

DENVER

GOLD GROUP

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UPDATE ON SEC REGULATION OF THE MINING INDUSTRY



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SEC REGULATION OF THE MINING INDUSTRY

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August 24, 2015

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- SEC Industry Guide 7
 - Overview of Guide 7
 - Comparison with international standards
 - Road to reform
 - Status of SEC rulemaking
- Other US Securities Law Updates
 - Disclosure of payments by resources extraction issuers
 - Conflict mineral disclosure
 - Executive compensation matters



Overview of Industry Guide 7

- Guide 7 is the core disclosure rule governing disclosures of U.S.-reporting companies with significant mining operations
- Adopted in 1981
- Though cutting edge at the time, Guide 7 has not been amended or updated since inception. Key interpretations have been provided solely through informal, nonbinding SEC comment letters.



Competing International Standards

- First Int'l code (JORC) developed in 1989, followed by other guides, including first SME Guide in 1991
- The Committee for Mineral Reserves International Reporting Standards (CRIRSCO) formed in 1994 to promote consistency in guides in: U.S.A, Australia, Canada, U.K. and South Africa
- Substantial reform throughout 1990's, early 2000's

Competing International Standards

- CRIRSCO family of codes/standards includes:
 - National Instrument 43-101 (CIM)
 - JORC
 - SAMREC
 - SME Guide
 - PERC (EU)
 - NAEN

Overview of Industry Guide 7

- Guide 7 permits disclosure of mineral deposits that can be “economically and legally extracted or produced,” including Proven (Measured) and Probable (Indicated) Reserves
 - Requires bankable feasibility study prior to declaration of reserves
 - Price assumptions based on three-year trailing average
 - No requirement that reserves be prepared by “qualified” or “competent” person

Overview of Industry Guide 7

- Disclosure of non-reserve mineral resource information is generally prohibited
 - Based on theory that investors are confused by difference between reserves and resources
 - Exception for information required to be disclosed by foreign or state law
 - Informal accommodation for reporting “mineralized material”

- Mineralized material
 - SEC's allowance of mineralized material reflected only in comment letters between issuers and SEC
 - Corresponds to measured and indicated resources
 - May be presented only as in place tonnage and grade (no contained ounces)
 - Required to include cautionary language

Overview of Industry Guide 7

- Guide 7 extends only to SEC filings and not to press releases, website postings and other communications
 - May include mineral resource disclosures with appropriate cautionary language
- For non-SEC filings, no SEC guidance on standard for resource disclosures

Current Guide 7 Reporting Regime

- Canadian foreign private issuers not subject to Guide 7
 - Can observe home jurisdiction requirements in SEC filings and in press release, websites, etc.
- Other foreign private issuers subject to Guide 7 but with flexibility
- Domestic issuers must observe Guide 7 requirements
 - Canadian incorporated
 - U.S. incorporated

Current Guide 7 Reporting Regime

- Canadian incorporated domestic issuers are allowed to report NI 43-101 compliant reserves and resources in SEC filings
 - Include legends for U.S. investors
 - Reconcile reserves to Guide 7 standards
- Disclosure in press releases and on company website is similarly flexible



Comparison with International Standards - CRIRSCO

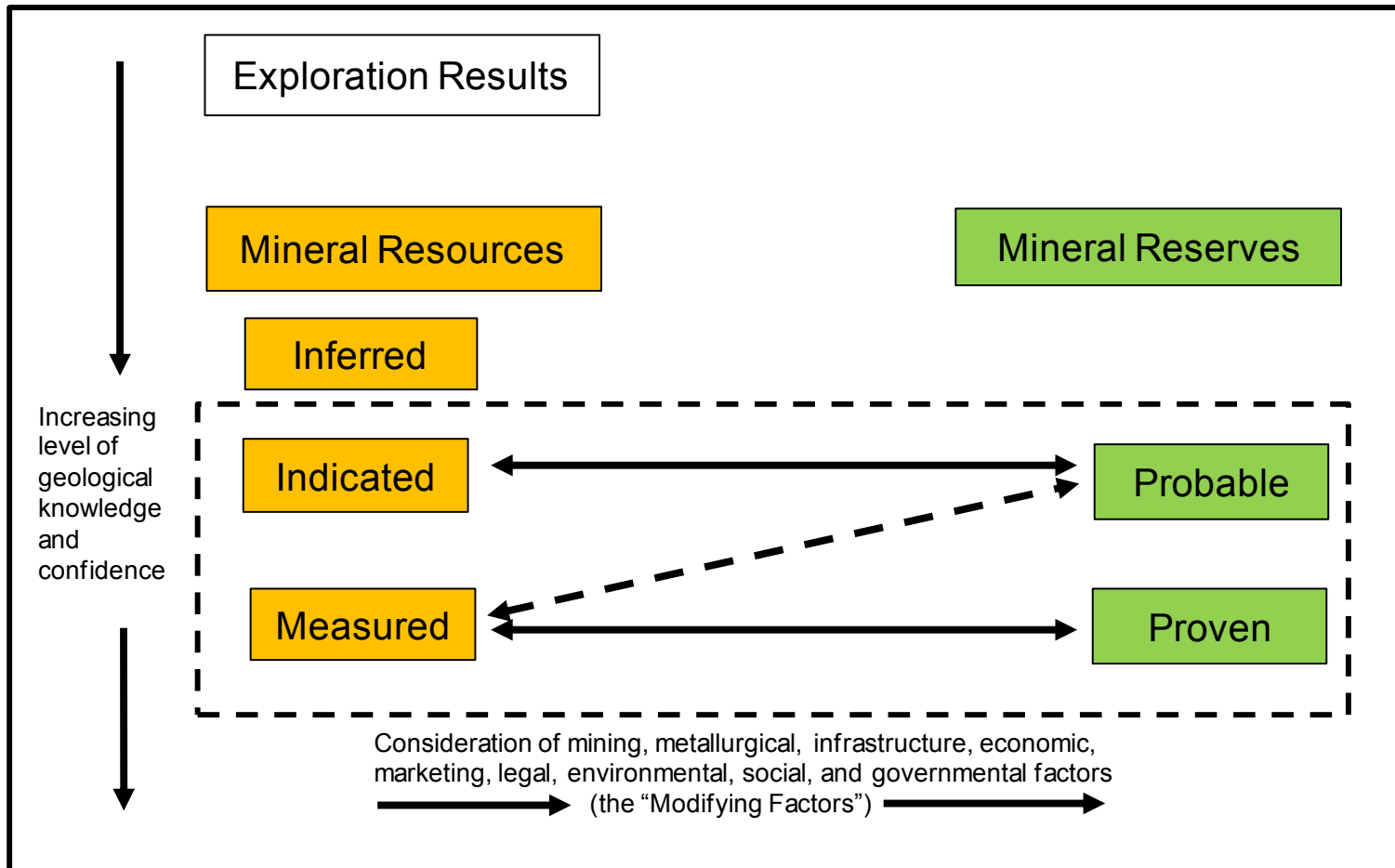
- CRIRSCO incorporates core definitions and guidance for Reserves and Resources
 - Recognized by the IASB as preferred reporting template
- Related guides contain common definitions used in public reporting in most capital markets



Comparison with International Standards - CRIRSCO

- Mineral resource estimates are uniformly disclosed and considered material and fundamental information for investors worldwide
- Measured, Indicated and Inferred mineral resource categories are observed

International Standards - Mineral Resources and Mineral Reserves



International Standards - Mineral Resource Categories

FISHING, NI 43-101 STYLE!

Inferred



Indicated



Measured



© Systemes Géostat International Inc.

Inféré

Indiqué

Mesuré

LA PÊCHE, STYLE NI 43-101 !

Other Key Elements of International Standards

- More flexibility on declaration of reserves (bankable standard not required)- allowed at prefeasibility
- Accepted use of management's future price assumptions
- “Qualified” or “competent” person required
- Rules apply to all company disclosures made, including on websites and in press releases



Guide 7 Impacts on U.S. Mining Companies

- Guide 7 disadvantages U.S. mining companies in communicating with investors and in coordinating disclosures in multiple jurisdictions
- Widespread uncertainty and confusion by issuers as to scope of permitted disclosure
- Jurisdictional limits of Guide 7 encourage disparate disclosures and leave non-SEC filings completely unregulated



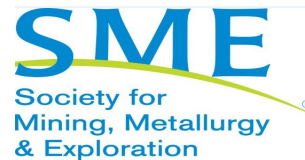
Guide 7 Impacts on U.S. Mining Companies

- Impacts market capitalization of U.S. reporting companies as resource estimates not fully appreciated
- Damages our capital markets and stock exchanges and diverts deals and listings to Canada and other jurisdictions

- Relevant factors affecting reform
 - Dodd-Frank/JOBBS Act
 - Oil & gas reform of Guide 2
 - Out-datedness of Guide 7
- Persistent industry pressure with respect to Guide 7 and mining issues generally
 - SME and CRIRSCO efforts

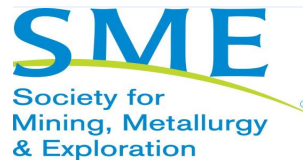
Road to Reform

- 2005: SME made recommendations to SEC regarding potential revised standards
- 2011: SME met with SEC reps to update Guide
 - Update of Guide 7 not seen as a priority
 - Overwhelmed with Frank-Dodd
 - Mining sector in the U.S. not as influential as in the past
- 2012: SME files Petition for Rulemaking
- 2013: Chair White speech confirms need to update Guide 7



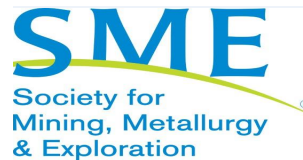
Road to Reform

- 2014: SME partnering with NMA for political support
- 2014: House Financial Services Committee/Senate Banking Committee engaged
 - SME submits questions for April 29 SEC oversight hearing
 - Several committee members circulate SME-drafted letter of support to Chair White
 - Requested draft of revised Guide



Road to Reform

- 2014: SME updates SME Guide
- 2014: SEC contacts SME asking for names of qualified professionals to be an “Academic Fellow” in DC to work on Guide 7 rulemaking
- 2015: SEC names Dr. Kwame Awuah-Offei, Missouri University of Science and Technology, as Academic Fellow



- Status of Guide 7 rulemaking?
 - SEC reports that it is “actively engaged in working on the disclosure requirements”
 - No stated timeframe for publication of proposed rules
 - Once published, expect 60 day public comment period
- Industry support and participation in comment process vital



Payments By Resource Extraction Issuers

- Section 1504 of Dodd-Frank and Section 13(q) of the Exchange Act require “resource extraction issuers” to disclose information relating to payments made by the issuer to a foreign government or the U.S. federal government for the purpose of the “commercial development of oil, natural gas, or minerals”
- Applicable to all companies required to file annual reports with the SEC (includes domestic, foreign private and smaller reporting issuers)
- SEC adopted final rules (Rule 13q-1) on August 22, 2012; however, rules were vacated by the DC District Court in July 2013 and remanded to SEC.



Payments By Resource Extraction Issuers

- “Resource extraction issuers” are issuers engaged in the commercial development of oil, natural gas or minerals
- “Commercial development of oil, natural gas or minerals” includes exploration, extraction, processing, export and other significant actions relating to oil, natural gas or minerals, or the acquisition of a license for any such activities
 - No disclosure required for payments to transport oil, natural gas or minerals for purpose other than export

Payments By Resource Extraction Issuers

- Disclosable payments include:
 - amounts paid to further the commercial development of oil, natural gas or minerals;
 - single payments, or series of related payments, of \$100,000 or more (i.e. not *de minimis*); and
 - taxes, royalties, fees, production entitlements, bonuses, dividends and payments for infrastructure improvements.
- Disclosure must be provided for payments made during the fiscal year by the issuer, an subsidiary or an entity under the issuer's control



Payments By Resource Extraction Issuers

- Governments covered
 - foreign governments, including departments, agencies or instrumentalities of foreign governments and companies owned by foreign governments, and including national and subnational governments, such as states, provinces, counties, districts, municipalities or territories
 - U.S. federal government, not including states or other subnational governments



Payments By Resource Extraction Issuers

- In rules adopted by SEC:
 - no exemption for confidential information
 - no exemption for commercially or competitively sensitive information
 - “project” remains undefined- however, SEC refers to commonly understood meaning of term in industry



Payments By Resource Extraction Issuers

- SEC rules vacated on July 2, 2013 by U.S. District Court for the District of Columbia
 - Questioned rule requirement that report be publicly filed
 - Questioned the lack of an exemption for payment information deemed confidential by government authorities
- Court remanded rules to SEC for further action, suspending current implementation of the rules

Payments By Resource Extraction Issuers

- Growing International Support for Similar Rules
 - Extraction Industries Transparency Initiative (EITI)
 - EU published comparable rules in June 2013 for large mining companies; member companies were required to adopt by July 2015
 - Canada's Prime Minister announced in July 2013 the intent to adopt new mandatory reporting standards for payments made to foreign and Canadian governments by Canadian extraction companies



Conflict Minerals Disclosures

- Section 1502 of Dodd-Frank and Section 13(p) of the Exchange Act require reporting issuers to disclose their use of “conflict minerals” originating in the Democratic Republic of Congo or adjoining areas if used in production of a product manufactured by the company
- Applicable to all reporting companies (domestic, foreign private and smaller reporting issuers)
- SEC adopted final rules (Rule 13p-1) on August 22, 2012 (effective as of November 13, 2012).



Conflict Minerals Disclosures

- “Conflict minerals” are defined as cassiterite, columbite-tantalite (coltan), **gold**, wolframite, and their derivatives, and any other minerals or their derivatives designated by the Secretary of State in the future



Conflict Minerals Disclosures

- Generally applicable to manufacturing companies
- SEC has determined that mining companies are not manufacturers (and thus not subject to the rules) unless they engage directly or indirectly in manufacturing, in addition to mining

Conflict Minerals Disclosures

- Where an issuer's manufactured products contain necessary conflict minerals, it must determine whether its materials originated in the covered countries
 - companies are required to perform a good faith, reasonable "country of origin" inquiry
 - if company believes that its conflict minerals did not come from the covered countries or if it has no reason to believe the conflict minerals originated in the covered countries, the issuer must disclose its conclusion and the basis therefore in the new Form SD and on its website

Conflict Minerals Disclosures

- Mining companies are thus implicated in supply chain diligence of reporting issuers and commonly required to certify the origin of their products
- Portions of the rule have been struck down by the Court of Appeals for the D.C. Circuit First Amendment grounds (reaffirmed on August 18, 2015)
- Other international conflict minerals rules brewing

Executive Compensation Matters

- Pay ratio
 - Final rule adopted August 5, 2015
 - Requires disclosure of:
 - Median annual total comp of all employees (except CEO)
 - Annual total comp of CEO
 - Ratio of these amounts
 - Exemptions for:
 - Emerging growth companies
 - Smaller reporting companies
 - Foreign private issuers
 - Effective for first full fiscal year commencing on or after January 1, 2017

- Mandatory clawback of executive compensation
 - Proposed rules released July 1, 2015
 - Final rules will be implemented through stock exchange listing rules
 - Coexists and differs from clawback rules under SOX 304
 - Applies to executive officers not just CEO/CFO
 - No requirement of “misconduct”
 - Enforced by issuer not SEC

Executive Compensation Matters

— As proposed,

- Issuers must adopt a clawback policy and disclose terms
- In the event of a financial restatement resulting from a material financial error, the issuer is required to clawback excess incentive-based compensation (based on attainment of financial reporting measures) received by executive officers in the three years prior to the restatement
- Amount of clawback based on reasonable estimate of compensation resulting from misstated financial results



Closing Statement

Special thanks to John Hayden from SME for all his contributions and updates. Thanks for coming! Please feel free to contact me with any questions.

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