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Technical and legal aspects for disclosure risk, liability and indemnity for QPs:

- **Title**
  - Title 17, CFR
- **Part**
  - Part 229 Regulation S-K
- **Subpart**
  - Subpart 600
  - Subpart 1300
- **Item**
  - Item 601
  - Items 1301 - 1305

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Additional Disclaimer

No part of this presentation should be considered legal advice. I am a technical consultant not lawyers.

SRK Consulting recommends that you discuss your filing requirements with your securities lawyers.

The following information is SRK’s interpretation of the new SEC rules.

SEC Mining Disclosure – SRK Workshop

OVERVIEW – WHO IS AFFECTED?

Affected Entities

- US registrants with material mining properties:
  - This includes all companies listed on US exchanges (whether it is their primary listing or not).
  - This also includes American Depository Receipts (ADRs) dependent upon the ADR category:
    - Unsponsored – ADRs restricted to trading in the over-the-counter markets.
    - Level I – ADRs traded in the U.S. over-the-counter market with prices collected and published in a centralized quotation service.
    - Level II – ADRs listed on a U.S. stock exchange and are used by issuers that do not wish to raise capital at that time.
    - Level III – ADRs designed for non-U.S. companies that wish to list and raise capital from U.S. investors at the same time.

Level II and Level III ADRs are likely to be subject to the new rules due to filing requirements.

When is this relevant?

	Form	TR*	Form Description
Securities Act Forms	S-1	x	Registration statement – Filed to register the offer and sale of securities to the public often in connection with an initial public offering.
	S-3	x	Short-form registration statement – An abbreviated registration statement available to certain already-reporting companies to register the offer and sale of securities to the public.
	S-4	x	Registration statement – Filed when the company is registering securities to be used as consideration in the merger or acquisition. The registration statement often incorporates any proxy statement being sent to shareholders.
	F-1	x	Foreign Private Issuers
	F-3	x	Foreign Private Issuers
	F-4	x	Foreign Private Issuers

*TR = Technical Report

	Form	TR*	Form Description
Exchange Act Forms	10	x	General Form for registration of securities
	8-K		Current report – Discloses material events or information that the company chooses or is required to make public prior to its next scheduled quarterly or annual report.
	10-Q		Quarterly report – Provides unaudited quarterly financial statements, updates regarding material risks that the company faces, and management's discussion and analysis of the company's results of operations for the prior fiscal quarter.
	10-K	x	Annual report – Provides audited annual financial statements, a discussion of material risk factors for the company and its business, and a management's discussion and analysis of the company's results of operations for the prior fiscal year.
	20-F	x	Annual report or registration statement – This filing includes audited financial statements of the foreign private issuer and a discussion of the company's financial results. A check box on the cover page indicates whether the filing is for an annual report or to register a class of securities.
	40-F		The MJDS permits seasoned Canadian issuers meeting certain other requirements to use their Canadian disclosure documents when filing their Exchange Act registration statements and annual reports on Form 40-F or their Securities Act registration statements on Forms F-10, F-7, F-8 and F-80.

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OVERVIEW – ROLE OF A QP

QP Definition

- A QP must have ≥ 5 years of **relevant experience** in the type of mineralization and type of deposit (or similar) under consideration and in the specific type of activity.
- The QP must be an eligible member or licensee in good standing of a recognized **professional organization** at the time the technical report is prepared.
- A recognized professional organization means a reputable professional association, or a board, authorized by U.S. federal, state or foreign statute to regulate professionals in the mining, geoscience, or related field (SEC does not publish an approved list of recognized professional organizations).
- The registrant is responsible for checking that QPs meet the specified qualifications.

QP Independence and Consent

- **Independence**: It is not required that the QP(s) are independent from the registrant.
- **Affiliated QP(s):** QP(s) are **individually named** and provide written consent on an individual basis.
- **Third-party Firms:** Comprising mining experts may sign the technical reports without naming their employees. The third-party firm will therefore incur liability rather than the individual QP(s).
- QPs must sign and date the Technical Reports, delineating which section(s) were prepared by each QP.
- Written consent by the QP(s) is required to use the QP(s) name, quotation or summarization of the technical report summary in a filing.

QP Responsibility

- To understand the SEC disclosure rules.
- To understand the sources of information:
  - Reliance on information provided by the registrant must be noted.
  - The QP is responsible for the information provided by the third parties.
- QP(s) take responsibility for the information disclosed.

Ignorance is not a defense!

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QP Liability

- QPs are subject to liability as experts under Section 11 of the Securities Act.
- This liability is attached to the individual or entity that signs the report:
  - For example, a third party consultant (in this example SRK), signing the report means that the third party consultant (SRK) bears the liability.
  - An individual signing the report personally bears the liability.
  - Project proponents cannot sign off as QP on their own reports; the inhouse QP will have to sign as QP.
- In addition to QP liability, individuals who author a report can be liable in tort or contract even if the report is authored by an entity.

Section 11 Liability

- Section 11 (“expert”) liability is a strict liability under US securities law:
  - Strict liability is a legal doctrine that makes a person or company responsible for their actions or products which cause damages regardless of any negligence or fault on their part.
- Section 11 liability typically applies to members of a board of directors and some members of executive management.
- Waiver, indemnification and limitation of liability:
  - Although contract and tort liability can be contractually limited, a QP’s statutory liability to the general public cannot be limited and **indemnifications may be difficult to enforce**.

The QPs should understand the level of liability to which they are exposed.

Could a qualified person be held liable?

- In short Yes! if information contained in the technical report summary is incorrect or misleading?
- U.S. securities laws allow any purchaser in a public offering of securities to sue the registrant (Company), its directors, and any officer that signed the SEC registration statement for the offering.
- Conditions required to sue:
  - if the registration statement pursuant to which the securities were sold "contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading . . . ", and the purchaser suffered damages.
- A purchaser may also sue any expert who has, with his or her consent, been named in the registration statement. (**Most likely the technical report summary**).

SEC Mining Disclosure – Disclaimers

DISCLAIMERS

Disclaimers and Reliance

- The QP is taking full responsibility.
- <u>No third-party disclaimers are allowed!</u>
- Reliance upon information provided by the registrant is allowed and may be able to be disclaimed:
  - In certain categories:
    - Macroeconomic information;
    - Marketing information and plans within the control of the registrant;
    - Legal matters outside the expertise of the QP;
    - Environmental matters outside the expertise of the QP;
    - Accommodations the registrant commits or plans to provide to local individuals or groups in connection with its mine plan; and
    - Governmental factors outside the expertise of the QP.
  - This information must be noted and commented upon as to why the QP believes it is reasonable to rely on this information.
  - This information must be summarized in a separate section of the report and the affected portions of the report must be noted.

Disclaimers and Reliance

- A QP may include in the technical report summary, information and documentation provided by a third-party specialist who is not a qualified person, such as an attorney, appraiser, and economic or environmental consultant, upon which the qualified person has relied in preparing the technical report summary.

- The QP <u>may not disclaim responsibility</u> for any information or documentation prepared by a third-party specialist upon which the qualified person has relied, or any part of the technical report summary based upon or related to that information and documentation.

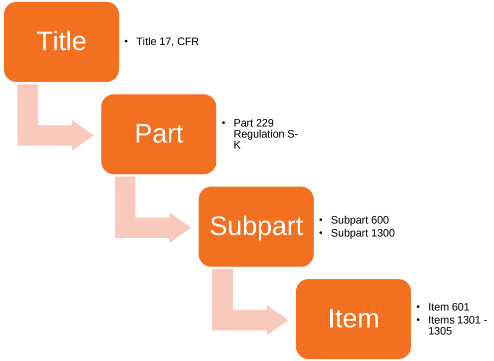
SEC Mining Disclosure – Disclaimers

WHERE TO LOOK IN THE RULES

S-K rules 1300

Disclosure by Registrants Engaged in Mining Operations:

- 229.1301 General instructions and definitions.
- **229.1302 Qualified person, technical report summary, technical studies**.
- 229.1303 Summary disclosure.
- 229.1304 Individual property disclosure.
- 229.1305 Internal controls disclosure.



1302 Qualified Person, Technical Report Summary, and Technical Studies

- Lays out:
  - Qualified Person standards.
  - Technical reports for the support of resources and reserves.
  - Mineral resources must be based upon an Initial Assessment by a QP.
  - Mineral reserves must be based upon a PFS or FS by a QP.
  - Updates are required when material changes occur.
  - Requirement for written consent to disclosure by QP(s).
  - Requirement for individual QP sign-off if the QP is an employee of or affiliated with the registrant.
  - Ability to disclose exploration targets.
  - Operating and capital cost accuracy at different levels of study.
  - **Limitations on disclaimers.**

Relevant Factors in Technical Studies

Factors	Initial Assessment	Preliminary Feasibility Study	Feasibility Study
Site infrastructure	Establish whether or not access to power and site is possible. Assume infrastructure location, plant area required, type of power supply, site access roads, and camp/town site, if required.	Required access roads, infrastructure location and plant area defined. Source of all utilities (power, water, etc.) required for development and production defined with initial designs suitable for cost estimates. Camp/Town site finalized.	Required access roads, infrastructure location and plant area finalized. Source of all required utilities (power, water, etc.) for development and production finalized. Camp/Town site finalized.
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.
Processing plant	Establish that all products used in assessing prospects of economic extraction can be processed with methods consistent with each other. Processing method and plant throughput assumed.	Detailed bench lab tests conducted. Detailed process flow sheet, equipment sizes, and general arrangement completed. Detailed plant throughput specified.	Detailed bench lab tests conducted. Pilot plant test completed, if required, based on risk. Process flow sheet, equipment sizes, and general arrangement finalized. Final plant throughput specified.

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Relevant Factors in Technical Studies

Factors	Initial Assessment	Preliminary Feasibility Study	Feasibility Study
Environmental compliance & permitting	List of required permits & agencies drawn. Determine if significant obstacles exist to obtaining permits. Identify pre-mining land uses. Assess requirements for baseline studies. Assume post-mining land uses. Assume tailings disposal, reclamation, and mitigation plans.	Identification and detailed analysis of environmental compliance and permitting requirements. Detailed baseline studies with preliminary impact assessment (internal). Detailed tailings disposal, reclamation, and mitigation plans.	Identification and detailed analysis of environmental compliance and permitting requirements finalized. Completed baseline studies with final impact assessment (internal). Tailings disposal, reclamation, and mitigation plans finalized.
Other relevant factors	Appropriate assessments of other reasonably assumed technical and economic factors necessary to demonstrate reasonable prospects for economic extraction.	Reasonable assumptions, based on appropriate testing, on the modifying factors sufficient to demonstrate that extraction is economically viable.	Detailed assessments of modifying factors necessary to demonstrate that extraction is economically viable.
Capital costs	Optional. If included: Accuracy: ±50% Contingency: 25%	Accuracy: ±25% Contingency: 15%	Accuracy: ±15% Contingency: 10%
Operating costs	Optional. If included: Accuracy: ±50% Contingency: 25%	Accuracy: ±25% Contingency: 15%	Accuracy: ±15% Contingency: 10%
Economic analysis	Optional. If included: Taxes and revenues are assumed. Discounted cash flow analysis based on assumed production rates and revenues from available measured and indicated mineral resources.	Taxes described in detail; revenues are estimated based on at least a preliminary market study; economic viability assessed by detailed discounted cash flow analysis.	Taxes described in detail; revenues are estimated based on at least a final market study or possible letters of intent to purchase; economic viability assessed by detailed discounted cash flow analysis.

SEC Mining Disclosure – Disclaimers

QUESTIONS