

Freeport-McMoRan Inc.
333 N. Central Ave.
Phoenix, AZ 85004

Douglas N. Currault II
Deputy General Counsel
and Corporate Secretary
Telephone: [REDACTED]
Facsimile: [REDACTED]

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Via Electronic Mail: rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090

Re: Securities and Exchange Commission Proposed Rules on Modernization of
Property Disclosures for Mining Registrants issued on June 16, 2016
Release Nos. 33-10098, 34-78086; File Number S7-10-16

Dear Mr. Fields:

Freeport-McMoRan Inc. (“FCX”) appreciates the opportunity to provide comments on the U.S. Securities and Exchange Commission’s (the “Commission”) proposed rules relating to Modernization of Property Disclosures for Mining Registrants dated June 16, 2016 (the “Proposed Rules”), which would replace the rules currently set forth in Item 102 of Regulation S-K under the Securities Act of 1933, as amended (the “Securities Act”) and the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and in Industry Guide 7 (“Guide 7”). FCX is a premier U.S.-based natural resources company with an industry-leading global portfolio of mineral assets. We are the world’s largest publicly traded copper producer. Our portfolio of assets includes the Grasberg minerals district in Indonesia, one of the world’s largest copper and gold deposits, and significant mining operations in the Americas, including the large-scale Morenci minerals district in North America and the Cerro Verde operation in South America. Our common stock is listed and traded on the New York Stock Exchange.

Our internal team that has reviewed the Proposed Rules includes individuals with substantial technical mining resource and reserve estimation experience, including experience in reporting mineral reserves for various types of mines under Guide 7, the Australasian Joint Ore Reserves Committee (“JORC”) and other international mining codes, together with representatives from our accounting, financial reporting and legal teams directly involved in our public reporting. In developing our response, we focused on what we believe are the primary issues the Commission should consider prior to promulgation of final rules relating to Modernization of Property Disclosures for Mining Registrants (the “Final Rules”).

The Proposed Rules contemplate replacing a longstanding disclosure framework with a substantial number of highly technical and competitively sensitive disclosures, which diverge in important respects from both the existing disclosure framework and recognized international

reporting standards. In light of the scope and complexity of the Proposed Rules and our recommendation that significant changes be made prior to adoption of Final Rules, we strongly urge the Commission to issue a re-proposal and/or conduct roundtable discussions before promulgating the Final Rules. We believe that an additional round of public review and input would be informative in identifying and addressing any remaining points of confusion and disagreement, which would likely minimize the need for subsequent guidance by the Commission.

Further, we urge the Commission to adopt a compliance date for implementation of the Final Rules that is no earlier than the annual report filed with the Commission for the second fiscal year commencing after the effective date of the Final Rules (for example, if the Final Rules are adopted in 2016, the earliest that they would be effective for calendar year companies would be for the Form 10-K filed for the year ended December 31, 2018), in order to give registrants sufficient time to comply.

Executive Summary

We appreciate the Commission's efforts to modernize its rules for mineral property disclosure and more closely align them with current industry and global regulatory practices and standards and agree that significant changes have taken place in the mining industry since the Commission last updated Guide 7 more than 30 years ago. We understand that the Proposed Rules have attempted to more closely align U.S. disclosure requirements with standards published by the Committee for Mineral Reserves International Reporting Standards ("CRIRSCO")¹; however, our response highlights several areas of significant concern and recommendations that we urge the Commission to consider prior to promulgation of the Final Rules.

Primary Areas of Support

To the extent that the Commission has proposed to adopt technical definitions that correspond to CRIRSCO, we are generally supportive of this approach and believe that it will help increase transparency and comparability across jurisdictions. The key areas where we agree with the Commission's approach are as follows:

- ***Disclosure of Mineral Resources.*** We agree with the proposal to allow registrants to disclose mineral resources, including the proposed classification of mineral resources as inferred, indicated and measured, in Commission filings.
- ***Qualified Persons.*** We agree that disclosure of mineral resources, mineral reserves and material exploration results should be based on the judgments of a "qualified person." We do not object to the proposed definition of qualified person, and we agree that there

¹ CRIRSCO is an international initiative to standardize definitions for mineral resources, mineral reserves and related terms for public disclosure, which have been largely adopted by mining and metallurgical institutions and accepted by regulators in other prominent jurisdictions for public capital raising for the mining sector, including Australia, Canada, South Africa, Hong Kong and the United Kingdom.

should be no requirement that qualified persons be independent from the registrant, as long as affiliations are properly disclosed.

Primary Areas of Concern

Our most significant concerns and comments with respect to the Proposed Rules, which are discussed in further detail below, relate to the following:

- ***Commodity Price Assumptions.*** We strongly disagree with the proposal to impose a commodity ceiling price in connection with estimation of mineral resources and mineral reserves. We believe registrants should be permitted to base commodity price assumptions on forward-looking estimates reflecting management's reasonable and supportable short- and long-term expectations as supported by all available evidence, which may include consensus forecasts and historical prices, for determining mineral resources and mineral reserves, and be required to disclose and explain the assumptions used. This approach would align U.S. reporting requirements with foreign jurisdictions using CRIRSCO-based frameworks. Further, we believe registrants should be allowed to use prices for mineral resource estimates that may be higher than the prices used for mineral reserves.
- ***Qualified Person Liability.*** We strongly disagree with the proposed requirement to name individual qualified persons, and obtain their consent, in Securities Act and Exchange Act filings and with the proposal to subject qualified persons to liability as "experts" under Section 11 of the Securities Act. We believe these requirements would expose such individuals to unwarranted and unprecedented personal liability that is not imposed on any other individual professional associated with U.S. securities filings.
- ***Exploration Results.*** We strongly disagree with the requirement to disclose material exploration results for each material property because this standard would likely result in disclosure of speculative and competitively sensitive information that would not be material to the registrant. We believe disclosure of exploration results should be required only if the results are material to the registrant.
- ***Mineral Resources and Mineral Reserves.*** We disagree with the requirement that mineral reserves be reported without taking into account estimated ore losses and dilution experienced in the mining process and with the requirement to disclose in situ reserves. We also disagree with the requirement that uncertainty estimates be disclosed with the proposed level of mathematical precision.
- ***Technical Report Summary Requirements.*** We believe the costs to prepare and file technical report summaries with detailed content requirements with respect to mineral resources, mineral reserves and material exploration results on each material property outweigh any benefit to investors because these reports would include voluminous amounts of technical data, some of which is competitively sensitive and most of which is not likely to be understood by the vast majority of investors. We note that oil and gas registrants' determinations of reserves are not required to be supported by such a

document, and we are not aware of any other industry that is required to support professional conclusions with a Commission-prescribed, publicly filed document. If the Commission concludes that some type of technical summary document should be prepared and filed, we strongly recommend that the Commission allow registrants to prepare such reports in accordance with the guidelines set forth in CRIRSCO Table 1 or JORC Table 1.

- ***Excessive Disclosure Requirements in Mandatory Tabular Formats.*** We believe the requirements for summary disclosure should be based on materiality. We disagree with a number of the proposed specific reporting requirements, including the overly prescriptive tabular formats for disclosure relating to material properties. We believe that investor understanding would be better served if the Commission prescribes *what* must be disclosed (to the extent material), and allows registrants to decide *how* best to disclose the information to investors. Given the dissimilar nature of small exploration stage mining registrants and large international production stage mining registrants, we believe the proposed “one-size-fits-all” tables will not produce meaningful disclosure for all registrants.

Detailed Discussion

I. Commodity Price Assumptions

We Strongly Disagree with the Proposal to Impose a Commodity Ceiling Price in Connection with Estimation of Mineral Resources and Mineral Reserves.

We strongly disagree with the proposal to impose a commodity ceiling price in connection with estimation of mineral resources and mineral reserves. We recommend that, consistent with the Society for Mining, Metallurgy and Exploration (“SME”) Guide for Reporting Exploration Results, Mineral Resources, and Mineral Reserves (2014) (the “SME Guide”), the Final Rules permit registrants to use commodity price assumptions based on forward-looking estimates reflecting management’s reasonable and supportable short- and long-term expectations as supported by all available evidence, which may include consensus forecasts and historical prices, for determining mineral resources and mineral reserves, and require that registrants disclose and explain the assumptions used. This approach would align U.S. reporting requirements with foreign jurisdictions using CRIRSCO-based frameworks.

Under the Proposed Rules, the SEC proposes a maximum price, or ceiling price, that would be permitted to be used for all commodity price estimates used in determining both mineral resources and reserves. The proposed ceiling price is the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements. In contrast, most jurisdictions outside the U.S. allow registrants to use any reasonable and justifiable price, based on the registrant’s view of long-term market trends.

Although Guide 7 does not provide a pricing model for estimation of mineral reserves, the Commission has provided guidance in the past that such price should not exceed a three-year trailing average. The Commission now proposes to prohibit registrants from using a price above the 24-month trailing average price. In the Commission's view, since there is no universally accepted commodity price model for long-term prices, a mandatory "ceiling is necessary to ensure mineral resource and reserve estimates are based on prices that are realistic." In the Commission's opinion, a three-year average lags too far behind market changes, whereas a 12-month average could be too volatile and not reflective of long-term trends.

We acknowledge the Commission's concern that using our recommended approach, which is consistent with the practices of foreign jurisdictions using CRIRSCO-based frameworks, would carry a greater risk of registrants using overly optimistic price expectations that overestimate the value of mineral resources and reserves. However, our recommended approach would lead to greater comparability across trading markets in other jurisdictions using CRIRSCO-based frameworks, and would eliminate the risk that the U.S. securities markets and our investors would be disadvantaged by the proposed imposition of a ceiling price that may not reflect registrant or investor expectations. Use of a relatively short period of historical pricing is not, in our opinion, the best estimation assumption, because temporary metal price fluctuations may significantly affect historical prices over a one- to three-year period, without a corresponding change in longer term price expectations. For example, estimation of mineral reserves pursuant to the Proposed Rules after a period of atypically high metal prices may obligate a registrant to disclose mineral reserves estimates above the registrant's reasonable and supportable price expectations, which may mislead investors as to management's view of the value of a registrant's assets.

Use of management's price assumptions would help investors to better understand the assumptions underlying management's long-term strategic plans for development of mineral resources. The sole use of historical prices is at odds with the purpose of the estimation of reserves and resources, which are inherently forward-looking in nature. This is particularly the case in environments where supply is constrained and demand is growing. Requiring adequate disclosure of pricing assumptions would mitigate the risk of overly optimistic price assumptions and promote transparency.

We note that U.S. generally accepted accounting principles ("GAAP") require fair value measurement in several situations, including for purchase price allocations in a business combination and in determining the impairment of long-lived assets, but do not dictate what commodity price assumptions to use as inputs in performing those calculations. Rather, companies are required to consider assumptions that may be used by a market participant in a similar situation, which allows management to use judgment in determining the appropriate commodity price assumptions.

Further, if the Commission adopts Final Rules containing a ceiling price, we do not believe a proposed ceiling price of the average spot price during the 24-month period prior to the end of the last fiscal year would capture the full business cycle for many commodities and could result in excessive overstatements or understatement of reserves during the peaks or valleys of a business cycle. For example, the 24-month period ended December 31, 2015 was a period of

declining copper prices, with the London Metal Exchange (“LME”) spot copper price averaging \$2.80 per pound, which was approximately 30 percent higher than the December 31, 2015 LME spot copper price of \$2.13 per pound. Conversely, the 24-month period ended December 31, 2010 was a period of increasing copper prices, with the LME spot copper price averaging \$2.88 per pound, which was approximately 35 percent lower than the December 31, 2010 LME spot copper price of \$4.42 per pound. We believe that management’s internally generated and supported pricing assumptions (*e.g.*, based on data points such as copper price forecasts of third parties and longer-term historical copper price trends) would result in better estimates of reserves and resources than a mandated pricing model for any arbitrary period, and is also in line with GAAP in recognizing the need for judgment.

We Agree with the Commission’s Approach Not to Mandate a Specified Price.

We agree with the Commission’s approach not to mandate a specified price, such as the requirement in Regulation S-K Subpart 1200, implemented by Commission’s final rules regarding Modernization of Oil and Gas Reporting adopted December 31, 2008 (the “O&G Modernization Rules”), that the determination of reserves must use the average price during the 12-month period prior to the ending date of the period covered by the report, determined as the unweighted arithmetic average of the first-day-of-the-month price for each month in the period. We believe mining operations are fundamentally different from oil and gas operations in certain key respects. Oil and gas operations are typically subject to more significant time pressures than mining operations primarily because (1) expensive upfront oil and gas leases often expire in a relatively short period if drilling does not commence and (2) after successful wells are completed, they generally continue to produce hydrocarbons for a period of time without significant additional expenditures. In contrast, mines, once producing, often have greater relative production costs and risks, because significant continuing expenditures are required in order to continue to extract and process ore. These factors support a longer-term, forward-looking approach to commodity price assumptions for mineral reserves and resources.

The Pricing Model Proposed Presents Practical Timing Challenges.

We also note that the pricing model proposed presents practical timing challenges, which are also a problem under the Commission’s existing guidance for estimation of mineral reserves, which provides that registrants should use a three-year trailing average ceiling price. Registrants cannot know what the ceiling price is until the end of the reporting period. The time period between the end of a fiscal year and a Form 10-K filing deadline (*i.e.*, 60 days for large accelerated filers) is insufficient to conduct a rigorous reserve analysis. Accordingly, registrants would be forced, as a practical matter, months before the end of the reporting period, to make a very conservative estimate of what the actual mandated ceiling price will be, which may lead to overly conservative reserve and resource estimates. Whether or not the Commission determines to adopt a pricing model that includes a ceiling price based on a historical time period, we urge the Commission to adopt a price determination date that is earlier than the end of the fiscal year by at least six months to ensure that registrants have a sufficient amount of time to conduct the resource and reserve analyses.

We Believe Registrants Should Be Allowed to Use Prices for Mineral Resource Estimates that May Be Higher Than the Prices Used for Mineral Reserves.

We believe registrants should be allowed to use prices for mineral resource estimates that may be higher than the prices used for mineral reserves. Mining companies reporting in foreign jurisdictions under CRIRSCO-based codes typically use a higher price for resources than reserves, primarily to support better long-range planning, including mine design and infrastructure needs. Not allowing registrants to use higher prices for mineral resources will result in lower mineral resource estimates under the U.S. reporting rules as compared to resource estimates reported in foreign jurisdictions with CRIRSCO-based codes. In addition, we believe the lower mineral resource price would undervalue a registrant's long-term mineral resources and would not align with investor expectations.

II. Qualified Persons

We Do Not Object to the Required Use and Definition of "Qualified Persons" and We Agree that there Should Be No Independence Requirement.

We agree that disclosure of mineral resources, mineral reserves and material exploration results should be based on the judgments of "qualified persons." We do not object to the proposed definition of qualified person, and we agree that there should be no requirement that qualified persons be independent from the registrant, as long as affiliations are properly disclosed. We believe the pool of permissible qualified persons should include a registrant's employees, because in many cases these individuals will be at least as well qualified as any outside third party consultant to evaluate a registrant's mineral resources and reserves. Moreover, for registrants with large international operations and complex reserves, we believe it would be impracticable for third party consultants to independently estimate all resources and reserves annually. We also urge the Commission to clarify in the Final Rules that a registrant may, in its discretion, use a different qualified person, and multiple qualified persons, for each of the exploration results, mineral resources and mineral reserves of each of its properties as long as the registrant identifies which reserve, resource or exploration information each qualified person participated in providing.

The Proposed Requirement to Name Individual Qualified Persons in Commission Filings Would Expose Them to Unprecedented Personal Liability.

The Proposed Rules would require the name of the individual qualified person, whether an employee of the registrant or employee of an outside third party firm, to be disclosed in a registrant's filings under the Securities Act and Exchange Act. We believe that this approach would lead to unwarranted and unprecedented increased exposure to personal liability for these individuals, as discussed further below. Naming an individual in a filing under the Securities Act or Exchange Act increases the risk that such individual will be named as an individual defendant in a lawsuit and introduces privacy and security concerns not otherwise present. Being named as a defendant in a lawsuit, even a frivolous one, would have both personal and reputational consequences for the qualified person, including negatively impacting such person's job prospects and ability to qualify for a mortgage and obtain certain insurance coverage. These

concerns would likely decrease the willingness of technical employees to function as qualified persons without additional compensation and liability protection, which may be costly to the registrant. We believe this incremental cost to registrants (and therefore shareholders) is not accompanied by a significant benefit to shareholders, because technical employees typically do not have significant personal assets and, as discussed below, shareholders already have sufficient protection from material misstatements or omissions in registrants' disclosures.

The naming of individual professionals in filings under the Securities Act and Exchange Act with respect to accounting and auditing, legal matters and in determining oil and gas reserves is not required, regardless of whether the individual is employed by the registrant or a third party consultant (unless the individual is a director or specified executive officer of the registrant and then only in that person's capacity as such). We do not see a principled reason to treat mining professionals differently. In fact, the Commission recently approved the new Public Company Accounting Oversight Board ("PCAOB") rules relating to the disclosure of audit engagement partner names. After years of commentary and redrafting, these new PCAOB rules do not require the naming of the audit engagement partner in any filing with the Commission (or the signature of the audit engagement partner on the audit report).

The names of individual professionals are not important to investors – what is important to investors is that registrants have appropriate internal controls to ensure that competent individuals make mineral resource, mineral reserve, and exploration results determinations. Accordingly, we believe the proposed requirements to use "qualified persons," as proposed to be defined, and the proposed requirements with respect to internal controls disclosure are appropriate to adequately inform and protect investors with respect to the determination of mineral resources, mineral reserves and material exploration results.

We Strongly Object to the Proposed Treatment of Qualified Persons as Experts under Section 11 of the Securities Act.

The Proposed Rules would require not only that the individual qualified person be named with that person's consent in Commission filings, but also propose to subject such persons to liability as "experts" under Section 11 of the Securities Act. We do not believe that individual qualified persons should be subject to potential personal liability under Section 11, one of the harshest standards of liability imposed under the federal securities laws. In addition, we believe the named individual would be exposed to potential personal liability in private actions under Section 10(b) of the Exchange Act. It is well recognized that the liability environment and legal system for public companies in the U.S. impose higher litigation risks than are present in other jurisdictions, and we do not believe these litigation risks should be increased. Increasing liability exposure of qualified persons is likely to make recruiting and retaining qualified persons more difficult and costly.

We believe that adequate protection for investors already exists without the need to expose individual qualified persons to increased liability. Among other things, under Section 11 of the Securities Act, with respect to the registrant, an investor currently may sue the registrant itself, any signatory of the registration statement (including the principal executive officer, principal financial officer and the controller or principal accounting officer), and the registrant's

directors. Registrants are required to maintain disclosure controls and procedures and internal controls over financial reporting, and its principal executive and financial officers are required to certify to the effectiveness of such controls. Mineral reserves are used in a number of GAAP calculations (including impairment testing, and depreciation, depletion and amortization), and, accordingly, registrants must have processes and controls to ensure the reserve estimates are being prepared and reviewed by appropriately qualified personnel. External auditors review these procedures as part of their assessment of registrants' internal controls over financial reporting. In addition, the registrant and certain individuals acting on behalf of the registrant are subject to Commission oversight, investigation and enforcement. As noted above, no individual accounting, legal or oil and gas engineering professional is required under current Commission rules to be named in Commission filings in their capacities as such, and incur the associated exposure to personal liability, and we see no principled reason to treat mining professionals differently.

If, however, the Commission determines that disclosure of the individual names of qualified persons is important to the protection of investors (we disagree), we urge the Commission to consider a framework similar to that adopted by the PCAOB with respect to naming audit engagement partners, or to provide for separate disclosure on registrants' websites.

Qualified Persons Should Be Allowed to Include a Limited Disclaimer of Responsibility When Relying on Other Experts.

The Proposed Rules would not permit a qualified person to include a disclaimer of responsibility (or statement of reliance on other experts), if he or she relies upon a report, opinion or statement of another expert. We disagree with this proposal because we believe it does not take into account the practical limitations of professional competence of most qualified persons and is therefore unrealistic. We believe qualified persons should be able to include a limited disclaimer of responsibility when relying on experts in fields in which the qualified person could not be expected to have professional training, such as legal and environmental or social and political issues. We believe the approach taken by Item 3 of Form 43-101F1 of Canada's NI 43-101 (and similar to the SME Guide) is more appropriate, as it permits a qualified person to include a limited disclaimer of responsibility if the qualified person is relying on a report, opinion, or statement of another expert who is not a qualified person, or on information provided by the issuer, concerning legal, political, environmental, or tax matters relevant to the report, as long as the qualified person identifies the source of the information relied upon, the extent of reliance and the portions of the report to which the disclaimer relates. For example, our technical team relies on legal experts with respect to the laws and regulations of several foreign countries in connection with assessing our reserves, including but not limited to complex tax, property and environmental laws.

Moreover, under the Proposed Rules, in order to establish the economic prospects of mineral resources, or the economic viability of mineral reserves, a qualified person would be required to evaluate qualitatively modifying factors, including, but not limited to, mining, energy recovery and conversion, processing, metallurgical, economic, marketing, legal, environmental, infrastructure, social and governmental factors. These factors are likely beyond the scope and knowledge of a single individual. Accordingly, without the above framework for disclaimer, or

ability to rely upon the work of other experts, it will be impracticable for large international mining companies to identify parties willing and able to act as qualified persons. In addition, for properties that registrants do not operate, we believe such registrants' qualified persons by necessity may have to, and in any event should be able to, rely on information prepared by the operator, and should be permitted to state this in the report.

III. Exploration Results

We Believe Disclosure of Exploration Results Should Be Required Only if Material to the Registrant. Required Disclosure of Material Exploration Results for Each Material Property Will Likely Result in Disclosure of Immaterial, Speculative and Competitively Sensitive Information.

The Proposed Rules would require that a registrant disclose material exploration results for each of its material properties in prescribed tabular form. A proposed instruction would explain that when determining whether exploration results are material, a registrant should consider their importance in assessing the value of a material property or in deciding whether to develop the property.

We strongly disagree with the requirement to disclose material exploration results for each material property. We believe disclosure of exploration results should be required only if material to the registrant and that the materiality standard that should be followed with respect to disclosure of exploration results should be in accordance with the well-established standard set forth in case law and in Rule 405 under the Securities Act and Rule 12b-2 under the Exchange Act, namely, information as to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the registrant's securities. Accordingly, in order for disclosure to be required under this well-established standard, the exploration results would have to be material with respect to the registrant taken as a whole and not with respect to an individual mining property.

We believe that much of the exploration information proposed to be disclosed for each material property would generally be immaterial and not likely to be understood by most investors, and would be costly and burdensome to prepare. Further, some of the exploration information is likely to be competitively sensitive, and given the level of detail required by the Proposed Rules, mandated disclosure would provide competitors with strategic information at no cost, which could cause significant competitive harm to a company and its investors. Examples of sound business reasons for keeping exploration results confidential include joint venture or other arrangements that require confidentiality and the ability to retain a competitive advantage where there are multiple parties competing for land or infrastructure resources in the same district.

As the Commission acknowledges, exploration results are inherently speculative. As a mature mining company with substantial production and reserves, we believe that our exploration results would typically not be material. However, we understand that exploration results may be all or a significant portion of the available information regarding the properties of an exploration or development-stage mining company, and that these companies may have an

interest in disclosing such information. For that reason, we would not object if the Final Rules were to allow for *voluntary* disclosure of exploration activity and of exploration results that are material to an individual mining property.

We Disagree with the Level of Detail and Prescribed Tabular Format for Disclosure of Exploration Results.

The Proposed Rules would require, for each material property, a summary of the exploration activity for the most recently completed fiscal year in a prescribed tabular form that, for each sampling method used, discloses the number of samples, the total size or length of the samples, and the total number of assays. The Proposed Rules would also require, for each material property, a summary of material exploration results for the most recently completed fiscal year in a prescribed tabular form, identifying the hole that generated the exploration results, and describing the length, lithology and key geologic properties of the exploration results, accompanied by a brief discussion of the exploration results' context and relevance. The Proposed Rules also include requirements to disclose in the proposed technical report summary, detailed drilling results, including a plan view of the property showing locations of all drill holes and other samples.

If disclosure of exploration activity and material exploration results is required for each material property, we believe the Commission should provide principles-based guidelines, not prescribed tables, so that a registrant can disclose the information in a manner it believes most useful for investors to understand. We believe the proposed requirements to disclose exploration activity and material exploration results with the proposed level of detail for each material property will inundate investors with immaterial details that are not meaningful to them. Exploration results that are important in assessing the value of a property or deciding whether to develop a property or further develop a property may not be material to a company as a whole. This information is highly technical and we believe it will be of little or no value, even to investors with technical backgrounds. We believe even knowledgeable persons can draw very few valid conclusions, if any, by reviewing the data as prescribed. Moreover, this detailed information is costly to provide. It would be highly burdensome to track and disclose sampling methods used, number of samples, size of samples and total number of assays for all exploration activity on material properties. We believe this would be an onerous exercise for geologists that will divert their time and attention from more valuable work of finding and developing new resources. Further, some of this information is likely to be competitively sensitive.

IV. Mineral Resources and Mineral Reserves

We Disagree with the Requirement that Mineral Reserves Be Reported Without Taking into Account Estimated Ore Losses and Dilution Experienced in the Mining Process.

In addition to our concerns regarding commodity price assumptions discussed in Part I above, we also disagree with the Commission's proposal to define mineral reserves as the "economically mineable part of a measured or indicated mineral resource, net of allowances for diluting materials and for losses that may occur when the material is mined or extracted." This is not a permissible definition of mineral reserves under any mining industry standards or practices.

The Commission acknowledges that the proposed definition conflicts with the CRIRSCO definition of mineral reserves, which does apply dilution and losses in order to determine reserves, but explains that the deviation would be “relatively minor” and would not result in significant additional compliance burden. We respectfully disagree – we believe that this deviation is significant and that the Commission should adopt a definition of mineral reserves consistent with the CRIRSCO definition. The CRIRSCO definition of mineral reserves is widely used and accepted among global mining industry participants and investors. Adopting a different definition could disadvantage U.S. reporting companies and could have the effect of requiring companies subject to both CRIRSCO-based codes and the Commission’s rules (as proposed) to prepare and disclose two sets of mineral resource and reserve estimates based on different definitions, which could confuse and mislead investors.

Ore losses and dilution occur because of the mismatch between the geometry of the ore body and the geometry of the mining method chosen, which leads to some ore being left behind (ore losses), on the one hand, and some waste material being mined along with the ore (dilution), on the other hand. Mineral reserves are intended to provide insight to investors as to the metal or other material that can be recovered and sold economically, *i.e.*, the economically mineable part of the mineral resource. Accordingly, the estimation of mineral reserves should make allowances for ore losses and dilution that inevitably occur during mining. Not including allowances for ore losses and dilution in estimating mineral reserves would be impractical because a measure of dilution is built into the resource estimation process through compositing of individual assay intervals, and through the inherent smoothing effect of moving average methods such as kriging and inverse distance weighting. To produce a completely undiluted mineral resource estimate would require a presupposition of cutoff grade and would ignore the practical considerations associated with any mining method.

We Strongly Disagree with the Requirement to Disclose In Situ Reserves, Which is Not Permissible Under any Mining Industry Standards.

The Commission has also proposed to require disclosure of mineral reserves across three points of reference (1) in situ, (2) plant/mill feed, and (3) saleable product. We believe this proposed reporting model is unnecessarily complex and inconsistent with CRIRSCO-based codes, which generally require disclosure only at the point where the ore is delivered to the processing plant (run-of-mine or plant/mill feed). We strongly disagree with the requirement to disclose in situ reserves, which is not permissible under any mining industry standards. We also believe the introduction of an entirely new term “plant/mill feed” not used in CRIRSCO-based codes would be confusing to investors. Accordingly, we believe registrants should be permitted to disclose mineral reserves including allowances for ore losses and dilution as run-of-mine (plant/mill feed) ore tons, contained product before plant recovery and saleable product after plant recovery.

We Disagree with the Requirement that Uncertainty Estimates be Disclosed with the Proposed Level of Mathematical Precision.

The Commission has also proposed that, in the technical report summary, registrants would be required to state the uncertainty in the estimates for indicated and measured mineral

resources in the form of “+/- x% relative accuracy at y% confidence level over [annual, quarterly, or monthly] production quantities.” Uncertainty estimates for inferred mineral resources would be required to be stated in the form “the qualified person expects at least z% of inferred mineral resources to convert to indicated or measured mineral resources with further exploration and analysis.” We disagree with this proposed requirement because of the limited availability of persons with the skillset to perform this analysis and the likelihood that the disclosure could mislead investors. Analyses of confidence limits and relative accuracy of measured and indicated resources at this level of mathematical precision are not well understood or widely accepted, and in North America the skillset required to perform these specialized analyses is possessed by a limited number of experts. In addition, such disclosures would imply a level of mathematical precision in determining resources that is unrealistic and could therefore be misleading. Moreover, we are not aware of any accounting or other rules that require registrants to support disclosures of the uncertainty in estimates with a prescribed level of mathematical precision.

V. Specific Disclosure Requirements

Requirements for Summary Disclosure

We Believe the Requirements for Summary Disclosure Should Be Based on Materiality.

The Proposed Rules would require mining companies with two or more mining properties to provide summary information about *all* of its mining properties. The summary information would include location maps for *all* properties and a table with detailed information for the registrant’s 20 properties with the largest asset values.

We believe maps should only be required for *material* properties, not all properties so as not to crowd disclosure documents with immaterial detail. We disagree with the proposal to require tabular disclosure (proposed Table 2) relating to the 20 properties with the largest asset values. For some registrants, properties near the bottom of this list of 20 could be individually or even collectively immaterial. In addition, it is unclear in the Proposed Rules how asset values should be determined.

To align with a materiality-based disclosure framework, we instead recommend that this summary disclosure requirement apply only to properties that are individually material to the registrant, with an “all other properties” row to capture the remaining, individually immaterial, properties. For registrants with many mining properties, none or very few of which are individually material, the Proposed Rules could adopt alternative reporting criteria. For example, where material mining properties in the aggregate comprise less than 50% of a registrant’s asset value, the Proposed Rules could require the reporting of summary information for the most significant non-material properties that, in the aggregate, comprise at least 50% of the registrant’s asset value.

We Believe the Tabular Formats for Tables 2 and 3 are Overly Prescriptive.

We believe the tabular formats for Tables 2 and 3 are overly prescriptive. With respect to proposed Table 2, it will be difficult to populate some of the columns with meaningful descriptions. With respect to Table 3, we note that many of our mines produce significant by-product metals that would need to be included in separate additional columns. We recommend instead that the Commission prescribe *what* must be disclosed (to the extent material) and allow registrants to decide *how* best to disclose the information to investors. Alternatively, we recommend that the Final Rules provide that registrants may modify tables if a registrant believes that doing so will improve disclosure clarity.

In addition, we do not believe the information required by Table 3 should be displayed side-by-side in a single table, primarily because mineral resources are, by definition, not susceptible to classification as saleable product. We recommend that the Commission consider, as an example of a permissible alternative disclosure format, the tables included on pages 32-35 of our Annual Report on Form 10-K for the period ended December 31, 2015.

Requirements for Individual Property Disclosure

In addition to our comments above regarding exploration activity and material exploration results required to be disclosed under proposed Regulation S-K Item 1304 (b)(5) and (6), we have the following comments relating to the proposed disclosures for individually material mining properties:

- **Proposed Regulation S-K Item 1304 (b)(1) through (4)** – the information that would be required to be disclosed under these items is voluminous and disclosure should only be required if material to the registrant.
- **Proposed Regulation S-K Item 1304 (b)(3)(iii)** – disclosure of the “total cost for or book value of the property and its associated plant and equipment,” would typically not be material to our investors and we note that registrants are already required to disclose total assets by segment under GAAP pursuant to Accounting Standards Codification (“ASC”) 208, “Segment Reporting.”
- **Proposed Regulation S-K Item 1304 (b)(4)** – disclosure of “a brief description of any significant encumbrances to the property, including current and future permitting requirements and associated timelines, permit conditions, and violations and fines,” would be voluminous and is often immaterial. Whether or not there is a “violation” can be subject to debate, and material violations are already covered by other disclosure obligations including Regulation S-K Item 103, Legal Proceedings; Regulation S-K Item 104, Mine Safety Disclosure; Form 8-K Item 1.04 Mine Safety – Reporting of Shut-downs and Patterns of Violations; and ASC 450, “Contingencies.”
- **Proposed Regulation S-K Item 1304 (b)(7)** – we strongly oppose the requirement to disclose “in-situ” ore tons and grades for the reasons discussed above in Part IV.

- **Proposed Regulation S-K Item 1304 (b)(8)** – with respect to proposed new Tables 7 and 8 relating to mineral resource and mineral reserve reconciliations, we believe that the interdependence of many variables would make presentation in this format difficult if not impossible for registrants to generate and for investors to understand. We suggest instead that registrants be required to provide a narrative explanation of material changes in reserves and resources, without being required to use the highly prescriptive tabular formats.
- **Proposed Regulation S-K Item 1304 (b)(9)** – this proposed rule would include an instruction that would require updated disclosures and an updated technical report summary if there is an annual change in total resources or reserves of 10% or more. We do not believe that the Commission should establish quantitative thresholds for presumed materiality of a change in estimates of mineral resources or reserves. We believe that a threshold for change of 10% is too low because reserve estimates typically have an inherent error of at least 10%.

Requirements for Technical Report Summaries

We Believe the Costs to Prepare and File Technical Report Summaries with Detailed Content Requirements Outweigh any Benefit to Investors.

The Proposed Rules would require a registrant to obtain a dated and signed technical report summary from the qualified person that identifies and summarizes the scientific and technical information reviewed and conclusions reached by the qualified person about the registrant's mineral resources, mineral reserves or material exploration results on each material property. The registrant would be required to file the technical report summary as an exhibit to the relevant registration statement or other Commission filing when disclosing for the first time mineral reserves, mineral resources or material exploration results, or when there is a material change in the mineral reserves, mineral resources or exploration results from the last technical report summary filed for the property.

We disagree with this proposed requirement because these reports would be burdensome to produce and would include voluminous amounts of technical data, some of which is competitively sensitive and most of which is not likely to be understood by the vast majority of investors. We note that oil and gas registrants' determinations of reserves are not required to be supported by such a document, and we are not aware of any other industry that is required to support professional conclusions with a Commission-prescribed, publicly filed document. If the Commission concludes that some type of technical summary document should be prepared and filed, we recommend that the Commission allow registrants to prepare such reports in accordance with the guidelines set forth in CRIRSCO Table 1 or JORC Table 1, which we believe generally require a more appropriate level of discussion than is proposed for the technical report summary.

We also ask that the Commission clarify what it means by "first time mineral reserves, mineral resources or material exploration results" in proposed Regulation S-K Item 1302(b)(2). For example, does this mean that no technical report summaries would be required with respect

to reserves on mature producing properties, until there is a material change in such reserves? Because registrants would be required to disclose resources for the first time under the Proposed Rules, would registrants have to provide a technical report summary for only the resources but not the reserves on mature producing properties? Or instead does the Commission mean that technical report summaries would be required for all material properties when reporting for the first time under the Final Rules after they become effective?

Public Disclosure of a Technical Report Summary for Each Material Property Could Cause Competitive Harm.

Public disclosure of a technical report summary for each material property would compromise our competitive position because we develop new technical processes specifically in response to the often challenging conditions of our exploration and development activity. When we develop new projects, we work for multiple years to develop proprietary information and processes related to the highly variable and often difficult conditions we discover. Development of these technical processes requires significant capital investment and requiring us to disclose this information could result in competitive harm. Compulsory disclosure of these processes would reduce our ability to use this knowledge of metallurgical processes and land positioning to negotiate favorable economics in future mining joint ventures, and would also reduce our ability to monetize these processes in the future and thus reduce the incentive for development of new technical processes.

Additionally, mining companies have partnerships, strategic alliances, supplier and customer agreements that contain confidentiality obligations. We believe compulsory disclosure of technical reports would require us to renegotiate significant agreements and would reduce the willingness of foreign mining companies to work with us, because these companies often place significant value on confidentiality, especially regarding strategy and proprietary operating methods.

More specifically, we believe disclosure of the following would present significant competitive concerns:

- the proposed requirement to describe “each mineral deposit type that is the subject of investigation or exploration together with the geological model or concepts being applied in the investigation or forming the basis of exploration program” (Proposed Regulation S-K Item 601(b)(96)(iv)(B)(6)(iii));
- the nature and quality of the sampling methods used to acquire data on surface water and groundwater parameters, and geotechnical data, and discussion of laboratory techniques (Proposed Regulation S-K Item 601(b)(96)(iv)(B)(7) and (8));
- detailed drilling methods and interpretations (Proposed Regulation S-K Item 601(b)(96)(iv)(B)(9));
- estimates of capital and operating costs (Proposed Regulation S-K Item 601(b)(96)(iv)(B)(20)); and

- economic analysis, including annual cash flow forecasts and measures of economic viability such as net present value, internal rate of return and payback period (Proposed Regulation S-K Item 601(b)(96)(iv)(B)(21); we note that annual cash flow forecasts are not required to be disclosed by GAAP for impairments or for business combinations.

Requirements for Internal Controls Disclosure

The Proposed Rules would require a mining registrant to describe the internal controls that the registrant uses in its exploration and mineral resource and reserve estimation efforts, and would also provide that this disclosure should include quality control and quality assurance (QC/QA) programs, verification of analytical procedures, and a discussion of comprehensive risk inherent in the estimation. Although the proposed requirement is similar to the disclosure of internal controls over reserve estimation efforts required by Regulation S-K Item 1202(a)(7) for oil and gas registrants, there is no similar QC/QA language in Regulation S-K Item 1202(a)(7). Accordingly, we ask that the Commission clarify in the Final Rules that the proposed internal controls disclosure should be focused on the registrant's overall control framework rather than the discrete control steps taken on individual properties.

Request for Further Review of Proposed Rules

As discussed at the beginning of this letter, in light of the scope and complexity of the Proposed Rules and our recommendation that significant changes be made prior to adoption of Final Rules, we strongly urge the Commission to issue a re-proposal and/or conduct roundtable discussions before promulgating the Final Rules. We note that the final O&G Modernization Rules, adopted December 31, 2008, and effective January 1, 2010, overhauled oil and gas property disclosures and followed a two-step administrative process that included (1) a concept release issued December 12, 2007 and (2) a proposing release issued June 26, 2008, both of which were subject to comment periods. In light of the similar magnitude of the changes to mining property disclosures contemplated by the Proposed Rules, we recommend that the Commission follow a similar two-step administrative process prior to promulgating the Final Rules.

Request for Grace Period for Compliance

We urge the Commission to adopt a compliance date for implementation of the Final Rules that is no earlier than the annual report filed with the Commission for the second fiscal year commencing after the effective date of the Final Rules (for example, if the Final Rules are adopted in 2016, the earliest that they would be effective for calendar year companies would be for the Form 10-K filed for the year ended December 31, 2018), in order to give registrants sufficient time to comply. The proposed reporting requirements will require covered registrants to reassess certain technical aspects of ongoing mining projects. This proposed grace period for compliance would assist technical departments with better balancing the load of preparing for the new reporting requirements while continuing their existing roles related to management of ongoing projects and assessment of new developments.

We appreciate the Commission's consideration of our views and would be pleased to meet with the Commission's Staff to discuss these matters and to participate in any roundtable discussion that may be scheduled.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. N. Currault II", is written over a light blue circular stamp.

Douglas N. Currault II