Freeport-McMoRan Inc.
333 North Central Ave.
Phoenix, AZ 85004

Douglas N. Currault II
Deputy General Counsel
and Corporate Secretary
Telephone: [redacted]
Facsimile: [redacted]

July 28, 2017

Via Electronic Submission

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Reconsideration of Pay Ratio Rule Implementation

Dear Chairman Clayton:

On behalf of Freeport-McMoRan Inc. (FCX), I am submitting this letter in response to recent comments by Commissioner Piwowar at the National Conference of the Society for Corporate Governance. Commissioner Piwowar urged interested parties to continue to provide comment on challenges faced in connection with the implementation of the final rule requiring public companies to disclose the ratio of the annual total compensation of the registrant's chief executive officer and that of its "median" employee (the Final Rule), which was adopted by the Securities and Exchange Commission (the Commission) pursuant to Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 953(b)).

FCX is a leading international mining company with headquarters in Phoenix, Arizona. We operate large, long-lived geographically diverse assets with significant proven and probable reserves of copper, gold and molybdenum, and we are the world's largest publicly traded copper producer. Our portfolio of assets includes the Grasberg minerals district in Indonesia, and significant mining operations in the Americas, including the large-scale Morenci minerals district in North America and the Cerro Verde operation in South America. At December 31, 2016, we employed approximately 30,000 people (12,200 in Indonesia, 11,000 in North America, 5,400 in South America and 1,400 in Europe and other locations).

As we have prepared for implementation, we have encountered challenges with certain aspects of the Final Rule, particularly those related to the definition of "employee," which are described below. While we believe a delay in the effective date is appropriate to fully evaluate the unintended consequences and costs of the Final Rule, immediate revisions to the Final Rule to address the issues below would alleviate some of the compliance burden.

Challenges Presented by Inclusion of Non-U.S. Employees

The definition of "employee" in the Final Rule includes all employees of a registrant and its consolidated subsidiaries, wherever located. While there are two limited exceptions that allow for exclusion of certain non-U.S. employees, use of the data privacy exception is itself time consuming and expensive, and use of the de minimis exception only provides minimal relief for a company with global operations like ours.[1] **We believe that only employees located in the U.S. should be included for purposes of the calculation.** This would significantly reduce compliance costs, as one study determined that permitting registrants to exclude non-U.S. employees would reduce compliance costs by 47%.[2]

We have offices and operations in 19 different foreign jurisdictions, each with its own unique compensation structure. Similar to other global companies, in order to pay competitive compensation in each jurisdiction in which we operate, we have specific compensation programs that vary from country to country. For example, even determining what constitutes "base pay" varies between jurisdictions and presents significant challenges from a methodology and consistency perspective in light of customary and/or legally required pay practices in foreign countries. The risk of inaccuracies in calculating compensation for non-U.S. employees is significant. As a result, we have and will continue to dedicate substantial internal and external resources to ensure appropriate employee training and a consistent data collection/analysis process. Our early estimates are that our personnel and external advisors will devote hundreds of human hours in response to this disclosure requirement, with the vast majority of that time focused on gathering and assessing information in foreign jurisdictions. The costs of diverting that level of time and resources away from company operations, balanced against the benefit gained by including non-U.S. employees, is unduly burdensome and costly and not in the best interest of our stockholders.

Exclusion of non-U.S. employees would also provide a constant in the pay ratio data for all companies, by eliminating the multiple and often inconsistent variables present when gathering data among different foreign jurisdictions (such as the impact of company versus government provided pension and health benefits, labor and security laws impacting the delivery of different forms of compensation, fluctuations in currency values, and different cost of living standards).

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[1] Under the Final Rule, a company may exclude non-U.S. employees from the determination of its median employee in two circumstances: (1) if data privacy laws in the applicable jurisdiction render the company unable to comply with the rule without violating those laws; and (2) a company can exclude up to 5% of its total employees who are non-U.S. employees, but this amount includes any non-U.S. employees excluded using the data privacy exemption and to use this exception, all non-U.S. employees in any single jurisdiction must be excluded.

[2] See Center on Executive Compensation Comments on Proposed Pay Ratio Disclosure, available at http://www.sec.gov/comments/s7-07-13/s70713-572.pdf.

Challenges Presented by Inclusion of Independent Contractors

The Final Rule, together with a C&DI, also expanded the notion of "employees" to include those that companies would characterize as independent contractors. **We believe that inclusion of independent contractors in any form is inconsistent with the statutory mandate of Section 953(b), and significantly increases the burden of complying with the rules.**

The Final Rule captured some independent contractors by defining "employee" to exclude "those workers who are employed, and whose compensation is determined, by an unaffiliated third party but who provide services to the registrant or its consolidated subsidiaries as independent contractors or 'leased' workers." Thus, under the Final Rule, all "workers" (including independent contractors) are deemed employees unless they satisfy the "unaffiliated third party" prong of the definition. In an effort to clarify this provision, the Commission Staff issued a C&DI stating that, for purposes of determining who is an employee under the Final Rule, "a registrant should include those workers whose compensation it or one of its consolidated subsidiaries determines regardless of whether these workers would be considered 'employees' for tax or employment law purposes or under other definitions of that term."[3]

Using a different definition of "employee" than the widely recognized tests under tax and employment law adds an unnecessary layer of complexity and confusion. Because registrants already classify their workers as employees or independent contractors for purposes of tax and employment laws, it is unreasonable to require registrants to conduct a separate analysis on a person-by-person basis, solely for purposes of disclosing the pay ratio. Applying a different test for this determination also introduces legal risk to employers, who must weigh numerous factors to determine the most appropriate classification based on a long history of tax decisions and case law and who are often required to defend their determinations.

Beyond the classification issue, incorporating independent contractors' compensation into the pay ratio analysis has also proved to be administratively burdensome. First, we do not have one centralized process for engaging independent contractors or tracking all of these arrangements. Each of our site locations has the authority to engage contractors and consultants, and these independent contractors are typically not paid through our various payroll systems but through accounts payable. As such, prior to assessing whether each particular independent contractor relationship falls within the definition of "employee" under the Final Rule, we have had to undertake a time consuming and costly process to first identify each of our independent contractors, both those with individual relationships as well as those providing services pursuant to an agreement with a third party provider.[4] Following identification of each independent contractor, we will have to assess the nature of each relationship to determine whether the "compensation was determined by an unaffiliated third party" under the Final Rule and Commission guidance. This will involve significant human hours, both in the actual assessments

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[3] See U.S. Securities and Exchange Commission, Division of Corporate Finance, Compliance and Disclosure Interpretations, Q&A 128C.05 (October 18, 2016).

[4] Although some of this information has been tracked for other disclosure purposes, the level of detail required in order to comply with the Final Rule is greater than that previously gathered.

as well as in connection with training our personnel and putting in place internal control procedures.

The Pay Ratio Disclosure Should Be "Furnished," not "Filed"

Under the Final Rule, the pay ratio disclosure is required to be "filed," not "furnished." We believe the Commission reached this conclusion based on an unnecessarily strict reading of Section 953(b), which requires that the pay ratio disclosure be included in any "filing" of an issuer described in Item 10(a) of Regulation 8-K. We note that, with respect to other disclosures, the Commission has provided for "furnished" status where "filing" poses undue risk of liability due to the uncertain nature of the disclosures.[5]

If the Commission is unwilling to change the filed v. furnished status of the disclosure, in light of the significant number of estimates, assumptions and judgment calls that will be required to calculate the pay ratio and prepare the related disclosure, we respectfully request that the disclosure be excluded from the CEO and CFO certifications required for "filed" information under Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934 and Section 906 of the Sarbanes-Oxley Act of 2002.

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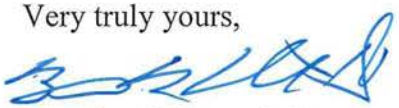
We appreciate the opportunity to provide comments on the Final Rule, and respectfully urge the Commission to revise the Final Rule to address the issues noted above, or delay the effective date of the Final Rule to allow the Commission additional time to consider the issues raised and to allow companies additional time to prepare.

Very truly yours,



Douglas N. Currault II

cc: Richard C. Adkerson
Kathleen L. Quirk

[5] For instance, Items 2.02 and 7.01 of Form 8-K, the audit committee report under Item 407(d) of Regulation S-K, the compensation committee report under Item 407(e)(5) of Regulation S-K, and the stock performance graph under Item 201(e) of Regulation S-K all represent information in "filings" that are deemed "furnished" by the Commission.