ANDREWS KURTH KENYON

1717 Main Street, Suite 3700
Dallas, Texas 75201
+1.214.659.4400 Phone
+1.214.659.4401 Fax
andrewskurth.com

September 26, 2016

Via E-Mail rule-comments@sec.gov

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

Re: Release Nos. 33-10098 and 34-78086
Modernization of Property Disclosures for Mining Registrants
File S7-10-16

Dear Mr. Fields:

We appreciate the opportunity to comment on Release Nos. 33-10098 and 34-78086, Modernization of Property Disclosures for Mining Registrants (the "*Release*"). We agree with the Securities and Exchange Commission (the "*Commission*") that the existing rules for disclosure of mining registrants' properties and mineral assets (the "*Existing Rules*") should be modernized. Recent extensive comments from the staff of the Commission (the "*Staff*") suggest a level of uncertainty on the part of registrants as to the disclosures required. We also understand that the Existing Rules are out of step with many international reporting requirements and with the CRIRSCO International Reporting Template (the "*IRT*"). A comprehensive statement of disclosure requirements appropriate for mining registrants should be welcomed by affected registrants and the professionals who assist registrants in preparing their property and reserve disclosures.

We recognize that the rules proposed by the Commission by means of the Release (the "*Proposed Rules*") would provide investors with significantly more information regarding a mining registrant's properties, mineral resources and mineral reserves. Nevertheless, the Proposed Rules raise numerous concerns for those registrants and, in some instances, have the potential to overload investors, especially less sophisticated retail investors. Among those concerns is whether the requirements to present detailed information under the Proposed Rules extend well beyond modernization and may not support the Commission's pending disclosure and simplification initiatives. We identify and discuss certain concerns with the Proposed Rules below and whether they would provide effective disclosure as intended.

1. The burden and cost of compliance with the Proposed Rules are likely to be significantly higher than those anticipated by the Commission and the Staff without a commensurate incremental gain in investor protection.

We are concerned that the estimates of the incremental hour burden per response and in total, as well as the incremental professional costs per response and in total, for compliance with the Proposed Rules set forth in PRA Table 2 in Section V.D. of the Release ("*PRA Table* 2") significantly understate the additional commitment of hours and additional costs needed to comply with the Proposed Rules.[1] For example, PRA Table 2 shows the incremental professional costs of compliance in connection with the preparation and filing of an annual report on Form 10-K (a "*10-K*") to be an average of $8,323.26. If a registrant preparing a 10-K were to engage experienced outside securities counsel to review its new disclosures for consistency with the Proposed Rules, the scope of review would likely encompass the initial technical report summary that would be required by proposed Item 601(b)(96) of Regulation S-K ("*Proposed Item 601(b)(96)*"), proposed Item 1302 of Regulation S-K ("*Proposed Item 1302*") to be filed as an exhibit to a 10-K, and the related information in the 10-K. The incremental cost of the outside counsel's review of that technical summary alone is highly likely to materially exceed the estimate of $8,323.26. If a registrant were to engage an independent professional to prepare the technical report summary, the incremental professional costs of compliance with the Proposed Rules for that review alone are likely to substantially exceed the total incremental professional fees of $8,323.26 estimated in the Release to review the entire 10-K. Costs would multiply for a registrant with more than a few mining properties. Many of the incremental costs will be incurred both initially and on an ongoing basis.

New information required to be included in a 10-K would require significant incremental hours for employees of the registrant to compile and verify, such as the information that would be required by proposed Item 1303(b) of Regulation S-K to be included in Tables 2 and 3 shown in that proposed rule or in the technical report summary. Many additional hours would be consumed in the preparation, review and approval of the related disclosures. Even if the technical report summary were prepared by an independent qualified person, the registrant's personnel will spend time gathering information. In most cases, the registrant's disclosure committee will review and approve the filing of that technical report summary as an exhibit to the 10-K. Moreover, the registrant will expend significant resources to update their IT systems and internal controls to permit reliable disclosure of exploration results and estimation of mineral resources and mineral reserves. Disclosure controls and procedures will be required to address the Proposed Rules, if adopted, as well as to ensure ongoing compliance. Because of the multiple levels of internal review likely to be required from technical personnel to management to the Board of Directors, the estimated 62.42 hour incremental hour burden per response for a 10-K set forth in PRA Table 2 materially understates the actual incremental time consumed to comply with the Proposed Rules if they are adopted as proposed.

[1] Other commentators on the Proposed Rules share this concern. *See, e.g.*, letters of Davis Polk & Wardwell LLP (Aug. 26, 2016) ("*Davis Polk Letter*"), and Natural Resource Partners L.P. (Aug. 24, 2016).

Added filing and updating requirements promise to increase substantially the costs of complying with the Proposed Rules, specifically the requirement to file a technical report summary when exploration results, mineral resources or mineral reserves are first disclosed in a 10-K, an Annual Report on Form 20-F, a registration statement under the Securities Act of 1933, as amended (the "*Securities* Act"), or the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), or a Form 1-A under the Securities Act (each, a "*Filing*") with the Commission or to file a revised or updated technical report summary when the material assumptions or information on which a previously filed technical report summary is based is no longer current. The potential imposition of expert status on the qualified person preparing the technical report summary and their resultant exposure to liability under Section 11 of the Securities Act ("*Section 11*") for technical report summaries filed as exhibits to registration statements under the Securities Act, including through incorporation by reference of a 10-K in a Securities Act registration statement, would likely cause a significant increase in the costs of compliance with the Proposed Rules. Alternatively, registrants may engage independent qualified persons to provide their required technical report summaries at a significantly increased cost over internal preparation. Moreover, engaging an unaffiliated qualified person to prepare a new, revised or updated technical report summary will require significant management time and other internal resources to provide information and review the summary.

Some of the additional disclosures required by the Proposed Rules, while increasing a registrant's compliance burden, may be of questionable value to investors, especially to those investors most in need of the protections under the securities laws. The amount of data that the Proposed Rules will require mining registrants to provide in their Filings may well create data overload that is already of concern to the Commission and the Staff as the length of disclosure documents continues to grow. For example, much of the information in the technical summary report will likely be interpretable only by industry experts and competitors (as discussed below). Moreover, much of the new detailed information about mineral resources and mineral reserves of up to 20 different properties in proposed Item 1303 of Regulation S-K, especially information about immaterial properties, is unlikely to be of practical value to most investors. The cost to produce such information is likely to outweigh the overall value of the information to investors and may result in the required inclusion of lengthy disclosures that are not material to the registrant and its results of operations and financial condition.

To reduce the cost of compliance with the modernized disclosure rules for mining properties, the Commission should consider adopting final rules ("*Final Rules*") that (1) require information relating to only those properties that are individually material to the registrant's results of operations and financial condition, (2) eliminate disclosures that will be of little value to most investors, such as the disclosure of hydrogeology data and geotechnical data proposed to be included in the technical report summaries and (3) provide that a qualified person preparing a technical report summary is not an expert for Section 11 purposes. By focusing on what is material to most investors, the Final Rules would reduce the risk of information overload.

2. The period over which the average price of minerals is determined for purposes of reporting on mineral resources and reserves should be reconsidered.

We appreciate that the Commission has chosen the trailing 24-month period for determination of the pricing model used to report mineral resources and reserves in technical report summaries and Filings to address the effect of market price volatility on the various price-affected metrics to be disclosed in such summaries and Filings. However, we are concerned that this 24-month period for the pricing model will risk substantially overstating or understating the current real value of a registrant's mineral resources and minerals reserves compared with other pricing models, such as one using average prices over a trailing 12-month period. As the Commission writes in the Release: "[c]ommodity prices used to evaluate mineral resources and reserves should reflect the long term expectations of the qualified person conducting such analysis."[2] However, the prescription of the average price for a commodity over a fixed 24-month trailing period would not always permit the qualified person to reflect his or her long-term expectations for prices for purposes of reporting under the Proposed Rules.

In 2014, we witnessed oil prices decreasing by 50% over an approximately nine-month period. If, at the end of 2014, the valuations of oil reserves held by a registrant had been valued using the average of the daily closing prices for a barrel of oil over the trailing 24 months ended December 31, 2014, the calculated value of those reserves would significantly exceed the value of those reserves since April 2014, the month in which that precipitous decline in oil prices commenced. On the other hand, prices of a commodity can quickly move in the other direction. For example, the closing price per pound for high-grade copper moved from $1.47 on May 16, 2005 to $3.97 on May 16, 2006.[3] Until the financial crisis of 2008, copper never traded for less than $2.41 per pound. For the period from January 1, 1971 through July 11, 2005, high-grade copper had not traded at a price higher than $1.65 per pound, but only during a four-month period early in the recent financial crisis has it traded below that $1.65 per pound mark.[4] Had copper traded in that 1971 to 2005 trading range in all of the 12 months ended May 15, 2005, the average price of copper for the trailing 24 months ended May 16, 2006 would have been significantly less than the average price after May 16, 2006.

Historical evidence demonstrates potential distortion of the average prices of minerals that can result from a longer pricing time frame. Accordingly, the period over which the average prices should be determined under the Final Rules should be the same 12-month period over which average oil and gas prices for reporting oil and gas reserves, or, in the alternative, the Final Rules should permit supplemental valuations based on closing prices for the minerals over the trailing 12-month period, so long as the basis for all such calculations is clearly disclosed and appropriate cautionary statements are included. We recognize that the Release notes that "[a]

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[2] Release at pg. 83.
[3] Source: Copper Prices - 45 Year Historical Chart, which appears at http://www.macrotrends.net/1476/copper-prices-historical-chart-data. We note that similarly precipitous decreases in high-grade copper prices and another rapid and dramatic price increase in such prices have occurred over a period of less than 24 months.
[4] *Id.*

12-month average ... could be too volatile and may not adequately reflect long term trends."[5] As we have seen with a number of commodities, long-term historical pricing trends can change quickly and drastically, and the change can take hold for a substantial time. We further understand that the adoption of a pricing model with a 24-month pricing period for reporting mineral resources and reserves in Filings may make that reporting more consistent with the reporting of mining companies made in accordance with the IRT or other countries' codes. Although such consistency permits comparisons of the relative financial performance of registrants, it may exclude or obscure the value of a registrant's mineral resources and mineral reserves based on current market conditions.

3. The Proposed Rules, including proposed Item 1303(b)(2) of Regulation S-K ("Proposed Item 1303(b)(2)"), should not require disclosure of property-specific information relating to immaterial properties.

Consistent with the focus of the Securities Act and the Exchange Act since their initial adoption and one of the three governing principles of the IRT,[6] the Proposed Rules should only require disclosure of information that is material. Proposed Item 1303(b)(2) would require a registrant to disclose property-specific information about up to those 20 properties in which the registrant has an economic interest and that have the largest asset values or, effectively, if a registrant has economic interests in fewer than 20 properties, in such properties in which the registrant has an economic interest, regardless of the size or value of that interest. We are concerned that the inclusion of immaterial information in accordance with Proposed Item 1303(b)(2) would give undue prominence to immaterial properties (and potentially mislead investors regarding their value and prospects), increase the length of disclosure documents and expand the size of the technical report summary, and by so doing potentially detract from property-specific disclosures relating to material properties contained in Filings. Limiting the disclosure made under Proposed Item 1303(b)(2) to information regarding only material properties would enhance the overall readability of a Filing and prominence of material disclosures.

Proposed Item 1303(b)(2) should be revised to permit registrants to exclude property-specific information about any properties that are immaterial to the registrant's aggregate mineral resources and mineral reserves from the summary disclosure. This revision would benefit registrants and investors alike. For registrants, the revision would reduce the cost and overall burden of compliance. For investors, the revision would reduce the complexity and mass of the information in a Filing and in the technical report summary, and in turn would allow investors to focus on material properties without the distraction of immaterial information. In other words, the exclusion of immaterial properties would increase disclosure effectiveness.

[5] Release at pg. 86.

[6] Clause 3 of the IRT states, in part: "[t]he main principles governing the operation and application of the Template are transparency, materiality and competence. ***Materiality*** requires that a Public Report contains all the relevant information which investors and their professional advisers would reasonably require, and reasonably expect to find in a Public Report, for the purpose of making a reasoned and balanced judgment regarding the Exploration Results, Mineral Resources and Mineral Reserves being reported."

4. Registrants should not be required to name the qualified person preparing a technical report summary in a Filing, and qualified persons should not be required to sign the technical report summary or provide a consent to being named in the Filing as having prepared the technical report summary.

Making the qualified person preparing the technical report summary an expert for purposes of Section 11 is not necessary for modernization. Doing so may cause mining registrants to engage unaffiliated professionals to prepare the technical report summary at a significantly increased cost. Registrants may have multiple employees who are currently engaged in the task of developing the information that will be included in those disclosures, including foreign nationals working outside of the United States. Asking any one of such employees to take on the task of being the qualified person and "expert" for such a registrant could result in such registrants resorting to an unaffiliated professional at substantial additional cost. This is especially the case for a registrant with global operations. An employee of a registrant will likely be very reluctant to serve as a qualified person and make judgments about, for example, the impact of social modifying factors on the estimates he or she is making if qualified persons are to have exposure to liability as experts under Section 11.

We understand that Proposed Item 1302 requires that a qualified person have responsibility for the technical report and technical report summary in order to further align disclosure practices of mining registrants with those of international mining companies reporting under the IRT or disclosure requirements related to CRIRSCO standards. Like another commentator,[7] we too doubt that the disclosure regimes of the foreign jurisdictions result in the same type of liability as Section 11 expert liability under the Proposed Rules.

The Commission can achieve the goals of having the technical report summary prepared by a professional who has the qualifications described in the definition of "qualified person" in proposed Item 1301 of Regulation S-K by requiring that technical report summaries be prepared by such a qualified person or several qualified persons and describing the qualifications of those persons. The Final Rules may achieve the goals of modernization without requiring (1) the qualified person or persons to be named in the related Filing, (2) the technical report summary to be signed by such qualified person or persons or (3) the qualified person or persons preparing the technical report summary to give a consent under Proposed Item 1302. The Commission may dispense with the consent and the filing of any consent pursuant to the Commission's authority under Section 7(a) of the Securities Act.

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[7] Letter of Sullivan & Cromwell LLP (Aug. 15, 2016).

5. The Proposed Rules should be revised to clarify that only material changes in the material assumptions and information underlying a technical report summary will give rise to the requirement to update a previously filed technical report summary.

Instruction 6 to proposed Items 1304(b)(9) and (10) ("*Instruction* 6") would require a registrant to file a revised or new technical report summary before making required disclosure in a Filing based on a previously filed technical report summary that is not current with respect to material assumptions and information. Instruction 6 should be revised to provide that any changes in any such material assumption or information that individually or in the aggregate do not result in a material change in the substance of the information in the previously filed technical report summary will not result in the need for a revised or updated technical report summary to be filed with a Filing. As revised, this provision would reduce the potential to delay a required Filing.

6. The requirements for the content of the technical report summary should be revised to streamline technical report summaries to focus on manageable amounts of disclosure relevant to most investors.

The Proposed Rules would require the technical report summary to include highly technical data that only industry experts and some members of the Staff might understand. For example, the Proposed Rules would require descriptions of each property's hydrogeology, including, among other disclosures, the nature and quality of sampling methods, type and appropriateness of laboratory techniques used to test for groundwater flow parameters, discussions of quality control and quality assurance procedures for such tests, and groundwater models used to characterize aquifers. Somewhat similar information would be provided as to geotechnical data, testing and analysis with respect to each property. Page 159 of the Release indicates that "[d]etailed hydrogeology and geotechnical data" will be included in the technical report summary and that such data would "provide insight into the adequacy and appropriateness of the mine's design parameters, which would allow investors and their advisors to evaluate fully the disclosed economic viability of the mine." We believe that only industry experts would fully understand such detailed hydrogeology and geotechnical data and their implications for a mine's design parameters. Instead, Filings could contain narrative disclosure as to the adequacy and appropriateness of a mine's design parameters and safety in view of the hydrogeology and geotechnical data relating to the area in which the mine is located. Such narrative disclosure would provide more meaningful disclosure for most investors and would therefore contribute to disclosure effectiveness.

We also note that Proposed Item 601(b)(96)(iii) states that the technical report summary "must not include large amounts of technical or other project data, either in the report or as appendices to the report." This objective does not seem to be met by the information specifically required to be included in the technical summary report, including the hydrogeology and geotechnical data described above, which appear to require the presentation of large amounts of technical data.

We believe that the Final Rules should eliminate any requirements for the presentation of detailed hydrogeology and geotechnical data.

7. Registrants should not be required to disclose information, such as contracts required to develop a mining property that are still under negotiation, if that disclosure would result in a competitive disadvantage to the registrant.

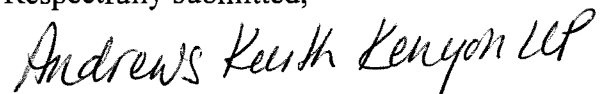
The Proposed Rules contain instances in which the disclosure of information could put a registrant at a competitive disadvantage. For example, subparagraph (iv)(B)(18) of Proposed Item 601(b)(96) requires registrants to describe in their technical report summaries all material contracts required to develop the property and identify which contracts have been executed and which are still under negotiation. We are concerned that the disclosure of contracts still under negotiation might provide competitors with a competitive advantage or might delay or interfere with pending contract negotiations. Moreover, a counterparty to negotiations, especially a private company not subject to the same disclosure requirements, might use that information as leverage to the registrant's disadvantage. We believe that the Final Rules should provide registrants with the ability to exclude information if the disclosure of the information could result in a competitive disadvantage.

Conclusion

In conclusion, we believe that the modernization of mining disclosure requirements has the potential to enhance information available to investors if it is does not overload Filings with immaterial or unduly detailed information or otherwise impair disclosure effectiveness. Incremental costs of gathering, presenting, reviewing and filing information, along with the costs of compliance and engaging experts, have the potential to deter mining registrants from becoming and remaining public reporting companies, and the potential to create competitive disadvantages for mining registrants. The need to inform investors should be balanced against the burden and distraction to registrants who are in the business of developing important resources. Although frameworks developed in foreign jurisdictions or by private industry organizations may offer some useful reference points, the mining industry is highly diverse. Accordingly, an emphasis on flexibility, materiality, clarity, and simplification in the Final Rules will serve registrants and investors alike.

If you have questions about any of the above comments or would like to discuss them, please contact G. Michael O'Leary at [redacted], Dudley Murrey at [redacted], or Melinda Brunger at [redacted].

Respectfully submitted,



Andrews Kurth Kenyon LLP