September 26, 2016

VIA E-MAIL: rulecomments@sec.gov
Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-1090
Attention: Mr. Brent J. Fields, Secretary

RE: Modernization of Property Disclosures for Mining Registrants File No. S7-10-16

Dear Mr. Fields:

We are grateful for the opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC") proposed rules to modernize property disclosure for mining registrants. As the mining property disclosure rules set out in Item 102 of Regulation S-K and Guide 7 have not been updated for more than 30 years, we commend the SEC's efforts to harmonize SEC reporting requirements with global mining and industry standards and the reporting requirements of other key mining capital markets jurisdictions outside the United States, which standards are largely based on the Committee for Mineral Reserves International Reporting Standards ("CRIRSCO"). We believe that the harmonization of reserves reporting standards in the United States towards CRIRSCO is beneficial to both investors and issuers; consequently, we are broadly supportive of the proposed rules.

There are a couple aspects of the proposed rules, however, which we feel are unduly burdensome to issuers and qualified persons who report on their reserves or which may result in material and unjustified variances between U.S. reporting requirements and CRIRSCO standards.

Qualified persons should not be subject to Section 11 expert liability.

Under the proposed rules, consistent with the CRIRSCO-based codes, any disclosures of mineral resources, mineral reserves and material exploration results reported in a registrant's SEC filings must be based on, and accurately reflect information and supporting

documentation prepared by, a "qualified person." It is proposed that such qualified persons would be deemed "experts" and thereby be subject to expert liability under Section 11 of the Securities Act of 1933, as amended (the "Securities Act") for the technical report summaries they prepare.[1] While we support the SEC's stated objective of strengthening the quality of mining reserves disclosure as a means of protecting investors, we believe that the imposition of expert liability on qualified persons is not necessary or warranted and may impose undue burdens on issuers and have other unjustified adverse consequences. We submit that making qualified persons subject to Section 11 liability is not necessary to ensure accountability and to protect against misleading or fraudulent disclosures by qualified persons, as the requirement for qualified persons to be a member of a recognized professional organization already provides for a disciplinary check and oversight by industry and professional experts ensuring the quality of the qualified person's reports.

Imposing Section 11 liability on qualified persons will subject them to a spectre of liability that goes far beyond any exposure they may have under CRIRSCO-based regimes. In particular, it exposes them to a much higher risk of securities litigation given the prevalence of securities class action litigation in the United States relative to other CRIRSCO-based jurisdictions. A reasonable consequence of the proposal to subject qualified persons to Section 11 liability as an expert is that qualified persons, whether employees of mining registrants or external consultants, may be unwilling to serve in such a capacity due to the significant heightened risk of litigation and personal liability—and this may result in excluding some of the best people for the job. Accordingly, registrants may encounter difficulties finding qualified persons to prepare the necessary reports, and they may also incur additional costs to pay for securities liability insurance to cover willing qualified persons. The imposition of Section 11 expert liability on qualified persons may also create incentives for registrants that have historically used employees as qualified persons to hire external consultants. For registrants that employ external consultants to prepare reserve and resource estimates and technical reports, the imposition of personal liability is likely to increase the costs such consultants charge for their services. As we understand smaller and midsize

[1] See Proposing Release at p. 35.

mining companies are more likely to use external consultants, this increased costs would fall disproportionately on the companies with the least resources to bear them.

We submit that these adverse consequences can be avoided without sacrificing investor protection. Under the proposed rule, a qualified person must be a member of a "recognized professional organization" which (i) establishes and requires compliance with professional standards of competence and ethics and (ii) has and applies disciplinary powers, including the power to suspend or expel a member regardless of where the member practices or resides.[2] Because qualified persons would already be subject to industry oversight and discipline, the imposition of expert liability would not meaningfully enhance the quality, reliability or transparency of disclosure in a way that warrants the potential incremental costs to the registrant. In addition, we believe subjecting qualified persons to expert liability is unnecessary because mining reserves disclosure is ultimately the responsibility of each mining registrant, who would continue to be subject to liability under the Securities Act and the Securities Exchange Act of 1934 for such disclosures.

As an alternative to subjecting qualified persons to Section 11 liability, we propose that the SEC could, consistent with other jurisdictions that have adopted CRIRSCO-based codes, specify a list of "approved" recognized professional organization of which qualified persons would be required to be a member. In this way, the goal of investor protection would be served by ensuring that only organizations that adequately enforce their standards for quality, ethics and professionalism are recognized.

Qualified persons should be permitted to disclaim responsibility for portions of the technical reports in respect of which the qualified person relied on other experts.

If a qualified person is to be made subject to Section 11 expert liability, as proposed, the qualified person should be permitted to disclaim responsibility to the extent he or she relies on a report, opinion or statement of another expert in preparing the technical report summary. The Staff notes that such disclaimers are permitted under the Canadian

[2] See Proposing Release at p. 44.

standards.[3] The estimation of mineral reserves and resources often implicates matters that are outside the scope of the qualified person's professional qualifications. Accordingly, in preparing a technical report summary, the qualified person may be required to rely on the views of other experts, such as lawyers, experts on land tenure and title, marketing experts and environmental consultants, among others. It would be unduly burdensome to expect an engineer or geoscientist to in effect provide an assurance and assume liability for matters beyond their sphere of specialization. We submit, therefore, that it would be appropriate to allow qualified persons to rely on, and disclaim responsibility for, information provided by other experts and to limit the liability of a qualified person to the portions of the technical report to which he or she contributed.

The rules should allow for reasonable flexibility in commodity price assumptions underlying reserve estimates.

Under the proposed rule, commodity price assumptions used in the determination of mineral reserves may not be higher than the unweighted arithmetic average spot price during the 24-month period prior to the end of the last fiscal year, unless prices are defined by contractual arrangements. This approach reflects the Staff's long-standing guidance that commodity prices used in mineral reserve estimation should not exceed a 3-year historical trailing average. While this approach is intended to promote transparency and comparability, the Staff recognizes in the proposed rule release that most foreign jurisdictions allow the use of any reasonable and justifiable price, which is based on the qualified person's or management's view of long term market trends.

We would urge the Staff to align the SEC mining disclosure rules with the more flexible approach adopted by other leading mining jurisdictions, such as Canada and Australia, or, in the alternative, to permit registrants that are subject to multiple reporting regimes to report reserves based on the price assumptions permitted in the other jurisdictions. We submit that requiring the use of 24-month trailing average prices may not serve the objective of providing investors with the best possible disclosure. For example, the qualified

[3] See Proposing Release at p. 213.

person or management may in good faith believe that historical prices over the trailing 24-month period are not representative of current and expected future trends. In such cases, the mineral reserves and resources that a registrant reports for purposes of complying with the SEC rules may differ significantly from the estimates the registrant uses for purposes of its internal business planning and therefore may not provide investors with the most relevant information to enable them to assess future cash flows. In addition, for mining registrants subject to multiple disclosure regimes, this approach may continue to result in mining registrants disclosing different reserves estimates for purposes of complying with the divergent rules of the SEC and the other jurisdictions, which risks creating confusion in the market.

In order to ensure transparency and allow investors to assess the registrant's underlying price assumptions, the SEC could require that where a registrant opts not to use the 24-month trailing average price, it must report the price assumptions used, the reasons why the qualified person believes those assumptions are reasonable and justified and an explanation of the effect on the registrant's reserves disclosure if 24-month trailing average prices were used.

We welcome the opportunity to discuss our comments as well as to answer any questions the SEC may have in connection with this letter. Any questions about this letter may be directed to Richard Price of Shearman & Sterling (London) LLP at [redacted].

Sincerely,

Shearman & Sterling LLP

Shearman & Sterling LLP