

Update on Proposed SEC Rules for the Mining Sector

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Press Release

SEC Proposes Rules to Modernize Disclosures for Mining Registrants

FOR IMMEDIATE RELEASE

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Washington D.C., June 16, 2016 – The Securities and Exchange Commission today announced that it has proposed rules to modernize the disclosure requirements for mining properties by aligning them with current industry and global regulatory practices and standards.

“These proposed rules would modernize the Commission’s disclosure requirements by aligning them with global standards and give investors more comprehensive information of a registrant’s mining properties that they can use to make informed investment decisions,” **said SEC Chair Mary Jo White**. “This proposal is another product of our disclosure effectiveness initiative, which is aimed at modernizing our disclosure regime and providing more meaningful information to investors.”

Basics of the SEC's Proposed Rules for Property Disclosures for Mining Registrants

- June 16, 2016: Securities and Exchange Commission proposed long-awaited mining property disclosure requirements
- June 27, 2016: Proposed rules published in Federal Register
- September 26, 2016: Deadline for public comments has passed
- The SEC's action modernizes property disclosure requirements for mining company registrants
- Many industry organizations encouraged reform (e.g., National Mining Association and Society for Mining, Metallurgy & Exploration)
- The SEC's proposed rules would rescind current requirements:
 - Item 102 of Regulation S-K (sets forth general disclosure requirements regarding an issuer's "principal" mines that are "materially important")
 - Industry Guide 7 (guidance on disclosure of "mineral reserves" and their classification as "proven" or "probable")
- New Rules will consolidate revised disclosure requirements in Regulation S-K, Subpart 1300

The SEC's Intended Goals for New Rules

- Update 34-year old requirements that have remained unchanged since 1982
- Seek to bring disclosure requirements in line with current industry and global standards
- Provide greater clarity and certainty regarding disclosure obligations – rather than relying on SEC staff's comment letter process
- Enable investors to receive more comprehensive information regarding registrant's properties
- Seek to align SEC standards with those of Committee for Mineral Reserves International Reporting Standards ("CRIRSCO" or "Reporting Committee") that apply in the world's mining jurisdictions
 - Canada
 - Australia
 - South Africa
 - European Union
 - Chile
 - Hong Kong
 - Russia
 - Elsewhere

Industry's General Reaction to Proposed Rules

- Proposed rules are long overdue and generally consistent with global standards
- Industry welcomes the change – especially those companies already reporting in other jurisdictions
- Compared to Guide 7 – the proposal provides a greater level of information to investors
- Mining companies and investors believe the proposal is necessary for accurate reporting and clarity
- But proposed rules are highly prescriptive and create greater potential liability for registrants and others
- SEC requested public comments regarding the need for more detailed disclosure of **environmental matters** (e.g., sustainability issues, management of greenhouse emissions and workplace health and safety)
 - Industry opposes such an effort

SEC's Guide 7 Requirements and Industry/Investor Criticisms

- Guide 7's mining disclosure requirements are 34 years old and out of date
- Guide 7 is out of touch with modern mining standards used in several mining countries – **disadvantaging multi-jurisdictional companies**
- In contrast to global standards, Guide 7 **requires** disclosure of “mineral reserves” but **precludes** disclosure of “mineral resources” in SEC filings
- U.S. mining companies complained of a disadvantage to international competitors who can report on **mineral resources** and “**potential**” **mineral reserves**
- Disclosure of mineralized material under Guide 7 is addressed by the SEC on an ad hoc or informal basis
- Limitations of Guide 7 are overcome by issuers disclosing mineral resource information outside of the formal SEC filing process (e.g., press releases, informal SEC communications and web information)

Overview of Proposed Rules

- The proposal is premised on global industry standards pursuant to CRIRSCO
- The key proposed changes include the following:
 - Creation of **one standard** requiring registrants to disclose mining operations that are material to the company's business or financial condition
 - Disclosure regarding mining operations is required if "**material**" to a company's business or financial condition. "**Materiality**" would be presumed if mining assets constitute 10% or more of the company's total assets
 - Guide 7's mandate of permitting only proven and probable reserves in SEC filings **would be eliminated**. **Inferred, indicated** and **measured** resources and exploration results would be disclosable, with certain conditions
 - Require a registrant to disclose mineral resources and material exploration results in addition to its mineral reserves
 - Provide **updated definitions** of mineral reserves and mineral resources

Overview of Proposed Rules *cont'd*

- Internal controls used in estimating exploration results and mineral reserves and resources, including quality control and assurance programs, would have to be disclosed
- **Mineral reserves, mineral resources** and **exploration results** are required to be based on supporting documentation prepared by a qualified professional – a “**Qualified Person**” – deemed an expert for purposes of U.S. public offerings
- Qualified Persons would not have to be independent, but any affiliation would have to be disclosed
- The proposal requires a **technical report summary**, written by a Qualified Person, to be filed with the SEC filing
- The proposal allows determinations of mineral reserves to be based on either a **feasibility study** or a **preliminary feasibility study**

New Requirement to Disclose Resources and Material Exploration Results, as well as Reserves

- Guide 7 only allows disclosure of mineral reserves (proven and probable)
- Proposed rules require registrants to disclose two additional categories in addition to mineral reserves:
 - (1) mineral resources; and
 - (2) material exploration results
- The definition of “**mineral resources**” is as follows:
 - a concentration or occurrence of material of economic interest (including mineralization, dumps and tailings) in or on the earth’s crust in such form, grade or quality, and quantity that there are reasonable prospects for its economic extraction
- The rule also provides for mineral resources to be categorized and reported as “**inferred**,” “**indicated**” and “**measured**” – in order of increasing geological confidence
- Qualified Person must estimate or interpret the location, quantity, grade or quality continuity and other geological characteristics of mineral resource

Requirement to Disclose Resources and Material Exploration Results, as well as Reserves, *cont'd*

- Disclosure of mineral resources must be based on Qualified Person's "initial assessment"
 - which must include estimation of cutoff grade; and
 - qualitative evaluation of "**modifying factors**" (e.g., site infrastructure, mine design and planning, processing plant, environment compliance and permitting, socio-economic factors, etc.)

Material Exploration Results

- Proposal requires registrants to disclose **material exploration results** for each of their material properties (required to be in tabular form)
 - Exploration results are defined as “data and information generated by mineral exploration programs (i.e., . . . sampling, drilling, trenching, . . . testing)” that are **not part of a disclosure of mineral resources or reserves**
 - Disclosure is not required for a company with material mining operations in the aggregate if no individual properties are material
 - Disclosure of exploration data is done in tabular form by property and drill hole, length, lithography, sampling methods, size or length of sample and number of assays
- Registrant cannot use exploration results alone to derive estimates of tonnage, grade or production rates, or in an assessment of economic viability
- Note that disclosure of exploration results can lead to **loss of competitive advantage** or a **breach of confidentiality arrangements**

Revised Definition of Mineral Reserves

- Guide 7 defines “mineral reserves” as follows:
 - that part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination
- Unlike CRIRSCO, Guide 7 does not specify factors upon which a reserve determination is made
 - Additionally, Guide 7 limits the basis for valuing a reserve determination on a **bankable feasibility study**
- Definition of “mineral reserves” in the proposal is as follows:
 - The economically mineable part of a measured or indicated mineral resource, net of allowances for diluting materials and for losses that may occur when the material is mined or extracted

Revised Definition of Mineral Reserves *cont'd*

- Proposal further alters the definition of “mineral reserves” by adopting CRIRSCO framework of applying defined “modifying factors” to indicated or measured mineral resources in order to convert them to mineral reserves
 - Subdivided in order of increasing geological confidence into “probable mineral reserves” and “proven mineral reserves”
 - Qualified Person must have high degree of confidence in results considering modifying factors
- Consistent with CRIRSCO, proposal would allow a pre-feasibility study to serve as basis for determining and disclosing mineral reserves rather than requiring only a final or bankable feasibility study

Qualified Person Requirement

- Proposal incorporates CRIRSCO requirement that documentation prepared by Qualified Person must support every disclosure of mineral resources, mineral reserves and material exploration results
- Qualified Person is defined in proposal as follows:
 - a mining industry professional with at least 5 years of relevant experience in type of mineralization, type of deposit and type of activity being undertaken for registrant
- Qualified Person must be eligible member or licensee in good standing of a recognized professional organization
- Registrant must vet the Qualified Person and file Qualified Person's dated and signed technical report summary with SEC filings
- Such technical report summary is required when resource or reserve is first assessed or exploration results are first analyzed

Qualified Person Requirement *cont'd*

- Proposed rules place great emphasis on Qualified Person
 - Qualified Person is considered an expert if technical report summary with consent is filed with or incorporated into SEC filing
 - As an expert, Qualified Person is subject to liability for any untrue statement or omission of a material fact
 - Proposal allows Qualified Person to rely on other expert opinions, but does not allow disclaimer of liability in such case
 - Qualified Person need not be independent, as long as disclosure is made
- Query whether Qualified Person role that is acceptable under CRIRSCO is problematic in U.S. litigation

Threshold Disclosure Requirements

- Proposal seeks to clarify which types of properties/operations require disclosure
 - Item 102 and Guide 7 are inconsistent and vague in this regard and fail to address a registrant with multiple mining properties
- Proposal requires registrants with two or more mining properties to provide summary disclosure of mining operations
 - Covers owned or leased properties and royalties in properties
 - Maps showing locations of all mining properties are required
- Summary disclosure table for each property is required for last three fiscal years to identify pertinent information
- Summary table requires information on up to 20 properties with largest asset values
- Proposal requires further detailed disclosures if U.S. registrant's mining operations are material to its business or financial condition

Threshold Disclosure Requirements *cont'd*

- “Mining operations” continue to include all related activities from exploration through extraction to first point of material external sale
- The relevant presumed materiality threshold is proposed to be 10% or more of registrant’s total assets
- Mining operation is also “material” if substantial likelihood that reasonable investor would attach importance to it in determining whether to buy or sell registered securities
- Proposed rules also apply to following:
 - **Vertically integrated companies** with mining activity representing less than 10% of assets – if competitive advantage is derived from its mining operations – if material mining operations are secondary to or in support of their main non-mining business
 - **Royalty companies**, as well as companies holding economic interests in mining properties
 - Companies with **multiple individual, non-material mining properties** (but which in aggregate are material)

Threshold Disclosure Requirements *cont'd*

- Proposal requires issuers to consider mining properties individually and in aggregate in complying with required disclosure
 - E.g., registrant with multiple properties none of which individually are material, but which in aggregate constitute material mining operations, would have to provide summary disclosure for combined mining activities
- Proposal applies equally to domestic issuers (including securities under Regulation A) and foreign private issuers
- Canadian issuers using Form 20-F for SEC filings can no longer provide mining disclosure under NI 43-101 under the prior Guide 7 exemption
 - Proposal eliminates that exemption for Canadian issuers
- However, Canadian issuers reporting pursuant to the multi-jurisdictional disclosure system (“MJDS”) are exempt from the proposed rules

Conclusions

- Clearly, new and updated SEC mining disclosure requirements are necessary
- The proposed rules parallel CRIRSCO standards, but not in every regard
- The new disclosure framework provides for extensive information disclosure regarding mining assets and exploration activities to benefit investors
- However, the proposed rules are prescriptive and will result in increased scrutiny from regulators – given the many new disclosure requirements to enforce
- Query whether increased potential liability of a Qualified Person as expert goes too far
- Consider requesting additional comment period from SEC if any concerns are raised in regard to the proposed rules

QUESTIONS? / ANSWERS!

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SEC Proposed Regulations For Filings Regarding Mineral Properties

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Introduction and Conclusion

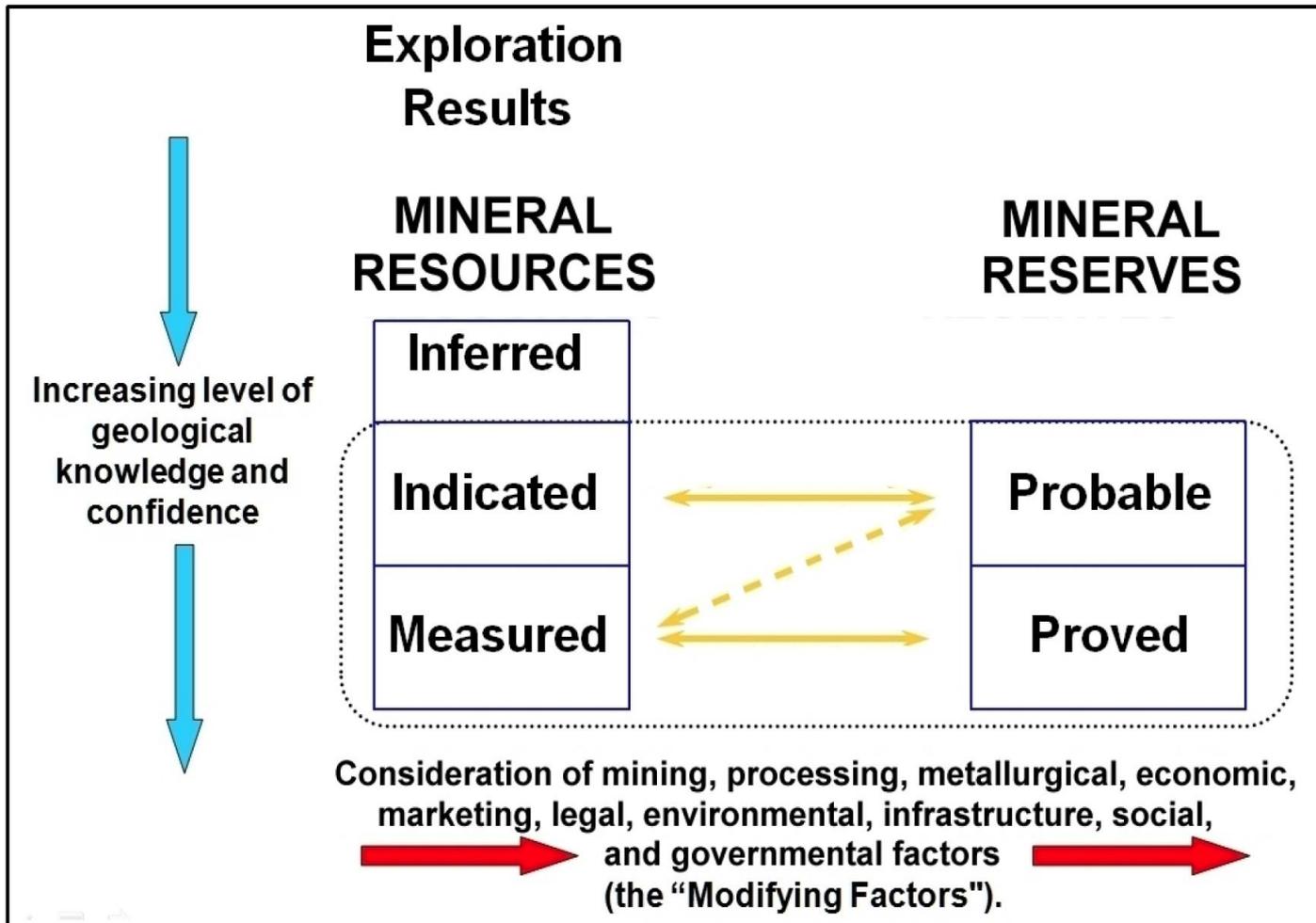
- A Welcome Change
- Highly Restrictive
- Is a US Listing Worth the Pain?

Key Facts

- Conforms to Other Global Standards Per the Committee for Mineral Reserves International Reporting Standards
- Requires a Technical Report Summary in Support of Filings
- Establishes the Qualified Professional Concept
- Exploration, Development and Production Stages for Mining Properties
- Adopts Measured, Indicated, and Inferred Mineral Resources

Key Facts (Cont.)

- Initial, Economic, Pre-feasibility and Feasibility Studies
- Mineral Reserves May Be Declared in a Pre-feasibility Study
- Defines Cut-off Grade
- Two-year Trailing Average Price of Commodity for Reporting and Mineral Reserves



CRIRISCO Members (As of October 2016)

Australia

Brazil

Canada

Chile

European Union

Kazakhstan

New Zealand

Papua New Guinea

South Africa

Mongolia (Applicant)

Russia (Applicant)

The Qualified Professional

- Five Years of Experience with Style and Type of Mineralization, and the Activity Being Undertaken by the Professional
- QP May Be an Employee of the Registrant
- Member of a RPO
- QP Liable for Untrue Statements or Material Omissions and Entire Content of Technical Report

The QP (Cont.)

- QP Must Quantify and Disclose the Uncertainty Associated with Mineral Resource and Mineral Reserve Estimates, i.e., Relative Accuracy, Specific Confidence Level, and Preliminary Production Schedule
- QP Must Conclude there are Reasonable Prospects for Economic Extraction of Mineral Resources by Qualitatively Applying the Modifying Factors Likely to Influence Economic Extraction

The QP (Cont.)

- Regulations Do Not Allow QP to Disclaim Responsibility if QP Relies on other Expert Opinions
- For Protection, Should Require that Every Subject in the Report be Prepared by a QP – Extra Cost to Prepare Report

Mineral Resources

- Establishes Three Classes of Mineral Resources
- Measured, Indicated and Inferred
- QP Must State the Minimum Percentage of Inferred Mineral Resources that will be Converted to M + Ind with Further Exploration: “The QP Expects at Least X% of the Inferred Mineral Resource to Convert to Indicated or Measured Mineral Resources with Further Exploration and Analysis”

Mineral Resources (Cont.)

- M + Ind Modifying Factors include Discussions of Hydrologic and Geotechnical Issues
- Table for Last Two Fiscal Years Explaining Reasons for Year-to-Year Changes for M + Ind

Mineral Reserve

- Exclusive of Mineral Resources
- Must be Based on Pre-feasibility or Feasibility Study Conducted by QP Applying the Modifying Factors to M + Ind
- Life-of-mine Plan that is Technically Achievable and Economically Viable
- Based upon a Discounted Cash Flow
- Provided for Last Two Fiscal Years Explaining Reasons for YTY Changes

Technical Reports

- Follows NI-43-101/JORC/SAMREC Etc.
- In Clear English so Understandable to the Lay Person
- In Summary Form
- Required for Material Events Affecting Exploration, Development, and Production Properties

Technical Reports (Cont.)

- Initial Report for Declaration of Mineral Resources – No Economics, Not a Preliminary Economic Assessment (PEA)
 - Must Include Cut-off Grade Based on Assumed Unit Costs for Operations and Estimated Mineral Prices
 - Level of Accuracy of Capital/Operating Costs $\pm 50\%$; Contingency Max of 25%
- If Economic Analysis Performed, Must Include Detailed Cost Estimates and Discounted Cash Flow
- Pre-feasibility Study LOA $\pm 25\%$; Contingency Maximum of 15%
- Feasibility Study LOA $\pm 15\%$; Contingency Maximum Of 10%

Major Issues Raised by Respondents

- QP should be able to rely on other experts and disclaim responsibility from other experts' report contributions
- Flexibility in commodity pricing
- Allow use of “If not, then why not” concept
- Quantitative assessment of conversion of resources to reserves is feed for litigation
- Contingency levels proposed do not agree with industry standards
- Exclude geothermal energy and brines