

## Mining and Natural Resources Law

June 27, 2016

### SEC Proposes New Mining Disclosure Rules

The Securities and Exchange Commission (SEC) this month unveiled proposed rules intended to modernize the disclosure requirements for SEC-registered companies engaged in mining activities. If implemented, the proposed rules would align the SEC's disclosure regime with current industry and global regulatory practices, including Canada's National Instrument 43-101.

The SEC's Industry Guide 7, long considered to be outdated, has become an outlier in a global industry. In addition to harmonizing the U.S. disclosure requirements with the CRIRSCO-based mining codes, the proposed rules would also codify mining disclosure requirements in SEC rules and provide greater clarity to market participants who have criticized the SEC's inconsistent policies.

#### Highlights of the Proposed Rules

- Requiring a registrant to provide mining disclosures if its mining operations are material to its business or financial condition, with the presumption that a registrant's mining operations are material if its mining assets constitute 10% or more of its total assets.
- Requiring a registrant with more than one property to provide summary disclosure concerning its combined mining activities, in addition to disclosure for individual properties.
- Ensuring that a company's public declaration of exploration results and mineral resources and reserves are supported by the findings of a "Qualified Person", being a mineral industry professional having the relevant level of expertise who would be deemed an "expert" for the

purposes of U.S. securities laws. The proposed rules do not mandate that the Qualified Person be independent from the company, but if the Qualified Person is affiliated with the registrant, the nature of the relationship would have to be disclosed.

- Permitted disclosure of exploration results and mineral resources, in addition to mineral reserves, for each of the company's material properties. This approach is consistent with the CRIRSCO rules and places U.S. registrants on a level playing field with Canadian and non-U.S. mining registrants, removing the current restriction to disclosure of only proven and probable reserves.
- Permitting disclosure of mineral reserves based on a preliminary feasibility study or a feasibility study.
- Requiring the Qualified Person to write a technical summary report in "plain English" to supplement the disclosure of mineral resources, mineral reserves, or material exploration results for each material property.

The proposed rules would apply to SEC-registered mining companies, both U.S. and foreign, but would expressly exempt Canadian MJDS issuers from the new disclosure requirements. Notably, Canadian issuers who are not MJDS-eligible would have to comply with both the SEC's proposed rules as well as the rules under the current Canadian regime.

The full text of the SEC's proposed rules and request for comments can be found at <https://www.sec.gov/rules/proposed/2016/33-10098.pdf>. Comments are due within 60 days of the rule proposal being published in the Federal Register. Some commentators predict that due to the complexity and novelty of the new rules it could take a year or more before the SEC implements the proposed rules.

For further information regarding the proposed mining disclosure rules, please contact any member of our Mining and Natural Resources Group.