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September 8, 2008

Ms. Florence Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

File No. S7-15-08

Dear Ms. Harmon:

We are pleased to submit this letter in response to the solicitation of the Securities and Exchange Commission (the "Commission") for comments regarding the proposed revisions to its oil and gas reporting requirements, published in Release No. 33-8935, Modernization of the Oil and Gas Reporting Requirements (June 26, 2008) (the "Release").

I. Summary.

We commend the Commission and the staff of the Commission (the "Staff") for their considerable efforts to modernize oil and gas reporting requirements. However, we respectfully request that the Commission reconsider its decision to continue to prohibit disclosure of estimates of oil or gas resources other than reserves in any document filed with the Commission. We submit that a categorical prohibition on such disclosure deprives the public markets of significant information, particularly as it relates to oil and gas exploration companies, without meaningfully enhancing investor protection. In the event that the Commission determines to maintain its prohibition on disclosure of resources information other than reserves, we would respectfully request that the Commission confirm that the exception contained in Instruction 5 to Item 102 of Regulation S-K (and the proposed revision to such Instruction set forth in the Release), which permits issuers to disclose estimates of oil and gas reserves other than proved if such information is required to be disclosed in the document by foreign or state law (the "Exception"), applies to foreign issuers and U.S. issuers alike.

II. The Commission should reconsider the prohibition on disclosure of resources information other than reserves.

In the Concept Release on Possible Revisions to the Disclosure Requirements Relating To Oil And Gas Reserves (the "Concept Release"),[1] which preceded the Release, the Commission inquired whether it should consider allowing companies to disclose reserves other than proved reserves in filings with the Commission, and, if yes, what reserves disclosure should be considered. The Commission did not inquire whether disclosure of resources other than reserves should be permitted.

Nevertheless, in response to the Concept Release, several comment letters suggested that each issuer be permitted, but not required, to disclose resources beyond reserves, in the manner or to the extent that such issuer deems appropriate.[2] The reasons offered by such commentators varied, but were based primarily on the view that an issuer should not be curtailed from providing full, meaningful disclosure to investors. In particular, commentators argued that permitting an issuer to disclose resources information would allow the issuer to provide a more accurate and complete picture to investors regarding the issuer's business, oil and gas properties, strategy, investment decisions and prospects. Notwithstanding the above-referenced comment letters, the Release does not indicate that the Commission considered lifting its prohibition on disclosure of resources information other than reserves.

We note that in the Release the Commission expressed its concern that estimates of resources other than reserves are "too speculative and may lead investors to incorrect conclusions". We submit that resources information though speculative may, nonetheless, constitute meaningful disclosure for some issuers. In particular, for early-stage oil and gas companies, whose business is the exploration of their oil and gas properties, information about resources is, in our experience, very often important to understanding the issuer's business, properties, strategy and prospects. In contrast, for mature oil and gas companies with significant producing assets, resources information other than reserves is, generally, not significant to the company as whole, and, therefore, disclosure of resources information other than reserves may not be meaningful. The fact that resources information may be meaningful to some companies and not meaningful to others suggests to us that each issuer should have the option to disclose information about its resources other than reserves, and not be prohibited from making such disclosures.

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[1] Release No. 33-8870 (Dec. 12, 2007) [72 FR 71610].

[2] See, for example, letters from BHP Billiton Petroleum, Nexen Inc., Petro-Canada, Sasol Ltd. And White & Case LLP.

As the Commission notes in the Release, securities regulators in other jurisdictions, such as the United Kingdom and the provinces and territories of Canada, permit the disclosure of resources information other than reserves. Moreover, we have been advised that in circumstances where an issuer's resources information is significant to the issuer's business and strategy, the reporting rules in such jurisdictions actually require, rather than merely permit, disclosure of such information. The reporting regimes adopted by such jurisdictions, like the Petroleum Resources Management System adopted by the Society of Petroleum Engineers, recognize a broad range of resources categories because such information is meaningful.

In our view, the benefits of allowing full disclosure of resources information outweigh the risks associated with such disclosure. While we agree with the Commission's conclusion that resources information other than reserves is speculative and understand the Commission's concern with respect to the disclosure of such information, we do not believe that prohibiting its disclosure in filings is the best way to mitigate the risks associated with such information. In fact, we believe that denying U.S. public markets access to resources information may have a deleterious effect on the efficiency and development of U.S. public markets.

We submit that disclosure of the risks and uncertainties associated with resources information, rather than prohibition of disclosure, better promotes the dissemination of information that is central to maintaining efficient capital markets. To this end, we note that the Staff currently recommends that issuers that disclose resources beyond proved reserves on their websites and in press releases include bold, cautionary legends to alert investors as to the risks associated with such information. We believe that if the Commission were to permit disclosure of resources information other than reserves, it would be appropriate to mandate that similar bold, cautionary legends be included in filings with the Commission that include such resources information. The Commission could also require that disclosure of resources information other than reserves be based on information derived from the report of an independent reserve engineer. We believe that measures designed to inform the public of the risks and uncertainties associated with resources information and enhance the reliability of such information serve better to protect the public and promote market efficiency as opposed to an outright prohibition on such information.

It bears mention that under the Commission's existing rules – namely the Exception and the Canada-U.S. multijurisdictional disclosure system – certain foreign issuers are permitted to disclose resources estimates in their filings with the Commission. Thus, as a practical matter, the strict prohibition on disclosure of resources information applies primarily to U.S. issuers. The fact that many foreign issuers are permitted by Commission rules to disclose resources information suggests that the Commission has *not* concluded that such information is inherently misleading. Consequently, we submit that a categorical prohibition on disclosure of resources information that applies primarily to U.S. issuers is inconsistent and unnecessary. Moreover, to prohibit U.S. companies from disclosing information that foreign issuers are permitted to

disclose can be a disadvantage to U.S. companies seeking to raise capital both in the U.S. markets and abroad.

In our view, the prohibition on resources information deprives the issuer of the ability to provide full information to the investing public and deprives the public market of full information about the issuer. We believe the result of this prohibition on information does not promote efficient markets. Ultimately, we submit, existing public and private remedies are sufficient to protect investors and that an outright prohibition on information is not justified.

III. The Exception contained in Instruction 5 to Item 102 of Regulation S-K applies to foreign and U.S. issuers.

The Exception contained in Instruction 5 to Item 102 of Regulation S-K permits issuers to disclose estimates of oil and gas reserves other than proved[3] where such disclosure is required by *foreign or state* law. We understand that the Staff has interpreted the Exception as applying *only* to foreign issuers.

In our view, a plain reading of the Exception, which refers to requirements of both *foreign and state* law, does not support the Staff's interpretation that the Exception applies only to foreign issuers. Further, we believe that the Staff's interpretation of the Exception prejudices U.S. issuers.

For a variety of valid business reasons, U.S. oil and gas companies may seek to access foreign capital markets, thereby subjecting themselves to foreign disclosure rules. As noted above, we have been advised that certain foreign jurisdictions may require oil and gas exploration companies to disclose resources information. However, given the Staff's interpretation of the Exception, a U.S. issuer that is subject to the disclosure requirements of a foreign regulatory authority that requires such issuer to disclose resources information cannot disclose all such information in its filings with the Commission.

At the very least, the result of the Staff's interpretation of the Exception is that the issuer's disclosure will be inconsistent across jurisdictions, which can create concerns under Rgulation FD. But, where resources estimates are significant to understanding a company's business, properties, strategy and prospects, the Staff's interpretation of the Exception can also create a practical barrier for U.S. issuers to access the public capital markets (both in the United States and abroad), while at the same time providing an avenue for foreign issuers to access public markets in the United States. The effect is that a newly formed oil and gas exploration company that seeks to raise capital in the public markets, including the U.S. capital markets, has an

[3] In the Release the Commission is proposing to permit disclosure of "probable" and "possible" reserves.

incentive to organize itself in a jurisdiction outside of the United States. We believe that this result is unintended and that the Staff's interpretation should be reconsidered.

IV. Conclusion.

For the reasons cited above, we respectfully request that the Commission reconsider its prohibition on the disclosure of resources information other than reserves. In the event that the Commission determines to maintain the prohibition, we request that the Commission confirm that the Exception applies to both foreign issuers and U.S. issuers.

We appreciate the opportunity to comment on the Release and would be pleased to discuss any questions the Commission or its Staff may have in respect of our comments. Should the Commission or the Staff wish to discuss our comments, please contact Adam Givertz at 416-360-5134.

Very truly yours,

Shearman & Sterling LLP