

# SEC Adopts Rules to Modernize Property Disclosures Required for Mining Registrants

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*Washington D.C., Oct. 31, 2018 —*

The Securities and Exchange Commission today announced that it has voted to adopt amendments to modernize the property disclosure requirements for mining registrants, and related guidance, under the Securities Act of 1933 and the Securities Exchange Act of 1934. The amendments will provide investors with a more comprehensive understanding of a registrant’s mining properties, which should help them make more informed investment decisions. The amendments also will more closely align the Commission’s disclosure requirements and policies for mining properties with current industry and global regulatory practices and standards.

Under the final rules, a registrant with material mining operations must disclose specified information in its Securities Act and Exchange Act filings concerning its mineral resources, in addition to its mineral reserves. Current Commission rules and guidance permit the disclosure of non-reserve estimates only in limited circumstances. Requiring the disclosure of mineral resources in addition to mineral reserves will provide investors with important information concerning the registrant’s operations and prospects.

“The final rules will modernize the Commission’s mining property disclosure regime by improving the quality and reliability of information provided to investors and by harmonizing disclosures with international standards, including removing the restriction on disclosure of mineral resource estimates that may have placed U.S. registrants and investors at a disadvantage,” said SEC Chairman Jay Clayton. “We appreciate the valuable input that we have received from a diverse group of interested parties that helped inform the Commission and shape the final rules.”

The final rules include several other requirements designed to further the protection and understanding of investors. The final rules also reflect a number of changes to the rules proposed in June 2016 in response to commenters.

The final rules provide a two-year transition period so that a registrant will not be required to begin to comply with the new rules until its first fiscal year beginning on or after Jan. 1, 2021.

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## **FACT SHEET**

### **Modernization of Property Disclosures for Mining Registrants**

#### *Action*

The Commission has adopted amendments to modernize the property disclosure requirements for mining registrants, and related guidance, under the Securities Act of 1933 and the Securities Exchange Act of 1934. The amendments more closely align the Commission’s disclosure requirements and policies for mining properties with current industry and global regulatory practices and standards. In addition, the amendments rescind Industry Guide 7 and consolidate the disclosure requirements for registrants with material mining operations in a new subpart of Regulation S-K.

These amendments are intended to provide investors with a more comprehensive understanding of a registrant’s mining properties, which should help them make more informed investment decisions.

#### *Highlights of the Final Rules*

Under the final rule amendments, as proposed and consistent with global standards as embodied by the Committee for Reserves International Reporting Standards (“CRIRSCO”), a registrant with material mining operations must disclose specified information in its Securities Act and Exchange Act filings concerning mineral resources that have been determined on one or more of its properties. Current Commission rules and guidance permit the disclosure of

non-reserve estimates, such as mineral resources, only in limited circumstances. Requiring the disclosure of mineral resources in addition to mineral reserves will provide investors with important information concerning the registrant's operations and prospects.

Also as proposed, and consistent with the CRIRSCO standards, the final rule amendments require a registrant's disclosure of exploration results, mineral resources, or mineral reserves in Commission filings to be based on and accurately reflect information and supporting documentation prepared by a mining expert--the "qualified person." This requirement will further the protection of investors by helping to foster proper risk assessment and disclosure, which is key to an investor's understanding of each stage of a mining project.

As proposed, the final rule amendments require a registrant to obtain a dated and signed technical report summary from the qualified person or persons, which identifies and summarizes the information reviewed and conclusions reached by each qualified person about the registrant's mineral resources or mineral reserves determined to be on each material property. A registrant must file the technical report summary as an exhibit to the relevant Commission filing when disclosing mineral reserves or mineral resources for the first time or when there is a material change in the mineral reserves or mineral resources from the last technical report summary filed for the property. The technical report summary filing requirement will not only help ensure that the registrant's disclosure in the Commission filing is accurate and reliable, but also will enhance investor understanding of a registrant's material mining properties.

#### *Principal Changes from the Proposed Rules*

The final rule amendments include a number of changes to the proposed rules in response to commenters. These changes would more closely align the Commission's mining property disclosure requirements with the CRIRSCO standards and thereby help decrease, relative to the proposed rules, the compliance burden and costs for the many registrants that are subject to one or more of the CRIRSCO-based codes, while preserving important investor protections. For example, among the changes, the final rules:

- Require a qualified person to use a price for each commodity that provides a reasonable basis for establishing estimates of mineral resources or mineral reserves, which may be a historical or forward-looking price, as long as the qualified person discloses and explains his or her reasons for using the selected price, including the material assumptions underlying the selection
- Provide that a qualified person will not be subject to expert liability under Section 11 of the Securities Act for certain aspects of specified modifying factors outside the expertise of the qualified person that are based on information provided by the registrant and are discussed in the technical report summary or other parts of the registration statement
- Eliminate the proposed quantitative presumptions regarding when a registrant's mining operations, and when a change in previously reported estimates of mineral resources or mineral reserves, are deemed to be material
- Eliminate the proposed summary disclosure provision requiring specific items of information in tabular format about a registrant's top 20 properties and, instead, adopt a more principles-based approach by requiring the registrant to provide investors with an overview of its properties and mining operations
- Reduce the number of summary and individual property disclosure provisions requiring tables from seven, as proposed, to two, and permit other required disclosure to be in either narrative or tabular format
- Permit, but not require, a registrant to file a technical report summary to support its disclosure of exploration results
- Permit the disclosure of exploration targets in Commission filings if accompanied by certain specified cautionary and explanatory statements
- Permit a qualified person to determine mineral resources and reserves at any specific point of reference, which must be disclosed in the technical report summary, rather than at three points of reference
- Permit a qualified person to include inferred resources in an economic analysis that the qualified person opts to include in an initial assessment as long as certain conditions are met
- Define "mineral reserve" to include diluting materials and allowances for losses that may occur when the material is mined or extracted

- Permit a qualified person to conduct either a pre-feasibility or final feasibility study to support a determination of mineral reserves even in high risk situations
- Permit the use of historical estimates of mineral resources or reserves in Commission filings pertaining to mergers, acquisitions, or business combinations if the registrant is unable to update the estimate prior to the completion of the relevant transaction, provided that the registrant discloses the source and date of the estimate, and does not treat the estimate as a current estimate
- Permit a registrant holding a royalty or similar interest to omit any information required under the summary and individual property disclosure provisions to which it lacks access and which it cannot obtain without incurring an unreasonable burden or expense

The final rules also clarify that a third-party firm, which employs a qualified person, may sign the technical report summary and provide the written consent required for an expert under the Securities Act.

*Compliance Date*

The Commission adopted a two-year transition period so that a registrant will not begin to comply with the new rules until its first fiscal year beginning on or after Jan. 1, 2021. A registrant may voluntarily comply with the new rules prior to the compliance date, subject to the Commission's completion of necessary EDGAR reprogramming changes. Guide 7 would remain effective until all registrants are required to comply with the final rules, at which time Guide 7 would be rescinded.

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