To:

British Columbia Securities
Commission Alberta
Securities Commission
Financial and Consumer Affairs Authority of
Saskatchewan Manitoba Securities Commission
Ontario Securities
Commission
Autorité des
marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince
Edward Island Nova Scotia Securities Commission
Office of the Superintendent of Securities,
Service NL Northwest Territories Office of the
Superintendent of Securities Office of the Yukon
Superintendent of Securities
Nunavut Securities Office

From:

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Subject:

Comments in response to "CSA Consultation Paper 43-401 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects".

Date:

July 13, 2022

Sir/Madam,

The attached document is in response to a request for feedback regarding suggested updates or enhancements to mineral disclosure requirements under NI 43-101.

- In general, as a QP over the last 20 years, I have found NI 43-101 to be an important and useful regulatory guide for mineral project disclosure to the investing public. It has provided a framework for rigorous and balanced disclosure of technical and scientific information that has become very familiar to investors and mining industry professionals.
- There are always improvements that can be made to any body of work. However, I do call attention to section 9.2 of the Instrument regarding "Exemptions for Royalty or Similar Interests". Royalty companies are becoming an important constituent of the mining industry that are of increasing interest to the investing public. In my experience, the Instrument does not allow for common disclosure circumstances encountered by royalty companies.
- The format of this document was based upon taking the original consultation document, converting it from pdf to .docx, and inserting feedback in red. I found this to be the most straightforward way to provide comments.
- Thank you for the opportunity to provide this feedback, and please feel free to contact me if there is a need for clarification.

I am submitting these comments on my own behalf as a consulting geologist.

Respectfully,

"*Dean D. Turner*"

AIPG CPG #10998

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Comments provided in-line in red.

1.1.2 CSA Consultation Paper 43-401 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA CONSULTATION PAPER 43-401

CONSULTATION ON NATIONAL INSTRUMENT 43-101 STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

April 14, 2022

Introduction

Canada plays a leading role in mining capital formation[1] and National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) is recognized globally as the pre-eminent standard for mineral project disclosure.

The purpose of this consultation paper (**Consultation Paper**) is to obtain feedback from stakeholders about the efficacy of several key provisions of NI 43-101, priority areas for revision, and whether regulatory changes would address concerns expressed by certain stakeholders. The information we gather will assist the Canadian Securities Administrators (**CSA** or **we**) in considering ways to update and enhance the current mineral disclosure requirements, to provide investors with more relevant and improved disclosure, and to continue to foster fair and efficient capital markets for mining issuers.

This Consultation Paper should be read together with NI 43-101 and Form 43-101F1 Technical Report (the **Form**). Unless defined, terms used in this Consultation Paper have the meanings given to them in NI 43-101.

The CSA are publishing this Consultation Paper for a 90-day comment period. In addition to any general comments that you may have, we also invite comments on the specific questions set out in the Consultation Paper.

The comment period will end on July 13, 2022.

GENERAL COMMENT. For royalty companies, Section 9.2 is particularly important, and especially vague for some cases, while too restrictive for other cases. See comments under section “L”.

Current Framework

Summary

NI 43-101 governs disclosure of scientific and technical information concerning mineral exploration, development, and production activities by mining issuers for a mineral project on a property material to the issuer. The disclosure, whether oral or written, must be based on information provided by or under the supervision of a qualified person, and specified terminology is required when disclosing mineral resources and mineral reserves. NI 43-101 also requires a mining issuer to file a technical report at certain times, using the prescribed format of the Form, prepared by one or more qualified persons who may need to be independent of the issuer and the mineral property.

The intended audience of a technical report is the investing public and their advisors who, in most cases, will not be mining experts. The technical report should include sufficient context and cautionary language to allow a reasonable investor to understand the nature, importance and limitations of the data, interpretations and conclusions summarized in the report.

History

NI 43-101 was first adopted in 2001, and most recently amended in 2011 when the CSA adopted new versions of NI 43-101, the Form and the Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Companion Policy**) that:

- eliminated or reduced the scope of certain requirements,
- reflected changes that had occurred in the mining industry,
- provided more flexibility to mining issuers and qualified persons in certain areas, including to accept new foreign professional associations and designations, and reporting codes as they arise or evolve, and

- clarified or corrected areas where the previous disclosure requirements were not having the effect we intended.

[1] In the year ended December 31, 2020, S&P Global Market Intelligence reported that over 50% of global mining capital formation by public mining issuers emanated from Canada.

Since NI 43-101 was last revised in 2011, the mining industry has experienced market highs and lows and has seen numerous changes, including:

- an update by the Canadian Institute of Mining, Metallurgy and Petroleum (**CIM**) of the CIM Definition Standards for Mineral Resources and Mineral Reserves (**CIM Definition Standards**) and the CIM Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines (**CIM Best Practice Guidelines**),
- emerging demand for commodities related to the growth in green energy and carbon neutral initiatives,
- increased investor awareness of the risks related to mineral project development, including demand for information about the environmental and social impacts, and
- an overhaul by other influential mining jurisdictions (including Australia and the United States) of their mineral resource/mineral reserve reporting codes and associated disclosure standards, including updates to the Committee for Mineral Reserves International Reporting Standards (**CRIRSCO**) template, which is the established international standard for the public reporting of exploration targets, exploration results, mineral resources and mineral reserves.

Since 2011, the CSA has continually monitored the mineral disclosure requirements in NI 43-101, and gathered data evidencing deficiencies identified through continuous disclosure reviews, prospectus reviews, and targeted issue-oriented reviews (collectively, **Mining Reviews**). These deficiencies include:

- qualified persons failing to properly assess their independence, competence, expertise or relevant experience related to the commodity, type of deposit or the items for which they take responsibility in technical reports,
- poor quality of scientific and technical disclosure in technical reports for early stage exploration properties for new stock exchange listings,
- inadequate mineral resource estimation disclosure, including disclosure related to reasonable prospects for eventual economic extraction,
- misuse of preliminary economic assessments, and
- inadequate disclosure of all business risks related to mineral projects.

Consultation Questions

A. Improvement and Modernization of NI 43-101

The disclosure items in the Form have generally remained unchanged since NI 43-101 was adopted in 2001, with some reorganization for advanced stage properties in 2011.

1. Do the disclosure requirements in the Form for a pre-mineral resource stage project provide information or context necessary to protect investors and fully inform investment decisions? Yes. Please explain. Compared to more advanced projects, the disclosure requirement for early stage properties is relatively straight forward and adequately addressed by NI-43101 in its current form.

2. a) Is there an alternate way to present relevant technical information that would be easier, clearer, and more accessible for investors to use than the Form? For example, would it be better to provide the necessary information in a condensed format in other continuous disclosure documents, such as a news release, annual information form or annual management's discussion and analysis, or, when required, in a prospectus? Of course there are alternatives, but issuers and the investing public are by now very familiar with NI 43-101. On balance, a significant change at this point would likely be counter-productive. However, perhaps one incremental improvement could be the adoption of the JORC table 1 report template to be included as a required Appendix to an NI 43-101 Technical Report (TR).

   b) If so, for which stages of mineral projects could this alternative be appropriate, and why? All stages for material properties requiring a TR. The template provides latitude for all stages of advancement of an exploration/mining property, and if material all stages should provide full disclosure.

3. a) Should we consider greater alignment of NI 43-101 disclosure requirements with the disclosure requirements in other influential mining jurisdictions? Not really. NI 43-101 has set a standard. This opinion is tempered somewhat due to my

unfamiliarity w/ other reporting codes (i.e., PERC, etc.).

4. If so, which jurisdictions and which aspects of the disclosure requirements in those jurisdictions should be aligned, and why?

5. Paragraph 4.2(5)(a) of NI 43-101 permits an issuer to delay up to 45 days the filing of a technical report to support the disclosure in circumstances outlined in paragraph 4.2(1)(j) of NI 43-101. Please explain whether this length of time is still necessary, or if we should consider reducing the 45-day period. An alternative is that the TR should be filed at the time of the initial disclosure, to support that disclosure. Often, the QP is rushed by the issuer to provide a news release (NR) before the TR is completed. This could be dangerous, as material facts could come to light when putting together the TR that were overlooked or not given proper consideration for the NR.

In recent years, CSA staff have observed mining issuers making use of new technologies to conduct exploration on their properties, including the use of drones. During the COVID-19 pandemic, we received inquiries from qualified persons about the possible use of remote technologies to conduct the current personal inspection.

6. a) Can the investor protection function of the current personal inspection requirement still be achieved through the application of innovative technologies without requiring the qualified person to conduct a physical visit to the project? No. There is no substitute for a site visit. This is especially true when considering check sampling, which should be SOP for QP site visits. See comments under Data Verification.

b) If remote technologies are acceptable, what parameters need to be in place in order to maintain the integrity of the current personal inspection requirement?

B. Data Verification Disclosure Requirements

Mineral projects commonly pass through the hands of several property holders, each generating exploration and drilling data. Using data collected from former operators prior to the current issuer's involvement in the project (**legacy data**) may be legitimate, but this data needs to be carefully verified, and transparently documented in technical reports. CSA staff see inadequate data verification disclosure at every project stage, from early stage exploration properties to feasibility studies.

Describing sample preparation, security, analytical procedures, and quality assurance/quality control (**QA/QC**) measures is critical to an understandable mineral resource estimate. Qualified persons must state their professional opinion on those processes, explain the steps they took to verify the integrity of the data, and state their professional opinion whether the data suits the purpose of the technical report. CSA staff emphasized these requirements in both CSA Staff Notice 43-309 *Review of Website Investor Presentations by Mining Issuers* and CSA Staff Notice 43-311 *Review of Mineral Resource Estimates in Technical Reports* (**CSA Staff Notice 43-311**).

Data verification as defined in section 1.1 and outlined in section 3.2 of NI 43-101 applies to all scientific and technical disclosure made by the issuer on material properties. For example, data verification:

- requires accurate transcription from the original source, such as an original assay certificate, Source certificates are frequently not available for historical work, particularly if conducted pre-2001.
- is not adequate when limited to transcribing data from a previous technical report,
- is not limited to technical reports but also to other disclosure such as websites, news releases, corporate presentations, and other investor relations material, and
- is not limited to the drill hole database and must be completed for all data in a technical report. Understood. But the rigor required for checking a DH DB and, for example, a soil geochem dataset is different. What about a geophysical dataset?

6. Is the current definition of data verification adequate, and are the disclosure requirements in section 3.2 of NI 43-101 sufficiently clear? Yes. It is up to the QP to follow the requirements of the Instrument, and to use judgement on what is, or is not, appropriate. Perhaps the issue has to do with enforcement of the current rules.

Item 12: Data Verification of the Form addresses a core principle of NI 43-101 and is a primary function of qualified persons. Mining Reviews demonstrate that disclosure in this item is often non-compliant. For example, we do not consider any of the following to be adequate data verification procedures by the qualified person:

- QA/QC measures conducted by the issuer or laboratory;
- database cross-checking to ensure the functionality of mining software;
- reliance on data verification by the issuer or other qualified persons related to previously filed technical reports; and

- unqualified acceptance of legacy data, such as disclosing that former operators followed “industry standards”.

In addition, qualified persons frequently limit data verification procedures to the drill hole data set, resulting in a general failure to meet the disclosure requirements of Item 12 of the Form, which apply to all scientific and technical information in a technical report.

7. How can we improve the disclosure of data verification procedures in Item 12 of the Form to allow the investing public to better understand how the qualified person ascertained that the data was suitable for use in the technical report? The Instrument in its current form provides a broad outline for the QP judge what would be full disclosure of data verification procedures.

8. Given that the current personal inspection is integral to the data verification, should we consider integrating disclosure about the current personal inspection into Item 12 of the Form rather than Item 2(d) of the Form? Yes.

C. Historical Estimate Disclosure Requirements

In spite of extensive guidance in the Companion Policy, CSA staff see significant non-compliant disclosure of historical estimates. We remind issuers that non-compliance with section 2.4 of NI 43-101 can trigger the requirement to file a technical report under subsection 4.2(2) of NI 43-101. Examples of non-compliance include:

- failure to review and refer to the original source of the historical estimate,
- failure to include the cautionary statements required by paragraph 2.4(g) of NI 43-101, or inappropriate modification of such statements,
- failure to include required disclosure of key assumptions, parameters and methods used to prepare the historical estimate, and Not always well documented.
- inappropriate disclosure by an issuer of a previous estimate.

9. Is the current definition of historical estimate sufficiently clear? Yes. If not, how could we modify the definition?

10. Do the disclosure requirements in section 2.4 of NI 43-101 sufficiently protect investors from misrepresentation of historical estimates? Yes. Please explain. Section 2.4 lays out a checklist which not only allows the investor to ascertain the general context for the historical estimates, but also requires the QP to state whether the historical estimate is reliable and relevant. This is sufficient.

D. Preliminary Economic Assessments N/C (defer to other experts)

The disclosure requirements for preliminary economic assessments were substantially modified in 2011, resulting in unintended consequences requiring additional guidance published in CSA Staff Notice 43-307 *Mining Technical Reports – Preliminary Economic Assessments* in August 2012.

Mining Reviews continue to show that preliminary economic assessment disclosure remains problematic for issuer compliance and, more importantly, is potentially harmful to investors. While the inclusion of inferred mineral resources is a recognized risk to the realization of the preliminary economic assessment, CSA staff’s view is that the broad, undefined range of precision of a preliminary economic assessment also contributes to that risk. This range of precision is incongruent with one of the core principles of NI 43-101, which is that investors should be able to confidently compare the disclosure between different projects by the same or different issuers. In addition, CSA staff see evidence of modifications to cautionary language required by subsection 2.3(3) of NI 43-101 that render this provision less effective.

11. Should we consider modifying the definition of preliminary economic assessment to enhance the study’s precision? If so, how? For example, should we introduce disclosure requirements related to cost estimation parameters or the amount of engineering completed?

12. Does the current cautionary statement disclosure required by subsection 2.3(3) of NI 43-101 adequately inform investors of the full extent of the risks associated with the disclosure of a preliminary economic assessment? Why or why not?

13. Subparagraph 5.3(1)(c)(ii) of NI 43-101 triggers an independence requirement that may not apply to significant changes to preliminary economic assessments. Should we introduce a specific independence requirement for significant changes to preliminary economic assessments that is unrelated to changes to the mineral resource estimate? If so, what would be a suitable significance threshold?

In 2011, we broadened the definition of preliminary economic assessment in NI 43-101 in response to industry concerns that issuers needed to be able to take a step back and re-scope advanced properties based on new information or alternative production scenarios. In this context, the revised definition was based on the premise that the issuer is contemplating a significant change in the existing or proposed operation that is materially different from the previous mining study.

CSA staff continue to see considerable evidence of preliminary economic assessment disclosure, subsequent to the disclosure of mineral reserves, which is potentially misleading and harmful to investors. In many cases, issuers continue to disclose an economic and technically viable mineral reserve case, while at the same time disclosing a conceptual alternative preliminary economic assessment with more optimistic assumptions and parameters. In many cases, the two are mutually exclusive options.

14. Should we preclude the disclosure of preliminary economic assessments on a mineral project if current mineral reserves have been established?

In some cases, issuers are disclosing the results of a preliminary economic assessment that includes projected cash flows for by-product commodities that are not included in the mineral resource estimate. This situation can arise where there is insufficient data for the grades of the by-products to be reasonably estimated or estimated to the level of confidence of the mineral resource. We consider the inclusion of such by-product commodities in the preliminary economic assessment to be misleading.

15. Should NI 43-101 prohibit including by-products in cash flow models used for the economic analysis component of a preliminary economic assessment that have not been categorized as measured, indicated, or inferred mineral resources? Please explain.

E. Qualified Person Definition

CSA staff have substantial evidence that the current qualified person definition is not well understood, and have seen an increase in practitioners with less than 5 years of experience as professional engineers or geoscientists acting as qualified persons in technical reporting. CSA staff have directed many comments to issuers informing them that the qualified person does not meet the requirements of NI 43-101 in the circumstance under review.

16. Is there anything missing or unclear in the current qualified person definition? No. If so, please explain what changes could be made to enhance the definition.

Currently, the qualified person definition requires the individual to be an engineer or geoscientist with a university degree in an area of geoscience or engineering related to mineral exploration or mining.

17. Should paragraph (a) of the qualified person definition be broadened beyond engineers and geoscientists to include other professional disciplines? No. If so, what disciplines should be included and why?

Qualified person independence

The gatekeeping role of the qualified person is essential for the protection of the investing public. CSA staff see evidence of issuers and qualified persons failing to properly apply the objective test of independence set out in section 1.5 of NI 43-101. The Companion Policy provides certain examples of specific financial metrics to consider. This list is not exhaustive. There are multiple factors, beyond financial considerations, that must also be considered in determining objectivity, including the relationship of the qualified person to the issuer, the property vendor, and the mineral project itself.

18. Should the test for independence in section 1.5 of NI 43-101 be clarified? No, fine as is. Grey areas come down to the QP's judgement. If so, what clarification would be helpful?

Named executive officers as qualified persons

CSA staff are concerned that the gatekeeping role of the qualified person conflicts with the fiduciary duties of directors and officers. We have seen situations where the self-interest of such individuals in promoting an attractive outcome for the mineral project overrides their professional public interest obligation as a gatekeeper.

19. Should directors and officers be disqualified from authoring any technical reports, even in circumstances where the independence is not required? Yes, implicitly it is a "bad look" for the CEO or an officer to author a TR anyway. Make disqualification explicit.

F. Current Personal Inspections

The current personal inspection requirement in section 6.2 of NI 43-101 is a foundational element of the qualified person's role as a gatekeeper for the investing public. It enables the qualified person to become familiar with conditions on the property, to observe the property geology and mineralization, and to verify the work done on the property. Additionally, it provides the only opportunity to assess less tangible elements of the property, such as artisanal mining or access issues, and to consider social licence and environmental concerns. The current personal inspection is distinctly different from conducting exploration work on the property; it is a critical contributor to the design or review, and recommendation to the issuer, of an appropriate exploration or development program for the property.

20. Should we consider adopting a definition for a "current personal inspection"? If so, what elements are necessary or important to incorporate? Suggested guidelines could be useful. What I commonly see are 'check box' personal inspections where the QP(s) spend(s) a day or so on the property. It seems that +- 3 days is generally more reasonable

for a site visit in order to recon the lay of the land, review documents, inspect outcrops/mining operations, make drill rig and sampling observations, conduct independent sampling (15-25 samples), etc. Those are 'off the cuff' comments for a geologic review. However, it does not make sense to prescribe the length of visit, as it can vary, especially by QP responsibility (e.g., geo vs met). Instead, some wording/guidance along the lines of having a personal inspection that allows due diligence on site to cover those subjects that the QP is responsible for.

CSA staff's view is that qualified persons must consider their expertise and relevant experience in determining whether they are suitable to conduct the current personal inspection. For example, geoscientists are generally not qualified to conduct elements of the current personal inspection related to potential mining methods or mineral processing. Similarly, engineers may not be qualified with respect to elements of the geoscience. In such cases, more than one qualified person may be required to conduct a current personal inspection, particularly for an advanced property.

21. Should the qualified person accepting responsibility for the mineral resource estimate in a technical report be required to conduct a current personal inspection, regardless of whether another report author conducts a personal inspection? An equivocal no. Why or why not? In most, but not all cases, this is highly appropriate. But I tend to default to the QP's judgement. In circumstances where there is a very collaborative arrangement between the 'site visit' QP and the resource model QP, a visit by the modeler may not be necessary. Instead of being prescriptive, perhaps wording/guidance to nudge in that direction: …'typically site visits are appropriate by each responsible QP.

22. In a technical report for an advanced property, should each qualified person accepting responsibility for Items 15-18 (inclusive) of the Form be required to conduct a current personal inspection? No, not each. Why or why not? Similar reasoning to above.

We expect issuers to consider the current personal inspection requirement in developing the timing and structure of their transactions and capital raising. Subsection 6.2(2) of NI 43-101 does allow an issuer to defer a current personal inspection in limited circumstances related to seasonal weather, provided that the issuer refiles a new technical report once the current personal inspection has been completed. However, this provision has been used infrequently since it was adopted in 2005. In rare circumstances where issuers do rely on this provision, CSA staff see significant non-compliance with the refiling requirement.

23. Do you have any concerns if we remove subsection 6.2(2) of NI 43-101? Yes. If so, please explain. Leave the flexibility.

G. Exploration Information

CSA staff continue to see significant non-compliant disclosure of exploration information, including inadequate disclosure of:

- the QA/QC measures applied during the execution of the work being reported on in the technical report,
- the summary description of the type of analytical or testing procedures utilized, and
- the relevant analytical values, widths and true widths of the mineralized zone.

24. Are the current requirements in section 3.3 of NI 43-101 sufficiently clear? Yes. If not, how could we improve them?

H. Mineral Resource / Mineral Reserve Estimation

In CSA Staff Notice 43-311 published in June 2020, a comprehensive review of disclosure in technical reports identified several areas of inadequate disclosure of mineral resource estimates.

Reasonable prospects for eventual economic extraction

CIM Definition Standards guidance states that a qualified person should clearly state the basis for determining the mineral resource estimate and that assumptions should include metallurgical recovery, smelter payments, commodity price or product value, mining and processing method, and mining, processing and general and administrative costs. Revisions to the CIM Definition Standards in 2014 and CIM Best Practices Guidelines in 2019 emphasized the requirement for the practitioner to clearly articulate these assumptions and how the estimate was developed.

Mining Reviews provide evidence of technical reports that lack adequate disclosure on metal recoveries, assumed mining and processing methods and costs, and constraints applied to prepare the mineral resource estimate to demonstrate that the mineralized material has reasonable prospects for eventual economic extraction.

25. Should Item 14: Mineral Resource Estimates of the Form require specific disclosure of reasonable prospects for eventual economic extraction? Yes, absolutely. Why or why not? By extreme example, 40 Mt @ 3 g/t Au of oxide at surface may be a potentially minable resource, but at a 500m depth that is likely not the case. If so, please explain the critical elements that are necessary to be disclosed. The aforementioned parameters, either assumed or defined (e.g., recoveries, mining costs, etc.), as well as cut-off grade assumptions, constraining shapes by mining method (i.e. OP shells or UG configuration [e.g., min mining width, dilution, continuity, etc.]), and other relevant modifying factors.

Data verification

Disclosure of a mineral resource estimate is a significant milestone for an issuer. CSA Staff Notice 43-311 noted that disclosure of data verification procedures and results was one of the weakest areas in the mineral resource estimate review, stating that in technical reports reviewed by CSA staff, more than 20% had incomplete disclosure concerning the qualified person's data verification procedures and results.

26. a) Should the qualified person responsible for the mineral resource estimate be required to conduct data verification and accept responsibility for the information used to support the mineral resource estimate? Yes. Why or why not? The drill database (and supporting information) is the foundation of a resource estimate, and is every bit the QP's responsibility as the nuances of interpolation technique, block size, cap grades, etc.

b) Should the qualified person responsible for the mineral resource estimate be required to conduct data verification and accept responsibility for legacy data used to support the mineral resource estimate? Yes. Specifically, should this be required if the sampling, analytical, and QA/QC information is no longer available to the current operator. Why or why not? Similar reasoning as above.

Risk factors with mineral resources and mineral reserves

Paragraph 3.4(d) of NI 43-101 requires issuers to identify any known legal, political, environmental and other risks that could materially affect the potential development of the mineral resources or mineral reserves. In addition, Items 14(d) and 15(d) of the Form require the qualified person to provide a general discussion on the extent to which the mineral resource or mineral reserve estimate could be materially affected by any known environmental, permitting, legal, title, taxation, socio-economic, marketing, political or other relevant factors.

Many technical reports only provided boilerplate disclosure about potential risks and uncertainties that are general to the mining industry. Failure to set out meaningful known risks specific to the mineral project make mineral resource and mineral reserve disclosure potentially misleading.

27. How can we enhance project specific risk disclosure for mining projects and estimation of mineral resources and mineral reserves? I reread section 3.4(d). It is already stated clearly, and it should be left to the QPs technical and ethical judgement to address the risks. Afterall, if something goes wrong with the project there are QP liabilities for negligence or malfeasance.

I. Environmental and Social Disclosure N/C (defer to subject matter experts)

In recent years, CSA staff have seen an increase in public and investor awareness of environmental and social issues impacting mineral projects. Item 4: Property Description and Location and Item 20: Environmental Studies, Permitting and Social or Community Impact of the Form allow for disclosure of relevant environmental and social risk factors for the mineral project.

However, these disclosure requirements related to environmental and social issues have remained largely unchanged since NI 43-101 was adopted in 2001.

28. Do you think the current environmental disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?

29. Do you think the current social disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?

30. Should disclosure of community consultations be required in all stages of technical reports, including reports for early stage exploration properties?

J. Rights of Indigenous Peoples N/C (defer to subject matter experts)

We recognize Indigenous Peoples to include First Nations, Inuit and Métis Peoples in Canada. We also recognize that issuers have projects in jurisdictions outside of Canada, and those jurisdictions will have Indigenous Peoples.

The unique legal status of Indigenous Peoples has received national and international recognition. For many projects, the rights of Indigenous Peoples overlap with legal tenure, property rights and governance issues. We believe that disclosure of these rights, and the Indigenous Peoples that hold them, forms an essential part of an issuer's continuous disclosure obligations.

Item 4 of the Form requires disclosure of the nature and extent of surface rights, legal access, the obligations that must be met to retain the property, and a discussion of any other significant factors and risks that may affect access, title, or the right or ability to perform work on the property. We are interested in hearing whether other disclosures should be included in the Form, or the issuer's other continuous disclosure documents, that relate to the relationship of the issuer with Indigenous Peoples whose traditional territories underlie the property.

31. What specific disclosures should be mandatory in a technical report in order for investors to fully understand and appreciate the risks and uncertainties that arise as a result of the rights of Indigenous Peoples with respect to a mineral project?

32. What specific disclosures should be mandatory in a technical report in order for investors to fully understand and appreciate all significant risks and uncertainties related to the relationship of the issuer with any Indigenous Peoples on whose traditional territory the mineral project lies?

33. Should we require the qualified person or other expert to validate the issuer's disclosure of significant risks and uncertainties related to its existing relationship with Indigenous Peoples with respect to a project? If so, how can a qualified person or other expert independently verify this information? Please explain.

K. Capital and Operating Costs, Economic Analysis N/C (defer to subject matter experts)

Capital and operating costs assumptions are integral to the financial and economic analysis of mineral projects. We see longstanding evidence, including industry-based case studies, of significant variance between disclosed cost estimates in technical reports and actual costs as projects are developed. This variance can have negative impacts on investors who rely on financial disclosure in technical reports.

Capital and operating costs

34. Are the current disclosure requirements for capital and operating costs estimates in Item 21 of the Form adequate? Why or why not?

35. Should the Form be more prescriptive with respect to the disclosure of the cost estimates, for example to require disclosure of the cost estimate classification system used, such as the classification system of the Association for the Advancement of Cost Engineering (AACE International)? Why or why not?

36. Is the disclosure requirement for risks specific to the capital and operating cost assumptions adequate? If not, how could it be improved?

Economic analysis

As stated above, a core principle of NI 43-101 is to require disclosure that will allow investors to be able to confidently compare the disclosure between different projects by the same or different issuers. Standardized disclosure is fundamental to this principle.

37. Are there better ways for Item 22 of the Form to require presentation of an economic analysis to facilitate this key requirement for the investing public? For example, should the Form require the disclosure of a range of standardized discount rates?

L. Other

38. Are there other disclosure requirements in NI 43-101 or the Form that we should consider removing or modifying because they do not assist investors in making decisions or serve to protect the integrity of the mining capital markets in Canada? Yes. Section 9.2 on "Exemptions for Royalty Holders". Royalty companies are becoming important investing options for the public markets. The exemptions in 9.2 are useful, but do not cover many important disclosure situations that Royalty companies encounter. A few examples of royalty holders being restricted from disclosing important and relevant information to investors are:

1) No provisions for data rights or site access as defined in an underlying royalty agreement. This is a common situation, particularly with legacy royalties. This leads to an inability on the part of the issuer to independently confirm project critical data and reports, such as resource and reserve estimates, mine plans, economic models, etc.

   This becomes an issue with disclosures by operators not listed on a recognized exchange or conforming to accepted reporting codes. Some well-established international mid-tier and major mining companies are listed on exchanges that do not follow NI43-101, JORC, PERC, etc. (e.g., Asian listed companies, such as in China or Japan). However, these companies routinely disclose important information via news releases, annual reports, etc. that should be made available to investors. For example, resources or reserves reported to non-CRIRSCO conformed standards such as CCMR (China) or GKZ (Russia [this appears to remain the Russian standard in spite of NAEN]).

   As with historical estimates, this information could be presented with appropriate caveats alerting investors to the differences, risks, etc. in relation to NI43-101/CIM reporting. This information would often be of great interest to investors in assessing a Company's royalty asset. Perhaps, at a minimum, royalty holders could point investors to those foreign company disclosures with the understanding that the investors would make use of the information at

their own risk. This would allow investors to review the non-compliant disclosures and make their own assessment in the same fashion as royalty companies do when conducting due diligence without data rights for a royalty acquisition.

2) Inability to disclose technical or scientific information from privately held mining companies. An in-house report or scientific or technical information may be prepared for potential investors by a QP and follow NI 43-101F1, but is not publicly disclosed. The report may be provided to the royalty holder, but the underlying data may be subject to confidentiality. The summary information from the report, such as R/R, LOM, etc. would often be of great interest to investors in assessing the royalty company's royalty asset. The royalty company QP would take responsibility for the disclosure with similar types of caveats as given for historical resources or reserves.

3) Limitations on ability to cite historical vs current resource or reserve estimates. The definition of "historical" can be tied to the date at which a royalty (or other) ownership is established. If a royalty interest is acquired before disclosure of a resource estimate and technical report, such information is not considered to be "historical". If the property is sold to another company, and the royalty holder subsequently judges the property to be material, the technical report is neither historical or current, and hence does not meet disclosure requirements. Further, it is possible that one royalty holder could disclose a resource estimate as historical, while another royalty holder on the same project is prohibited from doing so, depending on when the royalty interests were acquired relative to the technical report date. This appears to be inconsistent.

The above are just a few, non-exhaustive, examples to highlight potential disclosure issues for royalty companies. Further clarity and allowance for situations uniquely encountered by royalty holders would be important improvements to Section 9.2 and the Instrument. The subject of royalty interest exemptions deserves careful consideration in order to provide an avenue for timely, balanced, and full disclosure of technical and scientific information for royalty companies.

Comments and Submissions

We invite participants to provide input on the issues outlined in this Consultation Paper.

Please submit your comments in writing on or before July 13, 2022. Please send your comments by email in Microsoft Word format.

Please address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

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