

# The ESMA Guidelines – Practical Questions

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# Agenda

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- ? What is ESMA?
- ? Background to the development of the “guidance”
- ? CESR
- ? The AIM rules
- ? Consultation feedback
- ? ESMA recommendations
- ? Application experience
- ? What next?

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# What is ESMA?

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- ? European Securities and Markets Authority
- ? Successor to CESR (Committee of European Securities Regulators)
  - ? Independent EU authority
  - ? Accountable to EU Parliament
  - ? Ensures integrity, transparency, efficiency and orderly functioning
  - ? Single rule book
  - ? Consistent treatment of investors
  - ? Equal competition conditions
  - ? Reduce regulatory arbitrage

# Background

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## UK

? Yellow Book, Chapter 19

? AIM rules

## 2004

? Prospective Directive (PD) regulations

## 2005

? CCSR recommendations to competent authorities

# Chapter 19

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- ? Applied to mineral companies (> 25% of the business)
- ? Extraction and exploration
- ? Definition of reserves and resources
- ? Two year cash flow
- ? Value of proved + probable (value > 50% of expected MV)
- ? Controlling interests or influence on decisions

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# Chapter 19

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- ? Competent Persons Report
  - ? Professional qualifications
  - ? At least 5 year's experience
  - ? Independent of the company
  - ? Contents of the report
  - ? Less than 6 month's old

# CESR paras 131 to 133

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- ? Principal activity, extraction of mineral resources
- ? Excluded pure exploration
- ? Details of reserves
- ? Production life
- ? Licence terms
- ? Progress of development etc

## **If less than 3 year's operation**

- ? Set out control and influence
- ? Two year cash flow + accountant's report
- ? Mineral expert's report

# AIM – March 2006 (as amended)

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- ? Similar to Chapter 19
  - ? CPR
  - ? No cash flow
- ? Risk factors
- ? Material contracts
- ? Use of a standard
  - ? CIM, IMMM, JORC, Russian, SAMREC, SME
  - ? CIM, SPE

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# What's been changing?

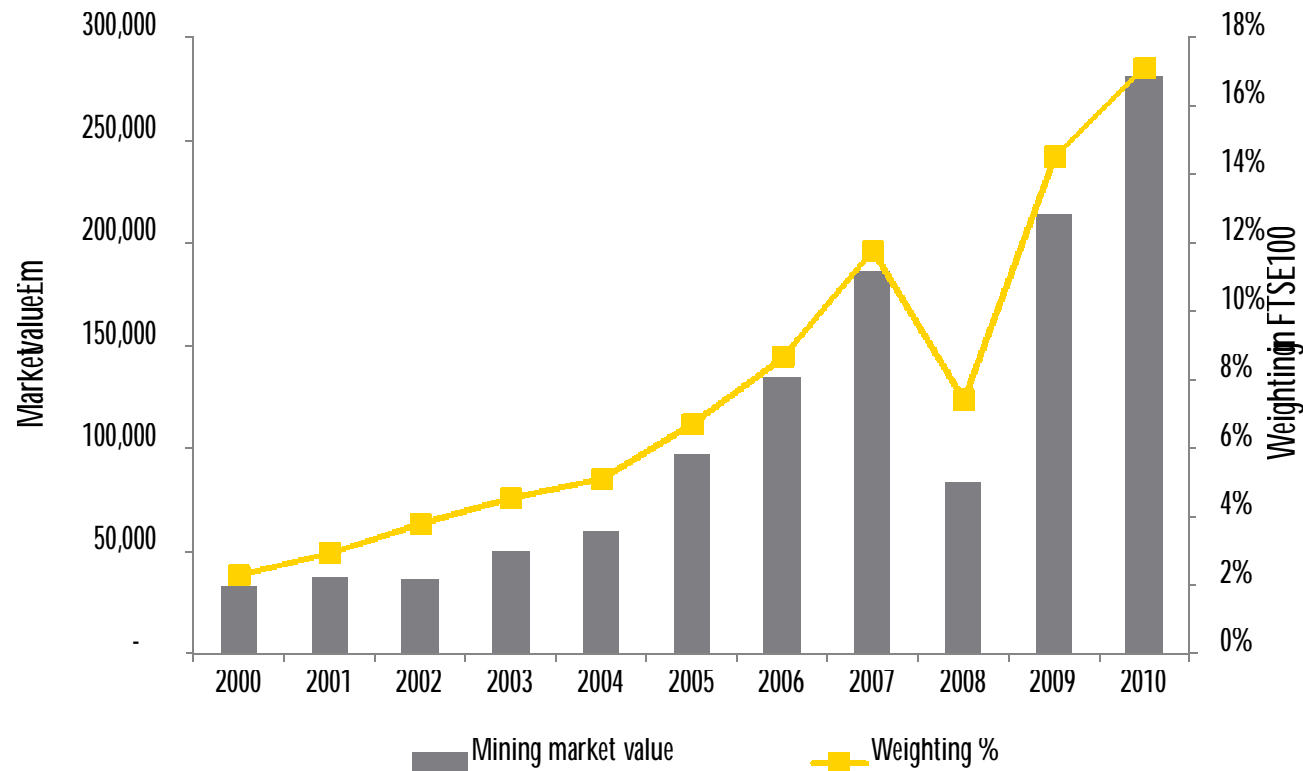
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- ? 14% of DJ Stoxx Euro 600 index
- ? Raised \$108bn new funds 2005 – 2010
- ? CRIRSCO
- ? PRMS
- ? UK FTSE 100 – growing proportion

# Growing importance to UK

? UK-listed mining companies have become increasingly important to the UK economy, accounting for 17% of the FTSE 100 by value at 31 December 2010.

Value and weighting mining companies in the FTSE100, 2000-2010



Source: Ernst & Young, Thomson Datastream. As at 31 December each year.

# Growing importance to UK

? UK-listed oil and gas companies have consistently accounted for between 16 and 22% of the FTSE 100 by value over the past five years



Source: Ernst & Young, Thomson Datastream. As at 31 December each year. Upstream E&P companies only, excludes oilfield services.

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# CESR consultation – April 2010

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? Aim to improve harmonised approach

? **Issues**

? Each CA decides

? Provides uncertainty as market requirements differ

? Market practice expects more

? 2 year cash flow – onerous

? Too few definitions

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# CESR consultation

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## ? Responses

- ? Wide agreement to proposals
- ? CRIRSCO family supported PERC
- ? Proposal to include “Industry guide 7” criticised

# ESMA revised paras 131 to 133 (March 2011)

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- ? Applies to prospectus for shares, debt, DR's
- ? Applies to material mineral projects including exploration
- ? Details of mineral resources and reserves
- ? Anticipated mine life
- ? Licence duration
- ? Current progress
- ? CPR unless
  - ? Published a CPR before
  - ? Already - securities admitted to trading on equivalent market
  - ? Reports and publishes resources / reserves annually

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# ESMA revised paras 131 to 133

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## CP qualifications

- ? Possesses required code competency requirements
- ? Professionally qualified
- ? At least 5 years' relevant experience
- ? Independent of the company

## CPR

- ? Not more than 6 months old
- ? Report in accordance with set standards

# ESMA new appendices 1 to 3

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## Appendix 1 - standards

- ? CRIRSCO family of codes (not industry guide 7 or Russian)
- ? PRMS and COGE
- ? Norwegian classification system
- ? Valuation
  - ? VALMIN
  - ? SAMVAL
  - ? CIMVAL

# ESMA new appendices 1 to 3

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## Appendix 2 and 3 – CPR content

- ? Legal and geological overview
- ? Geological overview
- ? Reserves and resources table
  - ? How put together, when property visited etc
  - ? Assumptions used
  - ? Maps, infrastructure, mining method, life and costs
- ? Valuation
- ? Environmental social and facilities
- ? Historic operating stats

# Application?

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? LWB Coal	June 2009	
? Enquest	March 2010	PRMS
? African Barrick	March 2010	CIM
? Essar Energy	April 2010	PRMS
? Vallar	February 2011	JORC

# Application?

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? Glencore	May 2011	JORC
? JSW Coal	June 2011	
? Ophir Energy	July 2011	PRMS

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# Where have we ended up?

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- ? Chapter 19 with a few enhancements
- ? PERC?
- ? Reserves – Proved, probable and Inferred
- ? Resources – Measured and indicated
- ? Exploration – Indicated and inferred

# Our views and opinions

[www.ey.com/miningandmetals](http://www.ey.com/miningandmetals)



# Our mining experience

We work with 25 of the top 30 mining companies globally. Our mining team are market leaders for inbound London main market listings in the sector.

- ? We audit 8 of the 23 FTSE All-share listed mining companies in London
  - ? Aquarius Platinum
  - ? Ferrexpo
  - ? Fresnillo
  - ? Gem Diamonds
  - ? Hochschild Mining
  - ? International Ferrous Metals
  - ? Kazakhmys
  - ? Xstrata
- ? We have the lion's share of inbound London listings in the mining sector
  - ? Ruukki Group
  - ? International Ferrous Metals
  - ? Ferrexpo
  - ? Fresnillo
  - ? Gem Diamonds
  - ? Hochschild Mining
  - ? Kazakhmys
  - ? Xstrata
  - ? Ferrous Resources (aborted during 2010)
- ? We have advised on major transactions in the mining sector
  - ? Xstrata's \$5.9bn rights issue and associated acquisition of Prodeco coal mine
  - ? Proposed merger of Vale and Xstrata
  - ? Proposed Xstrata and Anglo American 'nil premium merger of equals'
  - ? Proposed West Africa iron ore joint venture
  - ? Falconbridge takeover by Xstrata
  - ? Inco takeover by Vale
  - ? Phelps Dodge takeover by Freeport McMoran
  - ? Kazakhmys' investment in ENRC
  - ? Rio Tinto's defence of BHP Billiton's \$150bn hostile takeover approach
  - ? CITIC's \$185m investment in Oxus Gold plc



# Thank you

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**UN Expert Group on Resource Classification**

<http://live.unece.org/energy/se/reserves.html>

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