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To all:

Re: Request for Comments – Proposed Repeal and Replacement of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*, Form 43-101F1 *Technical Report*, and Companion Policy 43-101 CP

We are pleased to submit this letter in response to the request for comments of the Canadian Securities Administrators (the "**CSA**") published April 23, 2010 ("**Request for Comments**") on the proposed repeal and replacement of National Instrument 43-101 ("**NI 43-101**"), Form 43-101F1 ("**Form F1**"), and Companion Policy 43-101 CP (the "**Policy**").

GENERAL

In general, we are in favour of and support the proposed changes and amendments to NI 43-101 (the "**Revised Instrument**") which focus on reflecting changes in the mining industry, eliminating or reducing the scope of certain requirements and providing more flexibility to mining issuers and qualified persons in certain areas of the current NI 43-101 (the "**Current Instrument**"). The first part of our letter consists of comments and responses to the six questions posed in the Request for Comments. Some of our comments which follow are of a technical nature intended to clarify and provide for more consistent drafting in the Revised Instrument and some are suggested changes we believe would be helpful to the mining industry and not prejudicial to the purpose of Revised Instrument.

RESPONSES TO QUESTIONS # 1 – 6 OF THE REQUEST FOR COMMENTS

1. The purpose of the short form prospectus regime is to provide a streamlined, simplified process by which issuers can access the capital markets. Issuers must have an up-to-date annual information form and other continuous disclosure documents filed prior to becoming eligible to file a short form prospectus. Market participants have full access to the disclosure record of an issuer prior to its filing of a short form prospectus. An issuer must name the qualified person who approved the disclosure of (new) scientific or technical information in its short form prospectus.

Under perfect circumstances, the investment community or the "buy side" may attribute some value to an opportunity to have access to a technical report when considering an investment decision under a short form prospectus. However, the market realities are such that the buy side would welcome the opportunity for issuers to complete financings on a timely basis with considerably less cost and disruption. The scientific and technical disclosure in the short form prospectus which provides investors with the required information to make an informed investment decision, must be supported by a qualified person, thus giving it integrity.

Opportunity windows for financings are often brief, particularly for mining issuers facing current market conditions. It is therefore imperative that the offering process be efficient and cost effective in order to maintain a balance between stable and efficient markets and investor protection and confidence.

2. Our mining issuer clients would welcome the opportunity to file a short form prospectus without the requirement to file a technical report. Our view, on balance (see comments below), is that the short form prospectus trigger should be eliminated. It is a costly and time consuming requirement for mining issuers. Filing a technical report requires considerable issuer cost and outlays of management time as well as lengthy

timing and preparation. Financing opportunities often present themselves at unpredictable times. The elimination of the technical report short form prospectus trigger would provide desirable flexibility for mining issuers to access the capital markets at opportune moments.

Our buy side clients may like to have a technical report for due diligence purposes, however they are entitled to rely on the qualified person's consent as required by National Instrument 44-101 ("**NI 44-101**") for the expertised portions of the short form prospectus, which, we submit, provides adequate protection.

The removal of the technical report short form prospectus trigger does create a risk that the technical report may not support the disclosure provided in the short form prospectus and that a reconciliation may be required. This does increase the risk to potential purchasers of the securities qualified by the short form prospectus and increases the burden on issuers and qualified persons to develop methods and procedures so as to reduce the risk as much as possible.

We believe that the industry (issuers, dealers and qualified persons) will develop procedures and practices that may not entirely overcome, but will reduce this risk to acceptable levels. Therefore on balance, we believe that the removal of the technical report short form prospectus trigger is beneficial.

3. In considering the three cases proposed in the Request for Comments, our responses would not change for questions 1 and 2.

> Case 1: In the first case, the obligation to file a technical report to support new information that is not a material change in the affairs of the issuer would be an unjustified cost for the issuer and would not provide a benefit to the capital markets. No additional investor protection is gained.

Case 2: In the second case, the obligation to file a technical report would not provide a significant advantage or benefit to investors as the disclosure has been provided previously and the consent of the qualified person for the scientific and technical information disclosure in the short form prospectus provides the comfort required.

Case 3: The third case is a good example of the balanced approach of the proposed amendments to the Current Instrument. The short form prospectus offering can be completed by the mining issuer in a timely and cost effective manner, while offering investor comfort and protection through the certified expertised portions of any new technical or scientific information. Within 45 days of the disclosure a technical report must be filed by the issuer that will further support the disclosure in the short form prospectus. Any differences in such disclosure would be reconciled by the qualified person.

4. We consider that the guidance provided under section 4.2(13) of the amended Policy is very useful in providing issuers and their counsel with insight on how to disclose the new scientific and technical information and distinguish it from the previously disclosed and supported scientific and technical information. The guidance provided on reconciliation obligations and the possibility of restatement is helpful. We would suggest that the CSA consider including a section in the Revised Instrument or in the amendments to the Policy that would provide specific guidance with respect to the ways to remedy a situation where a technical report is filed after a final short form prospectus and the scientific and technical information in the technical report is inconsistent with the disclosure contained in the final short form prospectus.

5. We consider that the new six (6) month technical report filing exemption in section 4.2(7) of the Revised Instrument relating to an acquired property is very helpful. We believe that it is reasonable to expect that issuers will use the new six (6) month

exemption in light of the attached conditions, which we do not believe are too onerous. The proposed amendment is reasonable and strikes a good balance between mining industry realities and investor protection. See our comments in 4 above.

6 The current exemptions are important and useful. Market participants will find them beneficial and warranted in certain circumstances. We consider that these exemptions should be included in the proposed amendments.

DETAILED COMMENTS

1. General: As a general drafting point, we consider that the amendments to the Current Instrument should be drafted in a manner that make the instrument easier to read and understand. NI 43-101 is unique in that its use is not generally restricted to legal professionals but rather it is an instrument that is used extensively by management of mining issuers and technical persons. We believe that it should be drafted in a manner that is clear and easily comprehensible. We suggest that introductions to sections such as "except for", "except as provided in", "subject to" etc. should be retained as they set out an exemption or alteration to a statement at the outset. This type of drafting, although arguably prolix, will assist its broader user base in understanding the requirements of the Revised Instrument.

2. Part 1 – Definitions:

   (a) "effective date" - We find that the proposed definition of "effective date" as currently drafted to be confusing. The definition should be amended to be the date of the technical report or date specified in the report by the qualified person. As currently drafted, it is not clear how this specific date would be selected, who would select it and where the date would be stated.

(b) "professional association" - The amendments to the definition of "professional association" provide more flexibility to issuers. We would encourage the CSA to continue to provide and update frequently the Appendix A to the Policy which lists the approved foreign professional associations.

(c) "qualified person" – We suggest that the CSA specify how many persons constitute a "peer evaluation" and reduce the "ten" years in (c)(iv) B to "five". We consider five years to be an adequate qualification period.

3. Section 2.1 Requirements re Disclosure: We strongly support allowing technical and scientific information to be "approved by" as an alternative to being "prepared by" or "under the supervision" of a qualified person. This change will increase the efficiency and reduce the cost of the process of preparing technical reports without jeopardizing informational integrity.

4. Section 2.3 – Restricted Disclosure: Section 2.3 of the proposed amendments prohibits disclosure of metal or mineral equivalent grades for a multiple commodity deposit unless the disclosure also describes the grade of each metal or mineral used to establish the metal or mineral equivalent grade. If it is intended that this section apply to disclosure made prior to the implementation of the Revised Instrument, we believe that it would be helpful to have a "grandfather" clause introduced for old technical reports or to introduce a transitional time period for the benefit of issuers.

5. Part 4 – Obligation to File a Technical Report:

(a) General: We consider that the disclosure obligations as set out in Part 4 of NI 43-101 are too broad. For example, if a foreign issuer becomes a reporting issuer by way of share or asset acquisition through the issuance of its own securities, the obligation to file a technical report remains even

though the number of Canadian shareholders may be very few. The CSA should consider including a *de minimis* presence (shareholder) level or threshold for foreign issuers in Canada in connection with the requirements for filing technical reports.

(b) Sections 4.2(1)(c), (d) and (e) – Proxy Circulars / Offering Memorandum / Rights Offering Circular: The CSA should consider including a *de minimis* Canadian shareholder exemption or a designated foreign issuer concept for these sections. The sections are unclear and compliance with them is costly to issuers. The clarification provided by CSA in the proposed amendments to section 4.2(1)(c) of the Policy is helpful. The CSA might consider providing similar exemptions to sections 4.2(1)(g) and (h).

(c) Section 4.2(1)(i) – Take-over Bid Circulars: We would suggest that the CSA consider permitting a time delay to the technical reporting filing requirements under this section in the case of reporting issuers, similar to the time delay proposed in section 4.2(5)(a). These issuers will have previously disclosed relevant scientific and technical information about their properties and (as with a short form prospectus) any disclosure thereof in the bid circular can be supported by a qualified person. The requirement to file the technical report concurrently with the issue of the bid circular adds delay thereby affecting the ability of the bidder to act in a more timely fashion where it is desirable to do so. This would alleviate the disadvantage that reporting issuers in the mining industry face in the context of a share exchange bid as compared to reporting issuers in other industries. In the case of non-reporting issuers who will become reporting issuers as a result of the bid, we agree with the requirement to file the technical report concurrently with the issue of the bid circular.

(d) Section 4.2(1)(j)(i) and (ii) – Written Disclosure: In order to invoke the definition of "material change" in the *Securities Act* (Ontario) more precisely, the words "in respect of the affairs of the issuer" in sections 4.2(1)(j)(i) and (ii) should be removed and the words "in relation to the issuer" should be substituted.

(e) Section 4.2(8) – Removal of Consent Requirements: We are in favour of the proposal to remove the certificate and consent requirements under section 4.2(8). This change will increase the flexibility of mining issuer's use of the short form prospectus regime. The expert consents required under NI 44-101 maintain the protection of the investing public in that the expert still has to certify that there are no misrepresentations in the information derived from their report, valuation, statement or opinion. It may be that the consent of experts provided under NI 44-101 offers greater protection to the investing public than the consent requirements under section 8.3 of NI 43-101.

(f) Section 4.3(a) – Technical Report: We note that the CSA included the option of filing technical reports in French. The CSA may wish to include a requirement that all supporting documentation under section 4.3 be provided in English. This would maintain consistency and transparency of the information provided to the market place.

6. Part 5 – Section 5.1 – Author of Technical Report: We suggest that section 5.1 should track the language in the proposed amendments to section 2.1 and include "prepared by, supervised by *or approved by*". This addition would provide greater flexibility to qualified persons in the preparation of technical reports and improve the timeliness of information being provided to the capital markets.

7. Part 6 – Preparation of Technical Report: To eliminate ambiguity, we suggest as a drafting point that the currently proposed amendments to section 6.4(1) be amended to read as follows:

> (1) An issuer must not file a technical report that contains a disclaimer by any qualified person responsible for preparing or supervising the preparation of all or part of the report that:
>
> (a) disclaims responsibility or assigns or attributes responsibility to another party, for any information in the part of the report the qualified person prepared or of which the qualified person approved or supervised the preparation; or
>
> (b) limits the use or publication of the report in a manner that interferes with the issuer's obligation to reproduce the report by filing it on SEDAR.

8. Part 7 – Use of Foreign Code: We support the elimination of the reconciliation of mineral resource and reserve requirements in section 7.1. This requirement was not beneficial to investors and often very difficult for issuers to implement. We suggest that the CSA mandate the disclosure of which "acceptable foreign code" is being utilized in the preparation of the technical report.

9. Part 8 – Certificates and Consents of Qualified Persons for Technical Reports: We would suggest that the certificate of a qualified person should be dated the date of filing of the technical report, or within three (3) days of filing. The proposed amendments to section 8.1(1) as currently drafted do not offer guidance as to the correct date of a technical report.

We would suggest that the CSA consider in section 8.3(d) deleting the words "or part that the qualified person is responsible for" and substituting "or part of which the qualified person is responsible".

Thank you for this opportunity to comment on Revised Instrument, Form F1 and the Policy. If you have any questions concerning this letter, please direct them to Robert Shirriff at 416 865 4434 or Alex Nikolic at 416 865 4420.

Yours very truly,

Robert L. Shirriff

Alex Nikolic