

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

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Hello

Thank you for the opportunity to submit commentary towards your Consultation Paper regarding the National Instrument 43-101 Standards.

I am taking this opportunity to offer some observations regarding the Consultation and the Instrument.

Best regards



William McGuinty P.Ge. FGC

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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? Please explain.

Yes, the Form provides context and sufficiency for the investor in the case of a pre-mineral resource stage project Technical Report. Since its inception, the Form has been treated by most authors as a chaptering mechanism whether that was the intent or not. Generally, the content of the Form's items meets the summary purpose of the exploration information in a Technical Report.

Exploration stage technical reports are prepared at a time where the project has the least information and has the highest level of uncertainty as to its future potential. The improvement to be made to informing the investor is educative, by providing a clear understanding of the potential and limitations of the available information comprised in these reports.

Further analysis and review of this limited information beyond the currently accepted practice is unlikely provide a qualitative improvement to the information, or to the risk associated with further project exploration.

Where the Form is challenged is in "Item 20: Environmental Studies, Permitting and Social or Community Impact" which the CSA consultation document addresses later. The Form does not exclude this Item at the pre-resource stage and the range of volatility of these impacts can be broader than the technical matters presented. Proper disclosure of these matters goes beyond NI 43-101 into other CSA mandated disclosure tools.

- 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?

Such disclosure is already identified in National Policy 51-102 Continuous Disclosure Obligations and 51-201 Disclosure Standards and is properly set out as rules that govern the Discloser (Issuer). Disclosure is the responsibility of the Issuer and good practice would suggest that pertinent information related to mineral projects be diffused in such manner as to be accessible, regular, understandable and substantiated, using Qualified Persons and other experts as needed for the purpose. An example would be a summary of QA/QC standards applied to Company mineral projects in an AIF or in a press release containing results. Another example would be a timely discussion via press release, or other broadly distributed summary, of a significant change in political risk which is not a technical risk.

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b) If so, for which stages of mineral projects could this alternative be appropriate, and why?

Informative disclosure is beneficial at all project stages and available for use under continuous disclosure principles and mechanisms now.

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,
- 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.

6. Is the current definition of data verification adequate, and are the disclosure requirements in section 3.2 of NI 43-101 sufficiently clear?

The definition elements are clear but the impact of some of the stated disclosure requirements may provide little added value to the investing public or unduly add information that is unrelated to the focus of the Technical Report. There is also risk of conflating the Project with the Property.

As a report process, all data and information should be inventoried and identified on a Project. However, the Qualified Person must determine what information is pertinent and relevant to the report purpose and verify that subset.

- The reference to “all technical data” in the 4th bullet above and as referenced for Item 12, question 7 below, raises concerns when describing a focused resource target (or project) within a large Property. Work done on a large property that is unrelated spatially or materially to the estimate of a localized mineral resource should require the reporting of, but not the re-

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validation, of data. As an example, large scale geophysical surveys should not require re-validation when conducting a resource estimate if there is no bearing on the resource.

Issuers may have several physically and geologically contiguous properties within a land package. Are these to be considered part of the Issuer's 'property' when considering all data under by the Instrument? Such a scale does not allow the report Author to focus on the objective of a Technical Report or the investing public to identify the real focus of the report.

- An aspect of limited trust for previous work is implied in the Consultation document. The role of the QP should not be to discard data collected and developed by professionals who preceded them and simply start again. Transcription and validation are audit items. They should establish that the data is reliable by applying sufficient rigor to reviewing the information and to accept or correct the project's database, thereby leaving it improved for the next time it must be critically used.

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?

By allowing focus on the pertinent and verified data required for the report's purpose.

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?

The integration of the current personal inspection into Item 12 is not recommended.

Data review and verification are already a form personal inspection which is largely removed from, and lengthier than, a physical inspection. Data verification may use several persons working under a QP who may not be necessary or qualified to make a site inspection. Such data may not reside where a physical site inspection needs to occur. The appropriate physical investigation to support data verification during a current personal inspection can be carried out by the Qualified Person who must make the visit.

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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
- inappropriate disclosure by an issuer of a previous estimate.

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

NI 43-101 (and/or CP and/or Form) should make a distinction between historical estimates reported during the time NI 43-101 has governed such disclosure and those that have been prepared or reported prior to 2001. This may be best dealt with by offering additional appropriate statements. Historic literature contains terms such as resources, reserves and technical report without these terms being qualified after 2001 or relevant Guidance. Such documents remain accessible in the public domain with these poor qualifiers. The report author may deem it necessary to identify these 'estimates' rather than ignore them in the Technical Report, in a response to a general level of public knowledge about them. If required to identify these resources in a report, the Qualified Person should be able to declare they **cannot** do sufficient work to classify or perhaps requalify these resources or reserves based on the information available.

This situation may also apply to a property that has been transacted from a large miner to a junior company where resources were prepared since the advent of 43-101. In such cases the Qualified Person and the smaller Issuer may not be able to confirm the classification categories of the resources or reserves that are in the public domain in the same manner as the larger, not having the same latitude in classification.

10. Do the disclosure requirements in section 2.4 of NI 43-101 sufficiently protect investors from misrepresentation of historical estimates? Please explain.

With reference to the concern raised in Item 9, the current descriptions in the Instrument and the Companion Policy, as written, are sufficient to avoid misrepresentation.

D. Preliminary Economic Assessments

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

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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?

It is not recommended to enhance the precision of a preliminary economic assessment through definition.

Issuers and the investing public require a tool for timely appraisal of the progress being made by their investments. It is important to recognize the Preliminary Economic Assessment (PEA) offers value and risk at its current level of precision.

The risk has been noted in recent years where an Issuer and investors have made development decisions on PEA information. Its value can be less visible. A PEA is often an assessment of potential at a relatively early stage of exploration. If changes are made to tighten the PEA study parameters that include extensive cost and time to improve precision (approaching a pre-feasibility), these studies are no longer timely or cost effective and there will be fewer prepared under 43-101. Neither of these outcomes help the investing public in the near term when they consider the mineral resource they have currently invested in.

If precision is meant in the sense of identifying the choices made regarding methods and costs, such a discussion placed as an introductory summary in those sections when pertinent, would be useful. The decisions around the use of trailing averages or requirements for use of current costs, mining and processing method options considered and discarded, could be positioned more favourably for comparison by the investing public.

The largest accepted forward looking risk at the NI 43-101 PEA stage is the use of inferred resources. What percentage of all resources is in the inferred resource category should be clearly stated in the PEA conclusions.

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? explain.

NI 43-101 should be consistent in its approach to reporting cash flow modeling for all commodities in a PEA.

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It is common to look for by-product opportunities during mineral development projects. This is good practice in support of mine economy and moving the industry to a more sustainable, circular mining approach. At all reporting stages, known scientific and technical information about by-product commodity opportunities should be clearly presented.

If these opportunities cannot be estimated to the same level of confidence assigned to primary minerals, issuers should not potentially mislead by applying cash flow values to them as resources.

If an opportunity to extract and process these by-product commodities is identified and proposed, these can be explained, planned, and budgeted in the PEA under recommendations for future work.

A Preliminary Economic Assessment already provides sufficient latitude by including inferred resources.

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? If so, please explain what changes could be made to enhance the definition.

The Qualified Person definition is clear when the Instrument and the Companion Policy NI 43-101CP are read in concert. The combined description is more fulsome and provides greater information regarding the required depth of experience.

17. Should paragraph (a) of the qualified person definition be broadened beyond engineers and geoscientists to include other professional disciplines? If so, what disciplines should be included and why?

Integration of ESG and Indigenous experts who can or will prepare continuous disclosure information within CSA's Continuous Disclosure framework is important to the investing public and other stakeholders in mineral projects. They can offer comprehensive and thoughtful discussion of non-geoscience and engineering matters.

Can CSA broaden and maintain definitions for Qualified Persons (education, experience and professional membership) in ESG disciplines as they do in the Instrument and in Appendix A of the Companion Policy for geoscientists and engineers?.

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Whether this is possible or not, an Expert Statement of Qualification, inclusive of education, work and learned experience, and professional membership should be conceived for the information of the investor.

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? If so, what clarification would be helpful?

The Qualified Person definition can be enhanced by its own supporting description in Companion Policy NI 43-101CP. A clear statement that the Instrument should be read in conjunction with the Form and the CP would improve the understanding of the test for independence.

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 independence is not required?

The only time directors and officers can author a Technical Report is when there is no material change created by the information presented that would require the application of independence.

Such an instance might be a periodic update of a Technical Report for an exploration project with no resource. This is likely to be a consolidation of exploration work that a director or officer has managed or overseen, in their role as Qualified Person, as well as reported in press releases and other periodic corporate disclosure. The officer or director may have the best continuous knowledge of the Project.

The risk to Technical Report preparation in this instance is that authors with less or infrequent experience with NI 43-101 will be writing them. The director or officer as QP should employ such peer review as is necessary and outlined in the CP ("Disclosure is the Responsibility of the Issuer") there appears to be little advantage to the investor in a duplication of this work by an independent QP at this stage of property development.

Hopefully the CSA does not mean that directors and officers who occupy such positions in one Issuer should be prohibited from authoring reports where they are independent of another

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reporting Issuer, (director of Company A writing a report for Company B of which they are independent).

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?

Adopting a definition for a current personal inspection of sufficient breadth within NI 43-101 to cover the many site and inspection scenarios would cause the response to become ritualized to the Instrument and not adequately adaptive to a given Project. Additional non-prescriptive guidance would be more useful.

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? If so, please explain.

It is not logical to have an expectation that transactions and capital raising requiring a Technical Report be tempered by the seasonality of access to the project. A seasonally deferred personal inspection is an important if infrequent flexibility based on the location and condition of the property to be reviewed. A "significant non-compliance with refiling" for a provision that is "infrequently used" appears to be a small challenge of Issuer and author education, best managed with communication to both when such a deferral is granted and again at the time when the requested deferred visit was proposed to take place.

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