

Administrative tools:

- Order for full prospectus disclosure under s710
- Stop order
- Comment Letter
- Surveillance
- Enforceable undertaking
- Infringement notice
- Order to suspend trading, to ASX

Civil proceedings

Criminal proceedings