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August 15, 2016

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-0609.

Attention: Brent J. Fields, Secretary

Re: Modernization of Property Disclosures for Mining Registrants – File No. S7-10-16

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Commission's proposed revisions to the property disclosure requirements for mining registrants, and related guidance[1]. We support the proposed new disclosure standards, and commend the Commission for choosing to modernize these standards by aligning them with current industry and global regulatory practices and standards. Such an approach has obvious benefits for investors as well as registrants. Our one comment on the proposed rules relates to the Commission's determination that "qualified persons" will be treated as "experts" for Securities Act purposes. We think this is an unwarranted extension of liability, which is not necessary to accomplish the objectives underlying the proposed disclosure standards.

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1 Release Nos. 33-10098; 34-78086 (June 16, 2016).

The proposed rules are frankly unusual in the extent to which they impose procedural requirements on registrants under the guise of disclosure standards. The proposing release notes that the proposed rules track CRIRSCO-based codes in this respect. While mining engineers may well have useful comments on the details of these requirements, the procedural elements appear to us (as lawyers) to be generally reasonable; we assume these or similar procedures would be necessary to produce the required property disclosures in a responsible manner. We think even the requirement to obtain signed consents from the relevant "qualified persons", while striking us as overly prescriptive, could perhaps be rationalized as advancing the same objective, or even as protective of "qualified persons", given the separate requirement that "qualified persons" be named in the filings. But it seems to us a total leap – and one that the proposing release makes no effort to justify – to simply decree that "qualified persons" will thereby become "experts" for Securities Act Section 11 purposes, with the attendant liability.

A decision to follow the procedural forms of the CRIRSCO-based codes – such as requiring signed consents to inclusion of a study or technical report – in no way justifies imposition of the very substantive "expert" liability associated with similar procedural forms in the very different Securities Act context. The proposing release does not discuss the liability consequences, under CRIRSCO-based codes in other jurisdictions, of serving as a "qualified person", but we would be surprised if those consequences are comparable, in legal and practical terms, to the liability profile of a Securities Act "expert".

The nub of the problem is that the proposed rules both require involvement of "qualified persons" *and* impose expert status upon them as a result of that involvement. These are two quite separate things, and there is no reason why one needs to follow from the other. The only other example of such an approach, we believe, is the requirement to include audited financial statements, accompanied by reports of

independent auditors who must consent to inclusion of those reports. In all other cases – such as oil and gas reserves reporting, or property appraisals – the registrant has discretion whether or not to refer to the expert and include the experts' report or certification, along with a consent.

Before it could reasonably impose a requirement to involve persons *who thereby attain expert status* in connection with mining property disclosures, the Commission would need to carry out a careful cost-benefit analysis of that imposition of liability. The proposing release discusses at length the practical advantages of requiring involvement of competent persons in the disclosure process, but it does not appear to give any real consideration to the distinctly separate question of imposing "expert" liability on those persons. That the procedural forms being adopted from CRIRSCO-based codes resemble familiar Securities Act procedures does not justify imposition of "expert" liability. Rather, the liability consequences raise a separate substantive question. We don't think any case has been made for imposing "expert" liability on "qualified persons", as such. And we think it is a particularly harsh result, as applied to employees of the registrant. We would therefore urge the Commission to clarify that serving as a "qualified person" does not result in "expert" status.

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If you would like to discuss our letter, please feel free to contact Robert E. Buckholz at [redacted] or Robert W. Downes at [redacted].

Very truly yours,

Sullivan & Cromwell LLP

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