



The SEC's New Regulation S-K 1300 For Mining Property Disclosure

The SEC's response to three decades of joint advocacy by SME and
The National Mining Association

Presented by the SME Resources and Reserves Committee

February 26, 2019

SME Annual Meeting

Colorado Convention Center

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Welcome and opening remarks by Ian Douglas (Co-chair SME Resources and Reserves Committee)

Today's panel discussion of the SEC's new Regulation S-K 1300 has been organized by the SME Resources and Reserves Committee (SME R&R Committee) that has been involved in public reporting of Resources and Reserves for many years and has issued updates to the *SME Guide* as well as organized discussions and selected meetings with staff of the SEC.

There are three primary goals to this discussion:

1. Provide you with background and chronology on how mining disclosure has evolved from 1934 to this new disclosure rule.
2. Describe, discuss, and explain the new Rule S-K 1300 (and how it might apply to your situations).
3. Discuss some of the legal issues that may impact some of you or your companies in updated disclosure.

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Discussion format

To meet our goals, the format chosen was to break the meeting into four panel discussions and a closeout session. In each session, the panel will present introductory slides, followed by questions and discussions covering:

- **Panel 1:** Chronology and history of mining disclosure inside and outside the United States
- **Panel 2:** New Rule S-K 1300 main sections
- **Panel 3:** New Rule S-K 1300 disclosure obligations, comparisons to other codes, and implementation
- **Panel 4:** Legal issues and how to work with the SEC's staff
- **Closeout:** The path forward for the *SME Guide* and CRIRSCO (Committee for Mineral Reserves International Reporting Standards)

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Welcome by Donald Doe representing the National Mining Association

- Successful outcome of close collaboration
- Key components
 - Industry collaboration
 - Revitalizing work
 - Congress
 - Agency
- Goal—make industry more competitive and harmonize reporting with international standards
- Appreciation for everyone's collaborative: NMA members, SME, our allies on the Hill, and SEC, especially Chairman Clayton, Commissioner Stein, Commissioner Piwowar, and Commissioner Jackson, and the Division of Corporation Finance.
- Implementation

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Panel No. 1

Introductory chronology

1934 through Industry Guide 7	David Abbott
Working Party 79 to early <i>SME Guide</i>	J.M. Rendu
First <i>SME Guide</i> , Denver Accord, Reston	
Conference, sessions to answer SEC questions	
2008-2018 <i>SME Guide</i> Updates, SEC engagement	Harry Parker
2015-2018 development of S-K 1300	Kwame Awuah-Offei

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SEC mining disclosure policy 1934 through Industry Guide 7

David M. Abbott, Jr.
SEC Geologist for Full Disclosure and Enforcement
from 1975 to 1996
and
Senior Associate, Behre Dolbear & Company
1996 to present

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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.

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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 mineral 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 Table 1 in the *SME Guide*, JORC Code, CRIRSCO Template, etc.
- The current *SME Guide*, JORC Code, CRIRSCO Template, 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.

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Industry Guide 7’s definition of reserves

Reserve. That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination.

Note: Reserves are customarily stated in terms of “ore” when dealing with metalliferous minerals; when other materials such as coal, oil shale, tar, sands, limestone, etc. are involved, an appropriate term such as “recoverable coal” may be substituted.

This definition gets directly to the goal of mineral exploration and development, saleable product, without the perambulation through exploration and resources to reserves. It’s worth remembering.

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“New” mining disclosure provisions in 1981

- Added “and legally” to the definition of *reserves*. This made explicit what had been implicit in the definition. It also more clearly included permitting requirements.
- Added definitions of *exploration stage*, *development stage*, and *production stage* for the purpose of prohibiting the accounting profession’s definition of *development stage* in the financial statements of mining firms lacking reserves. This purpose is retained in S-K 1300 although not explicitly stated.
- The introductory note encouraged issuers to ask the technical staff questions and provided direct phone numbers.

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Basic principle: professional judgment is required

“Estimations of [reserves] are, in the final analysis, expressions of judgment predicated on knowledge and experience. An estimation of [reserves], however, purports to be more than an arbitrary determination—it seeks to attach value as a consequence of method. No specific method of estimat[ion of reserves] is required, but the method used must be an orthodox method, in accordance with orthodox definition of terms, and the one best adapted to the making of reliable estimations of [reserves] for the property in question.”

SEC, 1939, Schedules A & C for Reg. B; “reserves” replaces “recoverable oil and gas.”

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1988-2009 The first 20 years

Jean-Michel Rendu

Chair Working Party #79 (1988-1996)

Chair SME Committee on Resources and Reserves (1996-2009)

Founding Member of Committee for Mineral Reserves International
Reporting Standards (CRIRSCO)

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1988-1992: The foundations

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.

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1988-1992: The foundations

- 1991: First Version of "A Guide for Reporting Exploration Information, Resources and Reserves" (The SME Guide)
 - Presented to the SME Board of Directors by Working Party #79
 - Published in *Mining Engineering*, April 1991
 - Comments requested from SME membership
- 1992: The *SME Guide* is approved by SME
 - The *Guide* is *strongly recommended to be used* by all members of SME
 - Statement is included that *SEC reporting requirements may not be consistent with the content of The Guide*
 - Legal advice should be sought before making public statements

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1993-2001: International standardization

- 1997: "The Denver Accord"
 - CMMI International Definitions Group meets in Denver
 - Provisional agreement on definitions of Mineral Resources and Mineral Reserves
- 1998: Agreement to incorporate CMMI definitions in UN-ECE document
 - Meeting of CMMI International Definitions Group with Task Force of United Nations Economic Commission for Europe (UN-ECE), Geneva, Switzerland
 - Mission of UN-ECE Task Force: develop International Framework Classification for Mineral Resources and Mineral Reserves
 - 2009: CRIRSCO definitions formally included in UN Framework Classification

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1993-2001: International standardization

- 1998: Canadian “*National Instrument (NI)-43-101-Standards of Disclosure for Mineral Projects*”
 - Proposed 1998
 - Implemented 2000
- 1999: Second Version of “*A Guide for Reporting Exploration Information, Mineral Resources and Mineral Reserves*”
 - “Denver Accord” definitions
 - “Competent Person”



1993-2001: International standardization

- 1999: CRIRSCO, The Combined Reserves International Reporting Standards Committee
 - Replaces the CMMI International Definitions Group
 - “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”
 - 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



2002-2008: SEC considers need to modernize

- 2002: Sarbanes-Oxley Act of 2002
 - Fraudulent reporting by financial institution: Congress requires SEC rules changes
 - SEC. 404. Management assessment of internal controls
 - (a) RULE required: The Commission shall prescribe rules requiring each annual report...to contain an internal control report, which shall:
 1. State the responsibility of management for establishing and maintaining an adequate internal control structure and procedures...
 2. Contain an assessment...of the effectiveness of the internal control structure and procedures...
 - (b) INTERNAL control evaluation and reporting: with respect to the internal control assessment...each registered public accounting firm that prepares or issues the audit report...shall attest to, and report on, the assessment made by the management.

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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

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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.

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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.

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2002-2008: SEC considers need to modernize

- 1999-2008: Incorporation of CRIRSCO international standards in country rules and regulations for public reporting
 - Australia (1989)
 - South Africa (2000)
 - Canada (2001)
 - Chile (2007)
 - Pan-European Code (2008) accepted by regulators but not required to be followed
- Significant exception: USA
 - US-SEC continues to use Industry Guide 7

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2009-2011: SEC considers need to modernize

- 2009: Change of leadership
 - After 20 years in the chair, Jean-Michel Rendu retires from the SME Resources and Reserves Committee
 - Harry Parker becomes Co-chairman from 2007 and leads the effort to have international guidelines accepted by the SEC
 - Ian Douglas becomes Co-chairman in 2009
 - Both Parker and Douglas become SME representatives to CRIRSCO
- 2009-2011: Continued discussions with SEC as to updating/replacing Industry Guide 7 result in no action

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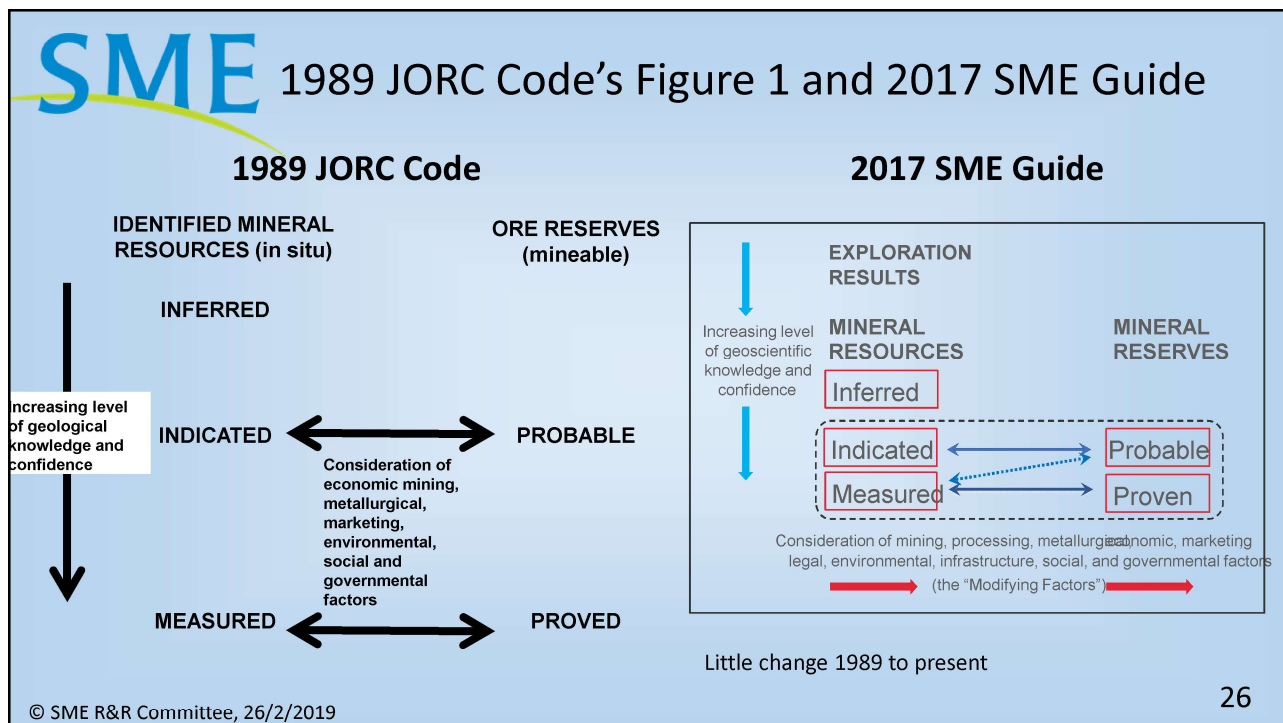
SME

2008—2018 *SME Guide* updates & SEC engagement

Harry Parker
Co-chair, SME Resources and Reserves Committee

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JORC Code & *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 Template 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.

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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.

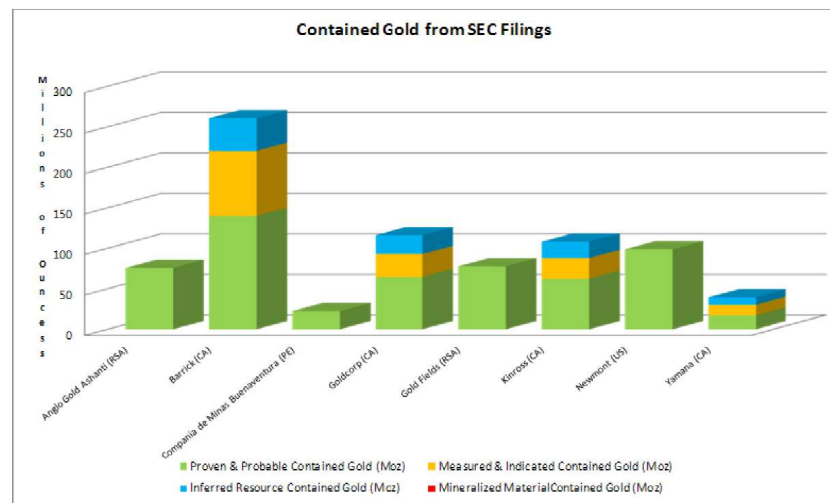
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2012 Petition for rule making



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

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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
Compañía 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

Canadian company market value per contained ounce is much higher than that for non-Canadian companies; relates to NI 43-101 disclosure of mineral resources (accepted by SEC)

351 191
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

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2015—2018 Development of S-K 1300

Kwame Awuah-Offei

SEC Academic Fellow 2016—2018

Associate Professor, Mining & Nuclear Engineering

Missouri University of Science and Technology

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SEC's proposed Rule S-K 1300 process

- A team in Division of Corporation Finance developed initial drafts of rules.
- Objective was to provide a more comprehensive understanding of a registrant's mining properties to help them make more informed investment decisions.
- Draft rules were reviewed by the Office of the General Counsel (GC), the Division of Economic & Risk Analysis (DERA), and the Office of Engineering.
- DERA drafted preliminary economic analysis of proposed rules.
- Commissioners reviewed and approved a draft rule proposal for public comment that was released as Securities Act Release 33-10098 on June 16, 2016.
- The rules provide minimum requirements with clarification in the proposing and final adopting releases. *E.g.*, there is no prohibition in the rules against the use of USGS Circulars 831 and 891 for resource classification but the proposing and adopting releases make it clear that the Commission's interpretation of the rules prohibits this.

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2016: initial proposed Rule S-K 1300

- SEC issues proposed Rule S-K 1300 on June 16, 2018 (Release 33-10098). Approximately 90 comments are received within 60 days. The comments are mainly from SME and other professional organizations, geological and mining engineering consultants, and mining companies (“registrants” located in the US and abroad required to file reports with the SEC).
- No real comments received from investors (key stakeholders).
- How to balance the sometimes contradictory comments?

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2008—2018 *SME Guide* updates & SEC engagement

Harry Parker
Chair, SME Resources and Reserves Committee

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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 seek to be informed.
- 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 un-necessarily complex, the tables may be extremely large, and may present information that is anticompetitive and immaterial.

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2016 SME comments on proposed Rule S-K 1300

- The prohibition of initial assessments including cash flows attributable to inferred mineral resources is at wide variance with the other CRIRSCO codes that allow cash flows attributable to inferred mineral resources.
- SME recommends reports should be prepared by qualified or competent persons that have university degrees in the mineral industry, and at least five years of relevant experience in the style of deposit or activity being undertaken. Qualified or competent persons must be members of recognized professional organizations (RPOs) with ethics and disciplinary codes that include the power to suspend or to expel a member.

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2016 SME comments on qualified persons

- SME believes it is best qualified to evaluate whether an RPO meets these standards.
- The proposed rule requires QPs to sign individually. SME prefers the report be signed by a qualified person firm, and liability taken on by the QP be less than the liability being taken on by the firm.
- The proposed rule prohibits the QP from disclaiming responsibility over work he did not do or was not qualified to do. State boards and the ethics codes of RPOs prohibit members practicing outside their areas of competence.

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2016 SME comments on materiality

- SME prefers requirements for material disclosure are better covered by language in the *SME Guide* (2017)
- “In particular, the Competent [*i.e.*, Qualified] Person, ...must consider that the benchmark of Materiality is the inclusion of all aspects relating to the Exploration Results, Mineral Resources or Mineral Reserves on which investors or their advisors would reasonably expect to be provided as explicit comments from the Competent Person. The Competent Person must discuss any material aspect for which the presence or absence of comment could affect public perception or value of mineral occurrence. Mineral Resources and Mineral Reserves are estimates with attendant uncertainty. The Competent Person should provide a balanced discussion of risks and opportunities accompanying statements of Mineral Resources or Mineral Reserves.”

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2016 SME comments on disclosure format

- The proposed Rule S-K 1300 (Release 33-10098, 6/16/16) has a “one-size-fits all” disclosure format for exploration information, mineral resources, and mineral reserves. Much of this information may be immaterial or anticompetitive if disclosed.
- SME feels that disclosure under Table 1 of the *SME Guide* is specifically designed to convey material information in a competent and transparent manner. This is the disclosure method used by almost all the CRIRSCO Codes. Canada is an exception, where Technical Reports are issued.

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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).
- A proposed revision to Industry Guide 7 and *SME Guide* were submitted to the SEC in June and July 2017.

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2017-2018 SME/NMA actions

- SME/NMA continue to engage Commissioners.
- Commissioner Jackson wants to know what is important to investors. NMA leads this effort.
- SME develops talking points to be used in a workshop with SEC Division of Corporation Finance.
- Corporation Finance develops new Rule S-K 1300 and publishes Release 33-10570 on October 31, 2018.

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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 (Release 33-10570, 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 (*Federal Register*).
- 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!

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Summary Features of S-K 1300 as adopted December 26, 2018

- Require that a registrant's disclosure of exploration results, mineral resources, or mineral reserves in Commission filings must be based on and accurately reflect information and supporting documentation prepared by a qualified person. This will further the protection of investors by helping to make the determination and reporting of estimates of mineral resources and reserves or exploration results more reliable.
- Require a qualified person to use a price for each commodity that provides a reasonable basis for establishing the prospects of economic extraction when assessing mineral resources, and that provides a reasonable basis for establishing that the project is economically viable when determining mineral reserves, which may be a historical or forward-looking price, as long as the qualified person discloses and explains, with particularity, his or her reasons for using the selected price, including the material assumptions underlying the selection;
- 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;

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Summary Features of S-K 1300 as adopted December 26, 2018 (cont.)

- 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;
- Provide that a qualified person will not be subject to expert liability under Section 11 of the Securities Act for findings and conclusions regarding certain aspects of specified modifying factors discussed in the technical report summary or other parts of the registration statement that the qualified person has indicated are based on information provided by the registrant;
- 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;

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Summary Features of S-K 1300 as adopted December 26, 2018 (cont.)

- Provide that a qualified person will not be subject to expert liability under Section 11 of the Securities Act for findings and conclusions regarding certain aspects of specified modifying factors discussed in the technical report summary or other parts of the registration statement that the qualified person has indicated are based on information provided by the registrant;
- Exclude geothermal energy from the definition of mineral resource;
- Require a qualified person to apply relevant technical and economic factors likely to influence the prospect of economic extraction, rather than all modifying factors, when determining mineral resources;
- Permit a qualified person in the technical report summary to disclose mineral resources as including mineral reserves as long as he or she also discloses mineral resources as excluding mineral reserves;
- 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;

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Summary Features of S-K 1300 as adopted December 26, 2018 (cont.)

- 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: and
- 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.
- In conclusion, most of SME's recommendations were met and Rule S-K 1300 is aligned with the CRIRSCO Template.

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Panel No. 2

New Rule S-K 1300 (main sections)

New SEC mining disclosure rules and the qualified person	David Abbott
Structure of Rule S-K 1300	Brian Groff
Exploration results and targets	Don Earnest
Mineral resources	Don Hulse
Mineral reserves	Michael Hester
Environment, health, & safety	Don Hulse
Health and safety now part of reserves reporting	Fred Heivilin
Commodity prices & market studies	Michael Hester

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New SEC mining disclosure rules and qualified person

David M. Abbott, Jr.
SEC Geologist for Full Disclosure and Enforcement
from 1975 to 1996
and
Senior Associate, Behre Dolbear & Company
1996 to present

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SEC Disclosure Rules Securities Act of 1933

- Section 7: Information required in registration statement—Schedule A
- Section 11: Civil liabilities on account of false registration statement—includes “every engineer, ... or person whose profession gives authority to a statement made by him, who has with his consent been named...”
- Section 17: Fraudulent interstate transactions
- Section 27: Private securities litigation
- Section 27A: Application of safe harbor for “forward-looking statements”
- 17 CFR 230: General rules and regulations, ‘33 Act
 - 230.405 contains the definitions of terms including “materiality.”

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SEC disclosure rules The Securities Exchange Act of 1934

- Section 10: Regulation of the use of manipulative and deceptive devices
 - Rule 10b-5: 17 CFR § 240.10b-5 - Employment of manipulative and deceptive devices.
- Section 13: Periodical and other reports
 - 10-K annual reports
 - 10-Q quarterly reports
 - 8-K other events: required or whenever a registrant wants to disclose a material change in its disclosures. Use item 8.01 for new properties or material changes to previous disclosures.
 - Form 20-F for foreign private issuers.

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SEC disclosure rules Regulation S-K: 17 CFR §229 - more than just S-K 1300

- Item 10(b): Commission policy on projections
- Item 102: Description of property
- Item 104: Mine safety disclosure
- Item 421: Plain English principles
- Item 509: interests of named experts and counsel
- Item 601: Exhibits—(b)(96) Technical report summary
- Item 1300—Disclosure by registrants engaged in mining operations
 - 1300 Definitions
 - 1301 General instructions
 - 1302 Qualified person, technical report summary, and technical studies
 - 1303 Summary disclosure
 - 1304 Individual property disclosure
 - 1305 Internal controls disclosure

Many rules that affect multiple industries also apply to mining companies. This presentation is limited to Item 601 and Item 1300.

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SEC rules plus *SME Guide*, etc.

- The SEC rules must be followed—definitions, tables, etc.
- The SEC's rules are *de minimus* requirements to which should be added any other material information.
- The *SME Guide*'s Table 1 may provide a better report outline as long as the required parts of the technical report summary are included.
- The *SME Guide* includes topics not included in the SEC rules, *e.g.*:
 - More detailed guidance on marketing industrial minerals.
 - Environmental, social, and health and safety considerations, including conflict minerals. To the extent that these topics are material, include them.
- Litigants (SEC or class action) will use the *SME Guide* and other CRIRSCO systems as listing potentially material information in addition to SEC rules.
- As the *SME Guide* is updated, additional guidance on potentially material disclosure items will be added.

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Effective dates for S-K 601(b)(96) & 1300 the end of Industry Guide 7

- Final rules, S-K 601 (b)(96) & 1300 are effective February 25, 2019.
- Industry Guide 7 (in rules 801(g) and 802(g) will remain effective until all registrants required to comply with the final rules “until the first fiscal year ending on or after January 1, 2021.”
- “A registrant may decide that it would like to take advantage of the final rules (e.g., by disclosing mineral resources in a Commission filing) prior to the completion of the transition period.”
- The SEC “will permit registrants to comply with the new mining property disclosure rules prior to the compliance date as long as they abide by all of subpart 1300’s requirements.”
- Is the voluntary compliance by property or all a registrant’s properties?

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The qualified person in S-K 1300

- Qualified person must prepare & sign a technical report summary.
- The registrant is responsible for selecting the QP.
- QPs and Recognized Professional Organizations (RPOs)
 - No SEC list of acceptable RPOs
 - Recognized professional association in mining industry or Board authorized by law to regulate professionals in mining, geoscience, or related fields
 - RPOs must
 - admit members based on academic qualifications and experience
 - Must establish and enforce professional standards of competence
 - Encourage or require continuing education
 - Must have disciplinary powers, including power to suspend or expel
- Advisable to choose QPs from SME, Canadian, JORC or other CRIRSCO RPO lists.

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The qualified person under S-K 1300

- QP must have 5 years relevant experience in
 - Type of mineralization
 - Type of deposit
 - Type of activity
- QP must not always have 5 years of experience in every type of deposit if QP has relevant experience in similar deposit types
- For exploration results or resource estimates, QP must have experience with
 - Sampling and analytical techniques
 - Extraction and processing techniques
- If applicable, QP must have experience with modifying factors

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The qualified person firm—a new concept

- A third-party firm comprising mining experts, such as professional geologists or mining engineers (a QP Firm), may sign the technical report summary instead of, and without naming, the individual QPs who prepared the TRS.
- Each individual employee, member, or other person with a QP Firm who prepares the TRS must meet the specified qualifications of a QP.
- A QP Firm may provide the written consent required for an expert under the Securities Act and bear the potential Section 11 liability.
- QPs employed or affiliated with QP Firms “will not automatically be exposed to potential Section 11 liability” as a result of their participation in the preparation of the TRS.

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QP Duties

- Sign-off disclosure of exploration results, resources, reserves whether declared under Summary Disclosure or Individual Property Disclosure.
- Prepare and sign technical report summaries.
- Must stick to tasks/disciplines for which he/she is qualified.
- Must identify categories of information provided by the registrant and the extent of reliance by the QP.
- Disclose why the QP considers it reasonable to rely on the registrant for any of the information received from the registrant.
- **The QP should not “expertise” information for which he/she is unqualified.**

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Structure of Rule S-K 1300

Brian Groff
Principal
Groff Engineering LLC

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Format of Adopting Release 33-10570

December 26, 2018

Federal Register pp 66344—66461

- Summary of commenter's principal concerns to 2016 SEC Proposal.
- Summary of principal changes to the final rules.
- Final mining disclosure rules—discussion.
 - o 2016 Rule proposal.
 - o Comments on 2016 Rule proposal.
 - o What is in final rule (contains decisions made, guidance). Will be used by staff to interpret the rule.
- Part 229: standard instructions for filing forms—*Federal Register* pp 66444 – 66461. This is the actual rule.

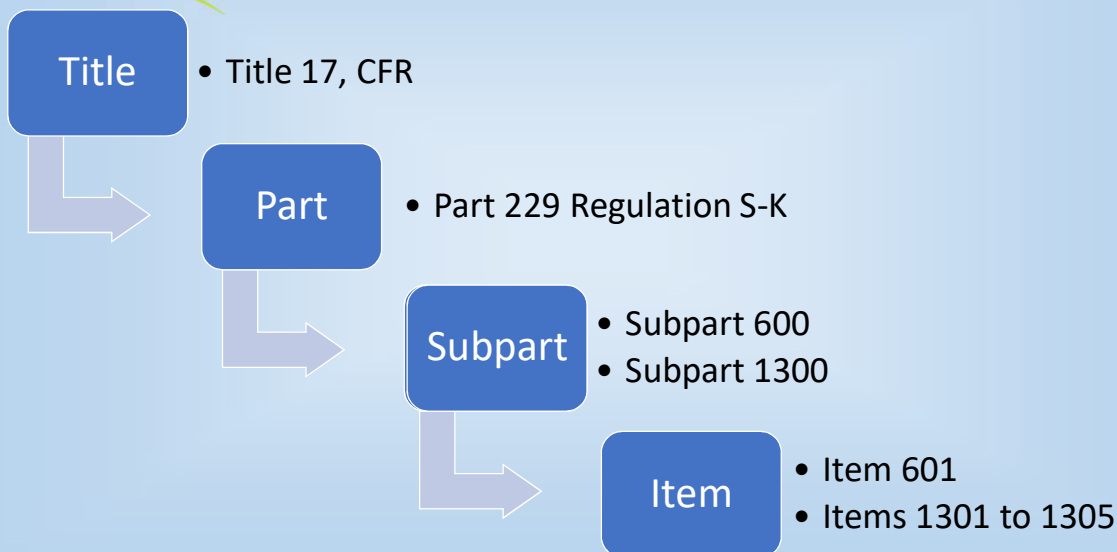
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Structure of the Code of Federal Regulations



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Regulation S-K

- Regulation S-K is the common name for 17 CFR 229, inclusive of all subparts and items.
- The new rule affects two subparts.
 - Subpart 601(b)(96), which pertains to Exhibits in SEC filings
 - Subpart 1300, which pertains to Disclosure Requirements for Registrants Engaged in Mining Operations. (i.e., “S-K 1300”)
- Item 102 also changed. It is simply the instruction to file a description of property, as it always has been, and now directs registrants to follow S-K 1300.
 - Formerly, Registrants were directed to Industry Guide 7
 - Industry Guide 7 is “no more” after January 1, 2021.

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Technical report summary

Regulation S-K Item 601 describes the Exhibits required for most SEC filings (17 CFR §229.601). Item 601(b)(96) is the new technical report summary requirement. For simplicity, let’s call this the “technical report summary” or TRS and know it refers to Item 601(b)(96), which is referenced 68 times in the final rule.

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S-K 1300 items

- § 229.1301 (Item 1301) general instructions and definitions.
- § 229.1302 (Item 1302) qualified person, technical report summary, and technical studies.
- § 229.1303 (Item 1303) **summary disclosure.**
- § 229.1304 (Item 1304) **individual property disclosure.**
- § 229.1305 (Item 1305) internal controls disclosure.

Items 1303 and 1304 are very similar but are for different purposes and have different “materiality” standards.

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Disclosure requirements

all reports must be by a QP

- Disclosure is required under S-K 1300 for registrants, annual filings (10-K, 20-F), and optional supplemental filings (8-K)
- Disclosure is filed by registrant
- Technical Report Summary is prepared by QP and filed as an exhibit to disclosure

Technical Report Summary (TRS) and Technical Studies						
	Exploration Results		Mineral Resources		Mineral Reserves	
	Trigger 1	Trigger 2	Trigger 1	Trigger 2	Trigger 1	Trigger 2
Technical Report Summary	Optional, if TRS exists, must be brought current if material change		If TRS exists, must be brought current if material change		If TRS exists, must be brought current if material change	
Initial Assessment			On file, may include cash flow			
Prefeasibility Study					On file, must include cash flow	
Feasibility Study					On file, must include cash flow	

Trigger 1 = Contains ≥ 10% Measured and Indicated Resources or ≥10% of Mineral Reserves; used for Summary Disclosure

Trigger 2 = Affects decision to invest; used for Individual Property Disclosure

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Summary disclosure requirements

all reports must be by a QP

- Summary Disclosure required for all properties. Those meeting Trigger 1 may not be aggregated. Any property that also meets Trigger 2 must also be reported under Individual Property Disclosure.

Summary Disclosure			
Trigger = Contains $\geq 10\%$ Measured and Indicated Resources or $\geq 10\%$ of Mineral Reserves			
	Exploration Results	Mineral Resources	Mineral Reserves
Exploration Results	Assumptions Current at end of year	Assumptions Current at end of year	Assumptions Current at end of year
Mineral Resources			
Mineral Reserves			
Initial Assessment	Not Required	Required	Not Required
Prefeasibility Study			Required
Feasibility Study			Required
Technical Report Summary	Only required for properties also Individually disclosed under Item 1304.	Only required for properties also Individually disclosed under Item 1304.	Only required for properties also Individually disclosed under Item 1304.
Internal Controls	Required	Required	Required

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Contents of summary disclosure overviews

- Map showing property locations
- Aggregate annual production for each of the three most recent fiscal years
- Location
- Type and amount of ownership interests
- Operator(s)
- Titles, mineral rights, leases, options, acreage
- Stage of development
- Key Permits
- Mine types and mineralization styles
- Processing plants and other facilities
- Table of mineral resources and reserves for material properties ($\geq 10\%$)

If a property is covered under Individual Property Disclosure, the overview should refer to it, rather than duplicate it.

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Individual property disclosure requirements

all reports must be by a QP

- All properties considered material to the business (Trigger 2) must be reported as Individual Property Disclosure

Individual Property Disclosure			
	Exploration Results	Mineral Resources	Mineral Reserves
Exploration Results	First time disclosure; assumptions current at end of year	First time disclosure; assumptions current at end of year	First time disclosure; assumptions current at end of year
Mineral Resources			
Mineral Reserves			
Initial Assessment	Not Required	Required	Not Required
Prefeasibility Study			Required
Feasibility Study			Required
Technical Report Summary	Optional, If TRS Exists, must be brought current if material change	If TRS Exists, must be brought current if material change	If TRS Exists, must be brought current if material change
Internal Controls	Required	Required	Required

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Exploration results (essentially CRIRSCO & *SME Guide*)

Donald Earnest
President
Resource Eval Inc.

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Exploration definitions

- Exploration project: Considered by the SEC to be equivalent to an “exploration stage property”, which is defined as a property that has no mineral reserves disclosed (see Exploration Stage Property definition 229.1301.B.5.i).
 - “A registrant must identify an individual property with no mineral reserves as an exploration stage property even if it has other properties in development or production”. Thus, a project for which there are only mineral resources delineated cannot be considered to be a “development project.”
- Exploration results: “Data and information generated by mineral exploration programs (*i.e.*, programs consisting of sampling, drilling, trenching, analytical testing, assaying, and other similar activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit) that are not part of a disclosure of mineral resources or reserves.”

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Exploration definitions (cont'd)

- Exploration potential: “An estimate expressed within a defined geological setting, quoted as a range of tonnage and grade (quality), of mineralization for which there has been insufficient exploration to allow an estimate to be made a mineral resource”;
- Exploration target: A statement or estimate of the exploration potential of a mineral deposit in a defined geological setting where the statement or estimate, quoted as a range of tonnage and a range of grade (or quality), relates to mineralization for which there has been insufficient exploration to estimate a mineral resource.”
 - Disclosure of an exploration target is based upon and accurately reflects information and supporting documentation of a qualified person.

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Exploration disclosure

SEC Final Rules require that disclosure of an exploration target must include:

- “A detailed explanation of the basis for the exploration target, such as the conceptual geological model used to develop the target”
- “An explanation of the process used to determine the ranges of tonnage and grade, which must be expressed as approximations”
- A statement that the ranges of tonnage and grade (or quality) of the exploration target could change as the proposed exploration activities are completed”
- “A statement clarifying whether the exploration target is based on actual exploration results or on one or more proposed exploration programs, which should include a description of the level of exploration activity already completed, the proposed exploration activities designed to test the validity of the exploration target, and the timeframe in which those activities are expected to be completed”
- SEC Final Rules do not require a technical report summary for disclosure of exploration results.

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Exploration disclosure (cont'd) required cautionary statements

- Because disclosure of exploration targets creates the potential for investor confusion in that an investor might misconstrue an exploration target as a project having an estimate of a mineral resource or mineral reserve, cautionary statements must be included. To address this, the SEC final rule requires that disclosure of exploration stage properties include the following cautionary statements:
 - “There has been insufficient exploration of the relevant property or properties to allow for an estimate a mineral resource.”
 - “It is uncertain if further exploration will result in the estimation of a mineral resource.”
 - “The exploration target therefore does not represent, and should not be construed to be, an estimate of a mineral resource or mineral reserve.”
- Must be included in addition to standard “forward-looking information” cautionary statements and safe-harbor rule.

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Exploration targets and results materiality

- The SEC final rules require a registrant to disclose exploration results and corresponding exploration activity if they are material to investors;
- The SEC noted that “when determining whether exploration results and related exploration activity are material, the registrant should consider all relevant facts and circumstances, such as the importance of the exploration results in assessing the value of a material property or in deciding whether to develop the property, and the particular stage of the property.”
- The SEC final rules do not require the disclosure of exploration results by “a registrant that has material mining operations in the aggregate but no individual properties that are material.”
- However, the SEC noted that a registrant company having no material properties might voluntarily elect to disclose exploration results for certain of its properties, until such activity and its results become material for investors. Once the exploration activity and related results become material, under the final rules they must be disclosed.

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Mineral resources (definitions are close to but not verbatim CRIRSCO & *SME Guide*)

Donald Hulse
V.P. Mining
Gustavson Assoc. LLC

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Mineral resource estimates

- (229)(b)(96)(iii)(B)(11)—mineral resource estimates
 - Describe the key assumptions, parameters, and methods used to estimate the mineral resources, ...
 - Provide the qualified person's estimates of mineral resources for all commodities, including estimates of quantities, grade or quality, ...
 - Include the qualified person's estimates of cut-off grades based on assumed costs for surface or underground operations and commodity prices ...
 - Provide the qualified person's classification of mineral resources into inferred, indicated, and measured mineral resources in accordance with §229.1302(d)(1)(iii)(A) of Regulation S–K.
 - The qualified person must disclose the criteria used to classify a resource as inferred, indicated, or measured.

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Mineral resource estimates

- (229)(b)(96)(iii)(B)(11)—mineral resource estimates
 - Discuss the uncertainty in the estimates
 - When reporting the grade or quality for a multiple-commodity mineral resource as metal or mineral equivalent, disclose the individual grade of each metal or mineral ...
 - Provide the qualified person's opinion on whether all issues relating to all relevant technical and economic factors likely to influence the prospect of economic extraction can be resolved with further work.
 - Instruction 1 ... The technical report summary must comply with all disclosure standards for mineral resources under §§ 229.1300 through 229.1305 (subpart 229.1300 of Regulation S–K).
 - Instruction 2 ... Sections 229.1303 and 229.1304 (Items 1303 and 1304 of Regulation S–K) notwithstanding, in the technical report summary, mineral resource estimates may be inclusive of mineral reserves so long as this is clearly stated with equal prominence to the rest of the item.

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Mineral resource estimates

- Mineral resource estimates disclosure requirement
 - (discussion on p. 66429 of *Federal Register* version of Release 33-10570)
 - Expands scope of Industry Guide 7 to allow disclosure of estimated mineral resources while aligning S-K 1300 with CRIRSCO based disclosure standards.
- 1300(d)(15)(i): definition of mineral resource
 - “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 economic extraction.” CRIRSCO uses “solid material.”
 - It is possible to engage in mineral production without disclosing mineral resources or mineral reserves. Such issuers, however, absent any other material mineral reserves, would be classified as exploration-stage issuers.
 - Includes extraction of mineral brines but not oil and gas extraction.

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Mineral resource categorization

- Classification of mineral resources
Inferred, Indicated, and Measured
in order of increasing confidence
based on the level of underlying
geological evidence; Inferred must
have potential to upgrade.
- Increasing geological confidence
 - More persistent mineral bodies
 - More samples to define quality
 - History of successful resource development in the area
- Reserves must be supported
by “modifying factors.”
- The classification is based on the
judgement of the qualified person.

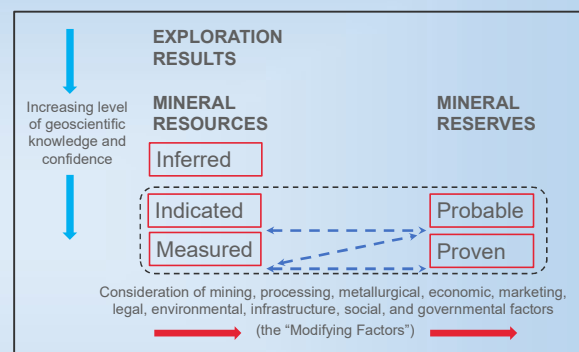


Figure 1 – SME Guide For Reporting Exploration Information, Mineral Resources, and Mineral Reserves
Not explicit part of S-K 1300.

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Mineral resource estimates Initial assessment

- 1301(d)(12) “(i) an initial assessment is a preliminary technical and economic study of the economic potential of all or parts of mineralization to support the disclosure of mineral resources. The initial assessment must be prepared by a qualified person and must include appropriate assessments of reasonably assumed technical and economic factors, together with any other relevant operational factors, that are necessary to demonstrate at the time of reporting that there are reasonable prospects for economic extraction.
- (ii) An initial assessment is required for disclosure of mineral resources but cannot be used as the basis for disclosure of mineral reserves.”

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Mineral resource categorization reasonable prospects for economic extraction

- 1301(d)(15) (iii) “When determining the existence of a mineral resource, a qualified person, as defined by this section, must:...
(B) Conclude that there are reasonable prospects for economic extraction of the mineral resource based on an initial assessment, as defined in this section, that he or she conducts by qualitatively applying relevant technical and economic factors likely to influence the prospect of economic extraction.”
- 1303(b)(3)(ii) “All disclosures of mineral resources by the registrant must be exclusive of mineral reserves.”
At the QP’s discretion mineral resources inclusive of mineral reserves can be disclosed In addition to the resources exclusive of mineral reserves.
- 1303(b)(3)(iii) “All disclosure of mineral resources and reserves must be only for the portion of the resources or reserves attributable to the registrant’s interest in the property.”

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Inferred resource limitations

- 1301(d)(11) “(i) 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.
- (ii) As used in this subpart, the term *limited geological evidence* means evidence that is only sufficient to establish that geological and grade or quality continuity is more likely than not. The level of geological uncertainty associated with an inferred mineral resource is too high to apply relevant technical and economic factors likely to influence the prospects of economic extraction in a manner useful for evaluation of economic viability.
- (iii) A qualified person:
 - (A) Must have a reasonable expectation that the majority of inferred mineral resources could be upgraded to indicated or measured mineral resources with continued exploration; and
 - (B) Should be able to defend the basis of this expectation before his or her peers.

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Mineral reserves (definitions are close to but not verbatim CRIRSCO & *SME Guide*)

Michael Hester
Vice President
Independent Mining Consultants, Inc.

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Mineral reserve definition 229.1301.d.14.i

- An estimate of tonnage and grade or quality of indicated and measured mineral resources that, in the opinion of the QP, can be the basis of an economically viable project.
- More specifically, the economically mineable part of a measured or indicated mineral resource, which includes diluting materials and allowances for losses that may occur when the material is mined or extracted.

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Mineral reserve definition 229.1301.d.14.ii

- The determination that part of a measured or indicated mineral resource is economically mineable must be based on a preliminary feasibility or feasibility study conducted by a QP applying the modifying factors to indicated or measured mineral resources.
- The study must demonstrate that, at the time of the reporting, extraction of the mineral reserve is economically viable under reasonable investment and market assumptions.
- The study must establish a life of mine plan that is technically achievable and economically viable, which will be the basis of determining the mineral reserve.
- And 14.iii, the term “economically viable” means that the QP has determined, using a discounted cash flow analysis, or has otherwise analytically determined that the extraction of the mineral reserve is economically viable under reasonable investment and market assumptions.
- Note, a life of mine plan is the basis of the mineral reserve.

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Mineral reserves estimates

601(b)(96)(iii)(B)(12) – Instructions for Section 12 of a technical report summary – mineral reserve estimates

- Describe the key assumptions, parameters, and methods used to estimate the mineral reserves, in sufficient detail for a reasonably informed person to understand the basis for converting, and how the QP converted, indicated and measured mineral resources into the mineral reserve.
- Provide the QP's estimates of mineral reserves for all commodities, including estimates of quantities, grade or quality, cut-off grades, and metallurgical or processing recoveries.
- Provide the QP's opinion on how the mineral reserve estimates could be materially affected by risk factors associated with or changes to any aspect of the modifying factors.

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Mineral reserve estimates (cont.)

601(b)(96)(iii)(B)(13) – Instructions for Section 13 of a technical report summary – mining methods

- Describe the current or proposed mining methods and the reasons for selecting these methods as the most suitable for the mineral reserves under consideration, including:
 - Geotechnical and hydrological models, and other parameters relevant to mine designs and plans
 - Production rates, expected mine life, mining unit dimensions, and mining dilution and recovery factors
- Requirements for stripping, underground development, and backfilling
- Required mining equipment fleet, and personnel
- Instruction: QP must include at least one map of the final mine outline

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Mine design and planning
from 229.1302(d), instruction 5
Table 1. Summary description of relevant
factors evaluated in technical studies:
mine design & planning

Factors ¹	Initial Assessment	Preliminary Feasibility Study	Feasibility Study
Mine design & planning	Mining method defined broadly as surface or underground. Production rates assumed.	Preferred underground mining method or the pit configuration for surface mine defined. Detailed mine layouts drawn for each alternative. Development and production plan defined for each alternative with required equipment fleet specified.	Mining method finalized. Detailed mine layouts finalized for preferred alternative. Development and production plan finalized for preferred alternative with required equipment fleet specified.

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Feasibility studies

- Section 229.1302 – Instruction 8 to paragraph (e)
- A feasibility study must contain..... (ii) finalized mining method, including detailed mine layouts and final development and production plan for the preferred alternative with the required equipment fleet specified. The feasibility study must address detailed mining schedules, construction and ramp up, and project execution plan.
- Does not include such detailed instructions in text for PFS studies, though the instructions to Table 1 in 229.1302(d) are not much different.

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The 2017 *SME Guide* has...

- SME guidance in Table 1.E.1.a for mineral reserves
- Mining method(s), mine plans and production schedule defined for the life of the project
- Description and justification of mining method(s) to be used
- Discussion of mining rate, equipment selected, ore control methods, geotechnical and hydrogeological considerations, staffing requirements, health and safety of the workforce, dilution and recovery

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The 2017 *SME Guide* has... (continued)

- For surface mines, discussion of pit slopes, slope stability, and strip ratio
- For underground mines, discussion of mining method, rock mechanics considerations, mine design characteristics, and ventilation/cooling requirements
- For in situ recovery or solution mining, discussion of extraction process, solution grades, host rock chemistry and reaction with solvents, permeability and porosity
- Consideration of waste rock issues related to impacts on surface and ground water systems

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Environment, health, & safety

Donald Hulse
V.P. Mining
Gustavson Assoc. LLC

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Mineral reserves modifying factors—social and environmental

Part 601(b)(96)(iii)(17)—Environmental studies, permitting, and plans, negotiations, or agreements with local individuals or groups.

- (i) The results of environmental studies
- (ii) Requirements and plans for waste and tailings disposal, site monitoring, and water management
- (iii) Project permitting requirements,
 - the status of any permit applications
 - any known requirements to post performance or reclamation bonds;
- (iv) Plans, negotiations, or agreements with local individuals or groups;
- (v) Mine closure plans and the associated costs;
- (vi) The qualified person's opinion on the adequacy of plans to address any issues related to environmental compliance, permitting, and local society
- (vii) Descriptions of any commitments to local procurement and hiring.

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Mineral reserves modifying factors—social and environmental

- SME experience suggests addressing the following:
 - Transparency
 - Science
 - Planning
 - Stewardship
- The *SME Guide* includes instructions on
 - Handling toxic minerals or reagents
 - Discussion of “conflict minerals”
 - *These instructions go beyond S-K 1300 and are an example of why the SME Guide continues to be an important guide to material disclosure.*

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Sustainability as adopted in the 2019 CRIRSCO Template

- Sustainability can refer to three principal themes:
 - the ability of the environment to maintain itself with minimal impacts to the local flora and fauna;
 - the ability of the surrounding community to continue its traditional economic and cultural activities; and
 - the ability of newly created economic inputs to continue beyond the mine life. Social issues and the social license to operate (SLO) are a measure of the communication and transparency with the community and the ability to gain the trust of the community.
- Historical performance by the company should be used to engage all stakeholders and to plan for continued benefits for all parties concerned.

Bottom Line: programs to create positive impacts in environmental, safety, and sustainability all contribute to winning the trust needed for the social license to operate.

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Health and safety now part of reserves reporting

Fred Heivilin
HGPS LLC

Note: Fred Heivilin was unable to participate in the February 26th presentation at the SME Annual Meeting. The slides he would have presented are included here.

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Health and Safety Keeps the door open for mining



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From Outcrop to Completion

- Is it safe?
- Is there a health problem?
- ***You are never safe from delay or shutdown!!!!!!!!!!***
- Problems
 - Both the perception and the problem must be removed.
 - They can occur at any time!!!!

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Health and Safety are Quality of Life Issues

- Mining is perceived to be bad:
 - Crystalline silica
 - Asbestos
 - Creates water problems
 - Pollutes air
 - Unsafe
 - Radioactivity
 - Heavy metals, dioxin
 - Reclaimed land is polluted and unusable

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SAFETY

- Plan/construct
- Document
- Build plant with all required safety equipment
- Detailed plan of operation
- Safety program-yearly, monthly, daily
- Revise it monthly or more until it is safe
- Keep program fresh and new
- **Are you ever Done?????**

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Safety report for reserves

- Is there a corporate safety program; yes or no?
- Company or property performance versus national averages
- Material problems or achievements(if any)

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Health

- Deposit physical and chemical testing
 - X-ray & SEM for silica, asbestos, and other toxic minerals
 - Chemical testing to determine if any toxins are present that may be soluble enough to be released.
 - Process testing to determine if and what changes, if necessary, need to be made to process to eliminate or reduces emission to allowable levels.

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Health

- Personnel screening and health
 - Pre-employment
 - x-ray, pulmonary function
 - hearing, sight, blood pressure, doctor exam
 - alcohol drugs
 - Periodic/random
 - x-ray, pulmonary function, hearing,
 - drugs, alcohol
 - End of employment or retiring
 - x-ray, pulmonary function, hearing
 - Doctor exam

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Process Design

- Mine
 - Single discharge point or settling pond
 - All high pH or toxic elements safely buried
 - Watch QC drilling and pit walls for changes
- Process
 - Collection device to maintain air and sound regs
 - Protect from weather events (hurricanes, etc.)
 - Mineral changes due to heat, chemicals
- Closing
 - Spills, groundwater changes, water discharges
 - Leave behind a chance for economic use

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Health & safety checklist

- Crystalline silica?
- Asbestos?
- pH problems?
- Air emissions?
- Water emissions?
 - Sulfur
 - Dust

Have the above been checked and tested for where there is reason to believe there may be a problem?

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Commodity prices and market studies

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Vice President
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Commodity prices—summary

- SEC backed away from the June 2016 proposal that prices be no higher than the average spot price over the past 24 months.
- Also backed away from the traditional 36-month trailing average that has been used as a benchmark.
- Historical or forward-looking prices may be used, subject to justification.
- Acknowledged that many companies rely on consensus prices based on forward-looking price forecasts.
- Prices must be disclosed.
- SEC rejected arguments that price projections are sensitive intellectual property that should not have to be disclosed. Panel 4 will discuss further.

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Commodity prices—summary (cont'd)

- Prices set by contracts must be disclosed. No provision to not disclose prices under the new rule; further discussion in Panel 4.
- New rules maintain that pricing information is material to investor's understanding of mineral resources and mineral reserves.
- Final rules permit different prices for mineral resources versus mineral reserves. The June 2016 proposal said they were to be based on the same price.

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Prices used to support mineral resources and mineral reserves

- Instruction 8 to paragraph 601(b)(96)(iii)(B)(11) (resources) and
- Instruction 5 to paragraph 601(b)(96)(iii)(B)(12) (reserves)
- The QP must estimate cut-off grades based on detailed cut-off grade analysis that includes a long-term price that provides a reasonable basis for establishing that the project is economically viable.
- The QP must disclose the price used for each commodity and explain the reason for the selected price, including the material assumptions underlying the selection.
- The explanation must include the disclosure of the time frame used to estimate the price and costs and the reasons justifying the selection of the time frame.

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Prices used to support resources and reserves (cont'd)

- The QP may use a price set by contractual arrangement, provided that such price is reasonable, and the QP discloses that he or she is using a contractual price when disclosing the price used.
- The selected price and all material assumptions underlying it must be current as of the end of the registrant's most recently completed fiscal year, see Instruction 2 of 229.1301.e.

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Market studies

- 601(b)(96)(iii)(B)(16): Instructions for Section 16 of a technical report summary—markets and contracts
- Describe the market for the products of the mine, including justification for demand or sales over the life of the mine (or length of the cash flow projection).
- Include information concerning markets for the property's production, including the nature and material terms of any agency relationships and the results of any relevant market studies, commodity price projections, product valuation, market entry strategies, and product specifications.
- Instruction 1 of 229.1301.e (page 430) states that, in certain circumstances, preliminary or final market studies may be required for PFS or FS studies respectively.
- These circumstances include where the mine's product cannot be traded on an exchange, there is no other established market for the product, and no sales contract exists.

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Preliminary market study (not in technical report summary)

1301(d)(18) A preliminary market study is sufficiently rigorous and comprehensive to determine and support the existence of a readily accessible market for the mineral. It must, at a minimum, include:

- Product specifications based on preliminary geologic and metallurgical testing,
- Supply and demand forecasts,
- Historical prices for the preceding five or more years,
- Estimated long-term prices,
- Evaluation of competitors (including products and estimates of production volumes, sales, and prices),
- Customer evaluation of product specifications, and market entry strategies.
- The study must provide justification for all assumptions. It can, however, be less rigorous and comprehensive than a final market study, which is required for a full feasibility study.

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Final market study (not in technical report summary)

1301(d)(9) A comprehensive study to determine and support the existence of a readily accessible market for a mineral. It must include:

- Product specifications based on final geologic and metallurgical testing
- Supply and demand forecasts
- Historical prices for preceding five or more years
- Estimated long term prices
- Evaluations of competitors, including products and estimates of production volumes, sales, and prices
- Customer evaluation of product specifications
- Market entry strategies or sales contracts
- And, justification for all assumptions, which must include assumptions concerning the material contracts required to develop and sell the mineral resource

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Comparison with 2017 *SME Guide*

- The SEC definition of preliminary and final market studies and their requirements under certain circumstances are more formal than the 2017 *SME Guide*. But, the *SME Guide* instructions for Industrial Minerals, Clause 68, discuss several items described in the market study, including markets with barriers to entry, market entry strategies, expressions of interest by prospective buyers, etc.
- Clause 53 of the *SME Guide* is consistent with the SEC rule:
 - Commodity prices and sales volumes should be based on forward-looking estimates reflecting reasonable and supportable short- and long-term expectations.
 - Supported by evidence such as consensus forecasts, historic averages, sales contracts or other price analysis, and sales volumes are supported by appropriate documentation.
 - Different prices for resources and reserves may be appropriate.

Confidentiality of contract prices, agreements, etc. are allowed by the SME Guide & CRIRSCO but may not be allowed by SEC.

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Panel No. 3

New Rule S-K 1300 disclosure obligations

Implementation of S-K 1300

Kwame Awuah-Offei

Materiality

Brian Groff

Disclosure obligations and
differences from NI 43-101, JORC Code

Stella Searston


Royalty interests

Brian Groff

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Implementation of S-K 1300

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Implementation of S-K 1300

- S-K 1300 will go into effect January 1, 2021.
 - Companies can voluntarily comply before then, and SEC staff hopes they will test drive S-K 1300 starting this year (2019).
- Industry Guide 7 will be rescinded Jan 1, 2021.
- All registrants will be required to comply for reporting on their first fiscal year ending after Jan 1, 2021.
 - Only exceptions are Canadian MJDS/40-F filers.
- SEC has to make changes to EDGAR to receive filings (e.g. technical report summaries as section 601 exhibits).

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Implementation: investor protection

- SEC's mission is "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."
- The lack of participation from investor groups was a challenge to the rulemaking but...
 - Rule makes clear mining disclosures should disclose items that are material to investors' understanding of registrant's business.
 - The SEC and/or investors can always seek redress for omissions or mis-statements of material facts ('33 Act § 11 liability)—both registrant and their "experts."
- Division of Corporation Finance reviews all mining annual reports (10-K, 20-F, 40-F, etc.) once every 3 years.
 - Reviewers can issue comments or refer to Division of Enforcement.

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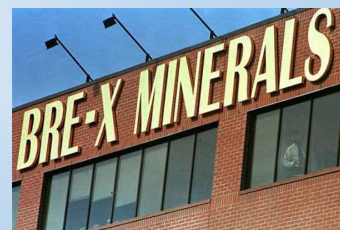
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Implementation: investor protection

- There is a whole sector of problem filings within the mining space.
- Bre-X taught us that big scandals affect the value of ALL mining stocks.
- SME, State Boards of Engineering, and professional societies have a role to play by rigorously enforcing ethics rules.
- We should all promote best practices.



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Summary disclosure

- The rules require registrants to provide summary disclosure (an overview) of its overall mining operations.
- Summary disclosure should include an overview of:
 - The location of the properties
 - The type and amount of ownership interests; the identity of the operator or operators;
 - Titles, mineral rights, leases or options and acreage involved;
 - The stages of the properties (exploration, development, or production);
 - Key permit conditions;
 - Mine types and mineralization styles; and
 - Processing plants and other available facilities.
 - Reconciliation of previous year's mineral resources and mineral reserves, previous year's production, current year's resources and reserves

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Summary disclosure (cont.)

- When presenting the overview, the registrant should include the amount and type of disclosure concerning its mining properties that is material to an investor's understanding of the registrant's properties and mining operations, **in the aggregate**.
- The final rules also include a provision explaining that, when presenting the overview, the registrant should include the amount and type of disclosure concerning its mining properties that is material to an investor's understanding of the registrant's properties and mining operations in the aggregate.

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Summary Disclosure - Table 1 to S-K 1303(b)(3)
mineral resource summary* at fiscal year-end
for each property with $\geq 10\%$ of estimated measured +
indicated resources or $\geq 10\%$ of estimated reserves

	Measured Mineral Resources		Indicated Mineral Resources		Measured+Indicated Mineral Resources		Inferred Mineral Resources	
	Amount	Grades/ Quality	Amount	Grades/ Quality	Amount	Grades/ Quality	Amount	Grades/ Quality
Commodity A								
Geographic Area A								
Mine/Property A								
Mine/Property B								
Other Geographic Areas								
Total								
Commodity B								
Geographic Area B								
Mine/Property A								
Mine/Property B								
Other Geographic Areas								
Total								

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* Exclusive of mineral reserves

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Summary Disclosure: Table 2 to S-K 1303(b)(3)
mineral reserve summary at fiscal year-end
for each property with $\geq 10\%$ of estimated measured +
indicated resources or $\geq 10\%$ of estimated reserves

	Proven Mineral Reserves		Probable Mineral Reserves		Proven+Probable Mineral Reserves	
	Amount	Grades/ Quality	Amount	Grades/ Quality	Amount	Grades/ Quality
Commodity A						
Geographic Area A						
Mine/Property A						
Mine/Property B						
Other Geographic Areas						
Total						
Commodity B						
Geographic Area B						
Mine/Property A						
Mine/Property B						
Other Geographic Areas						
Total						

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Individual material property disclosure at fiscal year-end

Table 1 to 1304(d)(1) based on [price]

Mineral Resources (optionally inclusive of mineral reserves)				
	Quantity	Grade	Cut-off Grade	Metallurgical Recovery
Measured Mineral Resources				
Indicated Mineral Resources				
Measured+Indicated Mineral Resources				
Inferred Mineral Resources				

Table 2 to 1304(d)(1) based on [price]

Mineral Reserves				
	Quantity	Grade	Cut-off Grade	Metallurgical Recovery
Proven Mineral Reserves				
Probable Mineral Reserves				
Proven+Probable Mineral Reserves				

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Technical report summary—brevity & readability

- A TRS must be prepared from a study and NOT be the study
- The TRS is intended to be a document that primarily informs investors
 - Not intended to be as long as what has become the standard NI 43-101 report
 - Not intended to be as brief as JORC Table 1 reporting
 - Must be current for all material properties at year-end

Item 601(b)(96)(ii): “The technical report summary must not include large amounts of technical or other project data, either in the report or as appendices to the report. The qualified person must draft the summary to conform, to the extent practicable, with the plain English principles set forth in § 230.421 or § 240.13a–20 of this chapter.”

“[T]he technical report summary must not include large amounts of technical or other project data, either in the report or as appendices to the report. This requirement would prohibit the current practice, by some registrants, of providing large amounts of drill hole data and other technical information as appendices to technical report summaries.” – Proposing Release

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Technical report summary—brevity & readability

- QPs have to be mindful that the TRS should provide “material” scientific and technical information and conclusions to support the disclosure of exploration results, resources and reserves
 - It is important that material information is not “buried” in immaterial information
- Note that the registrant “owns” the main disclosure, the QP “owns” the TRS

Item 601(b)(96)(i): “A registrant that...discloses information concerning its mineral resources or mineral reserves must file a technical report summary by one or more qualified persons that...identifies and summarizes the scientific and technical information and conclusions reached concerning an initial assessment used to support disclosure of mineral resources, or concerning a preliminary or final feasibility study used to support disclosure of mineral reserves.”

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Should registrants always provide the disclosure called for?

- The final rules do not impose an affirmative obligation to determine any item of disclosure (*e.g.* mineral resources).
- For example, if an aggregates company does not want to incur the expense of hiring a qualified person to determine the existence of mineral resources, it need not do so. In that case, however, the company would not be able to declare that it has mineral resources in a Commission filing.

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Materiality

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Materiality

- Traditionally, individual mining operations were *significant* if they accounted for 10% of a registrant's total assets, and only *significant* mining operations had to be reported.
 - 10% comes from Accounting Standards Code 280, and similar standards.
- Rule S-K 1300 maintains an ***unwritten*** 10% threshold but requires registrants to consider other factors when the threshold is not met.
 - Adopts the SEC's formal definition of *Material*. "The term *material*, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to ***which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.***" (17CFR 230.405)

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When is an operation material?

- Consider *NewCo* cement company ...
 - An individual cement plant may cost \$400-\$600 million to construct. By comparison, the mineral reserves may have only cost \$10-20 million to acquire.
 - Even with the purchase of mining equipment, the mine constitutes less than 10% of the plant.
 - The mineral property fails to meet the 10% threshold but the plant is dependent upon the reserves to produce clinker.
 - Conclude the reasonable investor would attach importance to the reserves when deciding whether to purchase the security.
- Final Rule, key word: *vertically-integrated*

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When is an operation material?

- Consider *OldCo* aggregates ...
 - The aggregates producer owns fifty (50) quarries within a given region of the U.S. No single quarry represents 10% of the total assets.
 - *Summary disclosure* of properties is sufficient to inform the reasonable investor.
- Final Rule, key word: *aggregate*

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Disclosure obligations and differences from NI 43-101, JORC Code

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Disclosure obligations

- TRS only required under Item 1304; Individual Property Disclosure.
- Must file a “technical report summary” on material properties that is prepared by qualified persons:
 - If disclosing mineral resources or mineral reserves for the first time
 - If material change to previously-disclosed mineral resources or mineral reserves
 - If disclosing an initial assessment (required for resources)
 - If disclosing a pre-feasibility study
 - If disclosing a feasibility study
- Certain report types have different information provision requirements.
- Optional to file a technical report summary on exploration results.
- Exemption from full TRS reporting for registrants having royalty/streaming interests.

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Disclosure obligations

- No exemptions for requirement to provide technical report summaries for any particular class of registrants.
- No exemptions for registrants in the industrial mineral or aggregates industry.
- No exemptions for certain registrants to omit cashflows.
- No exemptions for non-disclosure of price assumptions for commodities.
- No reciprocal recognition approach.
 - Only exemption applies to companies able to report using MJDS (multijurisdictional disclosure system; Canada/US listed only).

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Disclosure obligations—resources

- All categories of resources have to be reported following completion of an initial assessment.
- Thus, not necessarily the same as either a scoping study (CRIRSCO/JORC/SME) or a preliminary economic assessment (NI 43-101/CIM).
- Defined as a preliminary technical and economic study of the economic potential of all or parts of mineralization to support the disclosure of mineral resources.
- Must include appropriate assessments of reasonably assumed technical and economic factors, together with any other relevant operational factors, that are necessary to demonstrate at the time of reporting that there are reasonable prospects for economic extraction.

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Disclosure obligations—reserves

- Reserves have to be reported following completion of either a pre-feasibility or feasibility study.
- Retains the CRIRSCO view of differences between the two study types with feasibility being more comprehensive, and with a higher degree of accuracy.
- A prefeasibility study requires preparation of a preliminary market study while a feasibility study requires preparation of a final market study.
- The TRS requires a summary of the relevant marketing study.

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Disclosure obligations—SEC definitions

The SEC has defined what must be in each of an initial assessment, pre-feasibility study and feasibility study

- Defines content; defines level of detail; e.g. what can be assumed/analogous
- Defines estimate accuracy
- Defines contingency

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Technical report summary

- “Technical report summary”
 - Stated to be based in particular on Form 43-101F1
 - “substantially similar to criteria” in CRIRISCO Table 1/JORC Table 1
 - “similar in most respects” to contents suggested in mining engineering literature
- Information only to be provided if material; some sections may have little to no disclosure for some registrants as the sections are not material to an investor’s understanding of the registrant’s mining operations.
- Target audience is “for the benefit of investors who lack a scientific background” but also for “more sophisticated investors who may be familiar with the mining industry but who are not geologists or mining engineers.”

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Technical report summary

- Document must follow plain English principles (S-K 421).
 - Glossary required “if the disclosure requires the use of technical terms relating to geology, mining or related matters, which cannot readily be found in conventional dictionaries”
- Must not include large amounts of technical or project data, either in report, or as appendices.
- 601(b)(96)(iii) sets out 25 paragraphs (“sections”) that specify content to be addressed in each paragraph, and includes instructions for meeting information requirements as additions to some of the paragraphs.

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Technical studies and the technical report summary

- A **technical report summary** is summary of the material information for an investor extracted and summarized from the technical studies.
- **Technical studies** can be numerous, detailed reports including appended data, etc. Examples include but aren't limited to:
 - Title opinions
 - Preliminary & final market studies
 - Prefeasibility studies
 - Feasibility studies
 - Geologic, geophysical, and geochemical studies
 - Alternative mining plans
 - Metallurgical studies
 - Hydrologic studies
 - Environmental studies & EIS statements
 - Infrastructure analyses

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Technical report summary sections

- | | | | |
|--|--|--|--|
| • Executive summary | • Sample preparation, analyses, and security | • Infrastructure | • Other relevant data and information |
| • Introduction | • Data verification | • Market studies | • Interpretation and conclusions |
| • Property description | • Mineral processing and metallurgical testing | • Environmental studies, permitting, and plans, negotiations, or agreements with local individuals or groups | • Recommendations |
| • Accessibility, climate, local resources, infrastructure and physiography | • Mineral resource estimates | • Capital and operating costs | • References |
| • History | • Mineral reserve estimates | • Economic analysis | • Reliance on information provided by the registrant |
| • Geological setting, mineralization, and deposit | • Mining methods | • Adjacent properties | |
| • Exploration | • Processing and recovery methods | | |

Yellow = Required for exploration, mineral resources, mineral reserves.

Green = Required for mineral resources, must include discussion of relevant technical and economic factors, including cut-off, price, mining/ processing methods, recovery, infrastructure, environmental/ permitting etc. that establish reasonable prospects for economic extraction.

Cyan = Required for mineral reserves.

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S-K 1300 Compared to Form 43-101F1

- **Significantly** different in many respects.
- More prescriptive property description requirements
- Mandatory discussion of geotechnical and hydrological information, including sampling and testwork, under the “Exploration” heading
- More prescriptive requirements for drill data disclosure
- Mineral resources QP opinion statements are not required for Form 43-101F1
- More prescriptive requirements around novel process technology
- No inclusion of Form 43-101F1 allowance for limited reliance disclaimers
 - Instead specific chapter for information obtained from registrant

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S-K 1300 compared to Form 43-101F1 (continued)

- More prescriptive market studies requirements
- Contract descriptions required whereas Form 43-101F1 just asks to identify the contracts
- More prescriptive social license information provision requirements;
- QP adequacy statements related to environmental compliance, permitting, and social license less detailed
- Prescriptive capital and operating cost estimate ranges, contingencies
- Prescriptive economic analysis requirements

In many cases the underpinning Technical Study under S-K 1300 has more prescriptive requirements, which flows through to TRS having more prescriptive requirements

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S-K 1300 Compared to Form 43-101F1 (continued)

- SEC defines what must be available to a company in content terms to meet technical study definitions (this distinction may not be clear if one only compares TRS and Form 43-101F1 Technical Report section topics.
 - A PFS or FS in Canada may not meet the SEC's prescriptive requirements
 - Canada has no requirement for marketing studies as defined in SEC rule
- Initial assessment is not a PEA, but elements of a PEA may be reported as part of an initial assessment
 - A PEA in Canada may not meet the SEC's prescriptive requirements
 - Initial assessment may include Inferred; but if so, technical report summary must present the study results with, and without, the Inferred
- Mineral resources must always be presented exclusive of mineral reserves; but a technical report summary may present the resource statement with resources inclusive of reserves as a second table

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Comparison to Form 43-101F1 (continued)

Takeaways

- Studies definitions could be markedly different, must be borne in mind before commissioning any future mining studies.
- Significantly more information required on marketing than current Form 43-101F1 requirements depending on circumstances.
- Disproportionately likely to affect junior exploration companies in terms of compliance burden.
- MJDS reporting registrants may continue to use current exemptions.

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Example comparison of TRS and NI 43-101 for market studies

- S-K 1300 technical report summary
 - o Describe market for products over life-of-mine, demand or sales.
 - o Market studies, agency relationships, commodity prices, market entry strategies, product specification and valuation.
 - o Contract relationships for all steps in the value chain, if not arms-length transactions, must state what contract terms would be if arms-length.
- Form 43-101F1 Technical Report
 - o Only requires the QP to discuss whether the contract terms are within industry norms.
- Note: S-K 1300 has detail on preliminary and final market studies to be made as part of prefeasibility and feasibility studies; NI 43-101 does not.

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Example comparison of TRS and NI 43-101 for capital and operating costs

- S-K 1300 technical report summary
 - o Provide a summary of capital and operating cost estimates with justification for contingency, accuracy of estimates
 - o Risk assessment based on estimation methods applied in similar situations
 - o Must comply with Item 1302, Table 1 to paragraph d, stating accuracy and contingency levels for Technical Studies.
- Form 43-101F1 Technical Report
 - o Provide a summary of capital and operating cost estimates, with the major components set out in tabular form. Explain and justify the basis for the cost estimates.

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Comparison of S-K 1300 to JORC Code

- No direct content comparison by section number or section content due to very different layout between JORC Table 1 and the technical report summary.
- JORC Table 1 is described as a “checklist or reference for use by those preparing Public Reports on Exploration Results, Mineral Resources and Ore Reserves.” This is only a reporting requirement under certain conditions, and may consist of QP documentation *i.e.*, notes rather than a narrative report.
- S-K 1300 has significantly more disclosure required than JORC Table 1.
- S-K 1300 has significantly more prescriptive information requirements than are asked for in each sub-table of JORC Table 1.

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Comparison to JORC Code (continued)

- Significantly different in many respects.
- JORC Table 1 allows exclusion of commercially-sensitive information.
- JORC allows totaling of Measured + Indicated + Inferred resources.
- Same comments as for CIM/NI 43-101; JORC allows resources to be reported exclusive or inclusive of reserves at QP's election.
- Same comments as for Form 43-101F1 that SEC now defines what will be required for a mining study in content, accuracy and contingency terms.
 - More onerous for JORC, since PFS and FS under JORC can incorporate Inferred and Exploration Targets in the mine plan and cash flow analysis; therefore entire study might need to be reviewed or even redone before reserves/results can be disclosed in a technical report summary.
- Same comments as for Form 43-101F1 that there is no requirement for marketing studies as defined in SEC rule under JORC.

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Comparison to JORC Code

Takeaways

- Experience in preparing JORC Code Table 1 will not necessarily be applicable to compiling technical report summaries.
- The technical report summary requires significantly more detail than does JORC Table 1; it is likely to take practitioners a while to get to a compliant level of content presentation if they are not really familiar with Form 43-101F1 reporting; this could in turn impose more of a burden on companies by having to redo the technical report summary if it is found to be non-compliant in aspects.
- The prescriptive format of what content must be in a mining study and the type and level of detail required may result in JORC Code - reporting companies having to completely redo their mining studies.
- Significantly more information required on marketing than current guidance in the checklists in some circumstances.
- Disproportionately affects foreign registrants using JORC Table 1 as their preferred disclosure format in terms of compliance and cost.

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Royalties

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Principal

Groff Engineering LLC

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Royalty interests

- Royalty companies are specifically addressed in the Rule.
 - Examples include Royal Gold (NASDAQ:RGLD), Sandstorm Gold Ltd (Amex:SAND), Natural Resource Partners, LP (NYSE:NRP), and others who derive a passive income from royalty interests.
- Disclosure of *material* mining properties is required.
 - Exceptions
 - 229.1303(a)(3) for Summary Property Disclosure. Registrant does not have access to the information. Explain what information it lacks access to and why. (i.e. *If not, why not?*).
 - 229.1304(a)(2) for Individual Property Disclosure. Same exception as for Summary Property Disclosure.

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Royalty interests

- Technical report summaries
 - Required unless the mining registrant (i.e. the tenant or lessee) has already submitted a technical report summary. 229.1302(b)(3)(i)
 - Exception of lacking access to such report also applies if the royalty interest holder has formally asked for the requested information and has been denied.
- Reporting resources and reserves
 - Only report those Resources and Reserves from which royalties are derived. 229.1303(a)(3)(iv) and 229.1304(d)(3)

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Panel No. 4

Legal issues & practice tips

Impact of disclosure rules changes	Lee Terry
Section 11 liability of qualified persons	and
Confidential treatment	Brian Boonstra
Materiality	Davis Graham & Stubbs
Other impacts of S-K 1300	
Communication with SEC staff	Kwame Awuah-Offei

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Legal issues and practice tips

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Impact of disclosure rules changes

- Impact of change from SEC Industry Guide 7 to SEC Regulation S-K 1300
 - Binding effect of new rule
 - SEC Staff discretionary authority
- Relevance of *SME Guide*, CRIRSCO Codes, etc.
 - Cross border offerings
- Mandatory disclosure, additional disclosure and prohibited disclosure
- Supplemental disclosure

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Section 11 liability of qualified persons

- Liabilities of qualified persons
 - Expert liability under Securities Act of 1933
 - Defenses to expert liability
 - Differences for Forms 10-K, 10-Q and other 1934 Act reports
- The new concept of qualified person firms
 - SME/NMA suggestion accepted by SEC
 - Similar to other types of SEC experts
 - Reaction of other CRIRSCO Codes
 - Effect on cross border offerings
- Practical impact on solo qualified persons, including employees

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Confidential treatment

- Protecting proprietary business information in SEC disclosures
- **Bottom line—“material” information must always be disclosed**
- What has Regulation S-K 1300 changed with respect to confidentiality for mining companies making SEC filings?
 - Staff discretion for rule versus Industry Guide
 - Greater amount of mandatory disclosures
- Confidential treatment requests under Rule 83 of SEC Rules of Practice
- Practical guidance
- Secrecy versus liability

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Materiality

- Materiality under federal securities laws generally covers
 - Information that would be important to a reasonable investor in deciding whether to purchase or sell the security
 - For proxy statements, in deciding how to vote the security
- A “mixed question of law and fact”
- The effect of an SEC disclosure rule like S-K 1300 mandating certain affirmative disclosures
 - An (irrebuttable?) presumption of materiality
 - Consequences of consciously deciding not to disclose

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Materiality (continued)

- Materiality as a concept within a concept
- Like many SEC rules, Regulation S-K 1300 has numerous references to materiality within the rule
- Difficulty is deciding where the materiality is to be measured
 - Materiality judgments often depend on whether materiality is being judged in terms of the importance to the company as a whole or to the specific disclosure being made
 - As proposed by SME and NMA, final S-K 1300 abandons many of the proposed rule's "per se" materiality judgments in favor of general materiality standards
- Be careful what you ask for?

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Transition to S-K 1300

- Dealing with SEC staff after S-K 1300
- Early voluntary adoption of S-K 1300
 - Adopting release says "all or none" only
 - Practical limits on that declaration
- Likely areas of focus by SEC Staff pre-adoption and post-adoption
- Effect of S-K 1300 on press releases pre-adoption and post adoption

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Other impacts of S-K 1300

- Impact of Regulation S-K 1300 on unregistered offerings of securities, *i.e.*, private placements
- Will become de facto standard of disclosure sooner rather than later
- Mandatory in certain types of private offerings when it becomes effective for SEC filings
 - Rule 506(b) offerings under Regulation D that include non-accredited investors
 - Regulation A and Regulation A+ offerings
- Guidance for US issuers selling outside US under Regulation S

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Legal issues & practice tips

- Questions?
- Contact information after the presentation
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Communicating with SEC staff

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Communicating with SEC staff

- You can always contact the Division Staff (attorneys, accountants, engineers)
 - Do not try to take them to lunch, you just cost them money!
- Remember their limitations:
 - The rule is new to them too.
 - They cannot pass judgment on one filing over another.
 - They are doing their best “to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”
 - Handle comments and other interactions the way you handle all other regulator interactions.

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Closeout

The path forward for the *SME Guide* and CRIRSCO

Closing remarks Harry Parker
Ian Douglas

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Closing Remarks – S-K 1300

- New rule solidly incorporates CRIRSCO principles of transparency, materiality, competence
- Definitions are more detailed; examples marketing studies, accuracy and contingency limits. These will affect Technical Studies that underpin Technical Report Summaries.
- Very important going forward to make sure Table 1 of the *SME Guide* covers all aspects of Technical Studies.
- Invoking confidentiality will be seen as an exception, and will require legal advice.

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Closing remarks – Path Forward

- The SME Resources and Reserves Committee will continue to exist.
- The *SME Guide* remains relevant; it contains guidance not present in S-K 1300; it leads the mining community in modifying factor guidance for environment, health, safety, and sustainability.
- The SME will continue to support and work with CRIRSCO; recruiting new members like China and India; international reporting template.
- The SME and NMA will continue to work together on disclosure issues.
- Lastly, recognition and congratulations to Harry Parker in particular, as well as the entire SME/NMA team. Thanks also to Fred Heivilin, longstanding member of the R&R Committee who could not attend and be present today.

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