

PROPOSED AMENDMENTS TO THE DISCLOSURE RULES FOR MINERAL PROJECTS

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On April 23, 2010, the Canadian Securities Administrators published for comment proposed revisions to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101). These are the first major changes proposed for NI 43-101 since 2005. The amendments follow public consultations conducted by the CSA over the last year and address several of the disclosure-related issues frequently encountered by mining issuers. The CSA indicated that their intention is to provide increased flexibility for mining issuers while maintaining investor protection. Significant changes include:

- potentially eliminating the short form prospectus trigger for filing a technical report;
- expanding the use of preliminary economic assessments;
- eliminating the requirement in many circumstances to file new consents by the authors of a previously filed technical report which remains up-to-date and allowing expert consents in connection with short form prospectus filings to be signed by the firm that employed a qualified person;
- extending the use of historical estimates to include third party estimates made after 2001;
- adding flexibility in the eligibility criteria for qualified persons who are members of foreign professional associations; and
- adding flexibility in the use of foreign codes.

The proposals also include several other technical changes to the instrument as well as updates to the form of technical report, the guidance provided in the Companion Policy 43-101CP and other consequential amendments to other securities rules.

The Short Form Prospectus Trigger

The CSA is considering modifying or eliminating the short form prospectus trigger for filing a technical report. The CSA acknowledges that the existing requirement to prepare a new technical report in connection with a short form prospectus filing imposes additional costs and delays on issuers. The CSA is seeking to determine whether the reduced costs to issuers from eliminating the requirement would outweigh the benefits to investors of having scientific and technical disclosure in a short form prospectus supported by a technical report.

The preparation of a new technical report is frequently a major limitation on the timing and availability of short form prospectus financings. We believe the elimination of this requirement will be welcomed as a significant benefit to issuers as it would allow more ready access to favourable market windows. Although the proposal could potentially lead to circumstances where scientific and technical information in a short form prospectus is not supported by a technical report, we believe this concern is tempered by the basic obligation of an issuer to provide full, true and plain disclosure of all material facts. Furthermore, the statutory and civil liability provided for prospectus disclosure provides significant incentives for issuers and underwriters to ensure that any material scientific and technical information in a short form prospectus is accurate.

We expect that this proposal will generate considerable comment from issuers, advisors and investors.

Preliminary Economic Assessments

The proposals allow for increased flexibility in disclosing the results of preliminary economic assessments that include, or are based on, inferred mineral resources (i.e., scoping studies). The amended instrument would allow issuers to disclose preliminary economic assessments made after the completion of a pre-feasibility or feasibility study, provided that the disclosure includes the impact of the assessment on the results of any preliminary feasibility or feasibility study. Disclosure of a preliminary economic assessment would not be limited to circumstances where the results represent a material change or a material fact with respect to the issuer, as is currently the case for preliminary assessments. While there are still conditions to the disclosure of economic analysis based on inferred resources, these proposed changes will allow issuers to provide more complete disclosure to the market at an earlier stage.

Expert Consents

The CSA is proposing amendments to remove the requirement to file updated consents and certificates of qualified persons regarding written disclosure of scientific or technical information supported by a previously filed technical report in a number of circumstances (including the filing of prospectuses, AIFs, information circulars, take-over bid circulars and directors' circulars), provided that: (i) there is no new material scientific or technical information concerning the property not included in the previously filed technical report; and (ii) if applicable, the technical report continues to meet independence requirements. The proposed rule changes would also allow the firm that employed a qualified person who previously authored a technical report to sign the required consent on filing of a short form prospectus. These two proposed changes will address one of the most common problems encountered by mining issuers in complying with NI 43-101 – the logistical hassle of tracking down qualified persons who authored previously filed technical reports. It is often practically difficult to arrange for an individual technical report author, who may be working in a remote and inaccessible field location or may no longer be employed by the same consulting firm, to review the final version of a time-sensitive disclosure document and provide a consent before filing. The proposed changes will eliminate this common problem.

Historical Estimates

The current version of NI 43-101 allows issuers, in certain circumstances, to disclose historical estimates of the quantity, grade and metal or mineral content of a deposit prepared prior to the adoption of NI 43-101 in 2001 which do not employ the classifications and standards required by NI 43-101, subject to the obligation to include an appropriate explanation of the source and reliability of this disclosure. The CSA is proposing to change this accommodation so that it will apply to disclosure that was prepared by third parties before the issuer acquired, or agreed to acquire, the property, instead of the issuer's own historical disclosure. When combined with an additional exemption that allows an issuer six months, rather than the current 45 days, to prepare a technical report to support disclosure of a preliminary economic assessment, mineral resource or mineral reserve that are supported by a technical report filed by another issuer, the CSA's proposals should allow issuers to communicate information concerning newly acquired properties more effectively.

Flexibility in Eligibility Criteria for Qualified Persons and Foreign Codes

NI 43-101 currently sets out a prescribed list of acceptable foreign professional associations whose members are acceptable to be qualified persons. Given that Canadian-listed issuers have mineral properties world-wide, these limitations create significant barriers to the use of local experts as qualified

persons for international properties. The CSA is proposing to replace the current prescriptive list of acceptable associations with broader objective standards that professional associations must meet in order to have their members be eligible to act as qualified persons. We expect that this change will allow foreign professional associations to more easily adopt policies that will allow their members to meet the criteria necessary to act as a qualified person and avoid the need for time consuming applications for exemptive relief by mining issuers.

Flexibility in Use of Foreign Codes

The amended instrument similarly proposes to replace the current prescribed list of acceptable foreign mining codes with an objective test for determining which codes are acceptable and to remove the requirement to reconcile mineral resource and reserve categories under acceptable foreign codes to Canadian Institute of Mining, Metallurgy and Petroleum standards.

Other Changes

Other proposed amendments to NI 43-101 include:

- amendments to increase the flexibility of certain form requirements for technical reports;
- an exemption from the requirement to file technical reports for royalty holders in certain circumstances; and
- additional exemptions from the independence requirements for technical reports for: (i) producing issuers who are already reporting issuers in Canada; and (ii) producing issuers that are new reporting issuers in Canada and whose securities trade on certain specified exchanges.

The Notice and Request for Comment on the proposals is [available here](#).

MINING BULLETIN

We would be pleased to assist you in formulating and providing your comments to the CSA on these proposals. If you would like more information about the proposals and how they will apply to you, please contact your usual lawyer in BLG's Securities & Capital Markets Group or any of our Mining Group leaders noted below.

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