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Our Matter Number: 83411

November 11, 1998

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, Government of New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Securities Registry, Government of the Northwest Territories and
Registrar of Securities, Government of the Yukon Territory

DELIVERED

c/o Daniel B. Iggers, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

COURIERED

Claude St. Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 17th Floor
Montreal, Quebec
H4Z 1G3

Dear Messrs. Iggers and St. Pierre:

Re: Requests for Comment Proposed National Instrument 43-101 and Companion Policy 43-101CP

This letter is provided to the Canadian Securities Regulatory Authorities (the "CSA") in response to the notice of proposed National Instrument 43-101 and Companion Policy 43-101CP dated July 3, 1998. As requested, this submission is provided to you in duplicate and with a diskette containing the submission in WordPerfect format.

I. NATIONAL INSTRUMENT 43-101

Introduction and Overview

We believe NI 43-101 and CP 43-101 are based on sound research and should have the desired effect of improving standards of disclosure for mineral exploration, development and mining properties; however, as they are to be mandatory rules rather than guidelines, we believe it extremely important that they be precise and workable.

We agree with combining former NP 2A and NP 22 in one proposed National Instrument, as well as the introduction of several recommendations from the Interim Report of the Mining Standards Task Force (the "MSTF").

Although our firm has not expressed a view on the desirability of implementing generally proposals for statutory civil liability for continuous disclosure, we believe that the proposal of the CSA to seek provincial and territorial legislation to implement the recommendations of the Allen Report by creating liability on a broad category of persons involved in corporate disclosures, particularly the management of the issuer, will help to achieve improved standards of disclosure in the mining industry. In particular, we believe the potential civil sanctions contained in the Allen Report regarding false or misleading disclosure will help to make the "Qualified Person" ("QP") concept effective. Specifically, we believe such sanctions will assist QPs to resist economic pressure from employers and clients to disclose information which does not have a sound technical foundation and which, as a result, might be found to be false or misleading.

Although we understand that the Final Report of the MSTF will not be available until after October 30th, we encourage the CSA to take into account any further recommendations and adjustments proposed in such Final Report in determining the content of NI 43-101 and CP 43-101. However, we also caution that such further or adjusted recommendations must be implemented only where they are precise and workable. We intend to comment in areas and recommend changes where we disagree with the Interim Report of the MSTF.

Following the division of NI 43-101 into parts we will comment part-by-part on areas which we consider require amendment to be more effective, and then summarize our comments on the specific requests in the notice.

PART 1 - APPLICATION AND DEFINITIONS

1. We believe the new definition of "reserves" suggests that the definition of "feasibility study" and perhaps also the definition of "preliminary feasibility study" should be expanded. The addition of the phrase "which can be legally mined at a profit under specified economic conditions" in the definition of "reserves", in our view, makes it desirable to expand the definitions of "feasibility study" and "preliminary feasibility study" to include not only

geological, engineering and economic factors but also socio-economic factors, environmental and legal matters, such as land tenure and permitting. We would revise the existing definition of "feasibility study" by adding these factors into the phrase "... in which all geological, engineering, economic, socio-economic, environmental and legal factors are considered in sufficient detail ...". In the case of the definition of "preliminary feasibility study" we would revise it to read "... a study based on reasonable assumptions of technical, economic, socio-economic, environmental and legal factors, to determine ..." (underlining added). However, as we believe that it would not be usual industry practice to deal with socio-economic factors in a "preliminary feasibility study", we suggest that this usual practice would be accommodated by adding to the end of the present definition of "preliminary feasibility study" the phrase "except that such preliminary study may not include socio-economic, environmental and legal factors if such omission is noted". By requiring a preliminary feasibility study to specifically allude to whether or not it includes a consideration of socio-economic and legal factors, we believe that, where the preliminary study indicates that such factors have not been dealt with, the disclosee will be reminded that such important factors remain to be evaluated in determining the status of the properties covered.

In our view, socio-economic, environmental and legal factors must be addressed in a feasibility study. The free entry system for acquiring mineral interests in Canada and the systems in force, in some cases, in other countries imply that once a production lease is granted the holder of such production right is entitled to commence and continue production. This is a fundamentally incorrect assumption. As a condition to the commencement of mining operations, there are usually other conditions in addition to those accompanying the grant of the production rights, such as other permits and authorizations. Such permits and authorizations include water taking permits, certificates of approval to operate processing facilities, the filing and approval of mine plans, the satisfaction of effluent standards for the mine-mill and/or smelter complex. Additionally, in many locations and countries, at the development stage, consideration must also be given to factors such as aboriginal land claims and the availability of a skilled workforce and of community support for the project. Marketing (such as take or pay contracts) and political considerations may also affect the reserve and resource estimates. Thus, these legal, environmental socio-economic and other considerations and their impact on the issuer need to be addressed. To the extent that these matters are not within the areas of expertise of the QPs preparing such reports, they should be entitled to rely on persons who are experts in such areas. Then, the report shall state those areas where the QP sought advice, who gave it and a summary of the advice given.

2. We have several concerns with subparagraph (a) of the definition of "qualified person". First, we believe that the new definition of "reserves" (which is the most important physical asset of a mining company) will make it likely that several QPs will be required to report on reserves, resources and other technical, legal and socio-economic matters related to exploration or development of properties or an operating mining project. Thus, we believe the phrase "appropriate to the particular mining project" in the definition of "qualified person"

should be expanded by the addition of the words "and matter reported or commented upon" following such phrase.

Another important concern with subparagraph (a) relates to the requirement of at least five years of experience. While an experience factor is clearly relevant, we think it should be left to the government licenced organizations of geoscientists and other professional associations governing QPs to determine the appropriate standards of experience to be applied to QPs. While best practices in the industry may make five years' experience desirable, especially where reserves, resources and mining methods are being commented upon, a lesser number of years of experience may be sufficient for the purpose of commenting upon certain factors, such as the socio-economic and legal aspects of a mining project. The Law Society of Upper Canada and the Canadian Institute of Chartered Accountants do not place limitations on the areas in which their newly qualified members may practice. It is left to the judgement of the member to limit his or her areas of practice as advisable and the governing professional association to discipline those who do not. Furthermore, we question what is intended by a particular number of years of experience. Is the intention that the QP spend all or some lesser percentage of his or her working time in the particular area in which a QP is certifying his or her qualification?

Notwithstanding the commitment of the Ontario Minister of Northern Development and Mines to the licensing of the Association of Geoscientists of Ontario ("AGO") as the professional association for Ontario geoscientists, inevitably there will be an extended period before legislation is enacted. Thus, some measure of experience will have to be applied for some time to come. Until there are devices for measuring with scientific certainty the tonnage and grade of a mineral deposit, considerable judgement will continue to be part of the estimation of reserves and resources. As we believe this to be the case, we encourage the Ontario government to bring forth promptly legislation to empower the AGO as the appropriate organization to qualify and discipline geologists, geophysicists and geochemists. To the extent possible, we suggest legislation that would make geoscientists qualified in other jurisdictions with equivalent standards to Ontario able to practice in Ontario whether those persons were licenced in another jurisdiction of Canada or elsewhere. We think the Ontario licencing fee for out of province members should be only the amount necessary to verify the equivalent standards of qualification and, possibly any levy required for the professional associations' insurance coverage.

Since the frequency of reporting and the costs associated with more accurate and fulsome reporting will increase, we urge the CSA not to accept the initial proposal of the MSTF that QPs be limited to those who have previously submitted a report to the Ontario Securities Commission or The Toronto Stock Exchange. Engineers and geoscientists who have the requisite experience and training even though they have not previously performed the report preparation function should be entitled to write and submit "proper reports".

3. With regard to the definition of "senior resource issuer" we have a concern that it is not clear that the gross revenue test would be applicable to an issuer and its predecessor entities on an aggregate basis. There have been considerable fluctuations in both base and precious metal prices recently (not an unusual phenomenon) and we think the word "average" in the current form of the definition of senior resource issuer was intended to take account of this. Nonetheless the use of the phrase "of at least $50 million per year for each of the issuer's three most recently completed financial years" after the word "average" creates uncertainty. Thus, such definition should be clear that the $50 million gross revenues is $150 million in the aggregate in the preceding 3 year period by all entities reporting as one issuer at the relevant time, i.e. including merged predecessor entities.

4. Footnote 9 to the Notice of NI 43-101 states that subsections 1.3(1), (2) and (3) assist in interpreting the term "affiliated entity" and while based on the *Securities Act* (Ontario) they are broader as they extend to unincorporated entities. In particular, partnerships and limited partnerships are specifically referred to; however, if other "entities" are also to be covered, such as business trusts which are frequently used in resource developments, then we suggest that the term entity be replaced with "person". In our view, this has the dual advantage that entity does not require definition as it is not defined in the *Securities Act* (Ontario) and the definition of "affiliated person" will be expanded by reference to the definition of "person" in the *Securities Act* (Ontario) pursuant to the provisions of National Instrument 14-101.

PART 2 - DISCLOSURE

1. Consistent with our concern that one or more QPs are required in the preparation of many types of reports, especially those where their content goes beyond the exploration stage of a property, we would amend subsection 2.1(a) to delete the singular "a" and insert "one or more" in front of "qualified persons" as necessary or desirable. Similarly, we would revise section 2.2 to refer to "each" QP "who has prepared or supervised the preparation of any information that forms the basis of any written disclosure concerning mining projects on a property material to the issuer shall be named in the written disclosure" and add after the next word "together" the words "with the identification of the part of the information which was prepared or supervised by each qualified person and" before the last words "a statement of his or her relationship to the issuer".
   With regard to stating the relationship of the QPs to the issuer in all written disclosure concerning mining projects, we think this is too onerous for press releases. By their nature, press releases are intended to be summaries of material changes in existing information, not details on relationships which may affect the judgements made by the person responsible for the dissemination of the information. We think that the relationship of the QP to the disclosing issuer goes to the weight to be given to the judgements that must be made in predicting or estimating resources, reserves and the continuity of mineralization. Thus, we think it sufficient that such additional information be included in the written report supporting the press release.

2. With regard to subparagraphs 2.1(b)(i)(ii)(iii) and (iv) which deal with the disclosure of "resources" or "reserves", we recommend that the CIM be asked to review and reconsider the resource and reserve categories set out in the definition section 1.2, which (as noted in Footnote 7) are based on the September 1996 Ad Hoc Report published by the Canadian Institute of Mining, Metallurgy and Petroleum (the "CIM"). In our view, the 1996 CIM Report contained best practice guidelines from a Canadian perspective. Now there is a greater need for international consistency and while the 1996 CIM Report is consistent in many ways with United States and Australian practice, neither of those jurisdictions recognizes the "possible reserve" category. We suggest the following revisions to the "resource" and "reserve" definitions would clarify and improve the disclosure requirements:

   - Consistent with the practice in Australia and the United States, the term *Possible Reserves* should be omitted;

   - The words *"mineral accumulation*" should replace the word *"deposit"* in all three resource definitions;

   - The distinction between *"quantity"* and *"tonnage"* in the definition of a *Indicated Resource* should be made clear. If there is no difference, *"tonnage"* is preferred;

   - The types of sample in the definition of a *Measured Resource* should not be limited to those mentioned;

   - The word *"and"* before *"mine workings"* at the end of the definition of *Measured Resource* should be replaced by *"or"*;

   - The word *"limited"* before *"sampling"* in the definition of *Inferred Resource* does not make it clear that less sampling is required for an *Inferred Resource* than for an *Indicated Resource*. This should be made clear; and

   - The word *"values"* in the definition of *Proven Reserve* should be replaced with *"grades"*.

3. In subsection 2.3(a) the third word refers to "<u>the</u>" QP which we suggest be changed to "<u>a</u>" QP to take into account the fact that several QPs may be involved in the verification.

4. We would add to subsection 2.5 (a) the date of the estimate of each category of resources and reserves together with disclosure of any material information regarding whether any subsequent work is consistent or inconsistent with the earlier estimate of resources and reserves and, if the original estimates were by an independent QP, whether or not an independent QP has reviewed or audited the subsequent work.

5. Because we believe "QPs" should only bear liability if they have been negligent, reckless or dishonest, we would add a new section 2.7 which would recognize that in matters involving judgement, a QP will want to make and should be allowed to make an appropriate disclaimer or qualify his or her opinion. In our view, advice should be sought from the AGO and the CIM on the circumstances where a disclaimer or qualified opinion should be permitted and the scope of permitted disclaimers and qualifications. It must always be understood that each of the categories of "reserves" and "resources" are estimates.

PART 3 - OBLIGATION TO FILE A REPORT

1. In subsection 3.2(1) we would add the phrase "or properties" to be consistent with the heading so that the phrase would read "... cause a report to be prepared, ... on a property or properties material to the issuer" (underlining added).

2. Paragraph 3.2(1)3 seems to contemplate the takeover bidder preparing a report on the indirect acquisition of the mineral properties of the target corporation. How the bidder would get information to prepare such a report is unclear to us. We believe such information would be proprietary to the target corporation where for one reason or another it may have chosen not to disclose the full extent of the reserves and resources known to it in its own properties. If, however, a director's circular in response to a takeover bid circular wishes to assert that the published reserves and resources of the target corporation are greater than the existing public disclosure, then it would seem appropriate for such a circular, irrespective of the size of the target issuer, to be accompanied with or followed by the filing of a report confirming the basis for any such increased reserves or resources within a specified time of the release of the director's circular and before the bid expires or is completed.

PART 4 - AUTHOR OF THE REPORT

1. We believe that section 4.1 is consistent with our comments regarding one or more QPs. However, in our view, the provision would benefit from the additional words (following such reference) "each of whom shall date and sign the last page of the report indicating the currency date of the information and the portion or portions of the report for which he or she is responsible".

2. We are unable to see the relevance of or need for adding professional seals to a QP's report. We doubt that the affixing of a seal has any relationship to disciplinary action by the members of any professional association.

3. With regard to the requirement in Paragraph 4.3(1) 3 to file an independent report on resources or reserves when for the first time there is a 100% or greater change from the most recently filed report, we suggest that this requirement might be circumvented by filing a series of inhouse reports showing incremental increases of less than 100%. We understand the purpose of the

Paragraph is to avoid inhouse reports that "hype" a property without independent verification. Perhaps, an independent report should also be triggered by a substantial increase in resources or reserves (something less than 100% increase, say a 25% increase) which is disclosed in a relatively short period of time from the last disclosure.

4. With regard to Paragraph 4.3(1) 4 we have already expressed our concern that having regard to the frequency of metal price fluctuations and mergers and business combinations in the mining industry, Paragraph 3.2(1)3 defining a "senior resource issuer" should be revised to contemplate aggregate revenues over a 3 year period of $150,000,000 by all entities currently reporting as one person.

PART 7 - CONTENTS OF THE REPORT

1. While Paragraph 7.1(1) 4 (Property Description and Location) is meant to deal with properties that may not have reached a development stage as well as operating properties, we suggest the addition of a clause (xi) which would, to the extent known, require a listing of permits applied for and noting those that have been obtained or are necessary and outstanding.

2. We would also add subclauses (vi) and (vii) to Paragraph 7.1(1) 5 (Accessibility, Climate, Local Resources, Infrastructure and Physiography) specifically covering "processing infrastructures such as processing equipment and buildings" and "personnel accommodations, nearby or at the mine mill complex and a description of any applicable arrangements for fly-in - fly-out of personnel".

3. With regard to Paragraph 7.1(1)12 (Resources and Reserves), we have earlier indicated our view that there should be a reference to the date of the information relied on. Furthermore, if there is continuing work after the date of the information relied upon, it would be desirable to require a statement as to whether the continuing work confirms or casts any material doubt on the information relied on for the report.

4. In subsection 7.2(4) headed (Contracts), we would add "Legal Tenure and" before the existing heading and in the text refer to "a summary of the legal basis on which the properties are held and any encumbrances on such tenure". Furthermore, we would add the word "sales" between "all" and "concentrating" in the existing wording so that the phrase would read "the terms and status of all sales, concentrating, refining arrangements, ..." (underlining added). The present wording seems to deal only with commodity forward sales contracts.

5. Consistent with prior comments, we also would expand the heading of subsection 7.2(5) (Environmental Considerations) to include "Environmental and Permitting Considerations" and in the text we would include not only environmental, financial and reclamation matters but also environmental permitting and socio-economic considerations. Thus, we would require description of any applicable aboriginal land claims, local issues relating to the mining project,

federal, provincial and territorial if applicable, environmental assessment and permitting requirements and their status.

PART 8 - CERTIFICATE OF QUALIFIED PERSON

1. Section 8.2 (Consents) refers to reports being addressed to "the securities regulatory authority". Is the intention that the issuer be entitled to file the QP's report with any securities regulatory authority applicable to it? If so, we believe the language should be more specific and make reference to the filing of reports in accordance with the new mutual reliance review system. In the same regard we note that subsection 9.1(1) refers to the "regulator" or "the securities regulatory authority" and that it is necessary to go to National Instrument 14-101 to find that in Alberta and Ontario "regulator" refers to the Director under the applicable *Securities Act*, whereas "securities regulatory authority" refers to the Securities Commission or similar regulatory authority referred to in Appendix C. We suggest that National Instrument 43-101 should be a more self-contained Instrument for the use of engineers and geoscientists (who are unlikely to be familiar with the securities laws) and that these defined terms should be spelled out in the wording of this Instrument rather than left to determination under another National Instrument.

II. **COMPANION POLICY 43-101**

PART 1 - PURPOSE AND DEFINITIONS

1. In section 1.4 (Interpretation), the term "professional association" is defined as "a professional governing organization recognized as such by the mining industry in its jurisdiction ...". While we are unsure who gives such recognition on behalf of "the mining industry" in each jurisdiction, the next sentence makes it clear that the CSA is reserving the right to approve any such professional association. Thus, we believe that this point should be clarified by amending the definition so that "professional association describes a professional governing organization recognized as such by the mining industry in its jurisdiction and published by the securities regulatory authority for that jurisdiction as appropriate for membership of "qualified persons" entitled to act in such capacity under this National Instrument".

2. There are also at least two other issues of concern with regard to this definition. First, there is an issue whether the governing professional association should have the power to discipline its members as recommended by the joint TSE/OSC MSTF. The second issue is whether there will be portability throughout Canadian jurisdictions or reciprocity consistent with our earlier comments. We believe the CSA can have an effect on the willingness of provincial and territorial professional associations to be reciprocal by indicating its desire for such reciprocity so long as qualifying standards are maintained and noting that reciprocity will be considered along with standards when security regulatory authorities are deciding on acceptance of professional associations.

PART 3 - GUIDELINES FOR EXPLORATION AND ESTIMATES OF RESOURCES AND RESERVES

1. With regard to subsection 3.1(3) on reserve estimates, we would expand subparagraph (g) ("Environmental Factors and Permitting") to cover specifically socio-economic factors. Here, we would include known attitudes and issues of local communities and aboriginal claim status, if applicable.

2. Under clause 3.1(3)(i) (Infrastructure), we would add the phrase "including availability of and proximity of living accommodations, recreational facilities, access and means of transportation" after the words "infrastructure requirements".

3. In section 3.2 (Deviation From Guidelines) in the third line, we would insert the phrase "accurate and" between the words "towards" and "consistent" so that it is clear that accuracy as well as consistency is the object of the guidelines.

PART 5 - AUTHOR OF THE REPORT

1. We think that section 5.1 (Selection of Qualified Person) is too narrow. First, we believe the responsibility need not be solely of the board of directors but should also be of the officers of an issuer to ensure an appropriate QP is preparing or supervising a report required by the National Instrument. Secondly, since reports are required in grass roots exploration situations where there may not be a mineral deposit, we think that confining experience and competence appropriate to mineral deposits and their types is too narrow and thus inappropriate. We believe the language should be much broader and refer to the QP having experience and competence appropriate not only "for the type of mineral deposit" but additionally "for the purpose of the report or part thereof and the disclosures being made therein" without reference to a particular type of mineral deposit. We note that there are coal deposits, diamond deposits, base metal and precious metal deposits that would require different qualifications.

III. **SPECIFIC REQUESTS FOR COMMENT**

I. **"Impact of Requirement For Qualified Person"**

If only engineers and geoscientists who have previously filed reports with the Ontario Securities Commission or the Toronto Stock Exchange are permitted to act as "qualified persons", until new QPs are recognized by professional associations which have disciplinary powers as proposed by the MSTF, we believe there would be very few available QPs. This would impose excessive costs on all mining exploration development and operating issuers. It would also represent a large economic windfall to those who chose to complete and file a report for the first time between the time this proposed requirement was published in the June 1998 Interim Report

of the MSTF and the effective date of NI 43-101. Thus, we believe that if all members of the Association of Geoscientists of Ontario ("AGO") and other provincial and territorial associations of engineers and geoscientists with disciplinary powers (collectively a "SRO for QPs") who have practised their profession on a full-time basis for at least three successive years are treated as QPs for purposes of NI 43-101, until such requirement is changed by the respective SRO for QPs and accepted by the members of the CSA, there will be a sufficient number of QPs available to all issuers to control the costs involved in requiring operating disclosures to reflect their views. Such an expansive change in the proposed definition of the QP would put pressure on the Ontario Government to enact self-regulatory legislation for the AGO.

We also believe that early reactions to the Interim Report of the MSTF clearly indicate a desire by geoscientists generally to have greater involvement in disclosure matters (see Recommendation 14 in the September 10, 1998 comment letter of the Prospectors and Developers Association of Canada ("PDAC") recommending that all exploration and mining companies have at least one QP as a member of its Board of Directors). While we do not endorse this proposal of the PDAC, we note that it is an indication that the PDAC (which has many potential QPs as members) is concerned that directors of mining exploration, development and operating companies pay more attention to technical disclosure.

In our view, the concerns expressed by the PDAC in their comment 13 regarding the implementation of the Allen Report are not well-founded. We believe that if implemented, the Allen Report will positively affect timely and accurate disclosure by mining companies and other issuers. However, with its implementation, the liability of QPs would derive from common law principles of tort law related to foreseeability and reliance, statutory liability from the enactment into force of the Allen Report recommendations and possible disciplinary proceedings by the statutorily empowered AGO, if the Government of Ontario acts as recommended by the MSTF.

We think, however, that QPs might receive some protection from these sources of liability through further legislation modelled on the Limited Liability Partnership amendments to the *Partnership Act* (Ontario) which received Royal Assent on June 11, 1998 together with amendments to the *Chartered Accountants Act*. In our view, these legislative enactments might form a useful part of the legislation establishing the AGO as a self-regulatory organization.

Perhaps, the insurance industry will also provide QPs with insurance coverage against these new liabilities in proper cases. The cost of any such insurance will likely be passed on to reporting issuers and thus increase their operating costs. While it would be helpful to be able to quantify the expected cost of such insurance in relation to the overall costs of compliance with NI 43-101 and CP 43-101, this, as well as the legislative amendments referred to in the previous paragraph, appear to us to be issues which must be faced by the SROs for QPs.

As noted, in our view, statutory enactment of the recommendations contained in the Allen Report would have a substantial effect on improving the disclosure of all issuers, not just those making disclosure of exploration, development and mining information. Such enactment would have its costs but they would not impact unduly on junior resource issuers and, in our view, would be well justified in earlier, more fulsome and accurate disclosure by all issuers. However, we do not consider the enactment of the Allen Report recommendations as an alternative to the proposals regarding the involvement of QPs in mining exploration, development and operating disclosures but rather see both actions as complementary and important steps in improving the accuracy and consistency of such disclosure.

II. Extension of Time Period For Filing Reports in Certain Circumstances

We endorse the 30 day extension for filing of supporting reports as per subsection 3.2(3) and would encourage the applicable "regulator" or the "securities regulatory authority" to extend such time for up to an additional 15 days at the written request of a QP responsible for any portion of an unfiled report if appropriate reasons are given for such further extension. In the case of ongoing work on a property, the more difficult question is the frequency of the reporting. As noted in the Decision of Mr. Justice Nunn in Coughlan et al v. Westminer Canada Limited et al (1993) 120 N.S.R. (2d) 91 and 332 A.P.R. 91 and affirmed by the Nova Scotia Court of Appeal, proper and timely reporting requires factual verification by appropriate experts; otherwise a "good news" "bad news" scenario might play havoc with stock prices. Justice Nunn after an exhaustive review of disclosure requirements under Canadian securities laws, including the timely disclosure policy of the TSE, concluded that only properly verified factual information should be disclosed.

III. Attributes and Exemption of Senior Resource Issuer

With metal prices prone to frequent fluctuation, we suggest the 3 year period may be appropriate but that it be an aggregate of $150 million in revenues over the 3 years and include the revenues of all predecessor persons now reporting as one person.

IV. Requirements For Filing an Independent Report

While there is an argument that if statutory civil liability for false or misleading disclosure were in force nationally as per the recommendations of the Allen Report and this were coupled with self-regulatory organizations in each jurisdiction with disciplinary powers over QPs working in that jurisdiction, there would be little need to mandate specific circumstances when an independent report is required. Since neither is in place and may not be in place for some time, we believe NI 43-101 properly selects appropriate occasions for requiring independent reports.

We believe, however, that directors resisting a takeover bid is a special case. In that circumstance, directors may be under considerable pressure to report increased reserves and resources at the material properties of the issuer. If they respond with a material increase of

published reserves or resources at any property over prior published categories (say a 25% or greater increase), in our view, they should have to file an independent report supporting such increase within the earlier of 30 days of their publication of the increased reserves or at least a date one day preceding the expiry of the bidders' offer and before completion of the bid.

The representatives of our firm who participated in the preparation of this comment letter listed below would be pleased to discuss any of the points raised herein with you at your convenience.

Yours very truly,

OSLER, HOSKIN & HARCOURT

Per: Donald E. Wakefield
Eden M. Oliver