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CANADIAN SECURITIES ADMINISTRATORS

NOTICE AND REQUEST FOR COMMENT

Proposed Repeal and Replacement of National Instrument 43-101 *Standards of Disclosure for Mineral Projects,* Form 43-101F1, and Companion Policy 43-101CP.

We, the Canadian Securities Administrators (CSA), are publishing for a 90-day comment period the following proposed documents:

- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (Amended NI 43-101 or NI 43-101)
- Form 43-101F1 (Amended Form)
- Companion Policy 43-101 (Amended Companion Policy)

collectively, "the Amended Mining Rule".

The text of the Amended Mining Rule is being published concurrently with this Notice and can also be obtained on websites of CSA members, including the following:

- www.albertasecurities.com
- www.bcsc.bc.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca

The Amended Mining Rule would replace the current National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (Current NI 43-101), current Form 43-101F1 (Current Form), and current Companion Policy 43-101CP (Current Companion Policy) (collectively, the Current Mining Rule) that came into effect as either a rule, a policy, or a regulation, in all CSA jurisdictions on February 1, 2001.

Each member of the CSA is expected to repeal the Current Mining Rule and replace it with the Amended Mining Rule. The Amended NI 43-101 and Amended Form will be implemented as a rule, commission regulation, or policy in all CSA member jurisdictions.[1]

Substance and Purpose of the Amended Mining Rule

We have been monitoring the Current Mining Rule since we adopted it. We have identified a number of areas where the Current Mining Rule is not operating as we intended, so are proposing a number of changes that will:

[1] In Ontario, the following provisions of the *Securities Act* provide the Ontario Securities Commission with authority to make the Amended NI 43-101: paragraphs 143(1)13, 18, 22, 24 and 39.

- reflect changes that have occurred in the mining industry,
- correct errors,
- simplify the drafting,
- provide exemptions in specified circumstances, and
- generally make the Current Mining Rule more user-friendly and practical.

Summary of Amendments
This section describes some of the key changes we are making in the Amended Mining Rule.

NI 43-101
Part 1
We have:

- deleted the application section. To clarify the scope of the rule, we have added to other provisions, where necessary, the phrase "scientific and technical information made by or on behalf of an issuer" to catch what was lost by removing section 1.1.

- removed the definition of "disclosure document".

- changed the definition of "mineral project" to clarify that Amended NI 43-101 also applies to a royalty, net profits interest, or similar interest in a property.

- changed the definition of "preliminary assessment" and expanded it to be an early stage study that includes an economic evaluation using inferred, indicated, or measured mineral resources, or any combination of these.

- added to the definition of "professional association".

- changed the definition of independence into a results based definition. The Current NI 43-101 lists some specific relationships that make a qualified person not independent but missed many other circumstances that compromise independence. To assist the interpretation of and application of the proposed new definition, we have provided guidance and examples of non-independence in the Amended Companion Policy.

Part 2
We have:

- removed subsection 2.3(3)(c) which is the requirement to pre-file in Ontario the disclosure of a preliminary assessment.

- removed subsections 2.4(a) and (b). Those subsections refer to historical estimates made by a person or company other than the issuer and historical estimates made by the issuer, respectively. These changes make the restrictions on disclosure of historical estimates

the same for both estimates that the issuer makes or a person or company other than the issuer makes.

Part 3
We have:

- limited the circumstances when we expect an issuer to make the proximate statement that mineral resources which are not mineral reserves do not have demonstrated economic viability in section 3.4(e).

- changed sections 3.2, 3.3, 3.4, and 3.5 to permit an issuer to more broadly cross-reference to previous disclosure that complies with these sections if it is contained in any document that has been previously filed with a securities regulatory authority.

Part 4
We have:

- changed section 4.2(2) to clarify that a reporting issuer in one Canadian jurisdiction that becomes a reporting issuer in another Canadian jurisdiction is not required to re-file the same technical report that is already in SEDAR, provided that there are no material changes in the information. Instead, the issuer only has to file, with the new jurisdiction, the required notice with reference to the previously filed technical report.

- clarified sections 4.2(1) 1. to 10. to make these triggers for a technical report easier to understand. Also, the Amended NI 43-101 provides that an offering memorandum will not trigger a technical report if the issuer is using an offering memorandum with the accredited investor exemption. We moved the directors' circular trigger into subsection 4.2(1) 10. We added a TSX Venture Exchange Short Form Offering Document as a new trigger for an independent technical report when it is filed with a securities regulatory authority that provides a prospectus exemption for those types of offerings.

- added "annual management's discussion and analysis" to the annual information form and annual report triggers under section 4.2(1) 6. By this change, we expect a venture issuer (as defined in the CD Rule referred to below) that does not file an annual information form to file a technical report annually at the same time as the management's discussion and analysis (MD&A) when its annual financial statements are due if the MD&A discloses material information concerning mining projects on material properties not contained in a previously filed technical report.

  We are proposing this change because the combination of new National Instrument 51-102 *Continuous Disclosure Obligations* (the CD Rule) and changes to Multilateral Instrument 45-102 *Resale of Securities* (the Resale Rule) means that some venture issuers will no longer file annual information forms. Because some venture issuers may not file annual information forms, we are concerned that an extended period of time could pass before a venture issuer supports its ongoing technical disclosure with a technical report. To address this, we expect that a venture issuer that does not file an annual information

form will file a technical report annually at the same time as its annual MD&A is due if the MD&A discloses material information concerning mining projects on material properties not contained in a previously filed technical report.

- added the phrase "or made available to the public" to subsection 4.2(3) for the purpose of the annual report trigger that is currently in subsection 4.2(1) 6. Even though an annual report is not a required filing under provincial or territorial securities laws, it will trigger a technical report that must be filed no later than when the annual report is made available to the public.

- added subsection 4.2(7) which provides that if an issuer triggers the requirement to file a new technical report, it will not have to re-file a technical report that is already filed on SEDAR if that technical report is still current. The issuer will only have to file the qualified person's updated certificate and consent.

Part 5
We have:

- changed subsection 5.3(1) 1 to require an independent technical report only for the first time an issuer becomes a reporting issuer in any one Canadian jurisdiction.

- changed the relief under subsection 5.3(3) to make it more functional. The proposed change relieves a joint venture participant from the requirement for an independent technical report if the qualified person preparing the report relies on scientific and technical information provided by a qualified person that is an employee of a producing issuer that is a participant in the joint venture.

Part 6
The changes under this part clarify that we expect the personal inspection to be current. The Amended Companion Policy gives guidance as to what current means for this purpose.

Part 7
We have added the South African Code for Reporting of Mineral Resources and Mineral Reserves (SAMREC Code) and replaced USGS Circular 831 with the SEC Industry Guide 7 as acceptable foreign codes for reporting mineral resources and mineral reserves, subject to the conditions set out in section 7.1.

Part 8
We have changed the content of the statements required in the qualified person's certificate and consent.

Part 9
We have:

- added exemptions for certain circumstances. We have added section 9.2 to provide an exemption from the personal inspection requirement only for grassroots exploration

properties if the reason the qualified person cannot visit the property is due to extreme seasonal weather conditions. Subsection 9.2(2) provides the conditions for this exemption and the Amended Companion Policy provides guidance about the use of this exemption.

- added section 9.3 to provide an exemption from the Amended Mining Rule for certain foreign issuers under specified circumstances.

We have also made a number of minor drafting changes that are designed to streamline and clarify the Current NI 43-101.

Form
We have added some new instructions to the Amended Form and eliminated some requirements in Item 12 – Exploration and Item 17 – Adjacent Properties.

The new instruction (7) provides that disclaimers are not permitted in technical reports filed under NI 43-101 except for the limited purposes set out in Item 5. We have changed the title of Item 5 to "Reliance on Other Experts" from "Disclaimers" to better reflect the purpose for which Item 5 is intended. Item 5 was not intended to permit a qualified person to disclaim liability to third parties in connection with public disclosure made by an issuer based upon a qualified person's technical report.

We're concerned about the use of such blanket disclaimers by some qualified persons in technical reports filed to support public disclosure under NI 43-101. These disclaimers generally purport to insulate the qualified person from any liability to third parties in connection with the technical report written by the qualified person and filed to support public disclosure. We're concerned about the use of such disclaimers, particularly in the context of public offerings, because they are potentially misleading and inappropriate. We're also of the view that they are unnecessary because securities legislation already provides qualified persons with protections as they are liable only for disclosure to which they consent and only when they are not diligent in the preparation of their technical report. We provide additional guidance regarding the use of blanket disclaimers in section 5.2 of the Amended Companion Policy.

We have also made a number of minor drafting changes that are designed to streamline and clarify the Current Form.

Companion Policy
We have added some new guidance in the Amended Companion Policy to recognize industry developments in the areas of best practices, the reporting of coal resources and reserves, and the reporting of diamond exploration results. We have amended the guidance provided on materiality by deleting reference to the 10 percent of book value test and providing new examples of when a property may be material to an issuer. We have inserted new guidance in section 5.2 regarding the prohibition of the use of third party disclaimers in technical reports. We have also added some provisions to the Amended Companion Policy that were previously contained in the CSA Staff Notice 43-302 *Frequently Asked Questions* and made a number of minor drafting changes.

Costs and Benefits
We believe that the Amended Mining Rule will enhance efficiency for market participants that are subject to NI 43-101 by

- simplifying and providing greater clarity as to how it applies in certain circumstances,
- in Ontario, removing the requirement to pre-file a preliminary assessment,
- permitting more cross-referencing to previously filed disclosure,
- removing the requirement to file a technical report with an offering memorandum if the issuer is using one in conjunction with a trade using the accredited investor exemption,
- removing the requirement to apply for relief when using the SAMREC Code and the SEC Industry Guide 7, and
- providing new exemptions from some of the Current Mining Rule's requirements.

Mining issuers should see a decrease in their costs of compliance with NI 43-101 as a result of our changes. Venture issuers who filed a technical report to support an annual information form required prior to the effective date of the CD Rule and Resale Rule should encounter no change in their costs of compliance with NI 43-101 at that time compared to the requirement under the Amended NI 43-101 to file a technical report to support scientific and technical disclosure in their MD&A.

Specific Request for Comment on Proposed Amendments to NI 43-101
We request your comments on the Amended Mining Rule. In addition to any comments you wish to make, we also invite comments on the following specific questions:

1. Do you think that issuers whose only interest in a mineral project is a royalty interest should be subject to NI 43-101 in the same manner and to the same extent as other mining issuers?

   One of the changes in the Amended NI 43-101 is an addition to the definition of "mineral projects" to clarify that the rule also applies to an issuer that has a royalty, net profits interests, or similar interest in a mineral project. We think NI 43-101 should apply to this type of issuer because the technical information on the mineral projects underlying a royalty interest is material information about a royalty issuer. Consequently, a royalty issuer should be subject to requirements regarding the disclosure of this technical information. We also recognize, however, that a royalty interest is different because it merely entitles its holder to receive an income stream. The holder of such an interest has likely never held any form of direct ownership interest in the mineral project or conducted any work on the mineral project.

   Do you think these types of issuers should comply with all provisions of the rule? As an alternative, should they only be relieved of the requirement to file a technical report because it may be difficult for them to get the information they require from the operating company to prepare one. On the other hand, is it reasonable to expect that these types of issuers ensure that their contract negotiations with the operating companies includes access to the information required to complete a technical report?

2. Do you think that the site visit relief in the case of extreme seasonal weather conditions for grassroots exploration properties that we propose under section 9.2 should be more limited? For example, should the relief only apply to a mineral project that the issuer owns or has an interest in for no longer than six months prior to the time it is required to file a technical report?

   The addition of section 9.2 in the Amended NI 43-101 will exempt an issuer from the site visit requirement for a mineral project on a grassroots exploration property. The guidance in the Amended Companion Policy explains that an issuer can only use it if extreme seasonal weather conditions make the property inaccessible or of no use to visit in time for the issuer to complete the site visit requirement before it must file a technical report for the property that is the subject of the technical report.

   However, we are considering limiting this relief so that it only applies to a mineral project that the issuer owns or has an interest in for no longer than six months prior to the time it is required to file a technical report. This limitation would prevent the potential for misuse of this relief that might occur when an issuer has a mineral project for several years but does not arrange its affairs in time to have its qualified person conduct a site visit before the extreme seasonal weather conditions occur. Do you think that we should limit this relief in this manner?

How to Provide Your Comments
Please provide your comments by **Friday, December 10, 2004**.

Please address your submission to all the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

You do not need to deliver your comments to all the CSA member commissions. Please deliver your comments **only** to the following addresses, and they will be distributed to all other jurisdictions by CSA staff.

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If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferable Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions
If you have any questions, please refer them to any of the following:

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