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BY EMAIL (rule-comments@sec.gov)

Securities and Exchange Commission  
100 F Street, N.E.,  
Washington, D.C. 20549-0609  
Attention: Brent J. Fields, Secretary

RE: Modernization of Property Disclosures for Mining Registrants –  
File No. S7-10-16; 81 Fed. Reg. 41,652

Ladies and Gentlemen:

We applaud the efforts of the Securities and Exchange Commission (“SEC” or “Commission”) to modernize its regulations applicable to mining registrants. Those efforts are reflected in the SEC’s proposed new disclosure requirements that include adding a new subpart to Regulation S-K, amending Item 102 of S-K, and rescinding Industry Guide 7 (“Proposed Rules”). These Proposed Rules were published for public comment in the Federal Register for Monday, June 27, 2016. 81 Fed. Reg. 41,652. In our experience, we have found the Commission’s current mining disclosure regime located in Item 102 of Regulation S-K and disclosure policies located in Guide 7 to have caused uncertainty for mining registrants. We believe the Commission should amend Item 102 of Regulation S-K by eliminating the instruction that refers mining registrants to the information called for in Guide 7, and instead instruct them to refer to, and if required, provide the disclosure under, new Regulation S-K subpart 1300, with certain changes, including those described herein.

Mining Finance Companies Are Different Than Mining Companies

Under the Proposed Rules, royalty companies and streaming companies (we refer to royalty and streaming companies herein as “mining finance companies”) would be subject to the same disclosure regime as owners of mining operations (we refer to such companies herein as “mining companies”), even though mining finance companies are not likely to participate in

mining and processing activities (in fact, we are aware of no primarily mining finance companies that participate in any mining or processing activities).<sup>1</sup>

It Is Misleading To Investors For Mining Finance Companies To Imply That They Own Or Control Reserves Or Resources of Mining Companies

We believe that the Proposed Rules and other disclosure requirements should be modified to appropriately address the distinction between mining companies and mining finance companies in light of their role in the mining industry.<sup>2</sup> Specifically, mining finance companies should not be permitted to disclose the reserves and resources owned and operated by mining companies which underlie the royalty and streaming agreements that comprise the significant assets of mining finance companies. To permit otherwise is potentially misleading to investors, as it suggests the assets of mining finance companies are something more than a contractual right to either (i) a percentage of revenue from production (i.e. an NSR) or (ii) an amount of the commodity produced by the mining company (i.e. a stream). Put another way, when mining finance companies disclose reserves and resources, it implies that they own or control the assets underlying their royalty/streaming agreement, when in fact they do not. By limiting disclosure of reserves and resources to mining companies, the rules will provide the investor with a clearer picture to properly evaluate and discern among mining companies and mining finance companies.<sup>3</sup>

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<sup>1</sup> The Proposed Rules acknowledge that in addition to operating mining companies, some registrants are royalty companies or streaming companies. The Proposed Rules do not address the distinction between royalty companies and streaming companies, and refer to both of these types of companies as “royalty companies.” In general, a royalty company is a company that receives a percentage of the net smelter revenue (“NSR”) from a mining operation in return for an up-front payment or investment. A streaming company generally refers to a company that receives, or has the right to purchase, all or a portion of the metal produced by a mining operation in return for an upfront payment or investment or future payments. Royalty and streaming companies are similar, and both are fundamentally finance companies rather than mining companies. They provide capital to fund development and production, but have no ownership or involvement in mining operations. In this letter, we use the term “mining finance company” to refer to both royalty companies and streaming companies, including companies that have both royalties and streams among their assets.

<sup>2</sup> Mining finance companies are similar to commodity pools, in that their principal assets are in essence derivatives (contracts); it is those assets that a commodity pool reports, rather than the underlying commodity itself such as gold, silver or copper (which is produced by, and represents the asset of, a mining company). Another analogous situation exists with respect to investment companies (mutual funds) which, in a manner similar to commodity pools, report only ownership of the investments (securities) they hold, not the issuer’s assets. Just as the disclosure rules applicable to commodity pools and investment companies differ from those applicable to operating companies, so too should the disclosure rules for mining finance companies differ, where appropriate, from those applicable to mining companies, including disclosure of reserves and resources.

<sup>3</sup> This comment letter specifically responds to Request For Comment No. 14 (see 81 Fed. Reg. 41,658) by taking the position as described herein that “No, the Commission should not permit a mining finance company to provide the disclosure of reserves required by a mining company registrant. Instead, the mining finance company should be limited to disclosing production and revenue related to its royalty payments or other similar payments or delivery of production.”

Table 3 of Subpart 229.1300 of the Proposed Rules<sup>4</sup> requires a year-end summary statement of reserves and resources. In the case of a mining finance company which owns a royalty, this would be misleading because its royalty is based on the revenues from production, not on the underlying reserve. To illustrate, in the case of a mining finance company which has a contractual right to a 6% NSR from a mining company that has a reserve of 10 million ounces but has no production, it makes no sense, and in fact it would be misleading, for the royalty company to report at the end of the year that it has reserves of 10 million ounces. And even if there was production by the mining company, the fundamental nature of the royalty company's asset – a contractual right to a portion of the revenues derived from that production – has not changed in any way, and it would still not make sense for the mining finance company to imply that it “owns” any portion of the 10 million ounces in reserves. Yet disclosing in a SEC filing a table which includes the 10 million ounces of “reserves” implies just that.

Similarly, with respect to a stream owned by a mining finance company, when the commodity is delivered under the streaming agreement, all that is delivered by the mining company is a portion of production; no control of resources or reserves is transferred. And, as with the example above, whether there is production or not in a given year, there is no reason for the mining finance company to report at the end of the year that it has reserves of 10 million ounces. In a year in which there is production, and ounces are delivered to the mining finance company, at most, all that has occurred is the nature of a portion of the mining finance company's asset has changed: from a contractual right to either inventory (in the case of delivered but unsold ounces) or cash (in the case of ounces delivered to and subsequently sold by the mining finance company). But in either case, it still does not make sense, and in fact would be misleading, for the mining finance company to report “reserves” of 10 million ounces.

As the Proposed Rules note, one of the key purposes for an annual reserves and resources table is because “[s]uch information would, for example, enable investors to understand and evaluate the registrant's ability to replenish depleting mineral reserves, a well-established measure of financial performance in mining.”<sup>5</sup> Yet a mining company's reserves and resources are completely irrelevant to a mining finance company's “ability to replenish depleting mineral reserves” since the latter would have no right to, or ownership or control of the mining company's reserves.

#### Limiting Disclosure Of Reserves To That Portion Which Underlies A Royalty Or A Stream Is Not Feasible

We considered the issue of limiting the reserves and resources disclosures of mining finance companies to that portion which generates the registrant's royalties or similar payments. But we believe there are many situations, particularly with respect to streams, where such an approach is not feasible. Take as an example a mining finance company that is entitled to the first one million ounces of metal produced at a mine and then 50% of any excess over the life of the mine. If the mining company that is obligated on the stream has 50 million ounces of proven

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<sup>4</sup> 81 Fed. Reg. 41,730.

<sup>5</sup> *Id.* 41,686.

and probable reserves, what portion of that should the mining finance company report as *its* proven and probable reserves? We believe the answer should be “none”, the mining finance company should not be permitted to disclose proven and probable reserves that include those 50 million ounces, but instead should disclose only the revenues and production that underlie its stream.

In contrast, the Proposed Rules appear to allow the mining finance company to disclose an amount of a mining company’s reserves that is proportionate to the mining finance company’s royalty or similar payment:

*The Proposed Rules would require a royalty or similar company to provide disclosure only for those underlying properties, or portions of underlying properties, that generate the registrant’s royalties or similar payments, and only for the reserves and production that generated its payments in the reporting period. We do not believe that investors in a company holding royalty or similar rights need information relating to portions of the mining property that do not contribute to the registrant’s royalty stream, as such portions do not impact the results of operations or overall value of the registrant.*<sup>6</sup>

We concur with the position that “investors in a [mining finance] company... [do not] need information relating to portions of the mining property that do not contribute to the registrant’s royalty stream, as such portions do not impact the results of operations or overall value of the registrant.” However, as stated above, such an approach would be inapposite in the context of many streams. Therefore, while we believe mining finance companies should be completely prohibited from disclosing the reserves and resources of mining companies, at a minimum, any such disclosure should be limited to that portion of a mining company’s reserves and resources which relate to the relevant royalty or stream, where such proportionality can be readily calculated in a way that is not misleading and makes sense to investors.

#### Mining Finance Companies Themselves Recognize That They Do Not Control Any Reserves Or Resources

Mining finance companies themselves recognize that their asset is limited to contractual rights, and not control of the underlying resources and reserves, as evidenced by this risk factor contained in a recent filing by a mining finance company that primarily owns streams:

The Company is not directly involved in the ownership or operation of mines and has no contractual rights relating to the operation of the Mining Operations. The owners and operators will generally have the power to determine the manner in which the relevant properties subject to the asset portfolio are exploited, including decisions to expand, advance, continue, reduce, suspend or discontinue production from a property and decisions about the marketing of products extracted from the property. The interests of the Company and the operators of the relevant properties may not always be aligned. As a

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<sup>6</sup> *Id.* 41,657 (emphasis added).

result, the cash flows of the Company are dependent upon the activities of third parties, which creates the risk that at any time those third parties may: (i) have business interests or targets that are inconsistent with those of the Company; (ii) take action contrary to the Company's policies or objectives; (iii) be unable or unwilling to fulfill their obligations under their agreements with the Company; or (iv) experience financial, operational or other difficulties, including insolvency, which could limit or suspend a third party's ability to perform its obligations under the precious metal purchase agreements. At any time, any of the operators of the Mining Operations may decide to suspend or discontinue operations, including if the costs to operate the mine exceed the revenues from operations. Except in limited circumstances, the Company will not be entitled to any material compensation if such operations do not meet their forecasted silver or gold production targets in any specified period or if the operations shut down, suspend or discontinue on a temporary or permanent basis. (See Risk Factor entitled "No Control Over Mining Operations" on p. 40 of the Annual Report Silver Wheaton Corp. filed with the SEC on March 17, 2016 as Exhibit 99.2 to Form 6-K.)

Similar disclosures were made in this risk factor contained in a recent filing by a mining finance company that primarily owns royalties:

All of our current revenue is derived from royalty and stream interests on properties operated by third parties. The holder of a royalty or stream interest typically has no authority regarding the development or operation of a mineral property. Therefore, we typically are not in control of decisions regarding development or operation of any of the properties on which we hold a royalty or stream interest, and we have limited legal rights to influence those decisions.

Our strategy of acquiring and holding royalty and stream interests on properties operated by third parties puts us generally at risk to the decisions of others regarding all operating matters, including permitting, feasibility analysis, mine design and operation, processing, plant and equipment matters and temporary or permanent suspension of operations, among others. As a result, our revenue is dependent upon the activities of third parties, which creates the risk that at any time those third parties may: (i) have business interests that are inconsistent with ours, (ii) take action contrary to our interests, policies or objectives, or (iii) be unable or unwilling to fulfill their obligations under their agreements with us. At any time, any of the operators of our mining properties may decide to suspend or discontinue operations. Except in limited circumstances, we will not be entitled to material compensation if operations are shut down, suspended or discontinued on a temporary or permanent basis. Although we attempt to secure contractual rights when we create new royalty or stream interests, such as audit or access rights, that will permit us to protect our interests to a degree, there can be no assurance that such rights will always be available or sufficient, or that our efforts will be successful in achieving timely or favorable results or in affecting the operation of the properties in which we have a royalty or stream interest in ways that would be beneficial to our stockholders. (See Risk Factor entitled "We own passive interests in mining properties,

and it is difficult or impossible for us to ensure properties are developed or operated in our best interest.” on p. 11 of the Annual Report on Form 10-K filed by Royal Gold, Inc. on August 11, 2016.)

### Mining Companies’ Disclosure Of Their Reserves Is The Best Approach

To be clear, investors need robust disclosures by mining finance companies. And as such, we certainly do not disagree with the following position expressed in the Proposed Rules:

Investors in royalty and other similar companies need information about the material mining properties that generate the payments to the registrant, including mineral reserves and production, to be able to assess the amounts, soundness and sustainability of future payments. For the royalty or similar company and its investors, the mining property underlying the royalty or similar payments is the primary or only source of revenues and cash flow.<sup>7</sup>

However, we believe certain information should come primarily (or exclusively in the case of reserves and resources) from the mining company registrants – the company that owns, operates and controls the reserves, and provides robust disclosures in its SEC filings (or, in the case of non-SEC registrants, under an acceptable foreign code). As a result, we believe the rules of disclosure should treat reserve and resource reporting in the same way the Proposed Rules would treat technical report summaries:

A royalty or similar company would ... not, however, have to submit a separate technical report summary about a property that is covered by a current technical report summary filed by the producing mining registrant. In that situation, the royalty or similar company may incorporate by reference the producing registrant’s previously filed technical report summary.<sup>8</sup>

We don’t see any gain in requiring a mining finance company to disclose reserves and resources already disclosed by a mining company. Such “double counting” (once by the mining company and once by the royalty or streaming company) is potentially confusing and misleading to investors. Thus, as is the case with respect to technical report summaries in the Proposed Rules, reserves and resources should be disclosed by the producing mining registrant and not the mining finance company.

### Conclusion

In sum, mining finance companies should not be allowed to report the reserves and resources of a mining company in Table 3 (or elsewhere). To do so would be misleading to investors, in part because of the “double counting” of the mining company’s resources and reserves, and more importantly, by potentially giving investors the impression that the mining

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<sup>7</sup> *Id.* 41,657.

<sup>8</sup> *Id.* 41,658.

finance company possesses or controls production of reserves and resources, when that is not the case. We believe that a clear disclosure of the interest of the mining finance company in the revenues or production of the mining company, coupled with a reference to the mining company's reserves and resources information, would provide the most useful and accurate disclosure to investors.

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Please feel free to contact me at [REDACTED] if you wish to discuss any of the above points.

Very truly yours,



Edward M. Green