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VIA EMAIL

Securities and Exchange Commission
Office of Secretary
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549-1090

Attn: Mr. Brent J. Fields

Re: Comments on Proposed Rule Regarding Modernization of Property Disclosures for Mining Registrants
Release Nos. 33-10098; 34-78086; File No. S7-10-16

Dear Sir:

We are respectfully submitting comments on the proposed rule (the "**Proposed Rule**") regarding Modernization of Property Disclosures for Mining Registrants in Release Nos. 33-10098; 34-78086; File No. S7-10-16 (the "**Proposed Rule Release**") relating to the limited "foreign law" exception that currently exists under the existing mineral property disclosure regime but which would be eliminated under the Proposed Rule.

As noted in the Proposed Rule Release, under Item 102 of Regulation S-K, Industry Guide 7 ("**Guide 7**") and Item 4.D of Form 20-F, a registrant may not disclose estimates for non-reserve deposits, such as mineral resources, unless such information is required to be disclosed "by foreign or state law" (the "**Foreign Law Exception**") or unless "such estimates previously have been provided to a person (or its affiliates) that is offering to acquire, merge, or consolidate with the registrant, or otherwise to acquire the registrant's securities." As further noted in the Proposed Rule Release, foreign mining codes have generally been adopted as listing standards for foreign securities exchanges or as guidelines by foreign securities commissions. However, Canada has adopted its mining code as a matter of law as National Instrument 43-101 – Standards of Disclosure for Mineral Projects ("**NI 43-101**"). As a result, the Staff (the "**Staff**") of the Securities and Exchange Commission (the "**SEC**") has taken the view that only Canada's NI 43-101 serves as the basis for a registrant to claim the Foreign Law Exception in order to be able to report mineral resource estimates in SEC filings.

The Proposed Rule would eliminate the Foreign Law Exception currently available to certain Canadian foreign private issuer registrants ("**Canadian 20-F Filers**") by amending Form 20-F to require such registrants to provide mining disclosure in accordance with subpart 1300 of Regulation S-K on the same basis as domestic registrants. Canadian foreign private issuers reporting on Form 40-F under the U.S. – Canada Multijurisdictional Disclosure System (the "**MJDS**") would continue to be permitted to report in compliance with NI 43-101 under the Proposed Rule. The Proposed Rule Release states that having one source for mining disclosure obligations should facilitate mining registrants' compliance with their disclosure requirements by eliminating the complexity resulting from the existing structure of SEC disclosure obligations in Regulation S-K and Staff disclosure guidance in Guide 7. While this approach may assist certain non-Canadian foreign private issuers that have been subject to both a foreign mining code (but not as a matter of law) and the distinctly different current U.S. regime, this would not be the case for Canadian 20-F Filers that may now be required by law to comply with two parallel but different disclosure regimes.

While the Proposed Rule and NI 43-101 are similar in many ways, they differ in certain important respects. There are different requirements under NI 43-101 and the Proposed Rule to be considered a "qualified person" and different requirements for what a "qualified person" is required to do. Will this mean that Canadian 20-F Filers will be required to hire two sets of "qualified persons" making parallel investigations of the same properties and projects, or to identify one of a limited number of individuals who might satisfy both definitions and be able to investigate and provide disclosure review under the two parallel regimes? Under NI 43-101, there are certain circumstances under which an issuer must file a technical report prepared by an "independent" qualified person when this would not be defined or required under the Proposed Rule. The guidelines around materiality of a registrant's mining operations are slightly different between NI 43-101 and the Proposed Rule. Could this potentially lead to a different determination as to whether mining operations are material to a particular issuer under the two regimes? Will there be circumstances in which an issuer would conclude mining operations are material under one regime, thereby triggering disclosure, and not material under the other regime, thereby not triggering disclosure, resulting in different information being available to U.S. and Canadian shareholders? The Proposed Rule would not permit qualified persons to use inferred mineral resources in any economic analysis conducted to determine the economic viability of mineral projects or economic prospects of mineral deposits in support of SEC disclosure, while this is permitted under NI 43-101 with the inclusion of certain cautionary language. Would this lead to different economic analyses under the two regimes and different determinations with respect to economic viability under the two regimes, particularly in the early stages of mine exploration? Under NI 43-101, a qualified person is required to report assumptions underlying price estimates but there is no prescribed price model; under the Proposed Rule, the qualified person would be required to use a 24-month trailing average ceiling price model. Would there be circumstances in which a qualified person under NI 43-101 would consider price estimates other than a trailing 24-month trailing average ceiling price to be more reasonable? While the technical report summaries under each regime are similar, they are not

identical. For example, the Proposed Rule requires disclosure regarding hydrogeology and geotechnical data, which is not required under NI 43-101. Can this voluntarily be provided under NI 43-101? Will this lead to Canadian 20-F Filers filing or otherwise making public different technical reports with different information for Canadian shareholders and U.S. shareholders? These are just some of the differences between the Proposed Rule and NI 43-101 that could introduce disparity in reporting in Canada and the United States as well as confusion among shareholders in different jurisdictions.

In many cases, Canadian 20-F Filers are smaller Canadian mining companies that have an insufficient public float and/or Canadian reporting to access the accommodations provided by the MJDS or, in certain circumstances, issuers that have chosen not to become reporting issuers in Canada. In the case of smaller Canadian 20-F Filers, such issuers tend to have fewer personnel and financial resources to devote to compliance with their mining disclosure obligations. This is particularly true in the context of the current world downturn in the price of and demand for many minerals, and the resulting cost-cutting measures that many of such mining company registrants (or potential registrants) have had to undertake. The Proposed Rule may require such registrants to devote sometimes already challenged resources to compliance with two disclosure regimes in Canada and the United States that are both mandated by law. This burden of dual compliance for Canadian 20-F Filers runs counter to many of the rule-making initiatives mandated by the Dodd-Frank Wall Street Consumer Protection Act, which were aimed at facilitating access to the U.S. capital markets, as well as to the established practice of providing certain accommodations to Canadian issuers. The elimination of the Foreign Law Exception for Canadian 20-F Filers may introduce additional compliance burdens for such reporting companies and may dissuade many potential Canadian 20-F Filers from pursuing a U.S. listing or becoming an SEC registrant.

Applicable Canadian law currently permits Canadian 20-F Filers to file their Form 20-F with the Canadian securities commissions to satisfy their annual reporting and/or annual information form requirements in Canada. We believe that this Canadian accommodation is a recognition that the Form 20-F disclosure requirements are sufficiently robust that they are essentially substantively equivalent to comparable requirements in Canada. It also permits filers to avoid the cost and time burden of having to prepare two substantive annual disclosure documents under two different reporting regimes. However, if the required mining disclosure in the Form 20-F is governed by the terms of the Proposed Rule, this may no longer satisfy such an issuer's obligations under NI 43-101, and such an issuer may be required to prepare two parallel substantive annual documents.

As noted above, some Canadian 20-F Filers are Canadian foreign private issuers that have chosen to bypass a Canadian listing and proceed with a listing on a U.S. stock exchange to access the broader and deeper capital markets in the United States. Because these companies are not reporting issuers in any province of Canada, they are also not eligible for the MJDS and would file their initial registration statement and their annual reports on Form 20-F. While such

Canadian foreign private issuers are not subject to the ongoing reporting requirements of the Canadian securities commissions, their mining disclosure is still subject to compliance with NI 43-101 to the extent that it is made public in Canada. For example, if such an issuer discloses mineral resource and reserve information to the public in Canada, it must ensure that the information complies with NI 43-101 and is provided to the applicable securities commission in Canada. As a result, such an issuer may also be subject to a dual compliance regime mandated by law in both Canada and the United States. Such a Canadian foreign private issuer may have provided disclosure to the public for many years in compliance with NI 43-101 (even if such an issuer were not a reporting company in Canada) and then be compelled to comply with a dual disclosure regime if the Proposed Rules are made final in the form proposed. Furthermore, if a Canadian company were to proceed with an initial listing on a U.S. stock exchange and later determine to proceed with a cross listing on a Canadian securities exchange, or if a Canadian company were to proceed with a concurrent U.S. and Canadian listing, they may be subject to reporting with the SEC on Form 20-F for a period of one or two years before qualifying under the MJDS, thereby requiring such an issuer to provide mining disclosure under the Proposed Rule in the U.S. and NI 43-101 in Canada for a one to two year period before being able to switch to compliance only with NI 43-101.

The MJDS permits certain Canadian foreign private issuers to satisfy their U.S. reporting and disclosure obligations by filing their Canadian disclosure documents with certain limited additional U.S.-specific information. The accommodations of the MJDS are based on the premise that the disclosure requirements in Canada for certain substantial Canadian foreign private issuers and the review (or potential review) of such disclosure by the Canadian securities commissions provide sufficient informational and oversight protections for U.S. investors. Smaller Canadian foreign private issuers with reduced disclosure requirements (e.g., companies that are not required to file annual information forms in Canada), or larger Canadian companies that have not yet met the Canadian reporting history requirement under the MJDS, are considered not to meet such informational protections. While smaller Canadian companies are not eligible for the MJDS due to reduced disclosure obligations in Canada, they are still required to comply with NI 43-101 to the same extent that larger Canadian companies are required to comply. Further, larger Canadian companies that have not yet met the reporting history requirement under the MJDS are still required to comply with NI 43-101. The accommodation for providing mineral disclosure in accordance with NI 43-101 should not be tied to MJDS eligibility, as Canadian issuers of every size must provide their mineral disclosure in accordance with NI 43-101, with no scaled disclosure for smaller companies. If the NI 43-101 disclosure requirements are sufficient for Canadian Form 40-F filers, they should be sufficient for Canadian Form 20-F Filers as well, as it is the same disclosure regime.

The rationale for the Foreign Law Exception for Canadian incorporated foreign private issuers remains the same before or after adoption of the Proposed Rule. The existing U.S. disclosure regime recognized the disproportionate burdens of having to comply with two different technical regimes as a matter of law. The Proposed Rule should continue to do the same. The fact that the

Proposed Rule is closer in scope to NI 43-101 than the previous U.S. disclosure regime does not mitigate the concern that many Canadian issuers (and often those smaller companies with the fewest resources to devote to compliance or those larger companies that simply do not yet have the reporting history in Canada to qualify for MJDS eligibility) may be subject to two different, concurrent legal regimes. Canadian foreign private issuers of all sizes are subject to the same requirements under NI 43-101, which is a robust alternative to compliance with the Proposed Rule. The Proposed Rule has been drafted with careful consideration of other mining codes, including, in particular, NI 43-101. We respectfully submit that the Foreign Law Exception should remain in place for Canadian foreign private issuers of all sizes as a recognition of the sufficiency of NI 43-101 for the protection of investors and the burdens of dual compliance for Canadian 20-F Filers. This approach is consistent with a number of accommodations provided to Canadian mining and other companies accessing the U.S. capital markets, including, most recently in the adoption of the final rule with respect to Disclosure of Payments by Resource Extraction Issuers in which the SEC determined, with a view towards reducing compliance costs, that the reporting requirements of Canada's Extractive Sector Transparency Measures Act (as well as certain other mandated foreign reporting regimes) is a substantially similar disclosure regime for purposes of reporting under the final rules. We respectfully submit that the Foreign Law Exception should take a similar approach in recognizing that NI 43-101 is substantially similar to the Proposed Rules and that Canadian foreign private issuers which are Canadian 20-F filers should be permitted to elect to provide their disclosure in accordance with NI 43-101, with sufficient advisory and cautionary language.

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We very much appreciate the Staff's review of this comment submission. If you have any questions regarding this comment submission, please feel free to contact me at [redacted]. In addition, you may direct correspondence to me by facsimile at [redacted].

Sincerely,

Thomas M. Rose