



CANADIAN  
INSTITUTE  
OF MINING,  
METALLURGY  
AND PETROLEUM

July 16, 2010

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission - Securities Division  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

To whom it may concern:

**Request for comment: Proposed Repeal and Replacement of National Instrument 43-101, Form 43-101F and Companion Policy 43-101CP**

During the May 11, 2010 CSA-CIM Working Committee Meeting, the CSA representatives requested the *CIM Standing Committee on Reserve Definitions* prepare comments on the proposed changes to National Instrument 43-101, Form 43-101F1 and Companion Policy 43-101CP.

In general, the *CIM Standing Committee on Reserve Definitions* supports most of the proposed changes to National Instrument 43-101, Form 43-101F1 and Companion Policy 43-101CP. Summary comments compiled by the committee are referenced by page and section for each of the three documents.

Regards

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## **1. National Instrument 43-101**

### **Part 1 Definitions and Interpretation**

#### **Page 1, section 1.1 “Certification Code”**

The CIM Standing Committee on Reserve Definitions supports the recognition of Chile’s “Certification Code” under NI43-101.

#### **Page 1, section 1.1 “Advanced Property”, clause (a)**

...“*advanced property*” means a property for which:

(a) *the potential economic viability of its mineral resource is supported by a “preliminary economic assessment, or*

The committee is concerned clause (a) will lead to misleading public disclosure of early stage exploration projects. As written, an issuer may describe an early stage project, with limited drilling, as an “*advanced property*” if they have prepared a “preliminary assessment”. The committee recommends clause (a) be removed.

#### **Page 2, section 1.1 “Historical Estimate”**

The new definition of “*historical estimate*” represents a significant improvement over the current definition. We believe the new definition will allow improved corporate disclosure of property acquisitions.

#### **Page 3, section 1.1, paragraph 3 & Page 7, clause 2.3 (3)(c)**

We recommend the term “*preliminary assessment*” not be changed to “*preliminary economic assessment*”. Adding the word “economic” implies a level of analysis that is not supported by an early stage study and is in potential conflict with the CIM definition of “Inferred Resource”.

Under certain circumstances, when material new information becomes available after a prefeasibility or feasibility study, there is general support to allow an issuer to disclose some form of “assessment”. The committee does not however recommend the term “*preliminary assessment*” be used after a prefeasibility or feasibility study has been completed.

### **Page 4, last paragraph**

Clause (iv) B. suggests a foreign qualified person will require “ten years” experience compared to a Canadian qualified person who requires 5 years. We do not believe NI43-101 should require higher experience levels than specified by the foreign codes it recognizes. In some cases this change could cause existing QP’s, recognized under JORC, to no longer qualify under NI43-101. “Ten” years should be changed to “five” years or the CSA should specify the conditions under which “ten” years is required.

### **Page 5, section 1.2 and 1.3**

We believe the previous wording of these sections is preferable, as it will allow the CIM to amend the definition of “Mineral Reserve” and “Mineral Resource” without impacting NI43-101.

### **Part 2 Requirements Applicable To All Disclosure**

#### **Page 6, section 2.1(b)**

This revision is supported by large mining companies which disclose mineral reserve and resource estimates on dozens of properties in their AIF with four or five qualified persons assigned to each. A reduced number of “Qualified Persons” used to “approve” mineral reserve and mineral resource estimates in an AIF, helps protect the confidentiality of disclosures that reference previous mineral reserve and resource tables compiled in an AIF.

#### **Page 6 & 7, section 2.3 (1)(c)**

The committee believes clause (1)(c) under section 2.3 is confusing when read with item (1)(d). We suggest clause (c) be clarified or clauses (c) and (d) be combined.

#### **Page 7, section 2.3 (1)(d)**

We believe the current wording of clause (1)(d) conflicts with the CIM Best Practice Guidelines, since it allows metal or mineral equivalent grades to be reported without the disclosure of relevant commodity price, plant recovery and smelter payment assumptions. We recommend clause (1)(d) be modified as follows.

*... an issuer must not disclose:*

*(d) a metal or mineral equivalent grade for a multiple commodity deposit, sampled interval or drill intersection unless it also reports the individual grade of*

each metal or mineral and the metal prices, recoveries, and any other relevant factors used to estimate the metal or mineral equivalent grade.

### **Page 7, section 2.3 (2)**

The committee supports the changes to this section and agrees the term “potential mineral deposit” should be deleted.

### **Page 7, section 2.3 (3)(c)**

As described under Page 3, paragraph 3 & Page 7, clause 2.3 (3)(c) the committee agrees that under certain circumstance, when material new information becomes available after a prefeasibility or feasibility study, there is general support to allow an issuer to disclose some form of “assessment”. The committee does not however recommend the term “*preliminary assessment*” be used after a prefeasibility or feasibility study has been completed.

### **Page 8, section 2.4**

The proposed changes to NI43-101 appear to allow “historical estimates” to be used in an economic analysis. We suggest an additional item be added to clarify:

*... an issuer may disclose a historical estimate using the original terminology if the disclosure:*

*(h) is not to be used to prepare an economic analysis or preliminary economic analysis*

## **Part 3 Additional Requirements For Written Disclosure**

### **Page 10, section 3.4 Item (c)**

Perhaps the most important assumption to be disclosed for mineral reserve or resource is the commodity price and exchange rate used to prepare the estimate. In addition mineral reserve or mineral resource sensitivities to commodity price should be disclosed. For example, if the copper price were reduced by 10% would the resource still have reasonable prospects of economic extraction? We propose the following sentence in blue be added to item (c)

*...the issuer must include in written disclosure:*

*(c) the key assumptions, parameters and methods used to estimate the mineral resources and mineral reserves Disclosed assumptions should include relevant commodity prices, exchange rate and a brief comment on the estimate's sensitivity to these assumptions.*

#### **Page 10, section 3.4 New Item (f)**

Many of us have seen disclosed reserve and resource disclosures change significantly with no apparent explanation. While we appreciate a current QP may not wish to provide comment or take responsibility for a previous technical report, the issuer should be obligated to disclose the contributing factors causing the change. We recommend item (f) be inserted.

*...where an issuer must include in the written disclosure:*

*f) a reconciliation between current and the previous mineral reserve and mineral resource disclosure and comment on contributing factors.*

#### **Part 4 Obligation To File A Technical Report**

##### **Page 11 section 4.2 “Note To Reader”**

*“The CSA is seeking comment on whether to keep or eliminate the short form prospectus trigger in 1(b)...”*

We believe that the short form prospectus filing trigger should be deleted, on the basis that the potential delay associated with preparing a new technical report may unreasonably limit an issuer's ability to complete a short form prospectus offering on a timely basis. As suggested in the draft companion policy, a short form prospectus containing new technical information not supported by a previously filed technical report should include appropriate cautionary language in the prospectus in that regard, which should alert investors to any risk associated with the potential for information in a subsequently filed technical report to vary from information contained in the prospectus.

#### **Part 5 Author of Technical Report**

##### **Page 15 Section 5.1**

We recommend the following phrase from page 16 section (5) of the *Companion Policy* be added to section 5.1:

5.1 .... A technical report must be prepared by or under the supervision of one or more qualified persons with at least one qualified person taking responsibility for each section or item of the technical report.

## **Part 7 Use of Foreign Code**

### **Page 18 Section 7.1**

Although the committee supports the continued use of foreign codes under certain circumstances, we caution that the removal of a reconciliation requirement to CIM definitions could become problematic if a foreign code adopted less harmonized definitions. Example; if a foreign code were to recognize “Possible Reserves” the current wording obligates the CSA to accept the foreign definition. The situation could be further complicated by the CSA CIM agreement that the CIM should notify CSA of any change to the CIM Definition Standards. The committee recommends the following two items be added to section 7.1:

*... may disclose and file a technical report that uses the mineral resource and mineral reserve categories of an acceptable foreign code if the issuer:*

*(c) is a co-owner of a property located in a foreign jurisdiction with a partner registered in a foreign jurisdiction.*

*(d) prepares a reconciliation to the mineral resource and mineral reserve categories set out in sections 1.2 and 1.3.*

## **2. Form 43-101F1 - Technical Report**

The proposed format for a technical report represents a significant improvement over the past versions. The new format is much more consistent with a typical prefeasibility or feasibility study.

### **Page 9 Instructions**

Support items (1) and (2)

### **Page 10 Item 16 (c)**

Add: ...waste dumps and stockpiles to phrase:

*(c) requirements for stripping, waste dumps , stockpiles, underground development...*

### **Page 10 Item 18 (c)**

Add: ...water to phrase

...*tailings disposal, power, water, and pipelines as applicable.*

### **Page 11 Item 21**

The committee would like to recommend the CSA separate “Capital” and “Operating” costs into 2 sections. In most cases, these costs are estimated by different qualified persons using different methods and approaches. This change would make a technical report more consistent with a typical prefeasibility or feasibility study.

### **Page 12 Instruction (1)**

The committee supports this change which allows producing issuers not to report confidential contact and market information.

## **3. Companion Policy 43-101CP**

### **Page 7 Section 2.2**

We support the clear guidance in this section allowing a qualified person to use 88-21 for the preparation of coal reserve and resource estimates; however any public disclosure must follow CIM definitions.

### **Page 8 Section 2.2 Item (1)**

Paragraph 1 of this section on restricted disclosure appears to be inconsistent with the referenced paragraph in NI43-101. Paragraph 2.3(1)(b) in revised NI43-101 only bans the use of inferred resources in an “economic analysis” and does not mention a “preliminary economic analysis”. There is currently no restriction on the use of an inferred resource for a “preliminary economic analysis”

### **Page 8 Section 2.3 item (2)**

**Exceptions** - The current wording of this section allows inferred resources to be used in an “*economic analysis*”. We believe this section was intended to read ... “preliminary economic analysis”.

**Page 19 Section 7.1**

The CIM Standing Committee on Reserve Definitions suggests the CSA insert the following sentence to reflect our NI43-101 recommendations:

*The issuer may also disclose mineral resource and mineral reserve categories of an acceptable foreign code if the issuer prepares a reconciliation to the mineral resource and mineral reserve categories as set out in Sections 1.2 and 1.3 of National Instrument 43-101.*