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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
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Re: AME Comments on CSA Consultation Paper 43-401

On behalf of the Association for Mineral Exploration (AME) and its members both based or exploring in British Columbia, I thank you for the opportunity to comment on *CSA Consultation Paper 43-401 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects*.

AME is the lead association for the mineral exploration and development industry based in British Columbia. Established in 1912, AME represents, advocates and promotes the interests of almost 5,000 members who are engaged in mineral exploration and development in BC and globally. AME encourages a safe, economically strong and environmentally responsible industry by providing clear initiatives, policies, events and tools to support its membership in delivering responsible projects that advance reconciliation and provide benefit to all British Columbians.

GENERAL COMMENTS

In general, National Instrument 43-101 (NI 43-101) has provided our members with a standard means of reporting with confidence and integrity to investors since its introduction in 2001 and revisions in 2011. Our remarks on most specific questions are brief for the following reasons: 1) a general level of support for NI 43-101 in its current form; 2) the primary concern being ensuring that guidelines are specific enough to be followed consistently by all securities regulators; and 3) respect for our diverse membership.

In summary, we believe that the current standards serve their purpose and are adequately stringent while being manageable for our members. AME cautions CSA regulators that tightening standards for qualified persons beyond the current definitions may lead to a shortage of qualified personnel to report on mineral projects. We also advise that although AME advocates for early and frequent engagement with Indigenous

peoples by its members, and supports the economic and social benefits that participation in mineral exploration and development bring to Indigenous peoples, the scope of disclosure of these relationships will vary between projects, particularly in early-stage exploration.

RESPONSES TO SPECIFIC QUESTIONS

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.

Yes; the requirements and related formatting do provide a means of comparing properties to inform investment decisions. Efforts on evaluating disclosure should be on the adequacy and appropriateness of the information contained and already required rather than the volume. Further requirements would increase costs for issuers and unnecessarily expand the scope and complexity of reporting for investors.

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?

No; the current Form provides a mean of disclosing all relevant information in a straight-forward manner.

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

If required, a condensed format should only be considered for very early-stage exploration projects with no, or very little, history of previous exploration, up to and including the first exploratory drill program.

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

NI 43-101 has served our members well as the premier standard for reporting and works in tandem with federal, provincial and territorial laws and regulations, including those governing engineers and geoscientists. Although frequent scans of other reporting frameworks are useful, greater alignment is unnecessary.

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

NI 43-101 disclosure is currently well aligned with JORC in Australia; this alignment should be maintained.

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.

The 45-day delay is a reasonable timeframe for issuers. This timeframe provides a means of allowing technical report writing after disclosure to address any issues that come to light which were unknown at time of disclosure.

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?

No; although technology such as meetings and drones can help provide information regarding a project, remote technology cannot currently replicate an on-site visit, which is especially important for the Qualified Person (QP) to check sampling procedures and QA/QC.

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?

The QP should operate and/or supervise the technology, and not just review information, which could be selective. Other considerations such as preservation of the data need to be considered.

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?

Yes; the current definition is adequate, and disclosure requirements are clear.

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?

Disclosure of what the QP has relied on for data verification purposes should be clear.

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?

In general terms, it makes sense to streamline reporting where feasible as the majority of data verification is done during the site visit.

C. Historical Estimate Disclosure Requirements

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

Yes; the current definition is clear, however guidance on the definition's interpretation would be helpful.

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

Yes; the current requirements are sufficient.

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?

No. These parameters vary widely with jurisdiction, project constraints, environment and social impacts: adding additional disclosures would make it difficult for companies to report on all of the parameters that affect the project.

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, this statement is adequate.

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?

No, current requirements are adequate.

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

No, preliminary economic assessments for properties that have current reserves should be acceptable, but it is important to disclose the effect of material changes between a PEA and a more current mineral resource estimate (e.g., by-products not considered in the mineral resource estimate).

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.

Yes, all metals disclosed in the economic analysis should be categorized as measured, indicated or inferred mineral resources, as these calculations should represent the whole deposit.

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.

Yes, this is the main concern regarding NI 43-101 for our members. We strongly urge the CSA to issue a new QP definition that defines experience as being inclusive of that received while being registered with a professional organization – including experience as a Geoscientist-in-Training or Engineer-in-Training in addition to experience with equivalent designations in jurisdictions outside Canada. It is AME's opinion, and the experience of its members, that such experience including five years after attaining a university degree is sufficient for building expertise toward the five years of experience required under the intent of NI 43-101.

We additionally advise the CSA to issue guidance that the QP have at least five years of experience with the type of deposit on which they are reporting; this, however, may be inclusive of work before receiving a university degree.

A new definition combined with appropriate guidance would ensure that QPs are experienced individuals that use their professional judgment in reporting, and allow for an adequate number of professionals to provide robust reporting.

For a proposed workable definition of a QP, please refer to the submission from Geoscientists Canada dated August 22, 2022.

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?

Yes, other professions should be accepted for disclosure not related to the mineral resource itself (e.g., a Registered Professional Biologist or Professional Agrologist may be qualified to disclose environmental risks, a Metallurgist could be qualified to disclose the economic extraction of resources, or a lawyer could be qualified to disclose land and legal risks). The definition should clearly state which professions – and to what extent – are accepted.

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

The test is adequate as is.

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

No, given the relatively small number of qualified experts for a given project, directors and officers should use their professional discretion when authoring technical reports. Through their professional designations, QPs follow a Code of Ethics, which should be the guiding basis for authoring technical reports. It is also noted that given the relationships between companies and their consultants and contractors, it may be difficult to verify a standard of independence that can be evenly applied among all issuers.

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?

Additional guidance, including the meaning of “current” may be helpful, but no definition is required.

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?

No. One QP should be mandated to take responsibility for the site visit including data collection and verification and QA/QC procedures. The QP who has modelled the resource estimate may be a consultant who is working on multiple other projects and may not know or understand the project as well as another QPs (e.g., the vice-president of exploration) and would not add much value by visiting (especially at earlier stage projects with minimal infrastructure or where there is no active, ongoing work).

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?

This depends on the complexity of the project, as there may be nothing on the project for some of the QPs to see and/or review, in which case this does not add value to the technical report. Guidance should be taken from professional codes of conduct, and at the discretion of the Professional taking responsibility for the disclosure.

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

Subsection 6.2.2 does provide flexibility on exemptions from site inspections in very specific circumstances; if this provision is covered by section 9.1, it may be removed.

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?

Yes, requirements are clear. However, subsection 3.3(2) in its entirety is not practical for projects with many drill holes. A summary of results with a link to a complete list of results should suffice.

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.

Yes, as disclosure is related to recovery, costs and possible mining method can be used to form an investor’s decision.

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?

Yes, the signing QP needs to verify whether the data supports the mineral resource estimate.

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?

Yes, the QP should decide whether data previously acquired meets the standards to be included in a mineral resource estimate. There are methods that can be used to test and confirm accuracy of historical data without having access to the sampling, analytical and QA/QC information.

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

Enhancing risk disclosure is challenging as the QP of a technical report is usually a geologist, and a full understanding of all of the risks associated with the mining project and estimation is likely outside of their professional qualifications. Additionally, as most technical report writers are consultants who rely on information they are given from the company, we believe it is difficult to enhance disclosure in this area. As stated above in our response to Question 17, a broadened list of QPs could properly address these risks including legal and social risks.

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?

Yes; disclosure requirements are adequate; however, at the mineral resource estimate stage, the QP may not be able to provide a complete and reliable opinion beyond the “extent known”.

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?

Yes; see response to Question 28.

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

We do not believe such disclosure should be mandatory. Companies should disclose whether or not they have engaged with local communities and the extent of their relationship with local communities. Some forms of engagement may not be relevant to the mineral resource estimate, and may be confidential between the issuer and community, particularly at an early stage.

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?

We acknowledge that various disclosures may be helpful to an investor including Indigenous groups on whose traditional territory a project is located; whether there are settled land claims; and how involved local communities are in mineral resource projects. As stated in our response to Question 30, we also believe that

it is important at the mineral resource estimate stage to disclosure whether or not engagement has begun with local Indigenous groups. However, generally speaking, disclosure of risks and uncertainties related to Indigenous rights is beyond the scope of a technical QP at the mineral resource estimate stage. Similarly, a fulsome discussion of opportunities related to Indigenous Peoples would also be beyond the scope of a technical QP. These risks and opportunities are difficult to understand and express definitively, especially at earlier stage projects. Accordingly, we do not believe specific disclosures should be mandatory.

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?

Similarly, disclosure of a relationship between an issuer and Indigenous Peoples is not the role of a QP; furthermore, there may be benefits and risks related to this relationship that are beyond the role of a QP to report. Through the government's legal duty to consult with Indigenous Peoples, policy regarding resource development and traditional territories is continually evolving and led by government in a manner that is beyond the scope of a single project or a QP to understand and disclose.

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.

No; a third-party disclosure of risks and uncertainties beyond the scope of the mineral resource estimate itself would not be appropriate. Projects each come with risks and benefits that are outside the scope of the QP. Furthermore, these relationships, discussions and/or agreements may be confidential and not appropriate for a third party to verify.

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?

Yes, these are appropriate when relevant.

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?

We acknowledge that the use of a recognized system could lead to more consistent capital cost estimates. However, there are many reasons why costs could vary across geography and between jurisdictions, so we are concerned that adhering to a specific system may add significant work and cost to our members.

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

It would help to have additional risk disclosure requirements relating to the capital and operating cost assumptions; the requirement to provide various scenarios with a number of variables as inputs could help an investor better understand how the economic viability of a project may change (at times without large changes in input requirements).

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?

No; economic analysis is outside the expertise of the majority of QPs and would be outside the scope of most mineral resource estimates. However, we highly encourage CSA to expedite the modernization of the SEDAR filing system to facilitate investors to conduct their own understanding of economic risks and opportunities.

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?

No; this questionnaire has been thorough from our perspective in terms of disclosure requirements in both NI 43-101 and the form.

Thank you again for the opportunity to comment on NI 43-101 standards of disclosure. Please feel free to connect with me by email at kjohnston@amebc.ca, or by phone at 778.772.4410 if you wish to discuss further.

Yours truly,

Kendra Johnston

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