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April 28 - May 1 2019

SEC RULE S-K 1300: MODERNIZATION OF PROPERTY DISCLOSURE FOR MINING REGISTRANTS

SEC RULE S-K 1300: MODERNIZATION OF PROPERTY DISCLOSURE FOR MINING REGISTRANTS



Brief Background

- The SEC published its Proposed Rule on June 16th, 2016. Many respondents submitted comments to the SEC, mostly in opposition to the rule.
- The SEC published its Final Rule on October 31st, 2018. (Press release 2018-248, SEC file S7-10-16)
- The Final Rule appeared in the Federal Register on December 26th, 2018. (Federal Register Vol. 83, No. 246, pp.66344-66461). The Final Rule is effective February 25th, 2019, with a compliance date of January 1st, 2021, for public registrants.
- Reporting by Industry Guide 7 will not be allowed after January 1st, 2021.

AGENDA

SEC RULE S-K 1300: MODERNIZATION OF PROPERTY DISCLOSURE FOR MINING REGISTRANTS

ROUND TABLE DISCUSSION (MINUTES) 28

- Introductions 04
- History and Background on S-K 1300 09
- Discussion: Industry Concerns 15
 - Materiality, Confidentiality, and Liability

AUDIENCE Q&A 20

Ask the “experts” anything!

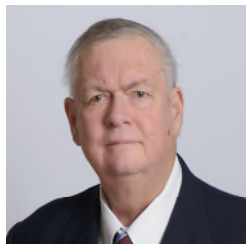
CLOSING INFORMATION 02

Where to find additional information

INTRODUCTIONS

PANELISTS

SEC RULE S-K 1300: MODERNIZATION OF PROPERTY DISCLOSURE FOR MINING REGISTRANTS



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CONSULTING LLC



HISTORY AND BACKGROUND OF S-K 1300

30 Years of Work

THE SEC AND MINING DISCLOSURE

- The SEC was created by the Securities Exchange Act of 1934.
- The SEC cited Herbert Hoover's 1909 definitions of proved and probable ore in 1938 in its first reported mining fraud case (in the matter of Platoro Gold Mines, 3 SEC 872).
- Mining disclosure guides were first developed in the old Form S-3 for mining issuers and for Regulation A in 1939.
- The mining disclosure guides were updated in 1981 for the then-fairly new Form S-18 (Release 33-6299).
- The Form S-18 mining disclosure language was re-issued unchanged as Industry Guide 7 in 1992 when S-18 was abandoned.

THE SEC AND MINING DISCLOSURE

Industry Guide 7 (text 1981)

Simple and flexible, but...

- Industry Guide 7 covers all types of solid minerals.
- Industry Guide 7 covers the basic definitions and general disclosure topics.
- Industry Guide 7 prohibits quantification of exploration information and resources.
- Mistakenly included “measured” and “indicated” in the definitions due to USGS Circ. 831.
- In 1981 the SEC’s technical staff realized that they were not in a position to draft what was subsequently published as *SME Guide*, JORC Code, CRIRSCO, etc.
- The current *SME Guide*, JORC Code, CRIRSCO, etc. represent thousands of hours of work by hundreds of mining professionals over the past 30 years.
- The SEC’s technical staff started referring issuers and their counsel to the *SME Guide* for guidance as soon as the first edition was published in April 1991.

THE SEC AND MINING DISCLOSURE

Industry Guide 7 (text 1981)

Simple and flexible, but...

1989: SME Working Party #79 is formed to assist in answering Industry questions

1989: A subcommittee of Working Party #79 is formed

Jean-Michel Rendu (Chair)

Tracy Barnes (Mining)

David Abbott (SEC Denver)

Stan Dempsey (Legal)

Sam Adams (Geology)

New members were added over time, as needed to fully represent all relevant expertise (geology, mining, processing, marketing, economic evaluation, environmental, financial, legal, etc.)

Working Party #79 used the 1989 JORC Code as its foundation while emphasizing **mining and processing** as well as geology.

THE SEC AND MINING DISCLOSURE

1993-2001: International standardization

- 1999: CRIRSCO, The Combined Reserves International Reporting Standards Committee
 - “To continue coordination between member countries of the development of international standards for the definition and reporting of Exploration Results, Mineral Resources and Mineral Reserves”
 - Replaces the CMMI International Definitions Group
 - Now known as the “Committee for Mineral Reserves International Reporting Standards” - CRIRSCO
 - Chile joined CRIRSCO in 2002: First non-English reporting code that follows international definitions
 - As of 2018 CRIRSCO membership included 13 countries or regions

THE SEC AND MINING DISCLOSURE

2002-2008: SEC considers need to modernize

- 2003: International Conference on Public Reporting, Reston, Virginia
 - “Reporting Mineral Resources and Reserves, an International Conference on Regulatory, Financial, Legal, Accounting, Managerial and other Aspects Pertaining to the External Reporting of Mineral Resources and Reserves”
 - Organized by SME; J.M. Rendu conference chairman
 - Presentations by stock exchange regulators from US (Roger Baer, Senior Mining Engineer, SEC), Australia, and Canada
 - Presentations by experts in all relevant expertise:
 - corporate management, accounting, legal, finance
 - geology, exploration, mining, processing, environment, social license to operate
 - international standardization and other issues

THE SEC AND MINING DISCLOSURE

2002-2008: SEC considers need to modernize

- 2005: “Recommendations Concerning Estimation and Reporting of Mineral Resources and Mineral Reserves”
 - Report submitted to the SEC by the "SEC Reserves Working Group/SME Resources and Reserves Committee". Participation from Australia, Canada, South Africa, UK
 - Discusses issues related to public reporting of technical, financial and accounting information:
 - Commodity pricing
 - Publication of mineral resources
 - Technical and economic study requirements
 - Permitting and legal requirements
 - Competent person
- Comments were to be sent to J.M. Rendu (general and technical) or Dick Graff (financial and accounting).
- SEC did not respond in writing. At Reston conference SEC spokesman Roger Baer said investors could not distinguish between resources and reserves; many “positive” feasibility studies led to failed mines.

THE SEC AND MINING DISCLOSURE

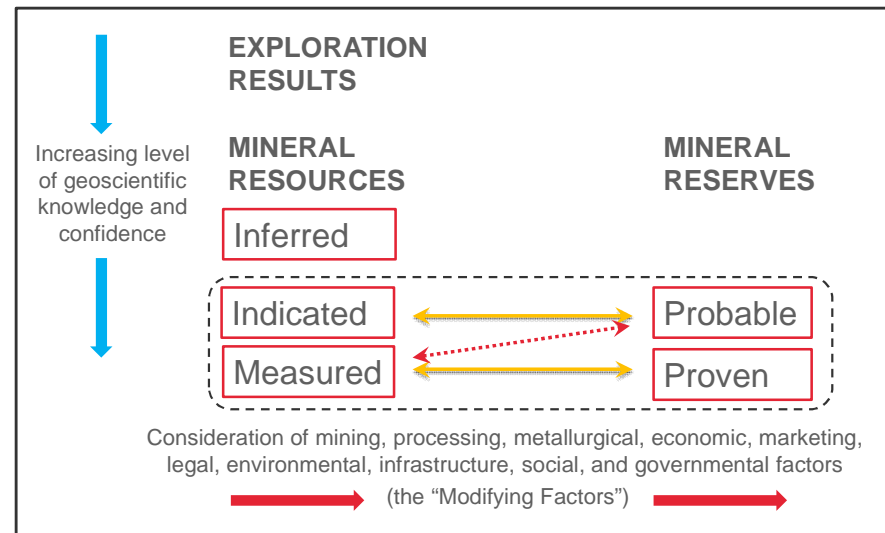
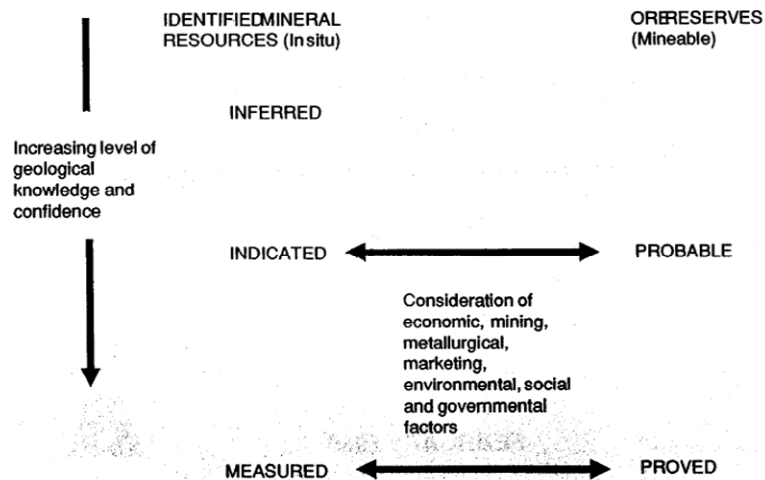
2002-2008: SEC considers need to modernize

- 2006: SME Registered Member
 - New class of membership is approved
 - Code of ethics
 - Admissions committee
 - Disciplinary committee
- 2007: Third version of SME Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves.
- 2007-2008: Annual conversations with Roger Schwall at SEC show no interest in modernizing disclosure requirements for mining companies.

THE SEC AND MINING DISCLOSURE

1989 JORC Code Figure 1 Compared to 2017

Figure 1. - REPORTING TERMINOLOGY



THE SEC AND MINING DISCLOSURE

JORC Code and The SME Guide



- SME clearly recognized that international definitions based on the JORC approach were far better than Industry Guide 7.
- 1996: David Abbott, at that time with SEC, said that SEC tended to adopt international standards as replacements when they were widely accepted.
- Thus, I and other SME members concluded that Denver Accord, CRIRSCO etc. should be backed, and from 2007 onwards bringing in new members of CRIRSCO was of tantamount importance (Russia, Mongolia, Brazil, Kazakhstan, Indonesia, Colombia, Turkey admitted from 2010 to 2018).
- **Thank you, David Abbott and all members of CRIRSCO**, for their efforts to recruit new members.
- Ongoing recruitment in India, China, Argentina, Philippines, Kyrgyz Republic, Mozambique, Ghana.
- Very important that codes, standards and guides follow the CRIRSCO Template and new members strictly follow Terms of Reference, including an ethics code and discipline of Competent Persons by Professional Organizations.

THE SEC AND MINING DISCLOSURE

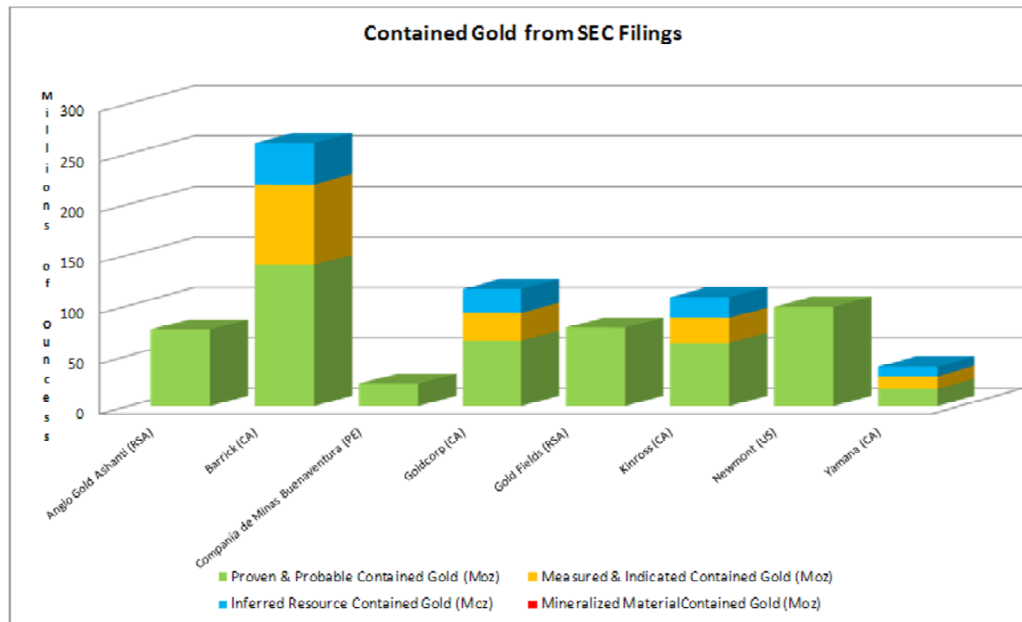
2011-2018: The SME engages the SEC

- 2011: SEC reorganizes Division of Corporation Finance. Reconstituted mining group interested in meeting SME. Two-hour meeting held at SEC Headquarters in Washington in December 2011.
- 2012: Recommendations for replacing Industry Guide 7 reach Senior Associate Director level and were not given sufficient priority to take action.
- 2012: National Mining Association becomes involved and tries to garner congressional support. Some members of congress write letters to SEC. No action results.
- 2012: SME submits a petition for rule making.

THE SEC AND MINING DISCLOSURE

2012 Petition for rule making

Key point is that Canadian companies can report mineral resources (yellow and blue).



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

THE SEC AND MINING DISCLOSURE

2012 Petition for rule making

Company	Market Capitalization 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

Key point is that Canadian companies can report mineral resources (yellow and blue).

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

351 **191**
227 **95**

THE SEC AND MINING DISCLOSURE

2016 SME comments on proposed rule S-K 1300

- Development of CRIRSCO codes, standards and guides as the international standard governed by the principles of competency, materiality, transparency.
- Proposed Rule S-K 1300 requires additional disclosure in an attempt to cover all requirements an investor might require.
- Preparation is onerous. Perhaps the forced use of a maximum commodity price that is a 24-month backward average is the best example. The CRIRSCO codes use supportable consensus pricing based on contracts, forward-looking market forecasts.
- The required disclosure tables for exploration information, mineral resources and mineral reserves are unnecessarily complex, the tables may be extremely large, and may present information that is anticompetitive and immaterial.

THE SEC AND MINING DISCLOSURE

2016-2017 SME/NMA actions



- NMA meets with SEC Commissioners. Commissioners ask for NMA/SME to develop an alternative they would like to see adopted.
- SME and NMA form joint working committee.
- SME legal counsel Lee Terry advises revision of Industry Guide 7 to include CRIRSCO Standard Definitions.
- Interpretation of Definitions to be based on SME 2017 Guide for Reporting Exploration Information, Mineral Resources and Mineral Reserves (to be updated as necessary).
- Revised Industry Guide 7 and SME Guide submitted in June and July 2017.

THE SEC AND MINING DISCLOSURE

Summary of the 2009-2019 process

- Another 10 years of considerable effort on the part of the SME Resources and Reserves Committee, in coordination with regulators, legislators, NMA, accounting and legal firms.
- New SEC regulations (Rule S-K 1300) are issued in 2018, that are essentially compatible with the CRIRSCO guidelines. SME comments on 2016 proposed Rule are considered and adopted in releases dated October 31, 2018 and December 26, 2018.
- A critical role of the SME Committee remains to assist the mining industry in developing understanding, acceptance, and compliance with the new regulations.
- In the years to come, as the industry endeavors to comply, the SEC clarifies interpretation of the new regulations, and worldwide regulations keep-up with changing times, the need for adjustments will no doubt become evident.
- It took “only” 30 years!

DISCUSSION: INDUSTRY CONCERNS

Materiality, Confidentiality, and Liability

MATERIALITY

Top Industry Concern: When must I have a Technical Report Summary Prepared?

- What is a Technical Report Summary (TRS)?
 - How does it compare to Canada's NI 43-101 F1? How does it differ?
- Does every mineral property require a TRS?
- Summary disclosure versus Individual Disclosure
 - What is required for summary disclosure?
- Must all drillhole data be disclosed?

TECHNICAL REPORT SUMMARY

- Summary of material information for an investor extracted and summarized from technical studies
- Plain language
- Must not include large amounts of technical or project data
- 601(b)(96)(iii) sets out specific content required

TECHNICAL REPORT, S-K 601(b)(96) VS NI 43-101

S-K 601 Table of Contents (TRS)		NI 43-101 F1 Table of Contents (TR)	
1	Executive Summary	1	Summary
2	Introduction	2	Introduction
3	Property Description	3	Reliance on Other Experts
4	Accessibility, Climate, Local Resources, Infrastructure and Physiography	4	Property Description and Location
5	History	5	Accessibility, Climate, Local Resources, Infrastructure and Physiography
6	Geological Setting, Mineralization, and Deposit	6	History
7	Exploration	7	Geological Setting and Mineralization
8	Sample Preparation, Analyses, and Security	8	Deposit Types
9	Data Verification	9	Exploration
10	Mineral Processing and Metallurgical Testing	10	Drilling
11	Mineral Resource Estimates	11	Sample Preparation, Analyses and Security
12	Mineral Reserve Estimates	12	Data Verification
13	Mining Methods	13	Mineral Processing and Metallurgical Testing
14	Processing and Recovery Methods	14	Mineral Resource Estimates
15	Infrastructure	15	Mineral Reserve Estimates
16	Market Studies	16	Mining Methods
17	Environmental Studies, Permitting, and Plans, Negotiations, or Agreements with Local Individuals or Groups	17	Recovery Methods
18	Capital and Operating Costs	18	Project Infrastructure
19	Economic Analysis	19	Market Studies and Contracts
20	Adjacent Properties	20	Environmental Studies, Permitting and Social or Community Impact
21	Other Relevant Data and Information	21	Capital and Operating Costs
22	Interpretation and Conclusions	22	Economic Analysis
23	Recommendations	23	Adjacent Properties
24	References	24	Other Relevant Data and Information
25	Reliance on Information Provided by the Registrant	25	Interpretation and Conclusions
		26	Recommendations
		27	References
			Title Page, Signature Page, TOC, List of Illustrations

All Properties

Required for
MRMR

"Advanced Property"
(Reserves based on a PFS
or FS), or Resources (an
IA))

All Properties

DOES EVERY MINERAL PROPERTY REQUIRE A TRS?

- Depends on materiality
- Materiality - Information that would be important to a reasonable investor in deciding whether to purchase or sell a security
- Materiality judgements often depend on whether information is material to the company as a whole or to the specific disclosure being made
- Mineral Properties that are more than 10% of a company's value are considered “Material” and would require a TRS.

WHAT'S DIFFERENT BETWEEN NI 43-101 AND TRS?

Differences:

- 1) Geologic Setting and Mineralization is combined with Deposits
- 2) Exploration is combined with Drilling
- 3) No QP certificates, registrant must determine qualifications.
- 4) Recovery Methods is now Process and Recovery Methods
- 5) Reliance on Others Experts is now Reliance on Information Provided by Registrant
- 6) No exceptions for Producing Issuers – Mineral Reserves must include economic analysis
- 7) Preliminary Economic Assessments are called Initial Assessments
- 8) Disclaimer for Initial Assessments: “Unlike mineral reserves, mineral resources do not have demonstrated economic viability.”

S-K 601(b)(96) MORE PRESCRIPTIVE

- Property description requirements
- Mandatory discussion of geotechnical and hydrological information, including sampling and testwork, under the “Exploration” heading
- **All** drill data disclosure, if data not used then explanation
- QP mineral resource opinion statements are required
- Much stricter rules on process plants using processing methods that have not previously been used to commercially extract the valuable product. Cannot report Mineral Resources or Mineral Reserves for project that requires a process plant that hasn’t previously been used commercially.
- No allowance for limited reliance disclaimers
- More stringent requirements for Market studies
- Contract descriptions required whereas Form 43-101F1 just asks to identify the contracts
- More social license information required
- QP adequacy statements related to environmental compliance, permitting, and social license
- Capital and operating cost estimate, ranges, and contingencies
- Economic analysis requirements

SUMMARY DISCLOSURE VERSUS INDIVIDUAL DISCLOSURE

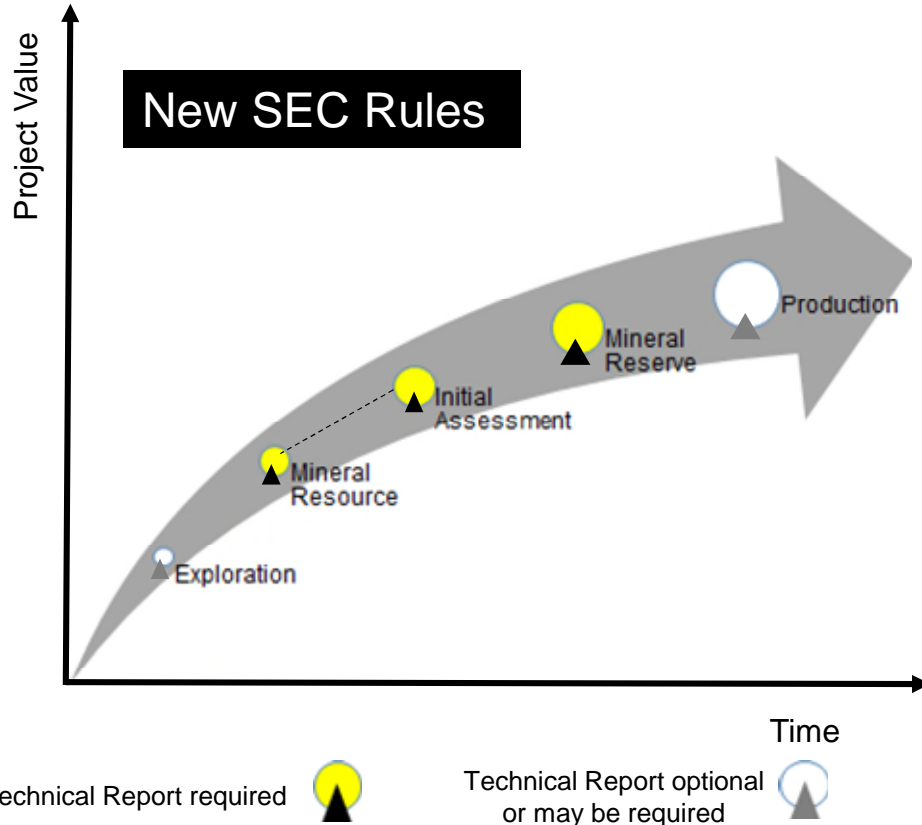
Summary Disclosure (229.1303)

- Includes all the registrant's mineral properties
- Includes a map or maps of all properties, overview of the mining properties and operations and a summary of all mineral resources and mineral reserves
- Disclosed at the end of the most recently completed fiscal year by commodity and geographic location and for each property containing 10% of more of the registrant's combined Measured and Indicated Mineral Resources or 10% of the registrant's Mineral Reserves
- As per format in Table 1 (Mineral Resources) and Table 2 (Mineral Reserves)

Individual Disclosure (229.1304)

- Material mineral properties
- Specific requirements for information to be disclosed
- If Mineral Resources or Mineral Reserves, must be disclosed in a specific formation in Table 1 and Table 2 specifically

GUIDE 7 VS THE NEW RULES MINERAL PROJECT STAGES



Individual Property Disclosure

- 1) TRS only required under item 1304
- 2) Those that report Mineral Resources after Jan 1, 2021 say March 2021 in a 10K or 10Q must be compliant
- 3) TRS must be filed with reporting

CONFIDENTIALITY

Top Industry Concern: Disclosure of sensitive information will be harmful to the business

- What has S-K 1300 changed with respect to confidentiality for mining registrants?
 - Staff discretion for rules versus Industry Guide
 - Greater amount of mandatory disclosures
- Confidential treatment requests (CTR) under Rule 83 of SEC Rules of Practice
 - 2019 – March 29th, SEC published the FAST Act which allows for confidential information to be omitted from filings. <https://www.sec.gov/news/press-release/2019-38>
 - Simplify disclosure or the disclosure process, including changes that would allow registrants to omit confidential information from most exhibits [601(b)(10) Material Contract Exhibits] without filing a confidential treatment request, and changes to Management's Discussion and Analysis that allow for flexibility in discussing historical periods.
 - "At this time, we are not expanding this approach to other exhibits [e.g. 601(b)(96)] required by Item 601, given the specialized subject matter and specific considerations relevant to each exhibit."
- Invoking confidentiality will be viewed as an exception and will require legal advice. (Lee Terry)

QUALIFIED PERSONS

S-K 1300 Definition

(1) “A qualified person is a mineral industry professional with at least five years of relevant experience in the type of mineralization and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant.” ¹

(2) “An eligible member or licensee in good standing of a recognized professional organization at the time the technical report is prepared.” ¹

¹ Regulation S-K §229.1300 (Item 1300) Definitions

QUALIFIED PERSONS

Liability

- Multiple QPs can author a report.
- QP is not subject to “expert liability”¹ for findings and conclusions regarding aspects of specific “modifying factors” based on information provided by others.
- If a QP is employed by a third-party firm, the third-party firm can be the entity executing the consent form, thus alleviating the QP of liability as an expert.
- If the QP is an employee of the Registrant, the QP must provide written consent, thus assuming liability as an expert.

¹ - Section 11 of the Securities Act of 1933, 15 U.S. Code §77k

QUESTIONS FROM THE AUDIENCE

Questions and comments about how S-K 1300 will affect your business.

ADDITIONAL RESOURCES

WHERE TO FIND THE SME GUIDE AND THE SEC RULE(S)

<http://www.smenet.org>

The screenshot shows the SME website interface. At the top, there is a navigation bar with links: SHOPPING CART, STORE, FULL CALENDAR, CONTACT US, JOIN, and LOGIN. Below this is a search bar with the text "Search by Keyword or Item". The main navigation menu is blue and includes: About SME, Membership, Events & Professional Development, Students, and Publications & Resources. The Publications & Resources menu is expanded, showing a grid of links: Overview, For Educators, Resources, and Publications. The Resources section is further expanded, listing various items: eNews Newsletter, Engineering and Technology History Wiki, Latest Industry Headlines, Minerals Marketplace, NMA CORESafety, OneMine, Photo Contest, Podcasts, SME Guide for Reporting, SME Valuation Standards, Stewart R. Wallace Memorial Library, Technical Briefings, and Webinars. A red arrow points to the "SME Guide for Reporting" link. Another red arrow points to the "Publications" section of the expanded menu.

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SME Society for Mining, Metallurgy & Exploration

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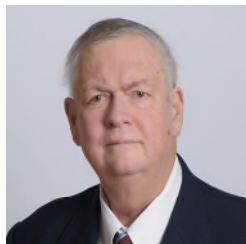
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PANELISTS

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PRACTICES/INDUSTRIES

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