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September 26, 2016

Via E-Mail: rule-comments@sec.gov

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

Re: Release Nos. 33-10098 and 34-78086
Modernization of Property Disclosures for Mining Registrants (the "**Proposed Release**")
File No. S7-10-16

Dear Mr. Fields:

We appreciate the opportunity to comment on the Proposed Release, and commend the Commission and its Staff on its thoughtful proposal to modernize mining property disclosure rules to bring them in line with industry standards. We believe that basing the proposed rules on the Committee for Mineral Reserves International Reporting Standards ("**CRIRSCO**") is a positive development. We have a few concerns and comments that we would like to bring to your attention.

In order to promote efficiency of disclosure, we recommend the Commission permit issuers to report under either the Commission's CRIRSCO-based proposed mining disclosure rules or other recognized CRIRSCO-based disclosure regimes, such as Canada's National Instrument 43-101 ("NI 43-101"). Existing Guide 7 includes an exception that permits the disclosure of information that would otherwise be prohibited by Guide 7, if such information is required by foreign or state law. The Commission has proposed eliminating this exception on the basis that it would no longer be necessary because the new rules would permit the disclosure of mineral resources. While we understand the Commission's reasons to eliminate the "foreign law" exemption, we are concerned about the duplicative and inconsistent reporting this will require for many issuers, since the proposed rules are similar, but different, to other reporting regimes. Concerns regarding duplicative reporting, and its related costs and inefficiencies, were effectively addressed by the Commission in the recently adopted final rules relating to disclosure of government payments by resource extraction issuers (the "**Government Payments Rules**"). We encourage a similar approach here.

The Government Payments Rules were originally adopted in 2012 and later vacated pursuant to a court order. During the time between the original adoption of the rules in 2012 and adoption of the final Government Payments Rules in 2016, the Commission noted that transparency initiatives had been adopted in other jurisdictions, such as Canada's Extractive Sector Transparency Measures Act ("**ESTMA**") and the EU Accounting Directive and the EU

Transparency Directive (the "**EU Directives**"). For issuers subject to reporting in multiple jurisdictions, there was a concern regarding duplication of reporting. In order to address this concern, the Commission permitted use of alternative reporting under certain circumstances. The Government Payments Rules provide that a "resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of Rule 13q-1 . . . may satisfy its disclosure obligations . . . by including . . .a report complying with the reporting requirements of the alternative jurisdiction." Both the EU Directives and ESTMA have been recognized as substantially similar disclosure regimes for purposes of alternative reporting.

We believe allowing alternative reporting using the same "substantially similar" standard that was used in the Government Payments Rules would be an appropriate way to handle the concerns of increased costs and inefficiencies resulting from duplicative reporting. NI 43-101, while not identical to the proposed rules, is substantially similar to them and is well-regarded and widely used. We believe it would be consistent with the desire to enhance investor disclosure while reflecting a consideration of competition, efficiency, capital formation, and costs if the final rules permitted alternative reporting in the same manner as the Government Payments Rules. Further, we believe that it would be appropriate to recognize NI 43-101 as a substantially similar disclosure regime for purposes of alternative reporting.

We recommend that the Commission reduce or eliminate the differences between the Commission's proposed rules and current industry and global regulatory practices and standards. In the Proposed Release, the Commission stated its intention to align the Commission's mining disclosure rules with current industry and global regulatory practices and standards. The Commission noted the concern of industry participants that the differences between Commission and international standards for mining disclosure have decreased the attractiveness of the US market, and harmed US stock exchanges and financial markets.

While the proposed rules would bring the Commission's disclosure standards much more in line with global standards, they differ from other CRIRSCO-based standards such as NI 43-101 in several important ways, including, among other things, (i) the method of calculating resources and reserves, including the mineral prices to be used in such calculations, which may result in material differences between the resources and reserves disclosed for a project under Commission and other CRIRSCO-based standards, (ii) the treatment of technical reports, including their required and permitted content, their names and the triggers for their preparation, update and filing, and (iii) the standards applicable to qualified persons. We support other commentators who have recommended that the Commission reduce or eliminate the differences between the Commission's mining disclosure rules and the rules adopted in other

CRIRSCO-based standards. We believe that NI 43-101 represents a well tested and well regarded approach to mining disclosure, and that the Commission's goal of alignment, and the competitiveness of US stock exchanges and financial markets, would be enhanced by more closely aligning the Commission's final rules with NI 43-101.

The Multijurisdictional Disclosure System ("MJDS") functions well, and Canadian companies reporting under the MJDS should not be subject to the proposed mining disclosure rules. We were pleased to note that the Proposed Release contemplates that Canadian issuers reporting pursuant to the MJDS could continue to report pursuant to Canadian disclosure requirements, and not be subject to the proposed mining property disclosure rules. We urge the Commission to retain this treatment in the final rules. We note that certain commentators have expressed a desire to subject all issuers, even issuers reporting under the MJDS, to the proposed mining property disclosure rules. We believe that would be imprudent and would strike at the heart of the MJDS and subvert its purpose. As the Commission stated in the MJDS adopting release, it established the MJDS in order to "facilitate the free flow of capital," and to enable cross-border offerings in the United States and Canada to be made more efficiently at lower expense. We believe the MJDS has helped to achieve these goals. Further, we believe that subjecting MJDS-eligible issuers to the proposed disclosure requirements both (i) subjects MJDS-eligible issuers in the mining industry to different standards than MJDS-eligible issuers in other industries and (ii) MJDS-eligible mining issuers would be more likely to exclude US participants from debt or equity offerings and would be less likely to seek US listings due to the increased compliance costs. We strongly support the Commission's current position in the Proposing Release relating to issuers reporting pursuant to MJDS.

Disclosure by royalty companies should be explicitly limited to information that is known or reasonably available to them. Under the proposed rules, royalty and other companies that hold rights with respect to mining properties that are material to the registrant will be required to provide disclosure with respect to the underlying mining properties. A royalty company may incorporate a current technical report summary by reference if the producing mining company has already filed it. The Commission recognized that royalty companies may not have complete information regarding the mining property (emphasis added):

> "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. This proposed

> limitation on the scope of the disclosure required for royalty or other similar companies also recognizes the limitations of the company's rights. Specifically, the registrant may not have access to information about portions of the mining property that do not contribute to the registrant's revenue stream."

The Commission further noted that the limitation on the scope of the required information was consistent with current rules providing that information required need be given only insofar as it is known or reasonably available to the registrant. However, not all registrants have the necessary information, or right to access the necessary information, in order to satisfy the limited scope of the disclosure set forth in the proposed rules. Further, as the technical report summary is not addressed to the royalty company, the qualified persons noted in that report may be unwilling to provide the required consent in order for the technical report summary to be filed by the royalty company. As noted by other commentators, we recommend that the rules explicitly note that information required need be given only insofar as it is known or reasonably available to the registrant.

If you would like to discuss our comments, the Commission may contact either Kimberley Anderson or Chris Doerksen at (206) 903-8800.

Regards,

Dorsey & Whitney LLP

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