

David L. Kanagy
Executive Director

kanagy@smenet.org
303-948-4210

October 6, 2011

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Via email: rule-comments@sec.gov

Dear Ms. Murphy:

Re: Request for Comments – Retrospective Review of Existing Regulations – File No. S7-36-11

The Society for Mining, Metallurgy and Exploration (SME) appreciates the opportunity to comment on retrospective review of existing regulations, and we have attempted to answer the questions asked in your response to Executive Order 13579 “Regulation and Independent Regulatory Agencies” dated July 11, 2011.

SME is a professional society (nonprofit 501(c)(3) corporation) whose nearly 14,000 members represent all professionals serving the minerals industry in more than 85 countries. SME members are engineers, geologists, metallurgists, educators, students and researchers. SME advances the worldwide minerals community through information exchange and professional development.

SME has had an on-going, long-term dialog with the SEC Division of Corporation Finance regarding mining disclosure policy for issuers engaged or about to be engaged in significant mining operations (Industry Guide 7).

Our comments follow each question posed by the SEC in its July 11 notice.

1. What factors should the Commission consider in selecting and prioritizing rules for review?

The Commission should consider the following factors:

- Time elapsed since last review and request for public comments
- Technological changes in industry practices developed by engineering and scientific firms
- Need for alignment with international disclosure standards widely adopted in other countries
- Need for re-balancing the cost of securities regulatory compliance with the perceived benefits of the rules to the capital markets
- Improved benefits to investors and institutions financing capital projects
- Improved communication of transparency, materiality and competence in public disclosure by issuers to investors, financial institutions and government agencies
- Improved ability to detect and prosecute fraud
- Improved competitiveness of U.S.-based or listed companies through more detailed disclosure already afforded to foreign-based or listed companies. This will reduce risk of misinterpretation by investors, financial institutions and the government.

2. How often should the Commission review existing rules?

Our experience relates to Industry Guide 7, which has not been revised in 30 years. This is clearly too long. During this time there have been technological changes in the minerals industry and widespread use of international standards in other countries that provide for much more transparency in disclosure and for preparation of disclosure by competent persons.

The Commission should review existing rules at least every 5 years. It should be mandatory for these reviews to include a public notice and comment period, as per the Administrative Procedures Act, that allows for adequate and substantive review by stakeholders.

3. Should different rules be reviewed at different intervals? If so, which categories of rules should be reviewed more or less frequently, and on what basis?

Rules that reflect public disclosure policy should be reviewed more frequently, particularly where it would be beneficial to investors, financial institutions and the government. Rules should also be reviewed more frequently to keep SEC regulations abreast of updated and strengthened international standards so that U.S.-based or listed issuers can compete on a level playing field with issuers based or listed in foreign countries.

Inadequate rules result in a diversity of interpretation by regulatory agencies, and where unchallenged by staff (because of inadequate resources), often result in promulgation by issuers of incorrect assumptions and or interpretation. SEC staff is burdened with interpretation of rules through comment letters that trigger excessive effort by regulatory agencies and their legal advisers to provide answers and/or revised disclosure.

In summary, when the SEC staff are establishing unwritten rules through interpretations contained in comment letters or emails to specific issuers, it is clear that the existing rules are inadequate and should be reviewed and updated.

4. To what extent does relevant data exist that the Commission should consider in selecting and prioritizing rules for review and in reviewing rules, and how should the Commission assess such data in these processes? To what extent should these processes include reviewing financial economic literature or conducting empirical studies? How can our review processes obtain and consider data and analyses that address the benefits of our rules in preventing fraud or other harms to our financial markets and in otherwise protecting investors?

The Commission should collect public disclosure standards used internationally, consult with securities commissions in countries having major exchanges, participate in conferences where rules are discussed and engage issuers and the investing public as to the relevance of existing and proposed SEC rules, and form opinions as to how rules could be strengthened. In many cases international standards or standards set by professional societies and independent boards have been adopted since the SEC last updated its rules. These international standards reflect experience gained in the interim and are far more relevant to the SEC's mission of providing public disclosure allowing investors, financial institutions and government to make informed decisions.

We endorse the evaluation of published peer-reviewed literature and conducting studies and making analyses as to improved benefits that might be gained by U.S.- based or listed companies through sensible rule changes. In particular such studies should look for improved transparency of disclosure, disclosure which is material to investors, financial institutions and government, and insistence on disclosure being prepared by competent persons.

Reviews should include focus groups that represent investment funds, brokers and financial institutions, law firms, industry trade groups and professional societies, junior and senior issuers, and consulting engineering and scientific firms.

Discussions with representatives from professional societies and independent boards can provide a considerable amount of information with regard to standards and work practices and in particular governance and audit procedures used to ensure compliance with the Sarbanes-Oxley Act. These bodies can provide advice as to rules and guidance designed to identify fraud and to prevent misleading or incomplete disclosure.

5. What can the Commission do to modify, streamline, or expand its regulatory review processes?

We were impressed with the approach the Commission took in modernizing its rules for public disclosure of resources and reserves in the petroleum industry in 2008-2009:

- Input was sought from petroleum companies, investors and consultants
- The Petroleum Resource and Reserve Management System jointly developed by the Society of Petroleum Engineers and the American Association of Petroleum Geologists was considered
- Assistance was sought from academic institutions
- The new rules recognized technological advances that had been made over the 30+ year period since the last rule-making
- Upon completion, the effort was recognized as being a success by all stakeholders

The SEC should leverage the regulatory experience of international disclosure standards by adopting rules that have been proven effective in other jurisdictions.

6. How should the Commission improve public outreach and increase public participation in the rulemaking process?

The Commission should recognize that its website is not often frequented by the public. To increase public participation, the Commission should promote stakeholder engagement by:

- Encouraging SEC staff to make presentations at conferences attended by participants that are actively engaged in public disclosure following SEC policies
- Encouraging staff to publish articles on, or interpretations of, its rules
- Contacting professional societies and boards whose members are actively engaged in public disclosure following SEC policies
- Creating advisory groups that will bring forward issues of current interest for discussion and that will provide feedback on specific standards and rules for regulatory compliance

7. Is there any other information that the Commission should consider in developing and implementing a preliminary plan for retrospective review of regulations?

Given government budgets are tight and staff resources for updating rules may be limited, the SEC should consider voluntary assistance to be provided by professional societies and boards in developing and implementing a plan for review of guidance and regulations.

Thank you for the opportunity to comment. We regard this effort as a high priority for promoting and protecting economic growth, innovation, competitiveness, and job creation.

Please contact me at 303 948 4200 if you have any questions..

Yours truly,



David L. Kanagy, CAE
Executive Director

cc: John Murphy, 2011 SME President