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Dear Diane

ASX Listing Rules Review Issues Paper: Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency. Company secretaries have primary responsibility in listed companies to deal with the Australian Securities Exchange (ASX) and interpret and implement the Listing Rules. Our Members deal on a day-to-day basis with ASX and have a thorough working knowledge of the operations of the markets, the needs of investors and the Listing Rules, as well as compliance with the Corporations Act (the Act).

We welcome the opportunity to comment on the *ASX Listing Rules Review Issues Paper: Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies* (the issues paper). CSA has confined our comments to two of the proposals contained in the issues paper, as they are central to our Members' concerns, being focused on disclosure of information that would competitively disadvantage Australian listed entities and add an unreasonable compliance burden.

Issue 1: Disclosure of key economic assumptions used to calculate reserve estimates

The issues paper contains a proposal to require resource companies to disclose the key economic assumptions used to calculate reserve estimates and a similar proposal to disclose cost and revenue factors relating to mineral resources and ore reserve estimates. CSA is of the firm view that this would result in the disclosure of commercially sensitive information regarding a company's internal economic assumptions, and pricing in respect of long-term, confidential sales contracts.

CSA is very concerned that such disclosures would place Australian listed entities at a disadvantage when competing domestically with large global entities not listed on the Australian exchange. Australian listed entities are not just competing for capital, but will also be competing for the same prospects and customers as those large global entities. The lack of confidentiality of the company's economic assumptions, in particular the price assumptions related to long-term contracts, would place Australian listed entities at a commercial disadvantage from which

other global entities would not suffer and could have implications from an anti-trust perspective. Such disclosures would put ASX listed companies at a disadvantage with respect to their customers and suppliers, as well as with non-ASX listed competitors. It could also result in valuable information between withdrawn from the market by Australian ASX listed minerals and oil and gas companies.

The disadvantages are not confined to the listed entity. The lack of confidentiality on economics and pricing will also discourage overseas customers and joint venturers from transacting with an Australian listed entity. CSA is of the view that customers will not want the information about their negotiations made public.

CSA notes that ASX is aware that there are issues of commercial sensitivity associated with this proposal and the issues paper suggests two alternative approaches: the disclosure of price ranges, or a brief explanation of the methodology used to determine the price assumptions underpinning the reserve estimates.

CSA does not support either approach.

In relation to the disclosure of price ranges, contracts negotiated with customers can vary. The starting and finishing prices in a pricing band would reveal confidential information relating to negotiations with customers to the advantage of competitive suppliers and provide customers of Australian listed entities with the knowledge of the points on which they can focus in negotiations. The proposal of disclosing a price range is particularly detrimental, as it would make it easier for customers to bring pressure to bear on negotiations. CSA is also of the view that customers are unlikely to wish the issues on which they negotiated to become public knowledge.

CSA is of the view that the issue that ASX is seeking to address with this proposal is to prevent junior start-up minerals and oil and gas companies from releasing statements of expected profitability based on economic assumptions that are unreasonable. CSA is of the view that more detailed review and enforcement of the disclosures against the existing JORC Code already mandated by ASX will provide a much better basis for investors and analysts to assess and understand the minerals reserve estimates than introducing prescriptive disclosure requirements that disadvantage Australian listed entities. CSA Members are not unanimous in their views as to whether the use of the international Petroleum Resources Management System document and Appendix co-sponsored by the Society of Petroleum Engineers, American Association of Petroleum Geologists, World Petroleum Council and Society of Petroleum Evaluation Engineers (SPE-PRMS) should be mandated or not and so we do not make a recommendation on this issue.

Issue 2: Disclosure of key assumptions underpinning production target/forecast financial information derived from the production target

The issues paper also includes a proposal in both the section on mining and on oil and gas to require disclosure of the key assumptions underpinning production target/forecast financial information derived from the production target.

CSA strongly opposes the proposals contained in clauses 140.1 and 276.1 that where an issuer reports a production target and forecast financial information derived from a production target, the issuer must disclose information relating to the key assumptions underpinning the production target at that point in time.

Such a disclosure requirement is extremely broad, with the potential to give rise to multiple disclosure obligations during the year for smaller companies, given that the individual components of the assumptions behind production forecasts could change during the year. It

could also require disclosure of commercially sensitive information. Directors have a duty to make disclosures that are timely and complete, and the tension in satisfying those two requirements can not only make the value judgment of each disclosure particularly difficult, but also see listed entities with a history of production required to make ongoing disclosures of highly sensitive information.

It is important to recognise that there are a number of entities listed on the Australian exchange with a long history of producing assets over a period of time. These demonstrated producers already make disclosures to the market providing investors with relevant information for the purpose of assessing the risks, the reliability and the basis for the stated production target and any forecast financial information derived from the production target. These include cash flow statements and reserve estimations, where the proof of the estimates is in the production. Such listed entities have a clear history of producing profits.

CSA is of the view that the issue ASX is seeking to address with this proposal is to prevent start-up companies from making highly speculative disclosures related to future production targets. Such junior reserve and resource companies do not yet have the means of production and release production targets without a reasonable basis to support the disclosures. Investors are seeking to rely on these disclosures for the purposes of monetising them, and therefore need to understand the assumptions that underpin the information.

CSA supports ASX in its efforts to ensure that investors can rely on such disclosures. CSA agrees that it is essential that investors have transparency as to any speculation by listed entities in relation to future production targets and forecast financial information derived from the production targets. However, in seeking to address the current lack of transparency from pre-production listed entities, the proposals in the issues paper are extremely disadvantageous to listed entities on the Australian market with a credible production history.

CSA notes that, if a listed entity is a producer, the proof of the estimates lies in the production and the history of profits, whereas if a listed entity is in pre-production, no such proof exists and all forecasts are based on assumptions. Imposing additional disclosure requirements around the disclosure of production forecasts and financial information derived from production targets may result in companies drawing back from releasing these kinds of forecasts, which would not be to the advantage of the investment community.

CSA does not support a two-tiered market and would not recommend any new listing rule being introduced that applies only to start-up companies. However, CSA is of the view that it is possible to introduce a listing rule that prohibits highly speculative disclosures related to future production targets ASX could do this by prohibiting production targets (and any forecast financial information derived from a production target) based solely on an exploration target.

Other points ASX may wish to consider are:

- where a minerals company is disclosing a production target based partially on an exploration target, requiring the company to specify how much (if any) of the production target is based on an exploration target, and
- defining the production targets it is concerned about as being those beyond a certain time limit — two or more years out (that is, so as not to capture short-term production guidance).

The listing rule could provide for the release of statements that highlight that the production target and/or forecast financial information is derived either in full or in part from estimates that are conceptual in nature and that there has been insufficient exploration and/or production to determine the realisation of the production target and/or financial forecast.

CSA Members would be more than happy to review a draft listing rule.

Conclusion

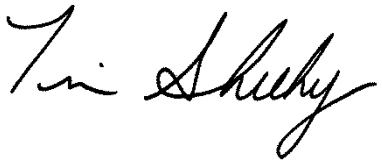
CSA Members strongly support the policy principles behind the issues paper and its proposals. Transparent disclosure is the cornerstone of Australia's system of fair, open and transparent capital markets. It is essential to ensuring that all market participants are fully and equally informed. It both protects investors and promotes confidence in the market.

However, CSA Members have very strong concerns with the two disclosure proposals outlined above. The continuous disclosure regime does not prejudice an entity's commercial operations by requiring it to release information meant only for management's internal use, nor does it require the disclosure of sensitive negotiations (subject always to maintaining confidentiality). Listed entities must judge the balance between the timely disclosure of information and the safeguarding of commercial interests.

CSA is of the view that the two proposals discussed in this submission fundamentally distort that balance, severely undermining the commercial interests in the process.

We have drawn on our Members' experience in our submission.

Kind regards



Tm Sheehy
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