Step back in time

Australian mining investment markets are on the verge of being dragged back to a 1970s disclosure model.

John Robertson* | 10 Aug 2016 | 19:14 | Feature

Regulators are suffocating resources companies with disclosure limitations (image: Gekkou30)

Metalicity, an aspiring zinc miner with recently acquired lithium interests in Western Australia, has had to withdraw a statement about its future production.

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Whenever I see a company forced by the Australian Securities and Investments Commission (ASIC) or the ASX to retract a statement, my attention is magnetically drawn to what has been censored. Just as people congregate voyeuristically around an accident site, I compulsively want to know what market regulators do not want me to know.

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On July 28, Metalicity released details of a scoping study into its Admiral Bay zinc project in Western Australia. Admiral Bay is billed by the company as possibly the third largest undeveloped zinc deposit in the world.

The company said it was aiming for at least a 20-year mine life with an ore throughput rate of 3-5 million tonnes per annum.

Directors must have been sensitive to what was to come because they made clear they did not have enough information to claim these as achievable targets.

The company explicitly described these quantities as measures of viability rather than production targets. They represented hurdles the project must overcome for it to be considered viable.

The next day, Metalicity released another statement saying that it was reissuing the earlier statement without these references to future production after discussions with the ASX.

> *"A prohibition on filling that information gap is a ban on disclosing information material to an investment decision"*

Company statements about future production plans are being scrutinised more keenly. In April, ASIC released an information circular (IS 214) to highlight what it regarded as acceptable content in the forward looking statements of mining companies.

In issuing the new document, ASIC claimed to have done nothing more than bring together in one place all the relevant guidelines that had applied previously. ASIC claims it did not intend to write any new rules.

Despite its protestations, ASIC's re-worded guidance has been inferred universally as a tighter and more rigorous definition of what is needed to back up statements about future production.

The ASX, as the disclosure regulator, has sought to apply these more detailed standards.

One aspect of the newly-encoded approach is the need for clearer evidence of companies having access to capital if they are going to refer to production targets.

Without funding there is no production. There is no disagreement on that point but the new emphasis has angered industry executives who see their quest for capital being hobbled unreasonably.

A company with a mineral resource in the early stages of development will usually make an explicit statement about future production in pitching to potential investors, whether individuals or large institutions. And, yet, what has been standard practice becomes tougher if regulators insist impracticably on such statements being permissible only after investors themselves have made the capital commitment being sought.

In practice, companies will have to gingerly work their way through this regulatory labyrinth by selectively and confidentially disclosing information the ASX does not want in the public domain.

That would be workable but for one flaw: it puts a stake through the heart of continuous disclosure and any systemic bias toward all investors being treated equally.

In being forced to preferentially disclose information to investors, continuous disclosure would be replaced with drip-feed disclosure as information leaks from those with the most-privileged information access to the least well connected in a backward leap into the 1970s and 1980s.

Banning the type of statement made by Metalicity hinders proper investment analysis.

One of the first questions an investor thinks to ask about a mining development at the stage of Admiral Bay is what might this project look like when up and running. The ASX is effectively telling all but a few selected investors they are no longer privy to that information.

Nor are investors entitled to know about the criteria a company will apply in making a judgment about a commitment to a project.

There is an important difference between saying that a project will produce at 3Mtpa, for example, and a statement that the company will only make a capital commitment in the event that it can produce 3Mtpa.

Investors are continually trying to understand what guideposts a company would employ in making a judgement about future spending. A prohibition on filling that information gap is a ban on disclosing information material to an investment decision.

In any event, there is a more farcical element to what is now happening.

Currently, as in the Metalicity instance, a company's ASX-approved report and a retracted version regulators do not want read have equal standing on the public record. In the modern world of instantly transferable files and digitally accessible databases, once a document is released there is no rewriting history.

The technology poses an interesting tactical option.

A company could make a statement knowing that it might go beyond what ASX would tolerate. It could readily agree to a retraction knowing, too, that it will have put on the public record for eternity its first preference for what it wanted investors to hear.

Presumably, the ASX and ASIC will have to come up with appropriately stern penalties (or ways to promptly purge the internet record) if they are going to stymie practices to work around the new disclosure constraints.

The ASX and ASIC are taking advice, as well as criticism, from numerous quarters but they are painting themselves into an uncomfortable corner.

At the heart of the regulators' predicament is an assumption that they can protect all investors from every lie, deceit, malpractice, wild exaggeration, optimistic forecast, disclosure oversight or even loose argument.

In trying to pursue the impossible, ASIC and the ASX will themselves become guilty of creating false expectations among investors about how safe markets have become.

More damagingly, as regulators constrain what can be said publicly, the more they will nurture unequal access to information reminiscent of 1970s-style disclosure practices.

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