

## Updates

November 30, 2018

### SEC Adopts New Disclosure Requirements for Mining Companies

The Securities and Exchange Commission recently adopted amendments to modernize the rules relating to property disclosure requirements for mining registrants, and Industry Guide 7 (Guide 7), under the Securities Act of 1933, as amended (Securities Act), and the Securities Exchange Act of 1934, as amended (Exchange Act). [\*Modernization of Property Disclosures for Mining Registrants\*](#), Release Nos. 33-10570; 34-84509; File No. S7-10-16.

These amendments will require a registrant with material mining operations to disclose certain information in its Securities Act and Exchange Act filings with respect to the registrant's mineral resources, in addition to its mineral reserves. Many of the new disclosures will need to be prepared with the assistance of a mining industry expert, known as a "qualified person," and on the basis of a "technical report summary" prepared by that person.

The SEC has indicated that these amendments are intended to improve the quality of disclosure about a mining registrant's properties, and to more closely align disclosure practices under SEC regulations with the current industry and global standards set forth in the Committee for Reserves International Reporting Standards (CRIRSCO).

This update summarizes key aspects of the new disclosure requirements.

#### Overview of New Mining Disclosure Requirements

Presently, mining property disclosure requirements are set forth in Item 102 promulgated under the Securities Act (Regulation S-K), and in Guide 7 and related staff interpretive guidance. The final rule amendments will rescind Guide 7 and codify the SEC's mining property disclosure requirements in new Subpart 1300 and Item 601(96)(B)(iii) of Regulation S-K (collectively, the New Rules).

The New Rules require a registrant with material mining operations to provide investors with the following:

- Summary disclosures if it owns, or otherwise has economic interests in (including a royalty interest), two or more properties;
- Detailed information about each individual property that is material to its business or financial condition;
- A technical report summary to support the disclosure of mineral resources, mineral reserves or material exploration results for each material property; and
- A description of the internal controls that it uses in its exploration and mineral resource and reserve estimation efforts.

For purposes of the New Rules, the term "material" means that there is a substantial likelihood that a reasonable investor would attach importance to it in determining whether to buy or sell securities issued by the registrant (i.e., which is the meaning given to that term under Securities Act Rule 405 and Exchange Act Rule 12b-2).

**Qualified Person Requirement.** A registrant's disclosure of exploration results, mineral resources or mineral reserves must be based on and accurately reflect information and supporting documentation prepared by a "qualified person" who has: (1) at least five years of experience in the type of mineralization and deposit under consideration, as well as the specific activity undertaken on behalf of the registrant; and (2) a license from a qualified mining industry professional organization.

**Technical Report Summary.** The registrant must obtain a dated and signed technical report summary (TRS) from one or more qualified persons and *file that summary as an exhibit* to the registrant's relevant SEC filings when disclosing mineral reserves or resources for the first time or with any subsequent material changes in the reserves or resources from the last summary filed for the property. A TRS may, but is not required to, be filed to support exploration results. A TRS must: (1) identify and summarize the scientific and technical information and conclusions reached concerning initial assessments used to support disclosure of mineral resources, or concerning preliminary or final feasibility studies used to support disclosure of mineral reserves, in the TRS; (2) conform, to the extent practicable, to the SEC's "plain English" disclosure requirements; and (3) not include large amounts of technical or other project data. The requirements for the TRS are based on Canada's legal instrument NI 43-101F1 and are substantially similar to Table 1 published by both CRIRSCO and the Joint Ore Reserves Committee of Australasia (JORC).

**Mineral Resources.** Mineral resources are defined as "a concentration or occurrence of material of economic interest in or on the Earth's crust in such form, grade or quality, and quantity that there are reasonable prospects for economic extraction." A registrant's disclosure of mineral resources must be based upon a qualified person's *initial assessment* that supports the determination of mineral resources. The registrant must classify its mineral resources into *inferred*, *indicated* and *measured* mineral resources, in order of increasing confidence based on the level of underlying geological evidence. A registrant is permitted to convert indicated and measured mineral resources into mineral reserves, on the basis of a qualified person's evaluation of those resources in light of modifying factors enumerated in the New Rules.

**Mineral Reserves.** Mineral reserves are defined as an "estimate of tonnage and grade or quality of indicated and measured mineral resources that, in the opinion of the qualified person, can be the basis of an economically viable project." A qualified person must apply modifying factors to indicated and measured mineral resources, evaluate those resources in order to establish the economic viability of the particular reserves and subdivide the resources into *probable* or *proven* reserves. A qualified person must make these reserve determinations on the basis of a *preliminary feasibility* (pre-feasibility) or *final feasibility study* that: (1) demonstrates the application of the modifying factors and how that application establishes the conclusion that, at the time of reporting, the extraction of the mineral reserve is economically viable under reasonable investment and market assumptions; and (2) establishes a life of mine plan that is technically achievable and economically viable.

**Summary Disclosures.** A registrant is permitted to provide summary disclosure, if none of its mining properties is individually material. Summary disclosures relate to the registrant's mining properties in the aggregate and must include disclosures regarding mineral resources and reserves by commodity and geographic area for each property that contains 10% or more of the registrant's combined measured and indicated mineral resources and reserves, if the registrant has engaged a qualified person to estimate such resources and reserves. The summary property disclosures mirrors disclosures required under Guide 7.

**Individual Property Disclosures.** A registrant must provide more detailed disclosure about any individually material mining properties, in addition to summary disclosure. Relevant disclosures must be made in respect of each material property, including: (1) the property's location, existing infrastructure and history of mineral and property rights; and (2) the registrant's current and known historical exploration, development and production activities on the property (including exploration results and targets, subject to the provision of sampling methods and geologic properties). As a general rule, estimates should be verified for the quantity, grade, or metal or mineral context of a deposit or explorations results as current mineral resources, mineral resources or exploration results. The list of disclosure items is substantially similar to items called for by Item 102 of Regulation S-K and Guide 7, and under CRIRSCO-based rules.

**Internal Controls.** A registrant must describe the internal controls that it uses to ensure reliable disclosure of its exploration and mineral resource and reserve estimation efforts. These internal control disclosures must be provided by a registrant that is providing either summary or individual property disclosures.

**Modifications to Form 20-F and Form 1-A.** The SEC has modified Form 20-F and Form 1-A to conform with the requirements of the New Rules.

#### Next Steps

Mining registrants should evaluate whether existing internal controls and procedures may require updating in order to comply with the New Rules, and consider the timing and logistics, including the preparation of a technical report summary by a qualified person, that will be required for compliance with the disclosure requirements under the New Rules.

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