

July 20, 2010

Pierre Thibodeau  
Senior Securities Analyst  
New Brunswick Securities Commission  
85 Charlotte Street, Suite 300  
Saint John, NB E2L 2J2

Dear Mr Thibodeau:

We are pleased to comment on the Canadian Securities Administrators (“CSA”) Notice and Request for Comment on the Proposed repeal and replacement of National Instrument 43-101 Standards of Disclosure for Mineral Projects, Form 34-101F Technical Report and Companion Policy 43-101CP.

Engineers and Geoscientists New Brunswick, established in 1920, regulates and governs the practice of engineering and geoscience in the province in accordance with the Engineering and Geoscience Professions Act of 1999. APEGNB has more than 5200 members and is affiliated with Engineers Canada which represents approximately 220,000 engineers across Canada and Geoscientists Canada which represents approximately 8,000 geoscientists across Canada.

Our comments pertain specifically to the proposed changes to the definition of the “professional association” and the definition of the “qualified person” (“QP”) in NI 43-101.

We have structured our response by providing a general comment and then making specific recommendations for improvements on the CSA proposal.

#### General Comment

In April 2009, Geoscientists Canada (Canadian Council of Professional Geoscientists - CCPG) submitted a letter to the Canadian Securities Association, recommending that in order to provide full recourse in law in Canada, the use of *Recognized Foreign Associations and Qualifications* should be discontinued and that all Qualified Persons (QP's) acting for a Canadian issuer should be registered with a professional association in a Canadian jurisdiction. Their letter articulated several problems inherent in allowing professionals registered outside Canada to continue to act as QPs for Canadian issuers. (see attached)



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While the proposed revisions to NI 43-101 do not make the fundamental change to the definition of the QP as recommended, we recognize that a number of the changes now being contemplated do go part way to addressing the risks and concerns to the investing public that were raised in their earlier correspondence.

We also recognize the considerable complexity of having those QPs who practice and reside outside of Canada, and report on a mineral project on a property located outside of Canada, become registered with a jurisdiction in Canada.

We acknowledge the new language in the Companion Policy 43-101CP which expands and provides interpretation to the definitions of “profession association” and “qualified person”. We note that it explains that NI 43-101 does not supersede or alter local requirements for a QP to be licensed in Canada, when practicing in a jurisdiction in Canada or working on a mineral project on a property that is in a jurisdiction in Canada. However as this is a fundamental matter that is not subject to interpretation or policy, is not subject to change, and is the law, the pertinent language here should be in the Instrument itself and should not be an item of secondary reference in the Companion Policy only.

### Specific Recommendations

We thus submit the following specific recommendations to improve the CSA proposal:

#### Definition of “Qualified Person”

In Section 1.1 of NI 43-101 Definitions - “qualified person”, we propose that a new subsection (d) be added after section (c) in the revised definition to read as follows:

(d) “if practising or residing in Canada, is registered and in good standing with the professional association in the jurisdiction in which the qualified person is practicing or residing; and if the mineral project is on a property located in Canada, is registered and in good standing with the professional association in the jurisdiction in Canada in which the property is located”

Also in Section 1.1 of NI 43-101 Definitions - “qualified person”, we propose, for greater clarity that the words “registered and” be placed after the word “is” and before the words “in good standing” in section (c).

Incorporating these changes will of course also require associated changes to Companion Policy 43-101CP.

With these changes, it will be clear that provincial/territorial law requires that to act as a QP for a Canadian issuer, where the QP practises or resides in a jurisdiction in Canada or where the mineral project is on a property is located in Canada, the QP must be registered with the professional association(s) in the relevant jurisdiction(s) in Canada.

This way the Canadian investing public will have assurance that those QP's practising and residing in Canada or reporting on a mineral project on a property in Canada are compliant with licensing requirements in Canada and can be served for legal purposes in Canada (by either a securities commission or the professional association – either in the province or territory where the QP practice or resides, and also in the province or territory in which the property is located). The public will also have the assurance that all QP's operating in Canadian jurisdiction will be subject to powers of compliant, discipline and sanction (as may be appropriate including fines and/or loss of licensure), as provided for under statute in Canada.

We believe these minor changes in the proposed revisions to NI 43-101 provide a simple workable solution that maximizes protection of the public and at the same time directly aligns the Instrument with supporting legislation in Canada.

I would be pleased to meet with you to respond to any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Broster', with a long horizontal flourish extending to the right.

Bruce Broster, Ph.D., P.Geo, FEC (Hon.)  
President

cc: Geoscientists Canada  
Canadian Securities Administrators





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April 29, 2009

Canadian Securities Administrators  
NI 43-101 Update and Revision Committee  
**Attention: Mr. Robert Holland, P. Geo, Committee Chair**

Mr. Robert Holland, P. Geo.  
Chief Mining Advisor  
BC Securities Commission  
P.O. Box 10142, Pacific Centre,  
701 West Georgia Street,  
Vancouver, BC V7Y 1L2

[rholland@bcsc.bc.ca](mailto:rholland@bcsc.bc.ca)

By: Email and regular mail

Dear Mr Holland:

**Re: Revision and Update - National Instrument 43-101 *Standards of Disclosure for Mineral Projects***

The Canadian Council of Professional Geoscientists (CCPG) is pleased to be able to provide these comments regarding the current consideration to revise and update National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

The CCPG is the national umbrella organization whose members are the ten provincial / territorial professional bodies that govern the practice of geoscience in Canada. The professional bodies that we represent currently have on register over 8,400 professional geoscientists. Just as the securities commissions regulate issuers in Canada, our professional bodies regulate geoscientists in Canada. In particular, we believe that our two organizations have common interests in the accountability of a Qualified Person (QP) in the context of NI 43-101. It is clear that a considerable component of the QP's work is within the practice of geoscience. Indeed, many of the QPs for NI 43-101 are registered professionals in one, or more than one, of our member bodies.

Our comments are strictly with respect to the question of "who should be accepted as a QP within the context of NI 43-101?" In particular, we believe there is a streamlined and superior process around diligence and recourse for acceptance and discipline of a QP to that offered through the current provision for *Recognised Foreign Associations and Designations*, as appears in Appendix A to NI 43-101.

Several recent events have shown that the robustness of the Appendix A mechanism is not adequate to protect the Canadian public - one of the primary responsibilities that all regulators in Canada must ensure. The most obvious weaknesses to the Appendix A provisions are framed through answers to the following:

1. Would the QP meet the underlying academic and experience requirements equivalent to those for registration as a professional geoscientist in Canada?
2. Is the QP subject to a code of ethics with similar expectations and demands as a code of ethics in Canada?
3. Will the QP be subject to prompt investigation and subsequent discipline action, if his/her practice of geoscience is found deficient?
4. Is the discipline process subject to Canadian law and are discipline actions taken outside Canada enforceable in Canada?
5. What recourse do Canadians have for redress either through CSA or CCPG members entities?

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The shortcoming of the use of a list of *Recognised Foreign Associations and Designations* as in Appendix A is that the necessary diligence and recourse around the proper responses to the questions above is at arm's length, both from CSA and from Canadian law. In fact, our ability to even ensure investigation is initiated and discipline actions are taken (as may be warranted) may be essentially zero. And in cases where the foreign entity on the list has an equivalent code of ethics and legally enforceable discipline process upon which to act, the home organization may, in fact, be reluctant to conduct any such action for an alleged infraction that occurs outside their particular jurisdiction (a US state for example).

We believe that a solution for CSA to this regulatory dilemma lies in the use of Canadian law and Canadian governance of its professions – both practices that are well established. Namely, to act as a QP in a Canadian context for a Canadian issuer, a QP should be a professional registered somewhere in Canada. The advantages of such a solution are obvious in terms of the answers to the five questions posed above - all would be addressed consistently and in accord with Canadian law. The list in Appendix A would be abolished and replaced with a simple requirement that a QP should be a registered professional in Canada.

For international QPs, acting for a Canadian issuer, it may seem at first glance that this is a considerable additional regulatory onus. However, this is not necessarily the case. Registration processes across Canada provide that those who meet all the specified requirements for registration in a particular jurisdiction can become registered in that jurisdiction, without undue delay. And CCPG, on behalf of its professional bodies, is currently negotiating, a number of mutual recognition agreements that will allow for registration in a Canadian jurisdiction based on the diligence of the international partner under a mutual recognition agreement, similar to several such agreements now in place for engineering professionals. The significant difference to the current mechanism is that this would ensure that the QP not only meets Canadian standards for academic qualifications and experience, but is also subject to a code of ethics and a legally enforceable discipline process in a Canadian jurisdiction. Once again, all five concerns implicit in the questions above are satisfactorily addressed.

Some may feel that this is "too regulated" or "too onerous", especially for international QPs. It is important to remember that the securities whose value is supported in part by the NI 43-101 reporting requirements are issued and traded on a Canadian exchange. It is certain, in the light of the recent economic turmoil around the world (which many now attribute to a failure in appropriate oversight), that the Canadian public is expecting high levels of diligence and accountability provisions that are enforceable, in all mechanisms put in place for its protection.

As the review of NI 43-101 proceeds, CCPG looks forward to meeting with you to discuss these suggestions with a view to developing a solution to this important issue that concerns both our organizations as consortia of Canadian regulators.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Broster', with a stylized flourish at the end.

Bruce Broster, Ph.D. P.Geo  
President.

Copy: [NI43-101@bcsc.bc.ca](mailto:NI43-101@bcsc.bc.ca)