

26 September 2016

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

Sent via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Dear Mr Fields

**Re: Release Number 33-10098; File No. S7-10-16 (the “Release”)  
Modernization of Property Disclosures for Mining Registrants**

The Australasian Institute of Mining and Metallurgy (the AusIMM) is one of the parent bodies of the Joint Ore Reserves Committee (JORC) of Australasia, and the AusIMM is one of the professional bodies in Australasia to which professionals may belong in order to meet the professional membership requirements to act as a Competent Person for public reporting of Exploration Results, Mineral Resources and Ore Reserves in Australasia.

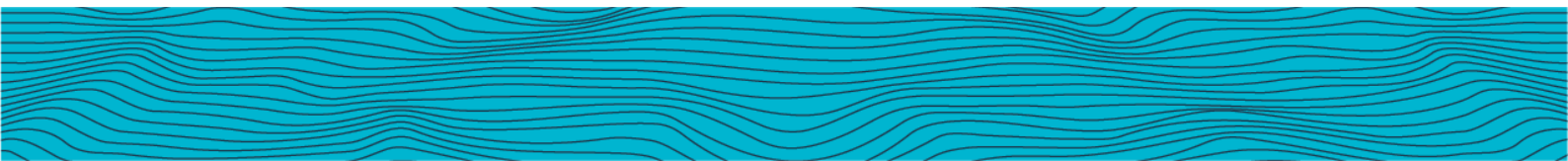
The AusIMM submits the following comments on the Securities and Exchange Commission’s (the “Commission”) proposed rules (the “Proposed Rules”) to revise the property disclosure requirements for mining registrants and related guidance currently set forth in Item 2 of Regulation S-K under the Securities 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”).

The AusIMM was founded in 1893, and provides services to professionals engaged in all facets of the global minerals sector. With a focus on providing leadership and opportunities to minerals industry professionals, the AusIMM delivers an ongoing program of professional development services to ensure AusIMM members are supported throughout their careers, enabling them to provide high-quality professional input to industry and the community.

The AusIMM as a parent of the JORC Committee also works closely with CRIRSCO, the Committee for Mineral Reserves International Reporting Standards to ensure international consistency in the development of reporting standards. The AusIMM notes that the SME in the United States is also a member of CRIRSCO.

The AusIMM congratulates the Commission on its decision to upgrade the Property Disclosure system to improve alignment with other approaches in place internationally and in particular with the CRIRSCO family of Codes, Standards and Guidance. Most of the CRIRSCO Standard definitions have been incorporated in the release as they were in the 2014 SME Guide.

However, the issues of most concern for the AusIMM as a parent of JORC are the potential for significant differences between the Proposed Rules and the CRIRSCO Template and the CRIRSCO family of Codes and Standards including the JORC Code which is incorporated into the ASX and NZX listing rules in Australia and New Zealand. The differences relating to Competent Person/Qualified Person are discussed below, but the AusIMM notes that the adoption of Proposed Rules in their present form may result in potential confusion on the part of investors whether a person claiming to be a Competent Person/Qualified Person belongs to a Recognised Professional Organisation (RPO).



## **Use of the term “Qualified Person”**

The term Qualified Person (QP) is only used in Canada; the more common term of Competent Person is used by 9 of the 10 current CRIRSCO members. The definition of the two terms is practically identical. Although we believe that the adoption of commonly understood terminology and standards would be better served by the SEC’s use of the term “Competent Person”. An alternative would be to accept both terms as inter-changeable. As a general rule, Reports on Exploration Results, Mineral Resources and Mineral Reserves must be prepared by, or under the direction of and signed by a Competent Person/Qualified Person.

## **Qualifications of Competent Person/Qualified Person**

We believe that the educational requirements for a Competent Person/Qualified Person are adequately catered for in the membership criteria of the respective RPOs and it is not required to repeat these in the Proposed Rules. The membership of a RPO with effective disciplinary provisions is crucial for the investing public to have confidence in the Competent Person/Qualified Person and their report.

With regards to the experience required by a Competent Person/Qualified Person we believe that the definition in the JORC Code<sup>1</sup> and the CRIRSCO Template<sup>2</sup> is adequate and requires a minimum of five years’ relevant experience in the style of mineralisation or type of deposit under consideration and in the activity which that person is undertaking. The Competent Person/Qualified Person must be clearly satisfied in their own minds that they are able to face their peers and demonstrate competence in the commodity, type of deposit and situation under consideration.

## **Recognised Professional Organisations**

We are in agreement with the proposal that a Competent Person/Qualified Person must be a member of an RPO or a board authorized by US federal, state or foreign statute to regulate professionals in the mining, geoscience or related field. The Release is seeking comment on what factors SEC should consider in relation to setting ‘reputable professional association’ factors, and whether such factors should be incorporated into the final rules. The examples provided include the frequency and quality of an association’s peer-reviewed publications, the number and global distribution of its members, and whether and to what extent the association publishes guides or standards that are accepted and used in the industry.

The system applied to CRIRSCO members is that a professional body applies to a National Reporting Organisation (NRO), which in turn makes a recommendation to the local securities exchange, as to whether it allows Competent Persons/Qualified Persons from the applying professional body to submit reports into that securities exchange. The involvement of the NRO is considered important as it is well placed to make judgement on the membership criteria applied by RPOs. The list of RPOs in Australia is maintained on the JORC website (<http://www.jorc.org/competent.asp>) and also on the ASX website. In this regard it would seem logical for the SEC to reference APPENDIX A “List of Recognized Professional Organizations (RPOs)” in the SME Guide for Reporting Exploration Results, Mineral Resources, and Mineral Reserves (The 2014 SME Guide) prepared by: The Resources and Reserves Committee of the Society for Mining, Metallurgy, and Exploration, Inc. or reference all the RPO lists of CRIRSCO members.

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<sup>1</sup> Clause 11 [JORC Code 2012](#)

<sup>2</sup> Clause 11 [CRIRSCO Template](#)

## Liability for Competent Person/Qualified Person

The proposal is specific in placing legal liability with the Competent Person/Qualified Person. However, it is the Australian view that a Public Report concerning a company's Exploration Results, Mineral Resources and or Mineral Reserves is primarily the responsibility of the company acting through its board of directors (the Board). Any such report must be based on, and fairly reflect the information and supporting documentation prepared by a Competent Person/Qualified Person or Persons<sup>3</sup>. The liability of the Board does not relieve the Competent Person/Qualified Person of his obligations to the professional body to which he belongs and which has an enforceable disciplinary process. Further, in Australia, the Australian Securities and Investments Commission (ASIC) and ASX do have the right to take action against company officers in certain cases and so there is legal liability attached to the company for the report as well.

## Conclusions

The Commission's decision to upgrade the Property Disclosure system to bring it more into alignment with other approaches in place internationally and in particular with CRIRSCO family of Codes, Standards and Guidance is endorsed. Most of the CRIRSCO Standard definitions have been incorporated as they were in the 2014 SME Guide.

However, there are potential differences between the Proposed Rules and the CRIRSCO Template and the JORC Codes as incorporated into the ASX and NZX listing rules in Australia and New Zealand which may cause potential confusion on the part of the investors and may well frustrate the purpose of the effort which has gone into preparing the Proposed Rules.

If the AusIMM can provide any further input, please feel free to contact me via

[REDACTED]

Regards



**Miriam Way MAusIMM**  
Acting Chief Executive

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<sup>3</sup> [CRIRSCO Template](#) Clause 8