

Key Milestone towards the Standardisation of Mineral Reserve and Resource Reporting

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The US Securities and Exchange Commission (the “SEC”) has proposed to modernise its rules for mineral property disclosure and more closely align them with international regulatory standards and practices. The SEC has published proposed rules for comment and the comment period will end on 26 August 2016. The announcement, including a link to the complete proposed rules, is available on the [SEC’s website](#).

The proposed rules follow coordinated efforts by industry participants over a period of more than ten years to reform the US mineral reserve disclosure requirements, which are currently set out in Item 102 of Regulation S-K under the Securities Act (“Item 102”) and Industry Guide 7 “*Description of Property by Issuers Engaged or to Be Engaged in Significant Mining Operation*” (“Guide 7”). The proposed rules would more closely align US disclosure requirements with standards published by the Committee for Mineral Reserves International Reporting Standards (“CRIRSCO”), an international initiative to standardise market-related reporting definitions for mineral resources and mineral reserves. CRIRSCO standards have been adopted by mining and metallurgical institutions and accepted by regulators in almost all other prominent jurisdictions for public capital raising for the mining sector, including Australia, Canada, South Africa, Hong Kong and the United Kingdom.

The Society for Mining, Metallurgy and Exploration, Inc., which is based in the US, has produced its Guide for Reporting Exploration Results, Mineral Resources, and Mineral Reserves (the latest being the 2014 version) (the “SME Guide”). The SME Guide generally follows the CRIRSCO standards, and therefore differs from the current requirements of Item 102 and Guide 7 in certain respects. The proposed rules would make the regulatory disclosure requirements in the US generally consistent with the recommendations in the SME Guide.

The proposed rules would result in the elimination of Guide 7 and an amendment to Item 102. Among other changes, Form 20-F, which is used by foreign private issuers for registration statements and annual reports, would be revised to require such issuers to provide all of the information required under the proposed rules.

Highlights

Highlights of the SEC’s proposed rule include:

- Registrants would be required to disclose information about “material”¹ mining operations. Mining operations would be presumed to be material if the mining assets constitute 10 per cent. or more of total assets, however, operations below that threshold may still be material on the basis of other quantitative or qualitative factors described in the proposed rules.
- Companies would be required to disclose mineral resources (classified as inferred, indicated and measured mineral resources) and material exploration results. Guide 7 currently prohibits the disclosure of

¹ Under Rule 405 of the Securities Act “material” relates to matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security.

estimates other than proven or probable reserves in SEC filings, unless the information is required to be disclosed by foreign law. Canada is currently the only jurisdiction which the SEC recognises as having laws which require the disclosure of mineral resources. Consequently, companies based in other jurisdictions are not permitted to disclose mineral resources in any US disclosure, even where such disclosure is provided in their home jurisdiction. Guide 7 does not currently refer to disclosure of exploration results, although such disclosure is permitted.

- Disclosure of mineral resources, mineral reserves and material exploration results would be required to be based on supporting documentation prepared by a “qualified person”, which is similar to the recommendation in the SME Guide. Item 102 and Guide 7 do not currently include such a requirement. A “qualified person” would be defined to be a mineral industry professional with at least five years of relevant experience in the type of mineralisation and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant. The qualified person must be an eligible member or licensee in good standing of a recognised professional organisation at the time the technical report is prepared, although the SEC does not propose to maintain a list of prescribed recognised professional organisations. Consistent with most jurisdictions applying CRIRSCO-based standards, the SEC has also not included a requirement regarding independence (though it has solicited comment on this point).
- Registrants would be required to obtain and file a technical report summary prepared by the qualified person covering each material property. The summary would be filed as a separate exhibit to public filings in order to support disclosure of mineral resources, mineral reserves, and material exploration results. Item 102 and Guide 7 do not require the preparation and filing of a separate technical summary. The summary would need to include disclosure of mineral resources and mineral reserves at the end of the most recently completed fiscal year, by commodity and geographic area, and for each property containing 10 per cent. or more of the registrant’s mineral reserves or 10 per cent. or more of the registrant’s combined measured and indicated mineral resources. To the extent such summaries are included in a registration statement for the offering of securities, the qualified person would be an “expert” subject to liability under Section 11 of the Securities Act.
- Mineral price estimates used in determining the economic viability of reserves and resources would be limited to a price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, unless prices can be supported by contractual arrangements. Under existing SEC guidance, a three-year average is to be used. Under the SME Guide, prices are only required to be reasonable and supportable.

A summary of the current and proposed US rules and recommendations from the SME Guide are included in the appendix below.

Access to US Capital Markets

At present, mining companies outside of the US are faced with inconsistent requirements between their home jurisdictions and those in the US, particularly in relation to the disclosure of mineral resources. The conflict exists both with respect to registered (public) offerings in the US and offerings in the private placement market, where the practice is to provide disclosure which is generally consistent with that which would be required for a public offering. By more closely aligning US rules with international standards the proposed rules should reduce costs and simplify access to the US equity and debt capital markets for foreign mining companies. It should also make it less burdensome for mining companies (both US and foreign) to maintain dual stock exchange listings with one listing on a US stock exchange and one elsewhere.

Simplifying M&A Transactions

Inconsistencies between disclosure standards in the US and internationally have proven to be problematic for potential foreign acquirors of public US companies in the mineral resource sector, because such target companies may not have (at least on the public record) information which is needed for the offeror to satisfy disclosure and other regulatory requirements in their home jurisdiction. A prime example is the requirement for London and Hong Kong listed mineral companies proposing to undertake a transaction involving the acquisition of significant mineral resources or rights. These are subject to requirements under the U.K. listing rules or Hong Kong listing rules (as the case may be) for tests based on mineral reserves and resources and the requirement for the inclusion of a mineral expert’s report in the circular to shareholders. The proposed

rules should make such requirements easier to fulfill, because such information would already be publicly available in a format that is either already sufficient for the home jurisdiction (e.g., the ESMA guidelines (which apply for the purposes of the U.K. Listing Rules) already accept and recognise the SME standard as an acceptable reporting standard) or requires only limited restatement and/or reconciliation. Of course, those exchanges will need to be satisfied that the new SEC rules mandate a standard of disclosure comparable to their own recognised standards, but this is a reasonable expectation given the alignment of the SEC's proposed rules with the SME standard.

Appendix

	Existing Item 102 and Guide 7	Proposed SEC Rule	SME Guide
Threshold for disclosure of mining operations	Required for registrants engaged in "significant" mining operations. Registrants are directed to take into account both quantitative and qualitative factors. In practice, the SEC has used 10 per cent. of total assets as a benchmark.	Required if mining operations are "material" to business or financial condition. Mining operations presumed to be material if constituting 10 per cent. or more of total assets. Operations below that threshold may still be material on the basis of other factors.	Not specified as this is a regulatory matter and not within the scope of the guide.
Disclosure of mineral resources	Prohibited unless required by applicable foreign law.	Required and classified into inferred, indicated and measured mineral resources.	Required and classified into inferred, indicated and measured mineral resources.
Disclosure of exploration results	Not required, but permitted.	Material exploration results required to be disclosed for each material property.	Disclosure is required if it could materially influence the economic value of the deposit to the company.
Reserves based on preliminary feasibility study or final feasibility study	Mineral reserves must be based on a (final) feasibility study.	Mineral reserves may be based on preliminary feasibility study or final feasibility study.	Mineral reserves may be based on preliminary feasibility study or final feasibility study.
Definitions of mineral reserve and mineral resources	Not consistent with CRIRSCO.	Generally consistent with CRIRSCO.	Generally consistent with CRIRSCO.
Competent person	Only requires disclosure of the name of the person estimating the reserves and the nature of such person's relationship to the registrant. No requirement for independence and no specific requirement as to	A "qualified person" is a mineral industry professional with at least five years of relevant experience in the type of mineralisation and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the	A "competent person" is a minerals industry professional who is a Registered Member of the SME or an eligible member of an approved Recognised Professional Organisation included in a list promulgated by the SME. The competent

	expertise.	registrant. The qualified person must be an eligible member or licensee in good standing of a recognised professional organisation at the time the technical report is prepared. There is no prescribed membership class or prescribed set of organisations. There is no requirement for independence.	person must have a minimum of five years relevant experience in the style of mineralisation or type of deposit under consideration and in the activity which that person is undertaking. A report must disclose whether the competent person is independent with respect to the entity and the project.
Technical report	No requirement for a technical report	A technical report summary must be obtained and filed for each material mining property.	Not specified as this is a regulatory matter and not within the scope of the guide.
Estimate of mineral prices for cut-off grade estimation	Nothing is specified in rules. Staff guidance that commodity prices used in mineral reserve estimation should not exceed a 3-year trailing average.	Commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year or reasonable price set by contractual arrangements.	Commodity prices used in mineral resource reporting should be based on a reasonable and supportable range of commodity prices.

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