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# Proposed SEC Rules Modernizing Property Disclosures for Mining Registrants

Author: [Scott D. Fisher](#)

On June 16, 2016, as part of its Disclosure Effectiveness Initiative, the U.S. Securities and Exchange Commission (SEC) announced proposed rules to modernize the disclosure requirements for mining properties by aligning them with current industry and global regulatory practices and standards in order to provide more meaningful information to investors.

The SEC's disclosure requirements and related guidance for properties owned or operated by mining companies are contained in Item 102 of Regulation S-K and Industry Guide 7. Item 102 sets forth the basic disclosure requirements for a registrant's "principal" mines that are "materially important" and requires disclosure of "material information" concerning the "production, reserves, locations, development, and the nature of the registrant's interest," including additional disclosure requirements for individual properties that "are of major significance to an industry segment."

Industry Guide 7 sets forth the views of the staff of the Division of Corporation Finance on how mining company registrants can comply with the SEC's description of property disclosure requirements applicable to registrants. This guide has not been updated for more than 30 years. During this period, the SEC noted in its proposal, mining has become an increasingly globalized industry and several foreign countries have adopted mining disclosure standards based on the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) that significantly differ from those in Industry Guide 7.

The proposed rules would rescind Industry Guide 7 and include the SEC's mining property disclosure requirements in a new subpart of Regulation S-K. The proposed revisions would update disclosure requirements for mining registrants in Item 102 of Regulation S-K under the *Securities Act of 1933*, as amended (Securities Act), and the *Securities Exchange Act of 1934*, as amended (Exchange Act), and related guidance in Industry Guide 7.

Oil and gas resources and operations are not covered by the proposed rules.

The SEC's proposed rules would

- require disclosure where a registrant's mining operations are material to its business or financial condition, with materiality presumed if a registrant's mining assets constitute 10% or more of its total assets;
- require disclosure relating to all mining-related activities, including exploration, extraction and sale;
- require a registrant to disclose mineral resources and material exploration results in addition to its mineral reserves;

- permit disclosure of mineral reserves to be based on a preliminary feasibility study or a final feasibility study that must include a life of mine plan, which would be the basis of determining the mineral reserve;
- provide updated definitions of mineral reserves and mineral resources based generally on the definitions under the CRIRSCO-based standards;
- require, in tabular format, summary disclosure for a registrant's mining operations as a whole as well as more detailed disclosure for a registrant's 20 properties with the largest asset values (or fewer, if the registrant has an economic interest in fewer than 20 mining properties);
- require that every disclosure of mineral resources, mineral reserves and material exploration results reported in a registrant's filed registration statements and reports be based on and accurately reflect information and supporting documentation prepared by a "qualified person," defined as a person who is both (i) a mineral industry professional with at least five years of relevant experience and (ii) a member or licensee of a recognized professional organization;
- require a registrant to obtain from the qualified person a technical report summary, which identifies and summarizes for each material property the information reviewed and conclusions reached by the qualified person about the registrant's exploration results, mineral resources or mineral reserves; and
- require disclosure of internal controls used in developing exploration and mineral resource and reserve estimates, including disclosure that addresses quality control and quality assurance programs, verification of analytical procedures and comprehensive risks inherent in the estimation.

The proposed disclosure requirements would be substantially similar to Canada's National Instrument 43-101, and so Canadian registrants that report pursuant to the multijurisdictional disclosure system may continue to prepare mining disclosure in accordance with Canadian disclosure requirements. However, foreign private issuers that use Form 20-F to file their Exchange Act annual reports and registration statements, or that refer to Form 20-F for their Securities Act registration statements on Forms F-1, F-3 and F-4, would have to comply with the mining disclosure requirements of the new Regulation S-K subpart 1300.

The original public comment period was extended until September 26, 2016, in order to allow interested parties additional time to analyze the issues and prepare their comments. For a proposal of this complexity and novelty, it could take a year or more before the SEC considers final rules, and the proposing release does not address how much time issuers would be given to comply with the new regime if it is adopted.

*If you have any questions regarding the foregoing, please contact [Jeffrey Nadler](#) (212.588.5505) or [Scott D. Fisher](#) (212.588.5596) in our New York office.*

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