Relationships Between Regulators, Markets, Companies, Investors, and Professional Organizations: Questions of Discipline

Harry Parker, SME
Competency and International Minerals Reporting
Sponsored by Minsouth
London, UK, 31 October 2011

Harry.parker@amec.com
• Relationships
• Principles
• Examples of Discipline
• Improvements Needed
Relationships
• Primarily provide financial oversight
• Forms submitted by companies
• Pursue insider trading, fraud
• Mainly lawyers, have a few geologists/mining engineers to provide advice or perform investigations
• Rely heavily on companies providing transparent, material disclosure
• Maintain watch lists for repeat offenders
• Mineral deposits are diverse; standards must be principle-based; CRIRSCO family of codes is over 20 years old; vibrant in addressing issues

• Competent Persons have minimum five years relevant experience, must be members of self-regulating organizations; ensure disclosure is transparent, material, competent
Example of Incomplete System

US SEC

Companies → Exchanges → Investors

Disclosure → Professional Advisers

Industry Guide 7 (2 pp, 30 years old)

SME Guide (50 pp, last updated 2007)

• Disclosure limited to Reserves; oversight mainly on 10-K, 20F forms

SME Committee
More Complete System - Canada

Principles
Principles (1)

• From a technical viewpoint, disclosure should be transparent, material and prepared by a Competent Person who signs or is named in the disclosure.

• From a market viewpoint, disclosure should be timely, should contain recommendations, description of costs of proceeds, contain warnings about uncertainty of forward-looking information, description of risk factors.

• Important for CPs to review prospectuses in advance.
• Disclosure should meet a cost/benefits test

• Should enable investors or their professional advisors to make informed decisions. This means good news and bad news

• Very heavy reliance on the Competent Person’s opinions

• Discipline must be swift and fair

• As we shall see, informal discipline can be as harsh as formal
Markets:

- Punish companies that provide unreliable, opaque, incomplete, confusing, non-credible disclosure
- Reward companies that provide reliable, transparent, complete, credible information

Reflected in:

- Market valuations of the company (share price)
- Liquidity (volume of shares traded)
- Shareholder base number of shareholders, and quality of shareholders (institutional, mining companies)
- Ease of obtaining finance and cost of finance
## Mining Markets at a Glance - 2010

<table>
<thead>
<tr>
<th></th>
<th>TSX</th>
<th>TSX &amp; TSXV</th>
<th>LSE</th>
<th>AIM</th>
<th>ASX</th>
<th>JSE</th>
<th>HKEx</th>
<th>NYSE/NYSE Amex</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Mining Issuers Listed</td>
<td>353</td>
<td>1,178</td>
<td>1,331</td>
<td>52</td>
<td>145</td>
<td>666</td>
<td>59</td>
<td>50</td>
</tr>
<tr>
<td>Quoted Market Value (C$ Billions)</td>
<td>520.9</td>
<td>42.0</td>
<td>562.8</td>
<td>624.4</td>
<td>27.9</td>
<td>684.8</td>
<td>442.0</td>
<td>329.4</td>
</tr>
<tr>
<td>New Mining Listings</td>
<td>59</td>
<td>149</td>
<td>208</td>
<td>3</td>
<td>23</td>
<td>75</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Equity Capital Raised (C$ Billions)</td>
<td>12.5</td>
<td>5.3</td>
<td>17.8</td>
<td>2.1</td>
<td>2.2</td>
<td>1.9</td>
<td>0.528</td>
<td>1.5</td>
</tr>
<tr>
<td>Number of Financings</td>
<td>303</td>
<td>2110</td>
<td>2413</td>
<td>4</td>
<td>143</td>
<td>67</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: TMX Group
Companies:

- Attracted to capital markets where cost of compliance with securities regulation is reasonable
- Leave capital markets where securities regulation is ineffective (lacks credibility; e.g. AIM), or causes significant risk to company and its management (civil liability; US), or has high cost of compliance (SOX 404; US)
Fri Oct 31, 2008
Farallon Files To Deregister From The SEC In The USA

... In determining to terminate the registration of its common shares, Farallon considered that administrative burdens and costs associated with being a U.S. reporting company have significantly increased in the past few years, particularly in light of SEC Sarbanes-Oxley requirements.

The preparation time and costs associated with preparing U.S. filings and meeting SEC regulatory requirements are substantial, and overall the Company's management believes that these administrative burdens and their associated costs far outweigh any benefits derived from the Company's registration with the SEC.
Cancellation of AIM listing on November 1, 2011

3 October 2011

October 3, 2011, TORONTO: Platmin Limited ("Platmin" or "the Company"; TSX/AIM: PPN; JSE: PLN) announces the cancellation of the trading of its common shares on the Alternative Investment Market ("AIM") of the London Stock Exchange, to take effect from 7:00 a.m. (GMT) on Tuesday, November 1, 2011 (the "Cancellation Date").

Platmin’s board of directors has decided that it is not justified for a company of Platmin’s size and with such relatively low trading volumes to maintain three stock exchange listings.
Listings and Delistings on AIM

AIM mining admissions and delistings since 2006

Source: Ernst & Young analysis of AIM market statistics. Excludes transfers to and from the Main Market.
• Securities regulators recognize professional associations that meet the purposes of their reporting standards

• Professional associations that do not meet their requirements are removed from their approved lists
“professional association”

has **and applies** disciplinary powers, including the power to suspend or expel a member **regardless of where the member practises or resides**;

Bold text is new.

Explains why a number of foreign associations are no longer recognized under NI 43-101.
• Some professional associations were not prepared to respond to a complaint or investigate whether their members should be disciplined.

• Some associations would not investigate a complaint against one of their members if the mineral property was located outside of their jurisdiction.

• NI 43-101 relies on Qualified Persons applying their professional and ethical standards to their work.
<table>
<thead>
<tr>
<th>Foreign Association</th>
<th>Membership Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Institute of Professional Geologists (AIPG)</td>
<td>Certified Professional Geologist (CPG)</td>
</tr>
<tr>
<td>The Society for Mining, Metallurgy and Exploration, Inc. (SMLE)</td>
<td>Registered Member</td>
</tr>
<tr>
<td>Mining and Metallurgical Society of America (MMSA)</td>
<td>Qualified Professional (QP)</td>
</tr>
<tr>
<td>Any state in the United States of America</td>
<td>Licensed or certified as a professional engineer</td>
</tr>
<tr>
<td>European Federation of Geologists (EFG)</td>
<td>European Geologist (EurGeol)</td>
</tr>
<tr>
<td>Institute of Geologists of Ireland (IGI)</td>
<td>Professional Member (IGeo)</td>
</tr>
<tr>
<td>Institute of Materials, Minerals and Mining (IMMM)</td>
<td>Professional Member (IMMM), Fellow (FMIMM), Chartered Scientist (CSci MMIMM), or Chartered Engineer (CEng MMIMM)</td>
</tr>
<tr>
<td>Geological Society of London (GSL)</td>
<td>Chartered Geologist (CGeo)</td>
</tr>
<tr>
<td>Australasian Institute of Mining and Metallurgy (AusIMM)</td>
<td>Fellow (FMMIMM) or Chartered Professional Member or Fellow (MMIMM (CP), FMMIMM (CP))</td>
</tr>
<tr>
<td>Australian Institute of Geoscientists (AIG)</td>
<td>Member (MAIG), Fellow (FAIG) or Registered Professional Geoscientist Member or Fellow (MAIG RGeo, FAIG RGeo)</td>
</tr>
<tr>
<td>Southern African Institute of Mining and Metallurgy (SAIMM)</td>
<td>Fellow (FSAIMM)</td>
</tr>
<tr>
<td>Engineering Council of South Africa (ECSA)</td>
<td>Professional Engineer (Pt. Eng.) or Professional Certificated Engineer (Pt. Cert.Eng.)</td>
</tr>
<tr>
<td>Comisión Calificadora de Competencias en Recursos y Reservas Mineras (Chilean Mining Commission)</td>
<td>Registered Member</td>
</tr>
</tbody>
</table>

- **New**: New categories added
- **No State Boards of Geology**: No state boards of geology are included.
- **Added categories**: Categories added to the list.
- **Removed member category**: A member category is removed.
- **New**: Additional new categories are highlighted.
Association of Professional Engineers and Geoscientists of British Columbia

**Discipline Notice**

Geoscientist was served Notice alleging unprofessional conduct for signing and publishing three misleading news releases as the Senior Geologist and a director of a mining company.
And agreed to the following penalty:
His membership in the Association is suspended for 6 months commencing
November 1, 2008;

• Before being re-instated he must:
  - Write and pass the Association’s Professional Practice Examination
  - Attend the Association’s Law & Ethics seminar
  - Take a course on the duties and responsibilities of a “qualified person” under
    NI 43-101
  - Pay $5,000 towards the Association’s investigation costs
  - Take a course on the responsibilities and obligations of directors and officers
    of public companies.
July 31, 2007

Geologist undertakes to:

1. To pay $30,000 to the British Columbia Securities Commission in respect of settlement of this matter which sum is due and payable immediately without further demand; and

2. To not prepare or disseminate news releases containing scientific or technical information for any issuer, except under the supervision of a director or officer of the issuer for 12 months from the date of this agreement.
• Suspended and Practice Restricted – Professional Geoscientist, London, Ontario

• The Association received a complaint from the BC Securities Commission regarding two mineral disclosure reports authored for a company trading on the OTCBB. The BCSC alleged that the geoscientist failed to meet his duties as a “Qualified Person” in that his reports did not comply with NI 43-101 in material respects.
• APEGBC membership suspended for 6 months

• Any NI 43-101 technical reports prepared by the geoscientist between November 23, 2010 and the commencement of the suspension must be peer reviewed by a professional geoscientist approved in advance by APEGBC’s Registrar

• Prior to June 30, 2011, must
  - Pay $5,000 towards investigation and legal costs
  - Write and pass the Professional Practice Exam
  - Take a course approved by the Registrar on the duties and responsibilities of a “Qualified Person” under NI 43-101
  - If geoscientist fails to comply with any of the above conditions, he will remain or be suspended until all of the conditions have been met.
Improvements Needed

- Company legal counsel and underwriters need to better understand regulatory environment: Use of proceeds, basis for incorporating economic analyses

- Competent and Qualified Persons need to better understand the regulatory environment: Disclosure triggers, recommended work programs, what does the investor really want/need to know?

- Has taken a couple of decades, but most CPs/QPs understand the codes. Only in last 5 years have the larger companies moved toward routine CP/QP reports on their mines: Quality of writing is poor
• Extensive and near-iron clad corporate governance systems in place for reporting resources and reserves in compliance with Sarbanes Oxley Act

• But CP reports are incomplete. Compliance with the act is impossible to verify: No sections showing resource model AND composites. How do we know the resource model honors the composites?
• Practice across state and provincial borders can require registration in the state or province in which the mineral deposit occurs. These are state/provincial requirements and make no sense for geoscientists

• Audits are too process oriented: Useless if processes don’t exist
• It is useful to look at MRMR estimation from a process point of view
• A process provides guidance, consistency, transparency and measure.
• A process can be easily analyzed and improved.

Unless processes exist, it is very hard to apply governance tools; sometimes checking takes as long as doing the work itself.....

The cost of finding a fatal flaw may be prohibitive.....

Particularly if the documentation and audit trail does not exist....

A process should be mapped
• Each process should have the following components:
  - Description of data collection or input data file
  - Purpose/objectives of the procedures used
  - Description of output data file
  - Validation (comparison using a parallel process)
  - Verification, manual or spreadsheet check
  - Assessment of risks and opportunities
• Each process should also have recorded:
  - Software used including version
    Documentation of audit trail, validation and verification and QA-QC checklist.
  - The audit trail should include date-stamped file names for input and output files.
  - Incorporation into memoranda, notes etc. as appropriate
  - Appropriate transfer/handoff to others dependent on results.
Thank You