**STILLWATER MINING COMPANY**

**MICHAEL "MICK" MCMULLEN** PRESIDENT AND CEO

August 9, 2016

**VIA EMAIL (rule-comments@sec.gov)**

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

**Re: Comments on Proposed Rule: Modernization of Property Disclosures for Mining Registrants (Release No. 33-10098; File No. S7-10-16)**

Dear Mr. Fields:

The Stillwater Mining Company ("**SMC**") thanks the Securities and Exchange Commission (the "**SEC**" or "**Commission**") for this opportunity to comment on the proposed rules regarding property disclosure requirements for mining registrants. SMC applauds the Commission for identifying many of the long-standing problems with the current disclosure regime and looks forward to the adoption of final rules that will provide our industry with a sustainable platform for competition and growth.

To this end, SMC requests that the Commission reconsider certain provisions relating to (1) the requirement of a discounted cash flow analysis in assessing economic viability, (2) the shift to a trailing 24-month average price ceiling, and (3) the indivisible burden of liability for qualified persons preparing technical report summaries. The SEC has solicited comments on each of these issues and SMC now responds to them in turn.

Question 79 (p. 108): **Should we require the use of a discounted cash flow analysis or other similar analysis to establish the economic viability of a mineral reserve's extraction, as proposed? Why or why not?**

The SEC should not require the use of a discounted cash flow model for reporting on the economic viability of mineral reserve extraction. Many mining registrants, including SMC, currently report an undiscounted projection of cash flows because it is often more reflective of real-world deliberations as to whether or not a mining operation is economical. For example, when operating a mine that becomes marginal, the decision to close is always based on the undiscounted cash flows of the day, rather than the discounted cash flows. Even for development stage assets, the decision to proceed with a mining operation is largely impacted by the method and cost of financing (e.g., debt, equity, stream, royalty). A qualified person has no control over this factor and would likely be hard-pressed to include a reasonable assumption in its report given the highly variable nature of the financing world.

Moreover, the proposed rules already contain a number of other provisions that will compel the use of conservative economic forecasting for future cash flows. For example, the SEC's proposing release contains a non-exclusive list of modifying factors – including "mining, energy recovery and conversion, processing, metallurgical, economic, marketing, legal, environmental, infrastructure, social and governmental" – that must be accounted for in converting mineral resources to proven and probable mineral reserves. Additionally, under the proposed rules "cash flows [would] be based on costs and revenues associated with planned production over the life of the mine." By requiring a life of mine plan in determining economic viability, the SEC will compel much of the same long-term focus that it would presumably be seeking through the imposition of a discounted cash flow analysis.

These and other requirements of the technical report summary will more than adequately depict the economic viability of mining registrants "under reasonable investment and market assumptions" without needing the further application of a discount rate, the choice of which would be highly subjective. Subject to these requirements, SMC asks the Commission to permit the continued use of undiscounted cash flows and allow the market to make any additional adjustments for the time value of money based on the abundance of information the proposed rules would make available to investors. This request could be easily implemented by replacing the word "discounted" with "reasonable method of" in the definition of "economically viable" under Section 229.1301(d)(13)(iii) of the proposed rules.

> Question 79, cont'd. (p. 80): **[S]hould we require the use of a price that is no higher than a trailing 24 month average spot price in the discounted cash flow analysis, except in cases where sales prices are determined by contractual agreements, as proposed? Is there some other period (e.g., 12 or 36 months) or measure that should determine the price used in the discounted cash flow analysis?**

SMC opposes the requirement of a discounted cash flow analysis for the reasons previously discussed. Additionally, SMC would advise the Commission to retain its current staff guidance calling for a pricing model based on a commodity's trailing 3-year average price. Because the proposed shift to a 24-month window is not, unlike other provisions, part of a broader effort to bring U.S. disclosure rules into closer alignment with CRIRSCO standards, SMC is unclear as to why the Commission believes this change is necessary.

The Commission seems to recognize the potential for heavy compliance costs associated with the adoption of a 24-month trailing period, including the possibility that "a price change may lead to a significant change in the scale of [a] proposed mining project . . . [causing] a qualified person . . . to repeat almost all the engineering and economic analysis to determine mineral resources." In this respect, too much exposure to price volatility is problematic not just for mining registrants, but also for investors desiring a smoother baseline for evaluating a company's performance across multiple reporting periods.

While SMC is thus skeptical of any proposed shift to a trailing 24-month average price ceiling, it is particularly opposed to applying this standard for long-life mining projects. As previously discussed, the required life of mine plan – as subjected to modifying factors – will inherently lead to a more conservative forecasting of cash flows for mining registrants with long-life projects. In light of this and other proposed rule changes, SMC encourages the Commission to let mining registrants with properties of a certain projected life expectancy cap their mineral resource and reserve estimates at the higher of the average 24- *or* 36-month trailing commodity price for those projects. Because short-term price volatility weighs less heavily on the "reasonable investment and market assumptions" of investors in long-life mining operations, this revision would be consistent with the SEC's broader effort to adopt policies that, while not boundless, are flexible enough to truly reflect economic viability for differently situated registrants.

> Question 114 (p. 161): **Should we preclude a qualified person from disclaiming responsibility if he or she relies on a report, opinion, or statement of another expert who is not a qualified person in preparing the technical report summary, as proposed? Why or why not?**

While the SEC's concern with expertization in mining disclosures is laudable, the rule changes, as proposed, would result in an inevitable freezing effect on the willingness of qualified persons to sign off on technical report summaries. Per the Commission's proposing release, technical report summaries would comprise 26 sections – including two categories for hydrogeology and geotechnical data in addition to the requirements of Canada's NI 43-101. In light of this expansive scope, the prospect of sole and indivisible liability for the entire technical summary report under Section 11 of the Securities Act is simply too onerous for qualified persons – and, in turn, for the mining industry at large – to operate efficiently under the proposed disclosure framework.

SMC encourages the Commission to chart a middle course between its current proposal and the approach taken by NI 43-101, for example, which permits qualified persons to *disclaim* responsibility for the contributions of third-party experts. Rather, the SEC should permit qualified persons to *limit* their responsibility to the section(s) of a technical report summary they expertize, so long as every section is ultimately expertized by a qualified person separately responsible for his or her work.

For large and often complex mining projects, it is highly unlikely that a single qualified person would truly have sufficient knowledge of all substantive areas covered by the technical report summary. As with JORC (Australia), SAMREC (South Africa) and NI 43-101, it is normal – and consistent with the code of ethics of engineering professionals – to therefore have qualified persons sign off on their relevant area(s) of expertise. By adopting this approach, the SEC would still achieve its goal of avoiding gaps in expert liability, while recognizing the practical realities attendant to preparing complex reports of this nature.

SMC appreciates the Commission's attention to these comments and will be available to discuss at greater length the recommendations contained herein as the comment period progresses.

Very truly yours,

Mick McMullen
Chief Executive Officer
Stillwater Mining Company