



August 26, 2016

VIA EMAIL (rule-comments@sec.gov)

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

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

Dear Mr. Fields:

We appreciate the opportunity to provide the Securities and Exchange Commission (the "Commission" or "SEC") with our comments on the proposed rules (the "Proposed Rules") to revise the property disclosure requirements for mining registrants and related guidance currently set forth in Item 102 of Regulation S-K and Industry Guide 7 ("Guide 7").

Vale S.A. ("Vale" or "we"), a Brazilian company, is one of the largest metals and mining companies in the world and the largest in the Americas, based on market capitalization. Vale is a reporting company under the Securities Exchange Act of 1934, as amended, and is listed on BM&F BOVESPA (the São Paulo stock exchange), the New York Stock Exchange and Euronext Paris.

We would welcome the opportunity to discuss our comments with the Commission or its staff. Any questions regarding our comments may be directed to Edson Ribeiro, Director of Exploration and Mineral Projects, at [REDACTED] or + [REDACTED].

Sincerely,

A handwritten signature in blue ink, appearing to read "Edson Ribeiro", written over a horizontal line.

Edson Ribeiro  
Director, Exploration and Mineral Projects  
Vale S.A.

cc: Nicolas Grabar, Cleary Gottlieb Steen & Hamilton LLP

## I. Introduction<sup>1</sup>

With the stated goal of modernizing the U.S. disclosure rules for properties owned or operated by mining companies, the Commission acknowledges the need to more closely align those rules with current industry and global regulatory practice and standards. We applaud the significant effort made by the Commission to eliminate Guide 7, which has not been updated for more than three decades, and strongly support any efforts to bring U.S. mineral reporting and disclosure standards in line with global industry standards.

We note, however, that the Commission's prescriptive approach to the Proposed Rules has resulted in a set of strict disclosure requirements that in many cases are highly burdensome and inconsistent with CRIRSCO-based codes. If left unmodified, the Proposed Rules would remain at odds with internationally accepted reporting requirements, increasing the costs of compliance for reporting companies such as Vale and leaving in place significant barriers to entry for foreign mining companies that would otherwise wish to list in the United States.

As described in further detail below, our key comments are as follows:<sup>2</sup>

- The Proposed Rules limit product prices used to estimate mineral reserves and mineral resources, in contrast with international practice. It is vital that the assessment of mineral resources and reserves take long-term trends into consideration, using the methodologies to estimate long-term price projections that have been adopted by the industry. In addition, we see no reason to apply the same price assumptions to mineral resources and reserves given the significant difference in timing of production.
- The Commission should revise the Proposed Rules to more closely align with international standards in order to avoid dramatically increasing the burden and cost of compliance with U.S. disclosure requirements. It is particularly important that the definitions of mineral resources and mineral reserves be as close as possible to the CRIRSCO Template so that a registrant could prepare a single set of mineral resource and mineral reserve estimates. Some significant deviations, such as the requirement to report mineral reserves net of allowances for diluting materials and mining losses and at three different locations, are inconsistent with international practice and potentially misleading.
- It is critical that the Commission abandon the prescriptive approach to the Proposed Rules and give greater deference to the judgment of qualified persons ("QPs") who are uniquely situated and qualified to determine the appropriate format and content of a registrant's disclosures, particularly with respect to disclosure tables. A more flexible approach is critical to protect confidential and commercially sensitive information.

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<sup>1</sup> Request for Comment 2.

<sup>2</sup> Many of our comments are consistent with those submitted by the Society for Mining, Metallurgy and Exploration ("SME") in its letter to the Commission dated August 4, 2016 ("SME Comment Letter"), which is available at <https://www.sec.gov/comments/s7-10-16/s71016-6.pdf>.

## II. The Standard for Mining Related Disclosure

*We agree that the Proposed Rules should include a rebuttable presumption for materiality<sup>3</sup>*

We agree that the threshold for materiality should be a presumption, rather than a bright-line test, consistent with the approach taken by Canada's Companion Policy to National Instrument 43-101 ("NI 43-101"), which provides that an issuer should determine materiality "in the context of the issuer's overall business and financial condition taking into account qualitative and quantitative factors" and taking into consideration "a number of factors that cannot be captured in a simple bright-line standard or test."<sup>4</sup> We recognize the Commission's expressed interest in adopting a standard that is generally consistent with the disclosure standards under the CRIRSCO-based mining codes. Given the complexity of factors that are relevant to the determination of a mining operation's materiality, we believe that the consideration of both quantitative and qualitative factors is appropriate. The adoption of this standard over a rule encourages a registrant to carry out a full evaluation of its mining operations and allows a registrant with mining operations that fall above or below a quantitative threshold the flexibility to conclude whether disclosure of such operations is required.

*The presumption of materiality should be based on a 15% threshold, which more closely aligns with mining companies' internal materiality analyses<sup>5</sup>*

We agree that the appropriate standard for disclosure should be whether a registrant's mining operations are material to its business *or* financial condition. No single factor or metric determines materiality. However, a presumption of materiality at or above a 15% asset threshold would better reflect the materiality determinations made by registrants with base metals and iron ore operations, such as Vale, than the proposed 10% threshold. Though we recognize the Commission's desire to establish a threshold that is consistent with those used to determine disclosure requirements under several of its existing forms and rules, it is equally important for this threshold to align with the existing practices of mining companies. Allowing registrants to utilize internal assessments of materiality to assess their disclosure requirements would limit the amount of additional analysis that a registrant needs to carry out, thereby limiting the burden of the Proposed Rules. To facilitate consistent application of this standard, we encourage the Commission to replace all references to the 10% threshold with 15% in the final rules.<sup>6</sup>

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<sup>3</sup> Requests for Comment 4, 5, 17, 99.

<sup>4</sup> See Companion Policy 43-101CP to NI 43-101, General Guidance, Pt.4, which is available at [https://www.bsc.bc.ca/Securities\\_Law/HistPolicies/HistPolicy4/PDF/43-101CP\\_CP\\_June\\_24\\_2011/](https://www.bsc.bc.ca/Securities_Law/HistPolicies/HistPolicy4/PDF/43-101CP_CP_June_24_2011/).

<sup>5</sup> Requests for Comment 3, 5.

<sup>6</sup> Accordingly, in determining whether an individual property is material to its business or financial condition, a registrant should take into consideration the presumption that a property that constitutes 15% or more of its total assets is material.

### III. Treatment of Exploration Results

*Disclosure of exploration results should be optional for production stage registrants*<sup>7</sup>

We agree that disclosure of exploration results should be permitted and encouraged by the Commission. However, the mandatory disclosure of material exploration results, as proposed, would raise concerns of potential violations of confidentiality arrangements and make it more difficult for SEC registrants to negotiate agreements with property owners and joint venture partners. It may also trigger disclosure obligations at early stages of exploration, which, given the level of detail required by the Proposed Rules, would provide competitors with strategic information at no cost. We recognize that exploration results may be the only available information for certain exploration or development stage issuers, in which case the disclosure of exploration results would be material for investors. However, for production stage registrants, the mandatory disclosure of exploration results would generally result in immaterial information to investors and would be costly and burdensome to prepare. This is particularly true for Vale, as we drill, on average, more than 200,000 meters each year globally as part of our exploration activities. In addition, for a production stage issuer with multiple projects and operations, the disclosure of exploration results, many of which may be “false positives,” could mislead investors.

In light of the risks to a company’s confidentiality and competitiveness, and the wide range of possible outcomes resulting from different exploration activities involving a variety of minerals, a production stage registrant should be responsible for determining whether or not disclosure is appropriate and material to investors. The Proposed Rules should be revised to encourage, but not require the disclosure of material exploration results; this is consistent with CRIRSCO-based codes and would level the playing field for SEC registrants.

*Registrants should be permitted to disclose “exploration targets”*<sup>8</sup>

Under the Proposed Rules, registrants are prohibited from using exploration results alone to derive estimates of tonnage, grade and production rates or in an assessment of economic viability. The CRIRSCO Template, Canada’s NI 43-101, JORC Code and ASX listing rules permit the disclosure of so-called “exploration targets,” defined as: “a statement or estimate of the exploration potential of a mineral deposit in a defined geological setting where the statement or estimate, quoted as a range of tonnes and a range of grade or quality, relates to mineralization for which there has been insufficient exploration to estimate mineral resources.”<sup>9</sup>

We recommend that the Commission conform the Proposed Rules with international standards on this point, as it has become common industry practice to disclose this information in technical reports and the benefits for investors outweigh any risks. This would allow SEC registrants to provide the same information to the market as their competitors reporting in foreign jurisdiction and better meet investors’ expectations.

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<sup>7</sup> Requests for Comment 42, 45.

<sup>8</sup> Requests for Comment 43, 44.

<sup>9</sup> See CRIRSCO Template and JORC Code ¶17. See also NI 43-101 Section 2.3 and ASX listing rules Section 5.6.

#### IV. Treatment of Mineral Resources and Mineral Reserves

##### A. Commodity Prices

*We strongly believe that registrants should be allowed to use their short-term and long-term estimates of future prices in the estimation of mineral resources and reserves<sup>10</sup>*

The Proposed Rules provide that the price used to estimate mineral resources and reserves cannot be higher than the average spot price for the 24 months prior to the end of the fiscal year covered by the filing, with the sole exception of cases where prices are determined by a sales contract. We have serious concerns with the proposed 24-month trailing average ceiling price proposed by the Commission, for the reasons described below.

- We believe that the approach proposed by the Commission is inadequate and may result in misleading disclosure. Mineral reserves and resources will be extracted in the future, generally over a long period of time, and commodity prices experience long-term cycles. The assessment of mineral resources and reserves should take these long-term trends into consideration as much as possible. The global industry has recognized methodologies to calculate long-term price projections, and mining companies and QPs rely on these methodologies in the estimation of mineral resources and reserves. The 24-month historical trailing average proposed by the Commission disregards the long-term cycle and exposes the reporting of mineral resources and reserves to short-term fluctuations of commodity prices. This may result in frequent and sometimes abrupt adjustments to reported resources and reserves, regardless of the views of the registrant's management, QP or the mining industry regarding expected future prices.
- The proposed 24-month trailing average ceiling price represents a significant departure from the rules adopted in other jurisdictions, thereby undermining the Commission's effort to align U.S. disclosure rules with international standards. Each of the CRIRSCO Template, JORC Code and Canada's NI 43-101 permits the QP to use a reasonable and justifiable price, based on the QP or management's views of the short-term and long-term market prices.<sup>11</sup> The Proposed Rules would cause U.S. disclosure rules to remain an outlier. Dual-listed companies would have to continue to deal with the burdens of inconsistent disclosure rules, incurring significant costs to carry out the additional work required to prepare different reports. Major mining companies listed in the United States, even if not subject to other reporting rules, will likely continue to prepare reserve and resource information based on international standards, as investors generally expect this information.
- We do not believe that the Proposed Rules would achieve the Commission's stated objective of promoting comparability between mineral reserves and resources of different registrants.<sup>12</sup> The proposed price ceiling may promote comparability among

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<sup>10</sup> Requests for Comment 67, 68, 69, 79, 80.

<sup>11</sup> See CRIRSCO Template, page 31; JORC Code Table 1 Section 4; SME Guide 2014 ¶¶ 51-54.

<sup>12</sup> Proposed Rules at 85.

certain domestic registrants, but the discrepancies with international standards will prevent comparability with registrants not subject to U.S. rules. Major mining companies subject to U.S. rules will likely continue to produce information that complies with international standards, and investors will receive conflicting information.

- The adverse effects of having divergent U.S. rules will be even greater under the Proposed Rules than under Guide 7. Under Guide 7, registrants are not allowed to disclose mineral resources, and the disclosure requirements for reserve reports are less burdensome, which mitigates the additional work for dual-registered registrants, as well as the potential for disseminating conflicting and confusing information to the market. Both the burden and the risk will be far more acute under the Proposed Rules.
- Accounting rules contemplate the use of future price information for purposes of purchase price allocation, impairment testing, fair value accounting, calculation of depreciation, depletion and retirement obligation provisions. If the Proposed Rules are adopted, there will be an unnecessary inconsistency between prices used for financial reporting and prices used for mining reporting.

We appreciate the Commission's efforts to promote comparability between mineral reserves and resources of different registrants, but the downside of the historical average price approach outweighs the benefits. The risk that a registrant might use unrealistic future price assumption is mitigated by (i) the disclosure by the QP of the methodology adopted and (ii) comparisons with future price expectation of other registrants and brokerage and financial institutions.

*A registrant should be permitted not to disclose its future price forecasts as long as it describes the methodology for estimating mineral resources and reserves and discloses whether or not the reported resources or reserves would be extractable if future prices did not exceed a certain average trailing price<sup>13</sup>*

In some cases, a registrant's future price assumptions may be commercially sensitive (e.g., when the product is sold under long-term contracts subject to confidentiality obligations or where long-term prices are used for strategic business planning). A registrant should therefore have the option to report resources and reserves estimated based on confidential future price assumptions, without disclosing such price assumptions, so long as the registrant discloses (i) the methodology for estimating mineral reserves and resources and (ii) whether these resources and reserves would be extractable if commodity prices were not greater than a certain historical price (e.g., the 36-month average trailing price). In other words, a registrant would be required to disclose whether or not the resources and reserves satisfy a cash flow test that assumes a certain average trailing price, and this cash flow test would be satisfied if it results in a positive net present value or a positive undiscounted cash flow.

We believe that this cash flow test would be unnecessary when a registrant discloses the future price assumptions used to estimate mineral reserves and resources. However, if the

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<sup>13</sup> Requests for Comment 79, 80.

Commission believes that a mechanism to create comparability is necessary, the test described above should be adopted instead of the proposed 24-month trailing average ceiling price model. Rather than preventing registrants from disclosing resources and reserves that are legally and economically extractable based on future price estimates, the final rules should require registrants to disclose whether or not the reported resources or reserves would be extractable if future prices were equal to a certain trailing average price.

Finally, we strongly recommend that for purposes of the cash flow test, at least a 36-month historical average price be adopted instead of the proposed 24-month price. As discussed above, commodity prices generally have a long-term cycle, and the use of 24 months would expose the prices to short-term volatility, which could cause significant fluctuations in reserve and resource estimates from year to year.

*Registrants should be permitted to use different price assumptions for reporting resources and reserves*<sup>14</sup>

The Proposed Rules require the use of the same ceiling price for reporting resources and reserves. This is inconsistent with the CRIRSCO Template and rules adopted in other jurisdictions, which permit disclosure of mineral resource and reserve estimates based on different price assumptions. As long as the methodology used to calculate future price projections is clearly disclosed and the price assumptions are justified, the QP should have flexibility to use different prices. Commodity prices used to estimate mineral resources are typically higher than the prices used to estimate mineral reserves, especially in light of the timing difference between commodity production from resources and reserves. Using the same price for resources and reserves would result in an underestimation of SEC registrants' resources, putting them at a significant disadvantage relative to registrants not subject to U.S. rules.

#### ***B. Treatment of Mineral Resources***<sup>15</sup>

We support the Commission's proposal to allow registrants to disclose mineral resources. This represents a modernization of U.S. disclosure rules and brings them closer in line with international practice. We also support the proposed classification of mineral resources as inferred, indicated or measured, which is consistent with international standards. We believe that certain adjustments are necessary to level the playing field for SEC registrants and to avoid inconsistent information in the market.

#### *Adjustment to the definition of mineral resource*<sup>16</sup>

The definition of "mineral resource" should be revised to mention reasonable prospects for "eventual" economic extraction, as in the CRIRSCO Template, JORC Code and CIM Definition Standards, which are the bases for the rules applicable in other jurisdictions.<sup>17</sup> The word "eventual" indicates timing for economic extraction, and timing may vary depending on the commodity or mineral. The CRIRSCO Template and JORC provide interpretive guidance on the

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<sup>14</sup> Request for Comment 69.

<sup>15</sup> Request for Comment 50.

<sup>16</sup> Request for Comment 50.

<sup>17</sup> See CRIRSCO Template; JORC Code ¶20, CIM Definition Standards, second paragraph under Mineral Resources.

meaning of the word “eventual” and the use of the same guidance would be beneficial to registrants and investors. The omission of this term from the final rules could give rise to undesirable distinctions in mineral disclosures that would jeopardize the Commission’s efforts to bring U.S. rules in line with international practice.

*Registrants should be able to use inferred resources in economic analysis, with proper cautionary language*<sup>18</sup>

The Proposed Rules prevent a QP from using inferred resources in any economic analysis conducted to determine the economic viability or economic prospects of mineral deposits. We agree that inferred resources cannot be used to make a determination about the economic viability of a project and therefore should not be used to report reserves. However, inferred resources are typically used to determine the prospects of economic viability in connection with a registrant’s decision to continue to pursue a certain project, from its initial assessment to the pre-feasibility and feasibility phases. These prospects of economic viability should be determined by a cash flow test. Drilling and collecting all data necessary to convert inferred resources into indicated or measured are generally costly, and preventing registrants from using inferred resources in cash flow tests would delay U.S. investors’ access to potentially relevant information. Therefore, consistent with the CRIRSCO Template, NI 43-101 and JORC Code,<sup>19</sup> we believe the Commission should permit registrants to use inferred resources in cash flow analysis, subject to appropriate disclaimers. Cautionary language should be sufficient to mitigate uncertainties associated with inferred resources reporting, consistent with international practice.

*Disclosure of the minimum percentage of inferred resources expected to be converted into indicated or measured resources is not adequate or feasible*<sup>20</sup>

We agree that inferred resources are only reportable if a QP has a reasonable expectation that the majority of mineral resources could be upgraded to indicated or measured resources. However, there is no reliable way to quantify, in terms of percentage, the amount that will eventually be converted into indicated or measured resources. The requirement to disclose the minimum percentage of inferred resources expected to be converted is unfeasible and not imposed by other jurisdictions. This would result in questionable conclusions and potentially misleading disclosure.

The definition of inferred resources already reflects underlying geological uncertainties. Despite the low level of geological confidence, inferred resources must show prospects of eventual economic extraction. If a QP has sufficient elements to conclude that a part of the inferred resources cannot be converted into measured or indicated resources, that part should not be reported as a resource. The QP should be able to describe the risks and uncertainties associated with the inferred resources report; the quantification in terms of percentage will not provide any additional protection to investors.

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<sup>18</sup> Requests for Comment 55, 56, 73.

<sup>19</sup> See CRIRSCO Template ¶22; JORC Code ¶21; SME Guide ¶34; NI 43-101 Section 2.3(3).

<sup>20</sup> Requests for Comment 58, 60, 61.

*Quantitative disclosure of the level of confidence or uncertainty should not be mandatory*<sup>21</sup>

For brownfield projects or projects for which the QP can establish a comparable operation, the QP may be able to provide a reasonable estimate of the level of confidence or uncertainty. However, this quantitative estimation is burdensome, and we believe that the costs of calculating it, in most cases, outweigh the benefit to investors. With respect to greenfield projects or projects for which no comparable operation is available, generally no reliable quantification can be made. Therefore, we believe that the mandatory disclosure requirement will likely result in misleading disclosure for certain projects.

We believe that the Commission should follow CRIRSCO, which encourages, but does not require a quantitative estimation of uncertainties. The definition of each category of resources already indicates the level of uncertainty associated with the resources, and the QP should be able to justify the resources report based on other methods.

*A QP should not be required to discuss in the initial assessment each modifying factor described in Table 1*<sup>22</sup>

We agree that resources should be supported by an initial assessment. However, the description of the modifying factors required for an initial assessment should be indicative, not prescriptive. Table 1 contains more details than what we consider to be necessary for purposes of determining resources, and the QP should be given flexibility to discuss only the material aspects.

We acknowledge that the initial assessment is narrower than the scoping study under CRIRSCO and the preliminary economic assessment under NI 43-101. We understand that a registrant is not required to produce a new initial assessment if it already possesses a scoping study or preliminary economic assessment covering the same resources.

### ***C. Treatment of Mineral Reserves***

We support the use of a preliminary feasibility study or final feasibility study to report reserves and the use of modifying factors. We believe that the adjustments discussed below are necessary to avoid putting SEC registrants at a significant disadvantage vis-à-vis registrants not subject to the U.S. rules.

*The definition of reserves should be revised to include allowances for diluting materials and mining losses*<sup>23</sup>

The Proposed Rules define mineral reserves as an estimate of tonnage and grade or quality that is “net of allowances for diluting materials and mining losses.” This is another significant departure from industry practice and most of the international rules, which jeopardizes the Commission’s efforts to conform U.S. disclosure rules to international standards.

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<sup>21</sup> Request for Comment 60.

<sup>22</sup> Requests for Comment 63, 64, 70, 71.

<sup>23</sup> Request for Comment 76.



Mineral reserves estimates typically include diluting materials and allowances for losses, and cut-off grades also include dilution.<sup>24</sup> We believe that the proposed concept of net estimates will confuse investors and impose unnecessary additional costs on SEC registrants.

*Registrants should be permitted to report reserves either at plant/mill feed (run-of-mine) or as saleable product, as determined by the QP<sup>25</sup>*

We also strongly oppose the proposed disclosure of mineral reserves at the three points of reference (*in situ*, plant or mill feed and saleable product). This is inconsistent with international standards, which generally require disclosure at one reference point, usually the point where the ore is delivered to the processing plant (plant/mill feed or run-of-mine).<sup>26</sup> We believe that registrants should be required to report reserves at one point, which should be either at plant/mill feed or as saleable product, as determined by the QP for each product and depending on the type of operation.

The “in situ” terminology is not transparent and is inconsistent with the CRIRSCO Template and JORC Code, and therefore should be avoided. We refer to and endorse the comments provided by the SME on this point.<sup>27</sup>

*The definitions of preliminary and final market studies should serve as guidance to the QP, not as minimum requirements<sup>28</sup>*

We agree that the pre-feasibility study and feasibility study should contain market studies supporting the economic analysis. The definitions proposed in Item 1301(d)(8) and (17) should serve as guidance to QPs, but not as minimum requirements. The QP should have the flexibility to decide the type of information to be included on a case-by-case basis.

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<sup>24</sup> See CRIRSCO Template, JORC Code and CIM Definition Standards (“It includes diluting materials and allowances for losses, which may occur when the material is mined or extracted and is defined by studies at Pre-Feasibility or Feasibility level as appropriate that include application of Modifying Factors. Such studies demonstrate that, at the time of reporting, extraction could reasonably be justified”). See also JORC Code ¶29 (“Ore Reserves are reported as inclusive of marginally economic material and diluting material delivered for treatment or dispatched from the mine without treatment”).

<sup>25</sup> Request for Comment 76.

<sup>26</sup> See CRIRSCO Template, ¶30, JORC Code ¶29, and CIM Definition Standards, third paragraph under Mineral Reserves.

<sup>27</sup> See SME Comment Letter, Items 7.1 and 7.2. See also JORC Code ¶ 51.

<sup>28</sup> Request for Comment 89.

## V. Specific Disclosure Requirements

*Greater deference should be given to a registrant's determination of the appropriate presentation of its disclosure, including the basis for aggregating its mining operations and the inclusion and content of disclosure tables*

### A. *Aggregation & Summary Disclosure*<sup>29</sup>

When assessing the materiality of its mining operations to determine whether disclosure is required under new subpart 1300 of Regulation S-K, it is important that a registrant be required to aggregate all of its mining properties.

A guiding principle of the CRIRSCO Template is that a public report should contain “all the relevant information which investors and their professional advisers would reasonably require, and reasonably expect to find in a public report.”<sup>30</sup> In that spirit, it is appropriate to require any registrant with economic interests in multiple mining properties, none of which may be individually material, to provide summary disclosure of its mining operations. However, rather than adopting overly prescriptive disclosure presentation requirements, the Commission should permit a registrant and its QPs to use their judgment to determine the best presentation of summary disclosure, including whether to aggregate interrelated mining operations or to group mines and plants by geographic region or commodity. CRIRSCO-based codes defer, in several important respects, to the judgment of QPs who are uniquely situated and qualified to exercise such judgment and determine the most suitable format and content for disclosure. Accordingly, the final rules should permit a registrant to present summary disclosure of its material business units based on the aggregation of individual mining properties, as described above, and to include the most salient characteristics to the relevant mineral assets. Such flexibility is necessary for a mining company with hundreds of properties, such as Vale, to present disclosure that is meaningful to investors without being unnecessarily onerous to prepare.

The summary disclosure required by proposed Item 1303(b)(2) and Table 2 should not be arbitrarily limited to the registrant's 20 largest properties, none of which may be material. Instead, a registrant should be permitted to exercise judgment in accordance with the CRIRSCO Template's guiding principle that all relevant information that investors would reasonably require to make a reasoned and balanced judgment of the registrant's mining disclosure should be included.

We agree that registrants should be required to disclose their estimates of mineral reserves and mineral resources as of the end of the most recent fiscal year (to the extent they have been determined based on supporting documentation prepared by a QP), as proposed. The final rules should make clear that the summary of mineral reserves and mineral resources required by proposed Item 1303(b)(3) and Table 3 applies to all mineral properties, not only those deemed material.

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<sup>29</sup> Requests for Comment 6, 10, 90, 91, 93.

<sup>30</sup> See CRIRSCO International Reporting Template, Pt. 3, which is available at <http://www.crirSCO.com/template.asp>.

We strongly support the position of the SME that estimated mineral reserves and mineral resources should never be combined in a single table, as proposed in Table 3, as doing so may mislead investors by suggesting that mineral resources are as economically feasible as mineral reserves. For the same reason, inferred mineral resources should not be combined with indicated and measured mineral resources. The side-by-side tabular format also falsely suggests that mineral reserve and resource estimates can be aggregated.

#### **B. *Individual Property Disclosure***<sup>31</sup>

The level of detail required by proposed Item 1304 for individual property disclosure is excessive and the value to investors of such granular disclosure is unlikely to offset the significant burden on registrants. Exploration may involve a wide range of activities, including results of outcrop sampling, assays of drill hole intersections, geochemical results and geophysical survey results. The procedures and parameters may vary substantially depending on the type of mineral and location, which makes it difficult and unadvisable to attempt to standardize the rules, as proposed. We have serious concerns with the detailed requirements for the disclosure of exploration results, which is inconsistent with the CRIRSCO Template. The inclusion and format of Tables 5, 6, 7 and 8 should be left to the discretion of the QP, with the guiding principle of presenting all material information relevant to investors. The summary of exploration results required to be disclosed in Tables 4 and 5 should be removed, as the requirements described in these tables are inconsistent with the CRIRSCO Template, do not contemplate a wide range of forms of data collection and analysis and would result in confusing and unhelpful disclosure to investors.

#### **C. *Requirements for Technical Report Summaries***<sup>32</sup>

We acknowledge the Commission's efforts to align the technical report summary with the NI 43-10 Technical Report. However, we note the important exception of proposed Item 601(b)(96)(iv)(B)(21), which diverges from the Canadian standards and requires public disclosure of a company's commercially sensitive information, including annual cash flow forecasts and measures of economic viability such as net present value and internal rates of return. We support the SME's comment that this section should be modified so that individual, annual cash flow forecasts may be omitted for operating mines, as well as the exclusion of economic analysis for producing issuers unless a material expansion of existing production is planned, in line with NI 43-101.

### **VI. *Qualified Person and Responsibility for Disclosure***

*We support the requirement that a registrant obtain a technical report summary from a QP before it can disclose mineral resources or mineral reserves*<sup>33</sup>

Technical report summaries should only be required to be filed as an exhibit to a registration statement or other Commission filing when the registrant is disclosing mineral reserves or mineral resources for the first time or when there is a material change from the last

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<sup>31</sup> Requests for Comment 99, 101.

<sup>32</sup> Request for Comment 111.

<sup>33</sup> Request for Comment 24.

report, as proposed by the Commission. Requiring registrants to file technical reports more frequently would be burdensome, as the reports are costly and time-consuming to prepare. The triggers included in the Proposed Rules are well suited to ensure that any disclosures relating to a registrant's mineral reserves and resources are kept up-to-date, without overburdening registrants.

#### *QP Requirements*<sup>34</sup>

The definition of QP should conform with an existing definition established by CRIRSCO, NI 43-101 or JORC in order to encourage consistency in the quality, as well as content, of disclosure internationally.<sup>35</sup> We support the Commission's proposal that a QP should be permitted to be an employee or other affiliate of a registrant as long as the registrant discloses its relationship with the QP, consistent with most CRIRSCO-based codes. The registrant should be responsible for determining whether an individual meets the qualifications to be a QP, as proposed. In the case of a QP employed by a registrant, the registrant is in the best position to evaluate the QP's credentials and make this determination.

Large multinational, production stage issuers like Vale employ a significant number of QPs. The per se disqualification of an employee or affiliate QP would significantly increase the cost of compliance with U.S. disclosure requirements without necessarily improving the quality of disclosure for investors; a QP's employment or affiliate status is not determinative of his or her ability to exercise objective and impartial judgment. We further support the Commission's proposed internal controls disclosures, which include quality control and quality assurance programs, verification of analytical procedures and a discussion of comprehensive risk inherent in estimates. Such disclosure allows investors to evaluate the ability of a QP to exercise objective and impartial judgment, lending further support to the position that external QPs are unnecessary.

We concur with the SME's proposal that a registrant should be responsible for disclosing any material conflicts of interest, which would better align the Commission's QP requirements with professional ethics codes. If the Commission determines that additional assurances are necessary under specified circumstances, the QP's assessment should be peer-reviewed by another QP, who does not need to be an external QP.

The Proposed Rules provide additional safeguards for investors, including the rigorous requirements to qualify as a QP, to ensure that such individuals are experienced professionals. We endorse the SME's position that such safeguards would be strengthened by the addition of the requirement that a "recognized professional organization" be an organization approved by CRIRSCO members, such as the Appendix to Canada's Companion Policy to NI 43-101 maintained by the Canadian Securities Administrators. In line with Canada's NI 43-101, continuing professional development should be encouraged, but not required.

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<sup>34</sup> Requests for Comment 21, 30, 37, 40, 116, 117.

<sup>35</sup> See, e.g., CRIRSCO Standard Definitions, which are available at [http://www.criusco.com/news\\_items/CRIRSCO\\_standard\\_definitions\\_oct2012.pdf](http://www.criusco.com/news_items/CRIRSCO_standard_definitions_oct2012.pdf); NI 43-101 Standards of Disclosure for Mineral Projects, which is available at [http://web.cim.org/standards/documents/Block484\\_Doc111.pdf](http://web.cim.org/standards/documents/Block484_Doc111.pdf); and Australia's JORC Code pt. 11, which is available at [http://www.jorc.org/docs/JORC\\_code\\_2012.pdf](http://www.jorc.org/docs/JORC_code_2012.pdf).

### *Liability of QPs<sup>36</sup>*

We agree with the Commission's position that a QP should be an individual. Although individual employees acting as QPs of a registrant are to be named and are required to sign a consent and technical report summary, the registrant should be able to indemnify such individuals. We strongly endorse the SME's position that in no event should the potential liability imposed on a QP employed by a registrant be commensurate with or broader than that of the registrant's principal executive and financial officers. If the Commission were to take the position that indemnification policies of QPs are unenforceable, the cost of engaging QPs would likely be materially impacted, thereby significantly increasing the financial burden on registrants in the United States relative to foreign jurisdictions.

The Commission should modify the Proposed Rules to expressly permit multiple QPs to sign off on a technical report, identifying the sections of the report for which each QP is responsible and providing a written consent to the use of each QP's name and any quotation or other use of the technical report summary in the registration statement or report. We strongly urge the Commission to conform the final rules with NI 43-101 to permit a QP's disclaimer of responsibility if he or she relies on a report, opinion, or statement of another expert who is not a QP in preparing the technical report summary. It is unreasonable to expect a QP to assume the burden of verifying all information provided by other experts in substantive areas in which the QP has no expertise.

## **VII. Transitional Rules**

*The transitional rules should specify that mineral reserves that have been previously disclosed in SEC filings are "grandfathered" and therefore not subject to the revised disclosure standards*

We note that the Proposed Rules are silent on the transitional period following the adoption of the final rules. The Commission should provide clear instructions with respect to a registrant's first time reporting mineral reserves and mineral resources. The Commission should make clear that a registrant need not disclose mineral reserves in accordance with the final rules if such reserves were previously disclosed in a Commission filing and no material change of such reserves is being reported.

Given the magnitude of changes to the current disclosure framework under Guide 7, we believe that a transitional period of at least two years should be provided before registrants are subject to the final rules.

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<sup>36</sup> Requests for Comment 33, 114.