Society for Mining, Metallurgy & Exploration

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October 1, 2012

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Amendment to Industry Guide 7—Petition for Rulemaking

Dear Ms. Murphy:

The Society for Mining, Metallurgy and Exploration, Inc. respectfully petitions the Securities and Exchange Commission, pursuant to Rule 192(a) of the Rules of Practice, to amend Industry Guide 7, which contains the SEC's basic disclosure policy for mining companies.

SME is a professional society (and nonprofit, Internal Revenue Code section 501(c)(3) corporation) whose nearly 15,000 members represent professionals serving the minerals industry in more than eighty-five countries. SME members are engineers, geologists, metallurgists, educators, students, and researchers. SME advances the worldwide minerals community through information exchange and professional development.

SME and the mining industry have been working diligently with the SEC for a number of years to try to clarify and update Guide 7 to no avail. It is vital for the SEC to move forward in the near-term to realign the U.S. reporting regime for mining companies both for the protection of investors and removal of competitive harm to U.S. mining companies.

SME stands at the ready to work with you and your staff to resolve this critically important issue for U.S.-based mining companies.

Please contact me if you have any questions.

Sincerely,

David L. Kanagy

David L. Kanagy, CAE
Executive Director

Society for Mining, Metallurgy & Exploration

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Dear Ms. Murphy:

The Society for Mining, Metallurgy and Exploration, Inc. ("SME") respectfully petitions the Securities and Exchange Commission (the "SEC"), pursuant to Rule 192(a) of the Rules of Practice, to amend Industry Guide 7 ("Guide 7"), which contains the SEC's basic disclosure policy for mining companies.

Executive Summary

Guide 7 has become increasingly outdated and out-of-sync with mineral reporting and disclosure standards used in the rest of the world. U.S. mining companies and their investors have suffered as a result. Changes to Guide 7 are needed to address the following issues:

- Mining, as an increasingly international industry, has developed comprehensive, uniformly accepted and understood standards for the reporting of Exploration Results, Mineral Resources and Mineral Reserves. Guide 7 is substantially different from these standards and disadvantages U.S. mining companies in communicating with their investors and in coordinating disclosures in multiple jurisdictions.

- Key conceptual matters are not specifically covered in Guide 7, namely the reporting of "mineralized material" and the limitation of Guide 7 to SEC reports. These matters are addressed by the SEC only in informal comment letters to individual issuers. Guidance in these letters as to the estimation and reporting of mineralized material is limited, leading to ambiguity and potentially disparate reporting practices.

- Mining companies and investors around the world consider Mineral Resource estimates as material and fundamental information about a company and its projects. Guide 7's prohibition on the reporting of Mineral Resources as such in SEC reports limits the completeness and relevance of SEC reports for investors. The SEC's practice of allowing Mineral Resource information in press releases and on websites, with no guidance or standards as to how Mineral Resource information should be reported, creates confusion and fails to ensure the quality and reliability of the information provided.

- Guide 7 discourages mining companies from listing in the U.S. This harms our stock exchanges, our financial markets and our economy. In the current environment, reforming Guide 7 would be a substantial step in supporting the U.S. mining industry and advancing economic growth and job creation in the U.S.

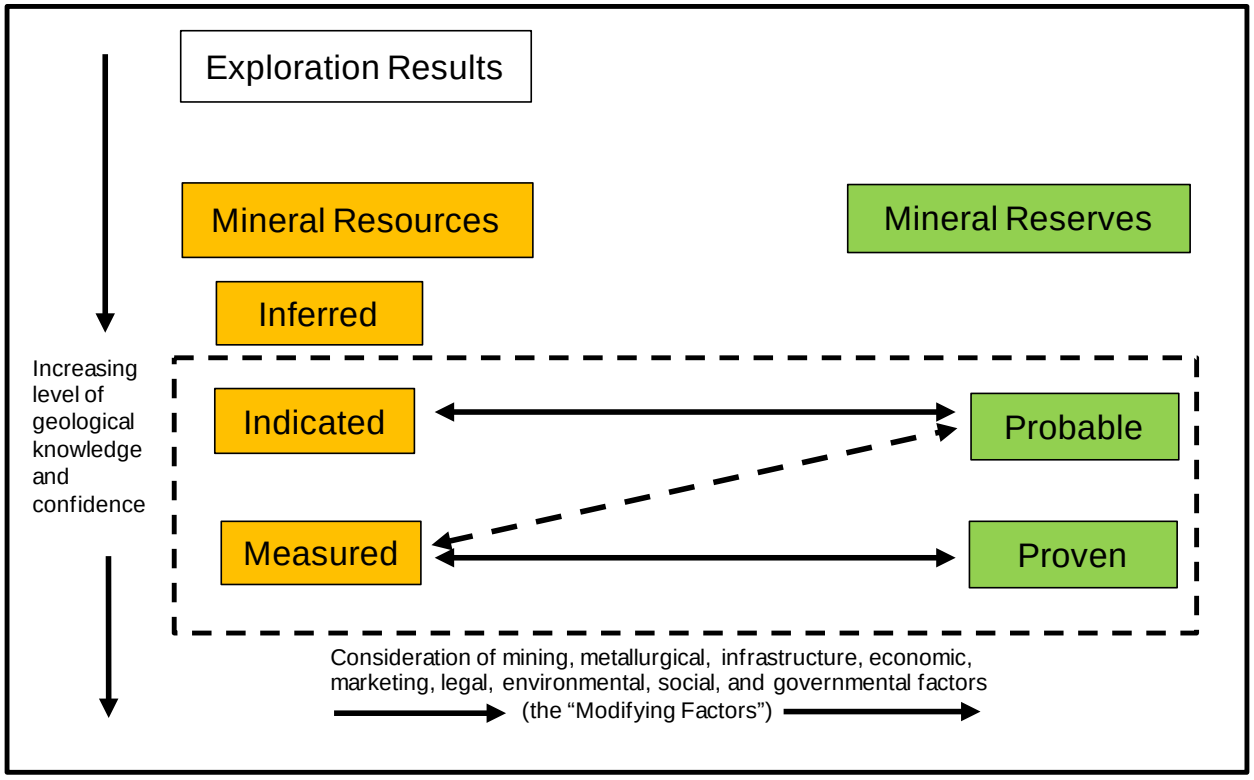
Overview

SME is a professional society (and non-profit, Internal Revenue Code section 501(c)(3) corporation) whose nearly 15,000 members represent 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.

Although the SEC modernized the oil and gas reporting rules in 2008, citing changes in the industry and the need for improved disclosure to investors, it has not updated Guide 7 in more than 30 years. Since issuing Guide 7, which was a commendable initiative at the time, the mining industry has evolved and has become increasingly globalized, with most large and many small mining companies publicly listed and operating in more than one country. The internet has made information, whether in the form of an SEC report, a press release, or an investor presentation, available around the world. Substantially similar definitions and standards for the estimation and reporting of Exploration Results, Mineral Resources and Mineral Reserves have been adopted by regulatory agencies in Canada, Australia, South Africa, the European Union, Chile, Hong Kong, and Russia. Collectively, these definitions and standards are termed the CRIRSCO family of codes, CRIRSCO being the Committee for Mineral Reserves International Reporting Standards. Figure 1 shows the relationship between Exploration Results, Mineral Resources and Mineral Reserves. The definitions and standards have also been accepted by the United Nations Economic Commission for Europe (UN-ECE) as part of the United Nations Framework Classification covering commercial mineral deposits. These definitions and standards effectively represent the prevailing internationally-accepted means of reporting Exploration Results, Mineral Resources, and Mineral Reserves. Public reporting in compliance with these definitions and standards has provided investors around the world with consistent and comprehensive disclosure. For many companies, disclosure of their "pipeline" of Mineral Resource assets demonstrates the future viability of the company and is viewed as especially material to investors.

The SEC's Industry Guide 7 is substantially different from these standards, most notably in **not** allowing the reporting of Mineral Resources as such. This factor alone has caused much confusion among mining companies and their investors. The SEC's accommodations on this point, specifically allowing the reporting of "mineralized material" in filings with the SEC and permitting the disclosure of Mineral Resource estimates on company websites, press releases, and investor presentations, have failed to resolve issuer and investor discontent with Guide 7 and have exposed the weaknesses of Guide 7 in the current environment.

Figure 1: Relationships Between Exploration Results, Mineral Resources and Mineral Reserves



This figure depicts categories of Mineral Resources and Mineral Reserves that are recognized by regulatory agencies in Australia, South Africa, Canada, Chile, Hong Kong, the European Union, and Russia. Guide 7 recognizes only Mineral Reserves.

All of this presents challenges for U.S. mining companies in communicating with their investors and potential investors. It frustrates company management, who cannot tell their story in a coherent and consistent fashion, and perpetuates the idea that other markets better understand the mining industry and offer better opportunities for investor support. This comes at a time when we cannot afford to further discourage U.S. mining companies. Mining is a core industry in the U.S., providing domestic production of a broad array of metals and minerals, including certain rare-earth and other critical minerals that are vital for U.S. independence and security. Although the domestic mining industry directly employs only about one-quarter of one percent of the U.S. workforce (approximately 350,000 people), those industry workers mark the starting point for the value chain that regularly contributes between 10 to 14 percent to the U.S. economy.[1] To continue to provide that significant value to the domestic economy and to meet

[1] Press Release, Soc'y for Mining, Metallurgy & Exploration, Mining Workforce Study Shows Critical Need for Skilled Workers (Jan. 2012), http://www.smenet.org/page/?id=884 (quoting SME Executive Director David L. Kanagy, issuing the results of SME's mining industry workforce study); Clifford N. Brandon III, Emerging

the growing demand for minerals, the mining industry will require increased access to capital markets and the investor community.

SME and the mining industry have been working with the SEC for a number of years to try to clarify and update Guide 7. In 2005, SME made certain recommendations to the SEC regarding what it considered to be the best approach for a revised standard of reporting Exploration Results, Mineral Resources, and Mineral Reserves, and these standards were reflected in the Draft 2005 SME Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves (the "Draft 2005 Guide"). These recommendations and the substantial other efforts of SME and others have failed to initiate the changes needed to Guide 7. The purpose of this Petition is to entreat the SEC to commit to making the changes to Guide 7 that the SEC staff acknowledges are both appropriate and necessary to strengthen the U.S.'s position in the international mining industry, and to be consistent with other internationally accepted reporting requirements. Although the SEC currently has a heavy rulemaking workload and many priorities, it is vital for the SEC to move forward in the near-term to update the U.S. reporting regime for mining companies both for the protection of investors and removal of competitive harm to U.S. mining companies.

I. BACKGROUND

A. Development of Mining Disclosure Regulations

1. Guide 7 and Current Disclosure Regime

In 1981, the SEC formulated Guide 7[2], which was based, in part, on United States Geological Survey Circular 831 (issued in 1980), "Principles of a Resource/Reserve Classification for Minerals". Guide 7 is the core SEC disclosure rule governing disclosures of U.S.-reporting companies with significant mining operations. At the time, the SEC had incorporated the latest mining industry developments into the definitions and disclosure instructions contained therein. Key controversial elements of Guide 7 in today's reporting environment are summarized below.

a. Reporting of Mineral Resource Estimates

Guide 7 permits disclosure of those mineral deposits that can be "economically and legally extracted or produced," including Proven (Measured) and Probable (Indicated) Reserves.[3]

Workforce Trends in the U.S. Mining Industry (Jan. 2012), http://www.smenet.org/store/mining-books.cfm/Emerging-Workforce-Trends-in-the-US-Mining-Industry/GPAC-EWT.

[2] The text currently found in Industry Guide 7 was adopted by the SEC in Securities Act Release 33-6299 (March 18, 1981) that expanded the use of Form S-18 to mining companies. When Form S-18 was withdrawn in 1992, the language was incorporated in Industry Guide 7.

[3] See U.S. Sec. & Exch. Comm'n, OMB No. 3235-0069, Industry Guide 7: Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations, para. (b)(5)(3) (2007), available at http://www.sec.gov/about/forms/industryguides.pdf

Guide 7 prohibits disclosure of non-reserve resource information, "unless such information is required to be disclosed by foreign or state law; provided however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with, the registrant or otherwise to acquire the registrant's securities, such estimates may be included."[4]

The exception for information "required to be disclosed by foreign or state law" has been construed to allow the reporting of resource information by Canadian issuers after National Instrument 43-101 ("NI 43-101") became law in Canada.[5] The SEC has made clear that the "foreign or state law" requirement means actual law and not merely stock-exchange listing requirements.[6] The net effect of these provisions is that Canadian companies, even if they are U.S. domestic issuers (i.e., not foreign private issuers), are allowed to report Measured, Indicated and Inferred Resources in their SEC filings, while all U.S.-incorporated issuers (and other non-Canadian foreign issuers) are prohibited from disclosing such information in their SEC filings, even if they are listed on the Toronto Stock Exchange ("TSX") or the TSX Venture Exchange ("TSX-V").

The inability to file Mineral Resource information in SEC filings significantly disadvantages non-Canadian companies. Figure 2 demonstrates the differences in Mineral Resource and Mineral Reserve reporting in SEC filings by U.S., Canadian and other foreign gold producing companies. Clearly, Canadian companies are reporting their pipeline of Mineral Resources, upon which their future viability depends, in their SEC filings, while U.S. and other foreign-based companies are unable to do so under Guide 7. Further, a majority of the mining companies we have surveyed have declared Mineral Resources that are two to five times Mineral Reserves (see Table 1). Under the CRIRSCO family of codes and standards (e.g. JORC, CIM (NI43-101), SAMREC, SME Guide, PERC, NAEN, Chilean etc.), these Mineral Resources must have reasonable prospects for eventual economic extraction and thus represent an important measure of the long-term prospects and viability of these companies, which is especially material to investors. Investors in U.S. and other non-Canadian companies are deprived of access to this information in SEC filings.

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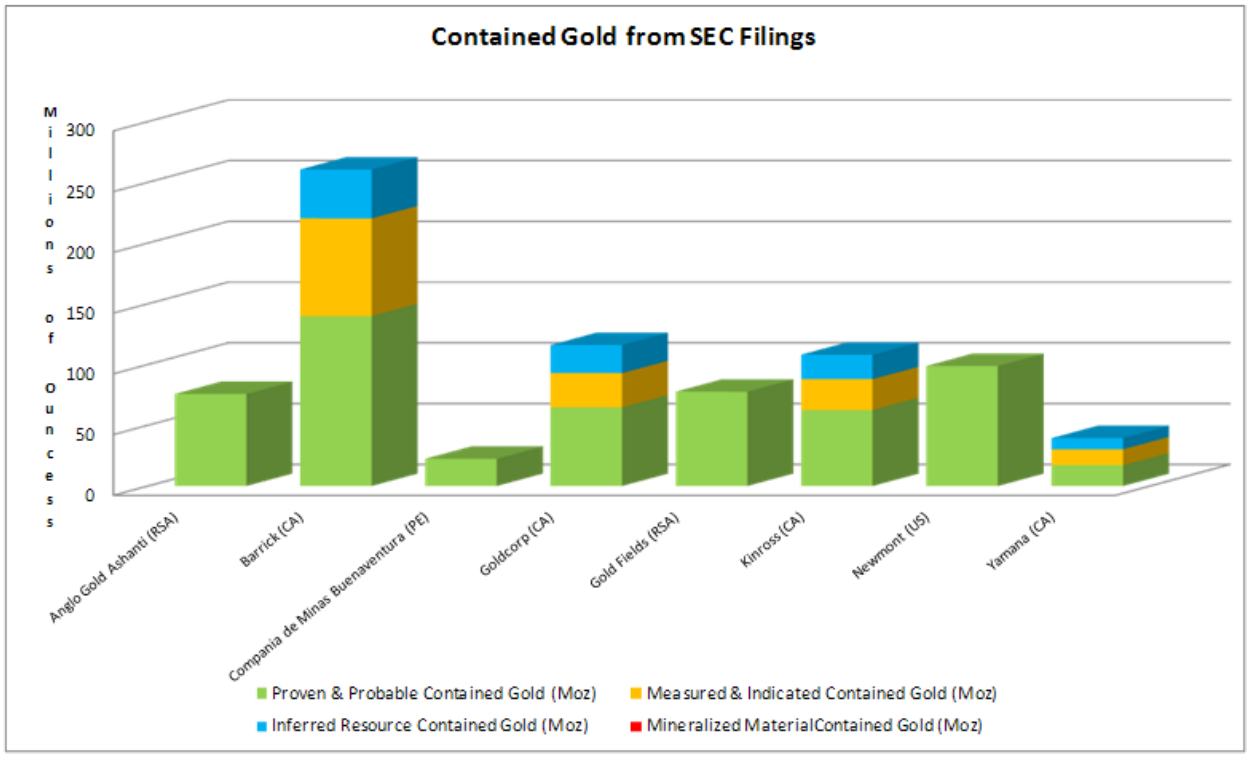
[4] See id.

[5] See Memorandum from Roger Baer, Senior Mining Eng'r, U.S. Sec. & Exch. Comm'n, to Peter Bradford, President & Chief Exec. Officer, Golden Star Res. Ltd. (Mar. 25, 2003) (on file with author) ("With the passage of National Instrument 43-101 into law, your disclosure using non-Commission reserve definitions and 'resource' estimates is allowed [for Canadian incorporated companies] under the exception in Instruction 3 to Paragraph (b)(5) of Industry Guide 7.").

[6] See Mitchell Krebs, Coeur d'Alene Mines Corp., SEC Comment Letter, 2008 WL 4545362 (June 12, 2008) ("It appears that you are referring to the accommodation noted in Instruction 3 to paragraph (b)(5) of Industry Guide 7, which is available to foreign companies and not to domestic companies in your response to comment 12. The listing provisions of the Canadian and Australian stock exchanges were developed by self-regulated entities and as such are not foreign law. Please modify your filing disclosure to remove your resource disclosures, and ensure your disclosures of mineralized material do not include inferred resources.").

Although comparisons between Canadian and non-Canadian companies based on SEC filings can be misleading, the effects of the disclosure discrepancies can be seen even when disclosures in non-SEC filings are analyzed. Table 2 provides a summary of market capitalization for gold companies per contained ounce of Mineral Reserves and per contained ounce of Mineral Reserves and Mineral Resources, combined. Canadian companies tend to have significantly higher valuations by this metric than non-Canadian companies.

Figure 2: Comparison of Disclosure Contained in SEC Filings by Gold Companies (2011)



CA = Canada, PE = Peru; RSA = Republic of South Africa; US = United States.

Table 1: Ratios of Mineral Resources to Mineral Reserves in Terms of Tonnage and Contained Metal

Company	Commodity	Tonnage Ratio	Contained Metal Ratio
Newmont (US)	Gold	0.57	0.43
Kinross (CA)	Gold	0.83	0.73
Goldcorp (CA)	Gold	0.97	0.79
Barrick (CA)	Gold	1.37	0.86
Anglo Gold Ashanti (RSA)	Gold	1.48	1.82
Compania de Minas Buenaventura (PE)	Gold	1.61	1.09
Yamana (CA)	Gold	1.63	1.31
Gold Fields (RSA)	Gold	1.64	2.29
Mosaic (US)	Potash	1.66	
Newcrest (CA)	Gold	2.28	1.83
Rio Tinto (UK)	Copper	2.34	1.70
Xstrata (UK)	Nickel	2.42	2.57
Hecla (US)	Silver	3.24	1.90
Coeur (US)	Silver	3.27	1.43
Anglo American (UK)	Copper	3.38	2.87
Anglo American (UK)	Coal	3.78	
BHP Billiton (AU)	Nickel	4.04	3.12
BHP Billiton (AU)	Copper	4.22	2.49
MMC Norilsk Nickel (RU)	Nickel	4.53	2.99
BHP Billiton (AU)	Iron Ore	4.60	4.64
Fortescue Metals (AU)	Iron Ore	4.61	4.09
Agrium (CA)	Potash	4.93	
Rio Tinto (UK)	Iron Ore	5.07	4.71
BHP Billiton (AU)	Coal	5.35	
Teck (CA)	Coal	5.56	
Antofagasta (CL)	Copper	5.64	4.52
Rio Tinto (UK)	Coal	6.00	
Pan American Silver (CA)	Silver	6.34	4.16
Potash Corporation (CA)	Potash	11.59	
Minimum		0.57	0.43
Maximum		11.59	4.71
Median		3.38	2.09
Mean		3.62	2.38

CA = Canada; CL = Chile; PE = Peru; RU = Russia; UK = United Kingdom; US = United States; RSA = Republic of South Africa.

Table 2: Comparison of Gold Companies' Market Capitalization and Valuation Per Contained Ounces of Gold in Mineral Reserves and in Mineral Resources + Mineral Reserves

Company	Market Capital-ization Millions USD	Proven & Probable Reserves Contained Gold (Moz)	Measured, Indicated, & Inferred Resources Contained Gold (Moz)	Reserves + Resources Contained Gold (Moz)	Market Value per Reserves Contained Ounce	Market Value per Resources and Reserves Contained Ounce
Anglo Gold Ashanti (RSA)	13,090	75.6	137.4	213.1	173	61
Gold Fields (RSA)	9,680	77.6	77.6	155.2	125	62
Kinross (CA)	10,510	62.6	45.5	108.0	168	97
Newcrest (AU)	21,050	78.3	135.1	213.4	269	99
Barrick (CA)	38,260	139.9	120.6	260.5	273	147
Newmont (US)	24,470	98.8	42.2	140.9	248	174
Goldcorp (CA)	33,100	64.7	51.3	116.0	512	285
Yamana (CA)	12,550	16.6	21.9	38.5	757	326
Randgold Resources Ltd. (RSA)	9,970	16.3	28.3	44.5	612	224
Agnico Eagle Mines Ltd. (CA)	8,250	18.8	19.3	38.1	440	217
IAMGOLD (CA)	5,060	13.3	10.7	24.0	380	211
Harmony Gold Mining (RSA)	3,670	41.6	122.3	163.9	88	22
Eldorado Gold (CA)	9,770	19.1	12.4	31.5	513	311
Compania de Minas Buenaventura (PE)	8,680	10.2	11.2	21.4	848	406
Canadian Companies	**117,500**	**334.8**	**281.7**	**616.5**	**351**	**191**
Non Canadian Companies	**90,610**	**398.4**	**554.0**	**952.4**	**227**	**95**

All ounces are attributable; Harmony Gold resources assumed to be inclusive of reserves
AU = Australia; CA = Canada; PE = Peru; RSA = Republic of South Africa; US = United States

The SEC has addressed two rather large conceptual matters informally through the comment letter process. First, it has allowed the disclosure of certain non-reserve information in filings with the SEC as "mineralized material." Mineralized material has been defined as "a mineralized body which has been delineated by appropriate drilling and/or underground sampling to establish continuity and support an estimate of tonnage with an average grade of the selected metals."[7] As further mandated in interpretive guidance, mineralized material may only be disclosed as in place tonnage and grade, and should not be disclosed as units of production (i.e., ounces of gold or pounds of copper). Mineralized material does not include material reported as reserves or tonnage and grades estimated by using geologic inference (the latter category is sometimes classed as Inferred Resources). The SEC has noted that it is permissible for mineralized material to consist of Measured and Indicated Resources,[8] thus recognizing that international standard definitions for Mineral Resources and their categories exist and are useful for providing parameters for non-reserve disclosures. When disclosing mineralized material, companies are instructed to include a legend or cautionary statement noting that the mineralized material will not qualify as a reserve until a comprehensive evaluation based upon unit cost,

[7] See Mitchell Krebs, Coeur d'Alene Mines Corp., SEC Comment Letter, 2008 WL 4545361 (Apr. 30, 2008).
[8] See Lars Pearl, Aurora Gold Corp., SEC Comment Letter, 2011 WL 7080489 (Sept. 7, 2011).

grade, recoveries, and other material factors concludes both legal and economic feasibility. Other than the guidance provided above, which has been provided to issuers through individual comment letters, the SEC has not provided guidance or requirements as to the estimation and reporting of mineralized material, and issuers may thus adopt the standard they find appropriate for such purposes. There is also no requirement that a distinction be made between Measured and Indicated mineralized material.

In practice, even with the SEC's accommodation on mineralized material, it appears that many larger companies choose not to report mineralized material in their SEC filings, but rely instead on Mineral Resource estimates provided in non-SEC filings, such as press releases, website postings, investor presentations, and annual reports. These companies appear to have recognized that the investor community is far more familiar with reporting in terms of Measured, Indicated and Inferred Mineral Resources backed by one or more of the CRIRSCO Template-compatible codes, than with estimates of mineralized material. The companies evidently feel strongly enough about this to do so, even though the SEC requires the disclosure of Mineral Resources to be accompanied by cautionary language.

Secondly, the SEC has acknowledged in comment letters that Guide 7 applies only to filings with the SEC and has permitted the disclosure of non-reserve resource information, labeled as such, on reporting issuers' websites and in their press releases, subject to the requirement to include cautionary language for U.S. investors. These disclosures have been allowed for U.S. domestic issuers, both foreign and U.S.-incorporated, and for foreign private issuers, and in most cases without any reference to foreign or state law requirements or stock-exchange listing requirements. Again, the SEC has not provided any specific standard in estimating or declaring Mineral Resources for this purpose. Further, these legends do nothing to address the differences between reserve statements under foreign codes and Industry Guide 7, so that the investor can form an opinion as to inherent risk.[9]

b. Commodity Pricing

The SEC requires the use, whenever possible, of historical prices in the estimation and reporting of reserves—currently in the form of not more than a three-year trailing average.[10] The SEC views this requirement as improving comparability between similar projects and eliminating subjectivity in price determination. However, it also creates inconsistencies between prices used for reserve estimation and prices used by management for planning purposes,

[9] Hecla Mining Company's 2011 Annual Report, which is a wrap of its Form 10-K, states the following: "Cautionary Note to Investors – The United States Securities and Exchange Commission permits mining companies, in their filings with the SEC, to disclose only those mineral deposits that a company can economically and legally extract or produce. **We use certain terms in this annual report, such as "resource," "other resources," and "mineralized materials" that the SEC guidelines strictly prohibit us from including with our filing with the SEC.** U.S. investors are urged to consider closely the disclosure in our Form 10-K, included in this report."

[10] See, e.g., Donald Neal, American Goldfields, Inc., SEC Comment Letter, 2005 WL 4796678 (June 14, 2005) ("It is the staff's position that prior to declaring reserves, the company should have obtained a 'final' or 'bankable' feasibility study, and employed the historical three-year average price for the economic analysis.").

including mine development and investment decisions. This requirement also creates inconsistencies with Mineral Reserve pricing requirements under U.S. Generally Accepted Accounting Principles ("GAAP") as described below.

c. Requirement for Bankable Feasibility Study to Declare Reserves

Guide 7 defines reserves as that part of a mineral deposit which could be economically extracted or produced at the time of the reserve determination. For new projects, the SEC requires a "final" or "bankable" feasibility study prior to the declaration of reserves.[11] Guide 7 does not contain any discussion of this requirement, which has instead been addressed in comment letters. To clarify these terms, the SEC has referred to checklists published by consulting companies.[12] A common understanding in the industry is that "bankable" implies that the confidence attached to the mining project developed in the study is sufficient for the project to be eligible for external debt financing. This is a higher standard than is required under other disclosure standards, and can result in a situation in which mineralization qualifies as reserves under other reporting standards, but not under Guide 7.[13] This can cause difficulties for cross-listed companies and companies engaged in business combinations with companies using different standards.

d. Generally Accepted Accounting Principles

The SEC definition of Mineral Reserves (which are not defined in U.S. GAAP) plays a critical role in financial reporting. SEC guidelines for reporting companies define the Mineral Reserves that are to be reported and used in the calculation of depreciation, depletion, and amortization. In other cases, including purchase price allocation in a business combination and impairment testing of mining assets, U.S. GAAP requires that consideration be given to Mineral Resources and exploration potential (components of the economic value in a mining asset beyond the value attributable to Proven and Probable Reserves, or "VBPP"), factoring in management's long-term outlook, including reasonable and supportable price forecasts for its mineral assets.[14] This occurs

[11] See, e.g., Melvyn Williams, Apollo Gold Corp., SEC Comment Letter, 2005 WL 4862853 (Dec. 29, 2005) ("Please note that . . . for undeveloped mines a final or bankable feasibility study should be completed before reserves are designated."); Fred W. Brackebusch, New Jersey Mining Co., SEC Comment Letter, 2005 WL 4902086 (May 17, 2005) ("It is the staff's position that proven or probable 'reserves' for a mineral property cannot be designated unless competent professional engineers conduct a detailed engineering and economic feasibility study, and the study demonstrates that a mineral deposit can be mined at a commercial rate and a profit made. This is the 'final' or 'bankable' feasibility study that is required to meet the requirements to designate reserves under Industry Guide 7.").

[12] See, e.g., Pincock, Allen & Holt, Inc., Pincock Perspectives: Minimum Engineering Study Requirements, Issue No. 70 (Sept. 2005), available at http://www.pincock.com/perspectives/Issue70-EngineeÉequirements.pdf; Pincock, Allen & Holt, Inc., Pincock Perspectives: Minimum Requirements for Feasibility Studies, Issue No. 34 (Sept. 2002), available at http://www.pincock.com/perspectives/Issue34-FeasibilityStudies.pdf.

[13] In Canada, for example, reserves may be declared at the conclusion of a pre-feasibility study.

[14] See FASB ASC 930-360 and 930-805 (formerly Emerging Issues Task Force, Fin. Accounting Standards Bd.), EITF Abstracts: Mining Assets: Impairment and Business Combinations, Issue No. 04-3 (Mar. 17–18, 2004), http://www.fasb.org/pdf/abs04-3.pdf.

despite the fact that the Mineral Resources that underlie the VBPP are precluded from being disclosed under Guide 7.

2. Development of Standards in Other Jurisdictions

Because of the international nature of the mining industry, a need for international standardization has long been recognized. A group of professional societies formed a committee in 1993, whose mission specifically includes the development of internationally acceptable guidelines for the definition, estimation, and public reporting of Mineral Resources and Mineral Reserves. This committee, known as CRIRSCO (Committee for Mineral Reserves International Reporting Standards), includes representatives of the U.S., Canada, Australia, South Africa, Europe, Chile, and Russia. Each of the member countries has developed national guidelines that follow essentially the same template.[15] These guidelines are similar to those in the SME 2007 Guide (as defined below).

Reporting codes and guidelines developed by national professional societies have been incorporated by reference in the disclosure standards applicable in Canada (NI 43-101 and the CIM (Canadian Institute of Mining, Metallurgy and Petroleum) Definition Standards), Australia (the Joint Ore Reserves Committee, or JORC, Code), South Africa (the South African Code for Reporting of Mineral Resources and Mineral Reserves, or SAMREC, Code), Chile (the Chilean Mining Code), and Russia (the NAEN Code). These codes, along with the Pan European Code (Pan-European Reserves and Resources Reporting Committee or PERC) have been recognized by the European Securities and Markets Authority (or ESMA). The definitions have also been accepted by the UN-ECE. Although there are differences between the reporting rules in various jurisdictions, the material provisions are the same as they relate to (i) the ability to report Mineral Resources using Measured, Indicated, and Inferred Resource categories, (ii) the clear relationships and definitions of Measured, Indicated, and Inferred Resources and Proven and Probable Reserves, (iii) the accepted use of management's future price estimates when estimating reserves, (iv) the requirement that Exploration Results, Mineral Resources, and Mineral Reserves be estimated by a "Competent or Qualified Person," who is a member of a professional association with an enforceable code of ethics, including the power to expel a member, (v) the type of study needed to determine resources and reserves as determined by the Competent or Qualified Person, (vi) broad application of the standard to all mineral-related disclosures by the issuer, (vii) disclosure that must be clear and unambiguous, and contain all material information required for investors and their advisers to make reasoned and balanced judgments, and (viii) the requirement that Mineral Resources must have reasonable prospects for economic extraction.

[15] International Reporting Template for the Public Reporting of Exploration Results, Mineral Resources and Mineral Reserves, July 2006, 33 pp, http://www.crirsco.com/template.

3. Efforts to Reform Guide 7

For a number of years, the mining industry has recognized a need to clarify and update Guide 7. In April 2003, SME met with SEC staff in Washington, D.C. to determine how SME could best assist the SEC and the mining industry in reaching this objective. At that meeting, SEC staff indicated that any change to Guide 7 would require a demonstration that the new rules would be equal to or more stringent than current practices. SEC staff also noted that the agency would prefer standards developed by the industry, in which SME should play an important role.[16] It was established that SME should develop industry recommendations and submit them to the SEC for its consideration. In 2004, SME formed the SEC Reserves Working Group/SME Resources and Reserves Committee (the "Committee") to accomplish these tasks. The Committee's recommendations were submitted to the SEC in April 2005 and were included in the Draft 2005 Guide.

After receiving no comments from the SEC on the Draft 2005 Guide, SME moved forward with the update and issuance of the 2007 Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves (the "2007 Guide"), which serves as the current basis of the Proposed Rules.[17] Since 2007, SME has continued to seek an audience with the SEC to further discuss reform, while working within the industry to garner support and understanding of the issues involved. SME again met with the SEC in December in 2011 to discuss the possibility of revising Guide 7; however, in a telephone conversation between John Reynolds of the SEC and Harry Parker on behalf of SME in February 2012, the SEC informed SME that no action was planned for the foreseeable future because of the commitment of the staff to other projects.

II. THE NEED TO REFORM GUIDE 7

A. Challenges Posed by Globalization

Mining has always been an international industry. Globalization has broadened the financial markets and listing opportunities available to companies and the reach of their investor base. Most large and many small mining companies operate and are publicly listed in more than one country.[18] Advances in technology, notably the internet, have made information, whether in the form of an SEC filing, annual report, press release, or investor presentation, available on a worldwide basis, which has made the unique disclosure requirements of Guide 7 increasingly obvious and problematic. Issuers must strive to reconcile their limited disclosure options under

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[16] See Jean-Michel Rendu, SME Meets with the SEC—Resources and Reserves Reporting Discussed, Mining Engineering Online, July 2003, at 35, http://web.cemr.wvu.edu/~dalexander/mine306/Resources%20Reporting%20SME%20Online%20July%202003,%20page%2035.htm.

[17] See infra Part III.

[18] For example, whereas approximately 12% of the issuers and 27% of the market value of TSX Venture Exchange-listed mining companies were dual-listed as of May 31, 2012, approximately 52% of the issuers and 88% of the market value of Toronto Stock Exchange-listed mining companies were dual-listed. Global Leaders in Mining, TMX Group (Jun. 21, 2012, 3:32 PM), http://www.tmx.com/en/listings/sector_profiles/mining.html.

Guide 7 with the industry-standard disclosures expected by their investors and perhaps required in other jurisdictions.

B. Guide 7 No Longer Meets SEC Disclosure Standards and Provides Inadequate Protection to Investors

The disclosure regime espoused by Guide 7 prevents companies from including all information material to management and investors in a company's SEC reports. In various other contexts, including the overhaul of the oil and gas reporting rules and in guidance regarding Management Discussion & Analysis, or MD&A, the SEC has stressed the importance of company disclosure that reflects the material factors that management considers in analyzing its business and making strategic and operational decisions. The consideration of Mineral Resource estimates is fundamental to a mining company. A company's ability to discuss the status of its projects and the probability that future growth and development will occur, quantified in a consistent way, is vital. Although the SEC has allowed resource information to be presented on company websites, in press releases, and in investor presentations,[19] this is merely a work-around and still leaves a company with incomplete SEC disclosure and the need to reconcile its filings with its other disclosures. Mineralized material is not an adequate substitute for resource disclosure because (1) of the lack of clear guidance as to what is covered by mineralized material,[20] (2) the term is not accepted in the industry, and (3) it excludes Inferred material. Mining professionals and investors think in terms of Mineral Resources and expect disclosure to that effect.

Guide 7's failure to require suitably qualified and experienced persons to prepare and review Mineral Resource and Mineral Reserve estimates undermines the reliability of even Guide 7-compliant Mineral Reserve estimates. Further, Guide 7 does not address the quality and reliability of mineralized material estimates in SEC reports or in the Mineral Resource estimates allowed to be disclosed on company websites and in press releases and investor presentations. As discussed above, the guidance on both topics is limited, with issuers able to establish their own reporting practices. This regime makes the application of appropriate internal and disclosure controls difficult, which is at odds with the SEC's strong focus on such matters since the adoption of the Sarbanes-Oxley Act of 2002. Both Mineral Reserve and Mineral Resource estimates must be supported by appropriately detailed studies that are fully documented in order to observe good corporate governance and facilitate audits and other independent or internal checks on the accuracy of estimates. The lack of a requirement for studies prepared by Competent Persons pursuant to specified standards makes fraud and inaccurate disclosures with

[19] See, e.g., Scott A. Caldwell, Allied Nevada Gold Corp., SEC Comment Letter, 2011 WL 7061966 (June 2, 2011) ("We note that your website and some press releases refer to or use the terms 'measured,' 'indicated,' and 'inferred,' resources. If you continue to make references on your web site or press releases to reserve measures other than those recognized by the SEC, please accompany such disclosure with cautionary language such as the following . . . .").

[20] For example, there is no requirement in Guide 7 or in relevant SEC comments that such material meet the "reasonable prospects for economic extraction" requirement that is embedded in the international codes as a safeguard to prevent reporting of material that is unlikely to be converted to reserves with more work.

respect to Mineral Reserve and mineralized material/Mineral Resource estimates both more likely and harder to detect, which in turn undermines investors' confidence in U.S. mining companies.

C. Anti-competitive Effects of Industry Guide 7

Guide 7, though cutting-edge at the time of its adoption, is widely viewed by the mineral industry as incomplete and out-of-date. The full requirements of Guide 7 are not readily apparent, with issuers and their counsel left to discover the SEC's views on various topics through comment letters. The requirements are at odds with international conventions as discussed above, which causes difficulties for cross-listed companies reporting in multiple jurisdictions. All of these factors decrease the attractiveness of the U.S. market to current and potential reporting companies. In light of increased globalization, companies have more choices as to which capital markets to access. Although the U.S. still presents one of the largest markets and thus will attract companies on that basis alone, there is a marked reluctance, particularly among exploration-stage mining companies, to pursue initial listings in the U.S. This harms our stock exchanges, as well as our financial markets.

The success of Canada's NI 43-101 stands in stark contrast to the current challenges facing mining companies in the U.S. Since the adoption of NI 43-101, Canada has become the jurisdiction of choice for mining companies, particularly junior mining companies, seeking financing and public listings. As of December 31, 2011, approximately 1,646 (or 59%) of the world's 2,803 mining companies were listed on the TSX (371 issuers) or the TSX-V (1,275 issuers).[21] Out of more than 2,251 equity financings completed globally in 2011, 90% were for companies listed on the TSX and TSX-V.[22] These financings represented a total of $31.4 billion in equity capital—40% of which was raised on the TSX and TSX-V.[23] Further, private and public mining companies in the U.S. often use NI 43-101 standards for the estimation of Mineral Resource and Mineral Reserves whether they are listed in Canada or not, which strengthens respect for and allegiance to the Canadian market.

In addition to the potential negative impact on stock price caused by uncertainty and confusion under Guide 7 disclosure standards, U.S. companies' stock prices are likely negatively affected by the inability to disclose Mineral Resources and discuss their exploration and development projects in a meaningful manner under the imprimatur of an SEC filing. The cautionary language required in any non-SEC disclosure is sufficiently harsh as to prejudice such disclosure as unreliable in the opinion of the SEC, even though the SEC has not reviewed the disclosure. This is particularly true for the junior, exploration stage companies that are flocking to Canada.

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[21] See Global Leaders in Mining, TMX Group (Sept. 24, 2012, 5:00 PM), http://www.tmx.com/en/listings/sector_profiles/mining.html.
[22] See id.
[23] See id.

D. Need for Support of Mining Industry in the U.S. and National Security Considerations

President Obama has given clear directives to Congress and U.S. governmental agencies to improve regulation and regulatory review, while also "promoting economic growth, innovation, competitiveness, and job creation."[24] Mining is a core industry in the U.S., with seventy-eight major commodities produced in the United States and approximately 350,000 people working directly in mining throughout the U.S.[25] It is estimated than nearly three million additional jobs are generated by industries that support mining.[26] In addition, U.S. mining companies provide domestic production of a broad array of metals and minerals, and it has become increasingly apparent that the U.S. needs to secure certain rare-earth elements within the U.S. to reduce reliance on foreign sources, particularly China.[27] The update of Guide 7 would be a substantial step in supporting U.S. mining companies and putting them on a more even footing with foreign companies.

E. Guide 7 Provides Inadequate Notice to Issuers of their Disclosure Obligations

As noted above, the full requirements of Guide 7 are not clear from the text of the rule, but instead are discernible only from comprehensive review of SEC comment letters. Since these letters are the only SEC guidance on several Guide 7 disclosure topics, their positions have essentially become mandatory and with legal effect for issuers. However, even when an issuer or its counsel has had sufficient exposure to prior SEC guidance to approximate SEC-compliant disclosure, the issuer has no assurance that the SEC will not change its position on a disclosure issue, a concern that is particularly acute for the U.S. issuer accommodations allowing mineralized material disclosures in SEC filings and Mineral Resource disclosures in the non-SEC documents discussed above.[28]

The current state of affairs is unfair to U.S. mining companies and conflicts with the strong public policy considerations favoring formal rulemaking procedures.

III. THE PROPOSED RULES

SME, in preparing its recommendations to the SEC in 2005 and in setting forth its proposal in this Petition, recognizes certain basic principles. It has carefully considered the

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[24] See Executive Order 13563: Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821, 3821 (Jan. 21, 2011).
[25] See Soc'y for Mining, Metallurgy & Exploration, supra note 1; Brandon, supra note 1; Colorado Mining Ass'n (June 15, 2012), http://www.coloradomining.org/mc_miningfacts.php.
[26] See Colorado Mining Ass'n, supra note 25.
[27] See Cindy Hurst, Institute for the Analysis of Global Security (IAGS), China's Rare Earth Elements Industry: What Can the West Learn?, 6, 13, 21 (Mar. 2010), http://www.iags.org/rareearth0310hurst.pdf.
[28] In fact, issuers are required to acknowledge in their responses to SEC comments that changes made in response to SEC comments do not foreclose the SEC from taking action with respect to the filing and that SEC comments cannot be asserted as a defense in any proceeding initiated by the SEC or any other person under the federal securities laws of the United States.

mission of the SEC, which is to protect investors and maintain the integrity of the securities markets. As stated on the SEC website, all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it. The SEC requires public companies to disclose meaningful financial and other information to the public, thereby providing a common pool of knowledge for all investors to use and judge for themselves if a company's securities present a good investment opportunity. Only through the steady flow of timely, comprehensive and accurate information can people make sound investment decisions. To meet the SEC's requirements for disclosure, a company must make available all information, whether it is positive or negative, that might be relevant to an investor's decision to buy, sell, or hold the security. SME has also taken into account mining and financial auditing industry best practices.

The main principles that governed the deliberations of the SME and its recommendations concerning public reporting are transparency, materiality, and competence.

- *Transparency* requires that the reader of a public report is provided with sufficient information, the presentation of which is clear and unambiguous, so as to understand the report and not to be misled.

- *Materiality* requires that a public report contain 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, or Mineral Reserves being reported.

- *Competence* requires that the public report be based on work that is the responsibility of suitably qualified and experienced persons who are subject to an enforceable professional code of ethics and rules of conduct.

These principles form the basis of all international codes and guidelines. In addition, the SME considers that the following relevant principles should be satisfied to provide U.S. and international investors with information needed to make sound decisions:

- *Consistency between Financial and Technical Reports*: Financial reports take into account Mineral Resources and Mineral Reserves and are based on assumptions concerning commodity prices and other parameters of significance. To be clear and unambiguous, technical and financial information should be published on a comparable basis, making the same basic assumptions. Where financial reporting makes use of reserve estimates (e.g., in depreciation, depletion, and amortization calculations), it should use reserve estimates made in accordance with accepted guidelines. Where financial reporting makes use of information that is also used in reserve estimates, such as commodity prices or other particulars of life-of-mine plans, this information should be consistent with that used in the reserve estimates.

► *Consistency between Financial Markets*: For global companies, transparency can only be achieved if information is reported on a consistent basis in all financial markets. Only then can the information supplied to all investors be identical, clear and unambiguous.

► *Development of Good Practice Guidelines*: In addition, the SME recognizes the importance of defining good practice guidelines, which take into account:
- The need for consistent and reliable estimation and reporting of Mineral Resources and Mineral Reserves;
- The increased requirements by the SEC for adequate procedures and internal controls in the estimation of Mineral Reserves;
- The need to assist the SEC in fulfilling its mission; and
- The need to support the interests of shareholders and investors.

A. Summary of Proposed Rules

Stated below are the critical components of the Proposed Rules.

1. Reporting of Mineral Resources

The reporting of Mineral Resources is fundamental to full and transparent disclosure of a company's assets and long-term plans and should be part of a company's public disclosures. Reporting of Mineral Resources should align with internationally-accepted principles of transparency, materiality, and competence as promulgated in the CRIRSCO template. Resources should be categorized for Measured, Indicated, and Inferred classes separately and should be reported exclusive of Reserves (e.g., meaning that Resource quantities do not contain declared Reserves).

2. Competent Person

New reporting rules within the U.S. should incorporate the concept of a Competent Person. A Competent Person is an engineer, geoscientist, or other mining professional who must have a minimum of five years' experience that is relevant to the style of mineralization and type of deposit under consideration and to the activity which that person is undertaking. The Competent Person must belong to a self-regulated professional organization (such as a Registered Member of SME) of engineers, geologists, or geoscientists that 1) admits individuals on the basis of their academic qualifications and experience; 2) requires compliance with the professional standards of competence and ethics established by the organization; and 3) has disciplinary powers, including the power to suspend or expel a member.

3. Technical and Economic Study Requirements for Reserves

Reserves should be based on a properly defined, adequately scoped and professionally executed study of the viability of a mineral project. The study must have advanced to the stage

where mining and mineral processing methods are defined and permitting is determined to be feasible. Realistic production and/or sales schedules must have been developed for the life of the project, including estimates of capital and operating costs. For projects with a very long life, the study must be sufficient to justify investments needed for current and planned production, as well as ongoing investments that will be needed to maintain long-term operations.

For new projects, the study must include a financial analysis, based on realistically assumed mining, metallurgical, infrastructure, economic, marketing, legal, environmental, social and governmental factors, which is sufficient for a Competent Person, acting reasonably, to determine if all or part of the Measured and Indicated Mineral Resource may be converted to a Mineral Reserve.

For the addition of Mineral Reserves to an existing operation or project, the study must be thorough enough to ensure that, in the opinion of the Competent Person, the previously declared Mineral Reserve combined with the new addition can be reported as a Mineral Reserve.

4. Pricing

Commodity prices used for the determination of Mineral Reserves should be based on forward-looking estimates reflecting management's reasonable short- and long-term expectations as supported by available evidence. The basis for the selected prices must be justified and supported by appropriate documentation. The Competent Person must ascertain that these prices are consistent with historical prices or with sales agreements and marketing determinations.

5. Applicability of Proposed Rules

New reporting rules would apply to all disclosures by U.S. reporting companies, including SEC reports, press releases, investor presentations and website postings.

B. Proposed Definitions

The definitions set forth below are suggested for inclusion in the Proposed Rules and should be considered in conjunction with Figure 1. The definitions were agreed within CRIRSCO in November 2011 and by the SME's Resources and Reserves Committee in February 2012. The CIM Definition Standards as amended (2010)[29] are compatible with and/or incorporate the Proposed Rules. The CIM Definition Standards (2010) were incorporated by reference in the 2011 update of NI 43-101. For additional information regarding these definitions and their proposed application, please also see the SME's 2007 Guide.[30]

[29] See CIM Definition Standards (Nov. 27, 2010), available at http://web.cim.org/UserFiles/File/CIM_DEFINITON_STANDARDS_Nov_2010.pdf

[30] The SME Guide to Reporting Exploration Results, Mineral Resources and Mineral Reserves, SME Resources and Reserves Committee, 47 pp (Sept. 29, 2007), http://www.smenet.org/docs/publications/enews/Sme_Guide_for_Reporting_Exploration_Results_2007.pdf.

1. Public Reports

Public Reports are reports prepared for the purpose of informing investors or potential investors and their advisers on Exploration Results, Mineral Resources, or Mineral Reserves. They include, but are not limited to, annual and quarterly company reports, press releases, information memoranda, technical papers, website postings, and public presentations.

2. Competent Person

A Competent Person is a minerals industry professional that is a member of a recognized association with enforceable disciplinary processes, including the powers to suspend or expel a member. A Competent Person must have a minimum of five years' relevant experience in the style of mineralization or type of deposit under consideration and in the activity which that person is undertaking.

3. Modifying Factors

Modifying Factors are considerations used to convert Mineral Resources to Mineral Reserves. These include, but are not restricted to, mining, processing, metallurgical, infrastructure, economic, marketing, legal, environmental, social, and governmental factors.

4. Exploration Results

Exploration Results include data and information generated by mineral exploration programs that might be of use to investors but which do not form part of a declaration of Mineral Resources or Mineral Reserves.

5. Mineral Resource

A Mineral Resource is a concentration or occurrence of material of economic interest in or on the Earth's crust in such form, grade or quality, and quantity that there are reasonable prospects for eventual economic extraction. The location, quantity, grade or quality, continuity, and other geological characteristics of a Mineral Resource are known, estimated, or interpreted from specific geological evidence and knowledge, including sampling.

6. Inferred Mineral Resource

An Inferred Mineral Resource is that part of a Mineral Resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. Geological evidence is sufficient to imply but not verify geological and grade or quality continuity. An Inferred Resource has a lower level of confidence than that applying to an Indicated Mineral Resource and must not be converted to a Mineral Reserve. It is reasonably expected that the majority of Inferred Mineral Resources could be upgraded to Indicated Mineral Resources with continued exploration.

7. Indicated Mineral Resource

An Indicated Mineral Resource is that part of a Mineral Resource for which quantity, grade or quality, densities, shape, and physical characteristics are estimated with sufficient confidence to allow the application of Modifying Factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit. Geological evidence is derived from adequately detailed and reliable exploration, sampling, and testing and is sufficient to assume geological and grade or quality continuity between points of observation. An Indicated Mineral Resource has a lower level of confidence than that applying to a Measured Mineral Resource and may only be converted to a Probable Mineral Reserve.

8. Measured Mineral Resource

A Measured Mineral Resource is that part of a Mineral Resource for which quantity, grade or quality, densities, shape, and physical characteristics are estimated with confidence sufficient to allow the application of Modifying Factors to support detailed mine planning and final evaluation of the economic viability of the deposit. Geological evidence is derived from detailed and reliable exploration, sampling, and testing and is sufficient to confirm geological and grade or quality continuity between points of observation. A Measured Mineral Resource has a higher level of confidence than that applying to either an Indicated Mineral Resource or an Inferred Mineral Resource. It may be converted to a Proved Mineral Reserve or to a Probable Mineral Reserve.

9. Mineral Reserve

A Mineral Reserve is the economically mineable part of a Measured and/or Indicated Mineral Resource. It includes diluting materials and allowances for losses, which may occur when the material is mined or extracted and is defined by studies at Pre-Feasibility or Feasibility level as appropriate that include application of Modifying Factors. Such studies demonstrate that, at the time of reporting, extraction could reasonably be justified.

10. Probable Mineral Reserve

A Probable Mineral Reserve is the economically mineable part of an Indicated, and in some circumstances, a Measured Mineral Resource. The confidence in the Modifying Factors applying to a Probable Mineral Reserve is lower than that applying to a Proved Mineral Reserve.

11. Proved Mineral Reserve

A Proved Mineral Reserve is the economically mineable part of a Measured Mineral Resource. A Proved Mineral Reserve implies a high degree of confidence in the Modifying Factors.

12. Pre-Feasibility Study

A Pre-Feasibility Study is a comprehensive study of a range of options for the technical and economic viability of a mineral project that has advanced to a stage where a preferred mining method, in the case of underground mining, or the pit configuration, in the case of an open pit, is established and an effective method of mineral processing is determined. It includes a financial analysis based on reasonable assumptions on the Modifying Factors and the evaluation of any other relevant factors that are sufficient for a Competent Person, acting reasonably, to determine if all or part of the Mineral Resource may be converted to a Mineral Reserve at the time of reporting. A Pre-feasibility Study is at a lower confidence level than a Feasibility Study.

13. Feasibility Study

A Feasibility Study is a comprehensive technical and economic study of the selected development option for a mineral project that includes appropriately detailed assessments of applicable Modifying Factors, together with any other relevant operational factors, and detailed financial analysis that are necessary to demonstrate at the time of reporting that extraction is reasonably justified (economically mineable). The results of the study may reasonably serve as the basis for a final decision by a proponent or financial institution to proceed with or finance the development of the project. The confidence level of the study will be higher than that of a Pre-Feasibility Study.

IV. CONCLUSION

The time has come to acknowledge the international nature of the mining industry and the need for comprehensive, uniformly accepted and understood standards for the reporting of Exploration Results, Mineral Resources and Mineral Reserves. Guide 7, though cutting-edge at the time of its adoption, is incomplete, ambiguous and out-of-date. Its unique disclosure limitations harm U.S. mining companies and undermine investor confidence in the U.S. markets. SME urges the SEC to take this opportunity to reform Guide 7, thus strengthening the U.S.'s position in the international mining industry, and giving individual U.S. mining companies the opportunity to compete on a level playing field. The SME offers its support and assistance in this process.

Sincerely,

David L. Kanagy
Executive Director, Society for Mining, Metallurgy and Exploration
cc: Davis Graham and Stubbs LLP