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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 43-101 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* (the Consultation Paper)

We are pleased to provide our feedback to the Canadian Securities Administrators (CSA) with respect to the Consultation Paper regarding the efficacy of the key provisions of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101 or the Instrument) as well as additional comments on NI 43-101 generally.

Our response incorporates internal feedback from our firm's Mining Group. In order to inform our response, we also solicited feedback from our issuer-clients that operate in the Canadian mining industry to better understand their views with respect to compliance with NI 43-101. Please note that this feedback was solely used to inform our views, and our response does not reflect the opinion of any particular individual or issuer.

For purposes of this comment letter, we have adopted the defined terms used in the Consultation Paper.

A. Improvement and Modernization of NI 43-101

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.

The Form requires extensive information and provides investors with the technical information necessary to make a fully informed investment decision on a pre-mineral resource stage project. However, we note that many prescribed items contained in the Form are not applicable to pre-mineral stage projects and we recommend that the Form be amended to reflect that items 13 and 14 are not required for such projects. Also, for pre-mineral resource stage issuers who are required to file an independent report, we suggest that the CSA consider whether the policy objectives of NI 43-101 can be achieved if certain items of the Form are not required to be prepared by independent qualified persons. For example, we believe that investors would be sufficiently protected where only items 9 through 12 were prepared by an independent qualified person.

In addition, while we believe that it is important to retain the requirement to prepare a technical report for pre-mineral resource stage projects which have drilling or trenching disclosed or proposed, the requirement to prepare technical reports for pre-mineral resource stage projects that are early stage exploration properties could be eliminated.

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?

Technical reports often include information that is more detailed than a summary of the material scientific and technical information and much of the information contained therein can be highly technical and may not be material to the subject property. The CSA should consider ways to limit the size and complexity of technical reports to promote the primary objective of providing a summary of material scientific and technical information concerning mineral exploration, development, and production activities on a mineral property that is material to an issuer.

In addition, the content and quality of technical reports varies widely across the industry and, in our experience, technical reports are not as consistent in form as other disclosure documents filed by issuers. The Form can be perceived as being overly complicated and we urge the CSA to simplify the requirements and strive for amendments that will allow for more consistency in market practice.

An alternative approach could be to retain the requirement to prepare a technical report, but better clarify that the Form is only intended to be a summary of material scientific and technical information. To further this point, the CSA might consider removing the summary section from the Form, as it currently results in a summary of a summary. Furthermore, the CSA could consider further simplifying the Form such that it better aligns to those items in item 5.4 of Form 51-102F2, such that the technical report addresses the intention to serve as a summary of only material information. In turn, the annual information form (AIF) summary could be eliminated, or such technical report could be incorporated by reference into the AIF.

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

Simplifying the Form and eliminating the requirement to repeat non-material scientific and technical information contained in a technical report and in other disclosure documents would be appropriate for mineral projects at all stages.

Mineral projects could be classified as (a) early stage exploration properties, (b) late stage exploration properties, (c) advanced properties and (d) properties currently in production.

We have addressed our view on early stage exploration properties (as currently defined in NI 43-101) in our response in question 1 above.

Late stage exploration properties could be defined as being properties which have a current mineral resource, the potential viability of which has not been supported by a preliminary economic assessment (PEA), a pre-feasibility study (PFS) or a feasibility study (FS). In the case of late stage exploration properties, we suggest retaining the current approach to technical reports subject to our comments in response to question 2(a) above.

Advanced properties could be defined in the same manner as the Instrument excluding properties currently in production. In the case of advanced properties, we suggest that the current approached to technical reports be retained subject to our comments in response to question 2(a) above.

In the case of properties currently in production, we would ask that the CSA consider whether there remains a sufficient basis to distinguish between those properties owned by producing issuers (as defined in NI 43-101) and issuers which are not producing issuers. Similar to the approach used in Item 22 of the Form to permit the exclusion of an economic analysis for properties current in production, the technical report requirement for properties currently in production could be simplified by: (a) exempting an issuer from filing a technical report provided that the issuer includes an annual mineral and mineral reserve statement and other disclosure required by paragraph 5.4 of Form 51-102 in the issuer's AIF or, if the issuer is not an AIF filer, another document on the issuer's disclosure record on SEDAR; or (b) specifying in the Form that certain items such as Items 5, 6, 7, 8, 9, 13, 18, 19, 22, 25 and 26 may no longer be material to the property once it is in production. Alternatively, the Form could be amended to provide for such information to be generally excluded provided that it would not constitute material or scientific information concerning the subject property.

3. a) Should we consider greater alignment of NI 43-101 disclosure requirements with the disclosure requirements in other influential mining jurisdictions?

Generally, we believe that NI 43-101 disclosure requirements should be aligned with the disclosure requirements in the United States, Australia, Europe, the United Kingdom and South Africa.

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

SEC foreign issuers (as defined in National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (NI 71-102)) should be able to elect to comply with SEC S-K 1300 in lieu of NI 43-101 requirements given the principles in both jurisdictions are now materially consistent and other requirements of applicable Canadian securities laws permit the use of documents filed under U.S. federal securities laws.

Designated foreign issuers (as defined in NI 71-102) should be exempted from the requirements of NI 43-101 to the extent that such issuers comply with the disclosure requirements of designated foreign jurisdictions that have adopted acceptable foreign codes (as defined in NI 43-101), being Australia, the United Kingdom and South Africa.

We suggest that the reconciliation requirements in paragraph 7.1(2) of NI 43-101 should be removed on the basis that acceptable foreign codes are substantially equivalent to CIM Definition Standards on Mineral Resources and Mineral Reserves.

4. 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.

At a minimum, the 45-day period should be retained, though an increase to 60 days may be warranted in order to better facilitate the timely disclosure of new material scientific and technical information and to afford an issuer to have sufficient time to prepare a new technical report. The timely preparation of a technical report is often constrained by the availability of qualified persons and the time and effort required to comply with the Form requirements. Preparation of a technical report on an expedited timeline can also significantly increase the cost of preparing such report.

We suggest that paragraph 4.2(5)(a) of the Form be expanded (or paragraph 4.2(6) of the Form be amended) to also apply to paragraph 4.2(1)(f) of the Form to permit a delay in filing a technical report in circumstances where new disclosure is included in an AIF. Otherwise, the requirement to file a technical report to support material scientific and technical information in an AIF negates the flexibility to delay filing a technical report where the information has been disclosed within 45 days of the filing of an AIF.

5. 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?

Physical site visits are an important part of a qualified persons role to support certain items of a technical report. The current requirement could be clarified to prescribe which items of a report require current personal inspection depending on the stage of the project and which items could be addressed through the use of remote technologies. We note that a qualified person may currently use innovative technologies to determine whether a new site visit is necessary to satisfy the current personal inspection requirement.

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?

We believe the CSA should consider outlining clear parameters guiding the use of remote and innovative technologies as the use of technologies may be vulnerable to manipulation. However, we recognize that this may be a difficult task as technology is evolving rapidly. The general principle that a qualified person must take whatever steps are appropriate, in their professional judgement, to ensure that the work, information, or advice that they rely on is sound may be sufficient to address circumstances in which remote technologies may be acceptable.

B. Data Verification Disclosure Requirements

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 scope of the current data verification definition and disclosure requirements could either be read broadly to apply to all scientific and technical information or more narrowly and limited to the specific examples provided in paragraph 3.2(a) of the Form (i.e. sampling, analytical or test data). In our view, data verification should be focussed on exploration and drilling results and the definition should be clarified accordingly. The requirement that qualified persons take responsibility for all sections of a technical report should sufficiently address any policy concerns that a qualified person has undertaken adequate due diligence to support scientific and technical information without specific reference to procedures undertaken.

In order to clarify the standard that is applicable to data verification, it may be useful to explicitly state that a qualified person is responsible for data verification based on their professional judgement.

In practice, there are different levels of detail included in written disclosure to describe how data was verified and the level of detail varies widely across different types of written disclosure (i.e. press releases as compared to an AIF). In some cases, issuers rely on boilerplate data verification statements and/or cross references to previously filed disclosure documents to satisfy the requirement in paragraph 3.2 of the Form. It would be helpful if NI 43-101 or the Companion Policy provided more specific guidance on the scope of data verification required.

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?

Item 12 should clearly specify which sections of a technical report require data verification. The placement of this item within the Form can be interpreted such that the primary focus of data verification are Items 9, 10 and 11 of the Form. To the extent that the CSA considers the data verification requirement to apply more broadly, the CSA may consider subsuming the data verification requirements within Item 2 or moving Item 12 prior to Item 4 of the Form.

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?

We believe that the current personal inspection requirement could be integrated into Item 12 provided that the current personal inspection requirement is, in substance, a component of data verification. In the alternative, as described in our response 7 above, Item 2 could be expanded to include Item 11.

C. Historical Estimate Disclosure Requirements

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

The current definition of "historical estimate" encompasses a number of different types of circumstances and estimates, some of which have been prepared in accordance with NI 43-101 and others which do not qualify as a mineral resource or mineral reserve (as defined in NI 43-101). As NI 43-101 has been in effect for over 20 years, the definition could be narrowed so as to apply solely to estimates which have been prepared prior to acquisition and categorized as an inferred mineral resource, an indicated mineral resource, a measured mineral resource, a probable mineral reserve or a proven mineral reserve under CIM Definition Standards or an acceptable foreign code.

If the current breadth of the definition of historical estimates is retained, the use of this exemption could be time limited such that the estimate would no longer meet the definition and be eligible for use by the issuer following the earlier of: (a) the date on which an issuer is required to file a technical report in respect of the subject property; or (b) 180 days following the date on which the issuer acquired the subject property. We believe that this concept balances an issuer's ability to disclose estimates which may be material on the acquisition of a property without being able to rely on non-current mineral resources and mineral reserves on ongoing basis in perpetuity.

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

See our response to question 9 above.

D. Preliminary Economic Assessments

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?

The definition of a PEA and the circumstances in which a PEA is permitted should be clarified and captured in the Instrument such that further clarification and guidance is not required in the Companion Policy or staff notices. In our view the number of sources of regulation and guidance on the use of preliminary economic assessments contributes to uncertainty on the permitted use of preliminary economic assessments.

Guidance should be added to the Companion Policy to clarify the circumstances in which technical reports are inadvertently triggered because of the disclosure of a PEA. There are several examples of disclosure which would be considered an inadvertent PEA in CSA presentations, but these can be difficult to locate and issuers may not be aware of these examples.

Currently, a PEA includes both (a) economic studies that are not done to a PFS or FS standard, but use measured and indicated mineral resources; and (b) economic studies that are based, in whole or in part, on inferred mineral resources. Generally, NI 43-101 does not restrict the use of scoping studies which are based on measured and indicated

mineral resources. The requirements relating to disclosure of PEAs and restrictions on disclosure of certain economic analyses could be simplified as follows:

a) eliminate scoping studies which do not use inferred mineral resources from the definition of PEA; and

b) clarify that an economic analysis that uses inferred mineral resources may be disclosed on properties with mineral reserves provided that economic analysis based solely on measured and indicated mineral resources and proven and probable mineral reserves is also included as a base case. See also our response to question 14 below.

In the absence of a commonly accepted standard on the common estimate parameters or amount of engineering required in a scoping study, we believe that the current formulation of a PEA as "any study which is not a PFS or a FS" is sufficient and market participants can make informed decisions based on the specific disclosure by an issuer. However, it may be helpful for the CSA to include guidance that disclosure of a PEA must include cost accuracy parameters and the amount of engineering completed, if any.

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?

Yes, the statement sufficiently alerts investors of the preliminary nature of the economics and risks associated with using inferred mineral resources in an economic analysis.

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?

The independence requirement lends credibility to first time disclosure of the results of a PEA. In our experience, it is usual to have significant changes to a PEA *without* changes to the underlying total mineral resources. It is appropriate to maintain the existing independence requirement for a technical report disclosing significant changes to a PEA resulting from a 100 percent or greater change in total mineral resources on the subject property. We note that this approach is consistent with the treatment of significant changes to a PFS or a FS, where a further independent report is not required unless there is a 100 percent or greater change in total mineral resources or total mineral reserves on the subject property (other than with respect to depletion).

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

It is important to permit issuers to disclose an economic analysis that includes, or is based on, inferred mineral resources if current mineral reserves have been established to allow

issuers with mining operations with future economic potential (beyond the current scope of operations supported by mineral reserves and measured and indicated mineral resources) to disclose the full potential of their assets within reasonable parameters and with appropriate cautionary language. It is not unusual for issuers to include inferred mineral resources in internal mine planning where further drilling is required to delineate a measured or indicated mineral resource, whether such inferred mineral resources are located in satellite deposits or within, or contiguous to, the existing mineral reserves. In cases where there are significant changes contemplated to existing or proposed operations (as described in Staff Notice 43-307), the current PEA definition works well. In cases where inferred mineral resources are included in mine plans where no significant changes are contemplated for existing or proposed operations, economic parameters or capital investments, the current PEA framework is not as well suited given the primary risks involved and the geological uncertainty inherent in an inferred mineral resource estimate. As noted in our response to question 11 above, we suggest that, in the definition of a PEA, the CSA consider carving out the use of inferred mineral resources in an economic analysis with mineral reserves, provided that the issuer includes a base case economic analysis that does not use inferred mineral resources and the inclusion of inferred mineral resources is not related to significant changes to existing or proposed operations. Item 24 of the Form could be clarified to permit such expanded economic analyses with appropriate cautionary language.

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.

We generally do not recommend a more prescriptive approach to how an economic analysis should be prepared which are otherwise based on the professional judgment of a qualified person. In the case of by-products, we note that it can be costly and time consuming for an issuer to prepare mineral resources estimates of by-products and an economic analysis that disregards the cash flows from by-products could be misleading to investors. Concerns on the use of by-product cash flows can be mitigated through disclosure of assumptions used in the economic analysis and any historical track record of by-product revenue.

E. Qualified Person Definition

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.

No response.

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?

No response.

18. Should the test for independence in section 1.5 of NI 43-101 be clarified? If so, what clarification would be helpful?

The definition is well understood.

19. Should directors and officers be disqualified from authoring any technical reports, even in circumstances where independence is not required?

Disqualifying directors and officers from authoring technical reports would be inconsistent with the practice that other disclosure documents are prepared and approved by directors and officers of an issuer. NI 43-101 prescribes circumstances in which a technical report is required to be prepared by an independent qualified person, and the definition of qualified person provides appropriate standards and safeguards where a technical report is not required to be prepared by independent qualified persons. Disqualifying directors and officers would also disproportionately impact smaller or early-stage issuers with fewer resources.

F. Current Personal Inspections

20. Should we consider adopting a definition for a "current personal inspection"? If so, what elements are necessary or important to incorporate?

Paragraph 6.2 of the Companion Policy provides sufficient guidance and flexibility for qualified persons to exercise their professional judgement to satisfy the requirement to conduct a current personal inspection.

To the extent that the CSA defines the term "current personal inspection", the definition should include the concept that a current personal inspection includes the most recent personal inspection provided there is no new material scientific and technical information about the subject property or the subject matter of the personal inspection. Also, to the extent that certain items of the Form specifically require a current personal inspection, such requirements should be included in NI 43-101 or the Form rather than the Companion Policy.

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? Why or why not?

See our response to question 20. Qualified persons should be permitted to exercise their professional judgement and determine if it is necessary to conduct a current personal inspection.

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? Why or why not?

Yes, subject to the existing guidance in paragraph 6.2 of the Companion Policy that the most recent personal inspection would constitute a current personal inspection where there has been no new material scientific and technical information. The ability to rely on the most recent personal inspection addresses concerns that site visits may not be required to update reports on mature operating mines.

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

No, subject to our response to question 1 above that technical reports may not be required for certain early stage exploration properties.

G. Exploration Information

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

Paragraph 3.3 of the Form is sufficiently clear but paragraph 3.3(1)(c) of the Form could be expanded to require or disclose the use of blanks, duplicates, standards utilized and third party laboratory checks in QA/QC programs.

H. Mineral Resource / Mineral Reserve Estimation

25. Should Item 14: Mineral Resource Estimates of the Form require specific disclosure of reasonable prospects for eventual economic extraction? Why or why not? If so, please explain the critical elements that are necessary to be disclosed.

As the concept of reasonable prospect for eventual economic extraction is imbedded in the CIM Definition Standards, any specific disclosure requirement should be based on the CIM Definition Standards and CIM Estimation of Mineral Resources & Mineral Reserves Best Practice Guidelines (CIM Best Practice Guidelines) rather than being added to Item 14. The Best Practice Guidelines provide that the factors significant to cut-off grades or values used in the Mineral Resource Estimate should be clearly stated.

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? Why or why not?

In the case of a technical report, the Form requires a qualified person to take responsibility for each item of the Form and it may be appropriate for different qualified persons to take responsibility for data verification and mineral resource estimates. In addition, the CIM Best Practice Guidelines provide that at least one qualified person must take responsibility for each part of the estimation process when publicly disclosing the results of mineral

resource and/or mineral reserve estimates. Based on the foregoing, the qualified person responsible for the mineral resources estimate should be permitted to rely on data verification conducted by another qualified person.

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? 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?

To the extent that legacy data is used for a current mineral resource estimate, a qualified person should accept responsibility for such data. Legacy data should be verified in the manner, and to the extent the responsible qualified person determines necessary in accordance with their professional standards. If needed, a re-assaying program should be implemented and/or twin hole drilling completed. If the legacy data cannot be verified, it should not be relied on for the purposes of mineral resource estimation.

27. How can we enhance project specific risk disclosure for mining projects and estimation of mineral resources and mineral reserves?

The current regulatory regime requires project specific risks to be identified pursuant to paragraph 3.4(d) of NI 43-101, Items 4 (h), 13(d), 14(d), 15(d) and 25 of NI 43-101F1, and Item 5.4(9) of Form 51-102F1. In addition, issuers may disclose project specific risks pursuant to Item 5.2 of Form 51-102F1. A similar approach could be taken to Items 17 (Recovery Methods), 20 (Environmental Studies, Permitting and Social or Community Impact) and 21 (Capital Costs) as the approach used for Items 4, 13, 14 and 15 to ensure that additional project risks are disclosed. We prefer an approach that would promote disclosure of specific material project risks as compared to further requiring general risks that are adequately addressed in other form requirements.

I. Environmental and Social Disclosure

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?

The current disclosure requirements under Items 4 and 20 of the Form are overly broad, such that they can be addressed with boilerplate disclosure or disclosure that is limited to tailings and water management. It would be helpful to have separate items of the Form address environmental and permitting matters, on the one hand, and social matters, on the other.

The environmental disclosure requirements could be updated to specifically reference additional items including the following:

- Air pollution, including anticipated greenhouse gas (GHG) emissions and mitigation plans, wind erosion, and vehicular traffic;
- Water pollution, including metal contamination, increased sediment levels in local waterways and mine drainage management;
- Damage to land, including changes to landscape and potential effects on local communities and habitats;
- Loss of biodiversity, including significant impacts to wildlife and flora and fauna and management plans (through all stages, including post closure); and
- Climate change risks, including adaptation plans.

To the extent that disclosure requirements in Items 4 and 20 are significantly expanded to address climate change, social and indigenous impacts, the CSA should consider whether such disclosure is appropriately captured by the Form to be included in technical reports or whether this information may constitute non-scientific and technical information that is outside the expertise of qualified persons. In this case, an issuer may be better positioned to rely on other experts and this information should be included in other continuous disclosure filings, such as the AIF.

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?

Similar to our response to question 28 above, the current disclosure requirements with respect to social and community impacts can often be overlooked or completed with boilerplate disclosure as they are too broadly captured in other items of the Form. The CSA could consider adding the following specific requirements:

- A list of the key communities of interest in the area of interest, and status of consultation and agreements for each community;
- A description of the social management system that is or will be developed to manage community relations, including a description of all relevant components (e.g. stakeholder identification, grievance tracking, etc.) and referencing relevant frameworks where relevant (e.g. IFC performance standards, Towards Sustainable Mining, etc.);
- Projected economic effects and activities that could result from the project;
- Projection of social changes that might occur as a result of the project and how this might impact the local communities; and
- Anticipated effect on local communities upon the closure of the project.

As noted above in our response to question 28, CSA should again consider whether this information is appropriately captured by the Form as scientific and technical information.

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

Yes, we believe that community engagement and the social license is critical to advancing projects, regardless of the stage of development, and accordingly, issuers should be required to disclose community consultations at all stages of development of a mineral project.

J. Rights of Indigenous Peoples

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?

Disclosure on the rights of Indigenous Peoples that impact a mining project material to an issuer should be addressed in a specific Item in NI 43-101F1 or alternatively, may be better captured in the AIF by Item 5.4 of Form 51-102F2. Again, the CSA should consider whether this information is appropriately captured by the Form as scientific and technical information. If yes, specific disclosures to be considered, include the following:

- A list of relevant legislation or binding international conventions for the rights of Indigenous Peoples in the jurisdiction, and resulting requirements for the project;
- A list of Indigenous Peoples that the Crown or other governmental authorities have identified require consultation, and a description of the relevant subject and aspects of such consultation;
- Details of any blockades, obstructed access or any claims filed that might adversely affect the issuer's rights
- Details of any injunctions or challenging of Crown or other governmental authorizations; and
- If applicable, a description of the final impact benefit agreements or similar type agreements with each impacted Indigenous group.

This level of disclosure will be challenging to balance as in Canada, issuers generally look to the Crown to tell them who will be impacted, and the individually impacted communities may change based on the types of activities (for example, exploration may impact a much smaller group vs construction and operation of a mine). In addition, it could be very difficult to provide a meaningful description of how negotiations with Indigenous groups are proceeding as they can often take years to negotiate and take several different positions throughout the negotiations. In other words, the disclosure could become outdated quickly

or in hindsight proved to have been optimistic. Similar to the notes above, prior to signing an agreement, many Indigenous groups will in concept oppose a project (subject to getting an agreement) and so disclosing the stance of the various Indigenous groups may not provide a true representation of the feasibility of a project opposite such groups.

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?

See our response to question 31 above. Specific disclosures should be mandatory where such risks are relevant to material scientific and technical information concerning the subject property. NI 43-101F1 currently requires disclosure where such risks could impact access, title, and the right to perform work (Item 4(h)), the extent to which mineral resource estimates could be materially affected by any known permitting, title, socio-economic or other relevant factors (Item 14(d)) and mineral reserve estimates (Item 15(d)). To the extent that these items or additional items of NI 43-101F1 are not considered to be sufficiently specific to the risks related to the relationship with Indigenous Peoples, these items could be amended to specifically capture such risks. In general, significant risks and uncertainties related to the relationship of the issuer with any Indigenous Peoples should fall within risk factors disclosed in other continuous disclosure filings that are applicable to all issuers.

Also, as noted above, the CSA should consider minimizing the circumstances in which the Form requires a qualified person to rely on other experts under Item 3 of the Form.

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.

We do not believe that disclosure of the above-noted risks should be expertized such that the qualified person is required to rely on a report, opinion or statement of another expert who is not a qualified person. Similar to the approach taken with respect to disclosure of other non-scientific technical matters in the Form, the reliance on other experts should be limited to where the qualified person determines it is necessary to provide a limited disclaimer. An issuer will generally be in the best position to provide information on the relationships they have with local communities and Indigenous Peoples and, similar to other Form requirements, the qualified person can determine if further validation is necessary. Generally, risk disclosure in other continuous disclosure filings is not required to be expertized.

K. Capital and Operating Costs, Economic Analysis

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

The current disclosure requirements are adequate. However, in our experience, we find the disclosure in response to the requirement to "explain and justify the basis for cost estimates" varies significantly in filings. CSA may consider providing additional guidance on the information intended to be captured by the explanation and justification (e.g. disclosure of benchmarking, where used).

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?

Capital cost estimates for advanced properties that are not in production or for properties in production where there will be a material expansion are one of the most material components of scientific and technical information on such projects for investors. However, the Form should not be more prescriptive on this matter, subject to our response questions 34 and 36.

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

We suggest that risks specific to capital and operating cost assumptions be included in Item 20 such that this risk information is clearly tied to, and disclosed proximate to, the capital and operating cost estimates disclosure.

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?

Item 22 allows the applicable qualified person to use professional judgement to present an economic analysis and we have no suggestions to modify the presentation of such analysis. We suggest retaining the flexibility in Item 22 for a qualified person to select a discount rate based on their professional judgement but suggest that the reference to sensitivity analyses in Item 22(e) also reference 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?

Use of Non-GAAP Measures

We respectfully submit that Items 21 and 22 of the Form should permit the disclosure of certain common non-GAAP measures, such as cash cost per ounce, all-in sustaining costs (AISC) and EBITDA often used in the disclosure in a FS, PFS and PEA. In particular we note that paragraph 7(2)(a) of National Instrument 52-112 - *Non-GAAP And Other Financial Measures Disclosure* (NI 51-112) states that an issuer must not disclose a non-

GAAP financial measure that is forward-looking information in a document unless the document discloses an equivalent historical non-GAAP financial measure. Generally, a FS, PFS or PEA is for a pre-production mining project and there is no equivalent historical non-GAAP measure on which to rely. Consequently, it appears on the face of it that it is not permissible for an issuer to disclose expected cash costs per ounce or AISC per ounce in a Mining Study or related disclosure on a new project. We understand from discussions with OSC staff that it is not the intent of NI 52-112 to prohibit disclosure of estimated cash costs, AISC or EBITDA for pre-production mining projects, and it would be helpful for the Form (and ultimately NI 52-112) to be amended to clarify that disclosure of such non-GAAP measures for pre-production mining projects is permissible.

Lithium and Brine Projects

The Form should be revised to specifically permit modifications to disclosure requirements for lithium and other commodities that may be hosted in brines, and perhaps other projects with similar development characteristics. In particular, the form does not provide sufficient flexibility to suitably address brine projects, and as a result it appears to be causing some confusion. The CIM Best Practice Guidelines for Resource and Reserve Estimation for Lithium Brines should be added to the list of Industry Practice Guidelines in the Companion Policy (i.e. similar to what has been included for Non-Metallic Mineral Deposits). It is important that the interplay between brine projects and NI 43-101 be more clearly addressed, especially as the importance of such projects continues to grow. In addition, development planning and operations for lithium projects typically contemplate an issuer producing chemical compounds such as lithium carbonate or lithium hydroxide that represent value-added modification to the base commodity and which are often manufactured for the unique product specifications of downstream purchasers. Meanwhile, the form contemplates disclosure based on the assumption that mine development and processing will result in production of a base commodity that is intended for sale into an established commodity market with transparent market pricing. This discrepancy has created confusion about the extent to which chemical production and sales should be disclosed in a technical report. It has also created concern about the extent to which an issuer will need to disclose sensitive proprietary information about its chemical production processes, specifications and product sales.

Disclaimers

We continue to see a lack of understanding by authors of technical reports on what disclaimers are permitted. In particular, independent engineering and other consulting firms continue to use customary disclaimers in technical reports that are subject to comments from securities regulators. We believe the Form should include clearer statements on disclaimers permitted with a corresponding prohibition on the use of certain disclaimers.

Materiality

We believe there should be bright line quantitative tests to determine if a mineral project is on a property material to an issuer. While the general guidance in paragraph (5) of the Companion Policy is helpful, the guidance is less instructive to issuers with multiple mineral projects. In addition, we suggest that NI 43-101 would be improved if there was more certainty as to when there was new material scientific or technical information for the purpose of relying on paragraph 4.2(8) of NI 43-101.

Checklists

When soliciting feedback from issuers, it was clear that persons involved in the preparation of technical reports believe that that checklists attached to Form 43-101F1 with respect to certain disclosure items would be helpful, including checklists for drilling results, data verification, historical estimates, mineral resource and mineral reserve reporting and risk disclosure.

Trade Off Studies

The feedback we obtained indicated that there was a consensus that NI 43-101 should allow for issuers to include trade off studies.

AIF Trigger

We believe that the annual assessment of a current and complete technical report supporting disclosure because of the filing of an AIF (the AIF trigger) can be burdensome on issuers. Also, in general, many issuers in recent years have had a difficult time with the AIF trigger due to supply chain and other delays as a result of COVID-19. To assist Issuers, either (i) more guidance should be provided so issuers can easily assess if their report is current and complete; and/or (ii) the AIF trigger should be revised such that it only applies once every three years (i.e. on every three year anniversary of an AIF, an issuer must make a current and complete assessment). Otherwise, we believe that there are other protections built in with other triggers and in particular with respect to the written disclosure trigger with material changes to mineral resources, mineral reserves or the results of a PEA where a report is triggers.

Property

We have received feedback that the definition of “property” and the concept of “common infrastructure” as referenced in paragraph 1.1(6) of the Companion Policy may be overly broad. We suggest that the concept of “common infrastructure” should be limited to shared infrastructure such as processing facilities and not extend to access roads or camps.

Electronic Communications

We believe that electronic communications will increasingly provide issuers with an effective means to make timely disclosure of technical information regarding mineral projects. Accordingly, the use of social media and electronic communications should be considered in the drafting of amendments to allow issuers to effectively communicate with security holders. Further, we note that the comments in CSA Multilateral Staff Notice 51-361 with respect to the use of hyperlinks is not practical in certain circumstances, particularly with respect to disclosure in news releases and social media posts where cost and character limit factors may be applicable. We believe that concerns that hyperlinks may stop working could be adequately addressed through an obligation to ensure that links are operable or the disclosure in the link is superseded by other written disclosure in the issuer's permanent disclosure record on SEDAR.

Consents

We believe that the administrative and cost burden of complying with NI 43-101 could be lessened if engineering and similar consulting firms which produce technical reports are permitted to provide consents required under paragraph 8.3 of NI 43-101 rather than obtain separate consents from each qualified person who is an author of the report. This approach is more aligned with the requirements for other expertized disclosure and audited financial statements where consents may be provided by corporate or other entities rather than individual experts.

We appreciate the CSA taking the time to consider our feedback and would be happy to further discuss or provide addition insight on any of the above noted responses.

Yours truly,

Cassels Brock & Blackwell LLP

"Alex Pizale" *"Jennifer Hansen"*

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