

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 Number  
Release Number 33-10098; File No. S7-10-16 (the "Release")  
Update of Property Disclosures for Mining Registrants**

Dear Mr. Fields:

The Canadian Institute of Mining, Metallurgy and Petroleum ("CIM") submits the following comments on the Securities and Exchange Commission's (the "SEC") Proposed Rule to revise the property disclosure requirements for mining companies and related guidance currently set forth in Item 2 of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Industry Guide 7 ("Guide 7").

We appreciate the opportunity to provide these comments and would be pleased to discuss them further with the SEC or its staff. Any questions regarding our comments may be directed to Deborah McCombe, President & CEO, Roscoe Postle Associates Inc. (RPA) and CIM Mineral Resource and Reserve Committee at [REDACTED] or at [REDACTED].

Respectfully yours,



Jean Vavrek  
Executive Director, CIM

T: [REDACTED]

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## **Summary**

The Canadian Institute of Mining, Metallurgy and Petroleum ("CIM") appreciates the opportunity to provide comments on the Proposed Rule developed by the Securities and Exchange Commission (the "SEC") to revise the property disclosure requirements for mining registrants and related guidance currently set forth in Item 2 of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Industry Guide 7 ("Guide 7").

CIM would like to acknowledge the considerable effort that the SEC has carried out on the Proposed Rule. This has been updated to include disclosure and technical standards that are generally consistent with Canada's National Instrument 43-101 ("NI 43-101") Standards of Disclosure for Mineral Projects adopted by the Canadian Securities Administrators ("CSA") in 2001 and updated in 2005 and 2011 and incorporates by reference the CIM Definition Standards whose definitions are consistent with the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) Template. CIM does encourage the SEC to better align the Proposed Rule with the disclosure standards of NI 43-101 and the CRIRSCO Template which would benefit both companies and the investing public.

CIM's comments are the following.

### **Qualified Person and Professional Association Comments**

In addition to the requirements in the Proposed Rule regarding the involvement of the Qualified Person, CIM has compiled a list of additional comments.

- Definition of Qualified Person – NI 43-101 defines a qualified person as an individual who is an engineer or geoscientist with a university degree or equivalent accreditation in an area of geoscience, or engineering, related to exploration or mining. The educational requirement is an important aspect of the qualified person definition and CIM recommends that this is included in the SEC's definition.
- Independence – CIM recommends that the involvement of an independent qualified person is required at milestones of the project such as first time disclosure of a mineral resource or mineral reserve and at milestones of the company such as an Initial Public Offering or a prospectus financing. This would provide an independent opinion at key stages of the project and align with NI 43-101. Guidance on assessing independence is provided in the Companion Policy of NI 43-101 (Companion Policy 43-101CP, Section 1.5). NI 43-101 also provides that an exception can be used where the company is a Producing Issuer as defined in NI 43-101 which helps balance the requirement for investor protection and the needs of producing companies. The depth of senior technical management that can provide peer review within a producing mining company provides a similar credibility as having independent qualified persons prepare the technical report.
- Reliance on Other Experts – CIM recommends that qualified persons should be able to include a limited disclaimer of responsibility when relying on experts in areas in which the qualified person could not be expected to have professional training such as legal, land tenure, social, environmental, political and tax matters, and for commodity pricing for specialized mineral products. To expect an engineer or geoscientist to provide opinions on these specialized fields, outside of their field of practice, is contrary to the professional and ethical standards enforced by most engineering and geoscientific

professional associations. A qualified person should be responsible for seeing that a suitable expert has provided this information, and that it is reasonable to rely on the other expert's information, but the qualified person should then be able to include a limited disclaimer of responsibility for the information provided by the other expert, in CIM's opinion.

### **Professional Association**

CIM supports the SEC's proposed adoption of a definition of a professional association similar to that in NI 43-101 which means a self-regulatory organization of geoscientists, engineers, or both geoscientists and engineers that:

- is given authority or recognition by statute in a jurisdiction of Canada, or is a foreign association generally accepted within the international mining community as a reputable professional organization
- admits individuals on the basis of their academic qualifications, experience, and ethical fitness
- requires compliance with the professional standards of competence and ethics established by the organization and which are compatible with industry-recognized standards
- requires or encourages continuing professional development
- has and applies disciplinary powers, including the power to suspend or expel a member regardless of where the member resides or practices.

As many foreign professional associations are not recognized by statute, in 2001 the CSA developed a list of accepted foreign associations so companies could easily identify qualified persons who are members of a recognized professional organization in good standing with the securities regulators (Companion Policy 43-101CP, Appendix A – Accepted Foreign Associations and Membership Designations). This list is modified as new foreign associations are recognized.

CIM strongly recommends that the SEC adopt an approved list of recognized professional organizations and refer to the Society for Mining, Metallurgy & Exploration (SME) list of recognized professional organizations or the Appendix A to Companion Policy 43-101CP maintained by the CSA so that the burden of maintaining and vetting various potential recognized professional organizations will not be the responsibility of the SEC staff.

### **Commodity Prices**

The Proposed Rule has the requirement that the prices used to estimate both mineral resources and mineral reserves be limited to less than or equal to the average spot price in effect over a 24-month period preceding the date of the estimate unless prices are defined by contractual arrangement. The prescriptive use of a trailing average price forces unrealistically optimistic price assumptions in a declining market and unrealistically pessimistic prices in a rising market.

CIM recently provided guidance<sup>1</sup> to issuers that consensus prices are credible sources for metal price disclosure. Issuers' short- and long-term forecasted prices are typically based on consensus projections that are derived from an average of the short-term and an average of the long-term prices provided by numerous financial institutions that are independent of the companies that report mineral resources and mineral reserves. Consensus short- and long-term price averages are typically updated on a monthly basis.

Most of the international reporting standards follow the CRIRSCO Template which requires the use of forward-looking market forecasts and prices as a parameter for the estimation of mineral resources and mineral reserves. The investing public is then able to compare similar mineral projects located in different parts of the world. The proposed use of a two year trailing average metal price for the estimation of mineral resources and mineral reserves by the SEC would not allow this comparability.

CIM recommends that the SEC allows mineral resources and mineral reserves to be estimated using consensus market or contractual prices. CIM recommends that the guidance provided by CIM and the CRIRSCO Template should govern commodity prices used for mineral resource and mineral reserve estimation and reporting.

#### **Disclosure of Material Exploration Information and Mineral Resources in addition to Mineral Reserves**

CIM recommends that the SEC's Proposed Rule "determine materiality in the context of the issuer's overall business and financial condition taking into account qualitative and quantitative factors, assessed in respect of the issuer as a whole" as set out in the Companion Policy 43-101CP rather than a bright line test of 10% or more of a company's total assets.

#### **Material Exploration Results**

The Proposed Rule would now require disclosure of material exploration results for each of a company's material properties. Material exploration results are defined as data and information generated by sampling, drilling, trenching, analytical testing and other similar activities undertaken to investigate a mineral prospect that is not part of mineral resource or mineral reserves. Companies would have to make disclosures at calendar-based intervals which may occur before exploration results could be considered material.

The requirement to include exploration results in annual disclosure may be potentially burdensome and therefore onerous for companies, particularly those at the exploration stages. CIM recommends that such results could be appropriately disclosed in the form of news releases when the results are considered material and technical reports issued at appropriate company milestones, such as a financing, or project milestones.

CIM concurs with SME that the proposed requirement to disclose exploration results raises substantial confidentiality and competitive concerns. There can be sound business reasons for

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<sup>1</sup> 2015 CIM Guidance on Commodity Pricing used in Resource and Reserve Estimation and Reporting submitted by the Commodity Price Sub-Committee of the CIM Best Practices Committee adopted by CIM Council on November 28, 2015

keeping exploration results confidential, including joint venture agreements and retaining a competitive advantage where there are multiple parties performing exploration in the same district.

### **Exploration Targets**

Exploration targets are not discussed in the Proposed Rule. Exploration targets are a defined term in the CRIRSCO Template and NI 43-101, and they are in common use under these disclosure frameworks. The definition contained in the CRIRSCO Template is as follows:

- An Exploration Target is 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.

When NI 43-101 was being developed, there was considerable discussion between exploration and mining companies and the CSA about the necessity of these companies to be able to disclose the target of their proposed exploration programs in order to finance this exploration. Companies felt this represented material information to potential investors. The CSA was concerned that the public may not understand the difference between an exploration target and a mineral resource estimate. Therefore a definition was developed that clearly states that the potential quantity and grade of an exploration target must be expressed as ranges and there must be cautionary language of equal prominence that the potential quantity and grade is conceptual in nature, that there has been insufficient exploration to define the mineralization as a mineral resource and that it is uncertain if further exploration will result in the target being delineated as a mineral resource. The qualified person must also state the basis on which the disclosed potential quantity and grade has been determined.

As this type of information is important for investment decisions, CIM recommends that the Proposed Rule include exploration targets with associated proximate cautionary language.

### **Mineral Resources and Mineral Reserves**

CIM supports the SEC's addition of mineral resources to the Proposed Rule. CIM recommends that the SEC's proposed definitions of mineral resources, mineral reserves and their modifiers should be identical to the CRIRSCO Template and associated codes such as the CIM Definition Standards, so that a single international set of mineral resource and mineral reserve estimates is achieved for regulatory disclosure. CIM also recommends that:

- Separate tables should be provided for mineral resources and mineral reserves, to discourage combining mineral resources and mineral reserves. In the mineral resource table, inferred mineral resources should also be disclosed separately from measured and indicated mineral resources.
- Mineral resources should be stated on an in situ basis only and tonnage and grade must be disclosed and contained metal may be disclosed.
- Mineral reserves should be stated on a run-of-mine basis (tonnage, grade and contained metal) that incorporates dilution and mine losses, and expected plant recovery factors should be provided.
- The prices used should be based on a company's view of industry consensus of long term prices. This may be different for mineral resources and mineral reserves.

- The technical and economic parameters used to estimate mineral resources should be clearly disclosed with the statement of mineral resources.
- The mineral resources should be stated in the context of whether they have reasonable prospect of eventual economic extraction.

### **Inferred Resources**

The definition of Inferred Mineral Resource in the Proposed Rule is as follows: “As used in this subpart, the term limited geological evidence means evidence that is only sufficient to establish that geological and grade or quality continuity is more likely than not. The level of geological uncertainty associated with an Inferred Mineral Resource is too high to apply modifying factors, as defined in this section, in a manner useful for evaluation of economic viability.”

CIM recommends that the SEC adopt the CRIRSCO definition of: “An Inferred Mineral Resource is that part of a Mineral Resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. Geological evidence is sufficient to imply but not verify geological and grade or quality continuity. It is reasonably expected that the majority of Inferred Mineral Resources could be upgraded to Indicated Mineral Resources with continued exploration.” Using the CRIRSCO definition, the assumptions underlying the estimates of Inferred Mineral Resources are more clearly defined.

### **Indicated Resources**

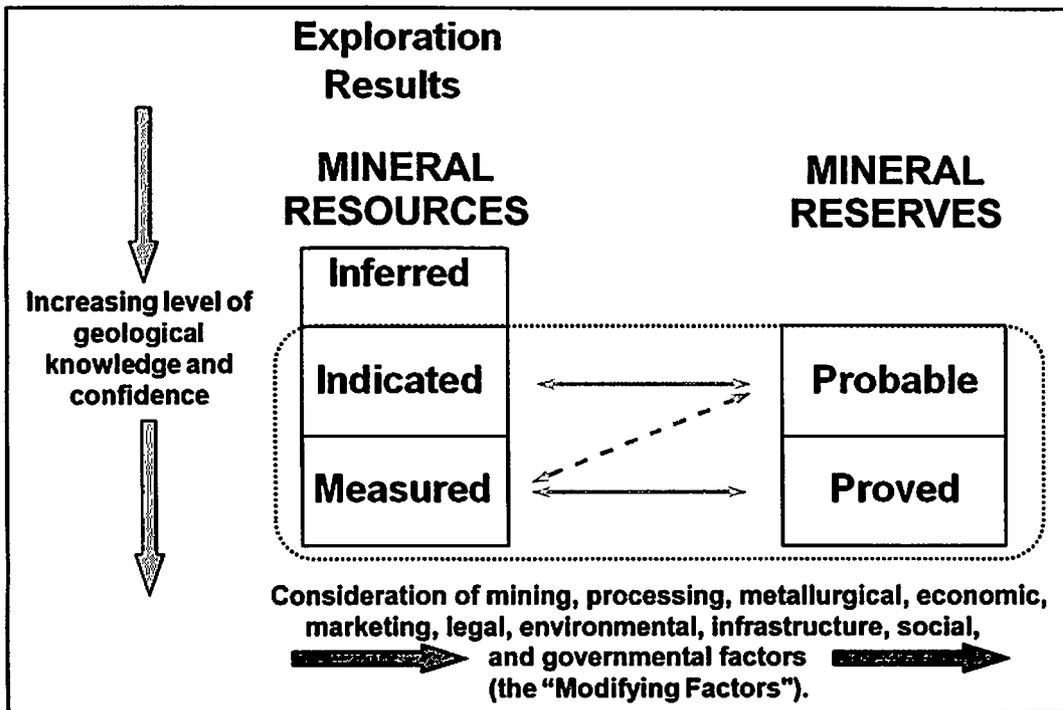
The Proposed Rule states: “An Indicated Mineral Resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling. As used in this subpart, the term adequate geological evidence means evidence that is sufficient to establish geological and grade or quality continuity with reasonable certainty.”

CIM recommends that the SEC adopt the CRIRSCO definition of Indicated Mineral Resource as it is more specific and assumptions underlying these estimates are more clearly defined. Under the CRIRSCO definition, “Geological evidence is derived from adequately detailed and reliable exploration, sampling and testing and is sufficient to assume geological and grade or quality continuity between points of observation.”

### **Reference to CRIRSCO’s Figure 1**

The CRIRSCO Template and associated codes and standards adopted by National Reporting Organizations all contain Figure 1, which displays the relationships between exploration results, and categories of mineral resources and mineral reserves.

CRIRSCO’s Figure 1 displays in graphic form the relative risks between components of mineral resources and mineral reserves.



**Figure 1 from the CRIRSCO Template**

CIM recommends that the SEC reference this figure in the Proposed Rule. Note the term "Proved" should be changed to "Proven" following existing Guide 7 and NI 43-101 practice.

**Technical Reports**

**Initial Assessment**

The SEC proposes that disclosure of mineral resources must be based upon a qualified person's initial assessment supporting the determination of mineral resources. An initial assessment would be defined in the Proposed Rule as a preliminary technical and economic study of the economic potential of all or parts of mineralization to support the disclosure of mineral resources. The initial assessment must include appropriate assessments of reasonably assumed modifying factors together with any other operational factors that are necessary to demonstrate, at the time of reporting, that there are reasonable prospects for economic extraction.

Instructions for an initial assessment in the Proposed Rule state that the qualified person must make assumptions about the two key determinants of cut-off grade estimation, operating costs and commodity prices and consider modifying factors such as site infrastructure, mine design and planning, processing plant, environmental compliance and permitting any other reasonably assumed modifying factors, including any socio-economic factors, necessary to demonstrate reasonable prospects for economic extraction.

In CIM's view, initial assessments which include an optional economic analysis should be considered scoping studies (also referred to as preliminary economic assessments under NI 43-101 below) and subject to proximate cautionary language stating that the economic viability of the mineral resources has not been demonstrated. The economic analysis should also be attributed to any combination of measured, indicated and inferred resources. In this manner, they will be similar in concept to a scoping study or preliminary economic assessment.

#### **Scoping Study or Preliminary Economic Assessment**

The Proposed Rule does not define a commonly used term in the mining industry, a scoping study. Scoping studies are defined in the CRIRSCO Template as follows:

- A Scoping Study is an order of magnitude technical and economic study of the potential viability of Mineral Resources that includes appropriate assessments of realistically assumed Modifying Factors together with any other relevant operational factors that are necessary to demonstrate at the time of reporting that progress to a Pre-Feasibility Study can be reasonably justified.

Scoping studies are termed "preliminary economic assessments" in NI 43-101 and are defined as "a study other than a pre-feasibility or feasibility study that includes an economic analysis of the potential viability of mineral resources." Additional guidance in subsection 1.1(4) of Companion Policy 43-101CP states "A preliminary economic assessment might be based on measured, indicated, or inferred mineral resources, or a combination of any of these. We consider these types of economic analyses to include disclosure of forecast mine production rates that might contain capital costs to develop and sustain the mining operation, operating costs, and projected cash flows."

CIM recommends that the SEC include a provision for a scoping study or preliminary economic assessment. This would allow the assignment of potential value to inferred mineral resources with proximate cautionary language at an early stage of the project before the viability of the mineral resources has been demonstrated by a prefeasibility study resulting in mineral reserves.

#### **Pre-Feasibility and Feasibility Studies**

The SEC definitions of pre-feasibility and feasibility studies are aligned with the CRIRSCO Template and CIM has no additional comments.

#### **Filing of Technical Reports**

The Proposed Rule would require a company to file a technical report summary authored by a qualified person as an exhibit to its SEC annual report or applicable registration statement when the company is disclosing for the first time material exploration results, mineral resources or mineral reserves or when there is a material change in the mineral resources, mineral reserves or exploration results for a property that is material to the company's business or financial condition. A royalty company may incorporate a current technical report summary by reference if the producing mining company has already filed it.

In the Proposed Rule, a material change is defined as:

- A change in exploration results that significantly alters the potential of the exploration target is considered material.
- An annual change in total resources or reserves of 10% or more is presumed to be material excluding production.
- A cumulative change in total resources or reserves of 30% from the current filed technical report summary excluding production is presumed to be material.

CIM recommends that the SEC adopt the trigger for filing of a technical report summary on a material property to be aligned with NI 43-101 to support either:

- The first time written disclosure of mineral resources, mineral reserves or the results of a preliminary economic assessment (i.e. scoping study) that constitutes a material change in relation to the company; or
- A change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the company.

NI 43-101 requires the filing of a technical report on SEDAR within 45 days of first time disclosure of a mineral resource or mineral reserve or preliminary economic assessment.

#### **General Mining Technical Disclosure**

To enhance protection of the public, CIM recommends that the scope of the Proposed Rule have a broader application covering all written disclosure such as including news releases, website postings, investor presentations, and any other public disclosure of exploration results, mineral resources and mineral reserves. This would align the SEC's Proposed Rule more closely with NI 43-101 and ensure that all of a company's mineral property disclosure to the public is consistent. As proposed by the SEC, it is quite conceivable that a company could issue a news release shortly after its annual report filing disclosing for the first time a significant mineral resource estimate on a material property that would not be supported with a technical report summary until the next annual report filing.

During the intervening time, investors would not have complete information in order to make an informed investment decision.

In closing, CIM appreciates the opportunity to provide these comments on the Proposed Rule and would be pleased to discuss them further with the SEC or its staff.