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New Brunswick Securities Commission  
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Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
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Dear Sirs/Mesdames:

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

We would like to thank the Canadian Securities Administrators for undertaking a review of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("**NI 43-101**"), Form 43-101F1 *Technical Report*, and Companion Policy 43-101CP 43-101. We believe that the proposed amendments will certainly improve upon NI 43-101 in a

number of respects. There are, however, a few comments that we would like to submit as further outlined in this letter.

**1. *Section 9.2 of proposed amendments to NI 43-101 – Exemption for Royalty Interests***

We agree with the exemption from the requirement to file a technical report for issuers whose interest in a mineral project is only a royalty interest, but feel it should be extended to issuers with other similar interests. We would propose that this exemption be available to an issuer whose interest in a mineral project is (i) only a royalty interest, OR (ii) only an interest in minerals refined from, or measured or quantified based on, production from such mineral project.

The extension of this exemption would assist those issuers who are not owners/operators and who do not have royalty interests in mineral projects, but who instead have interests that are similar to royalty interests. In particular, extending this exemption would assist issuers who hold streaming/purchase agreements entered into with the owners/operators of mineral projects. These streaming agreements are economically similar to royalty interests; however, they have different legal and tax attributes. They are similar in the sense that both royalty and streaming companies do not have working interests in a property. Therefore, they are generally not responsible for, and have no obligation to contribute additional funds for any purpose, including, but not limited to, operating or capital costs, or environmental or reclamation liabilities. Typically, both royalty and streaming interests are established through a contract between the royalty or streaming holder and the property owner.

The streaming market has been very active over the past five years since the inception of Silver Wheaton Corp., the first metals streaming company, in late 2004. Since such time, other streaming companies have come online, such as Gold Wheaton Gold Corp., Sandstorm Resources Ltd. and until it was acquired by Silver Wheaton, Silverstone Resources Corp. There may also be transactions entered into by other issuers such as Franco-Nevada Corp. and Royal Gold that would benefit from the extension of this exemption.

We would also suggest that the reference to “has disclosed the scientific and technical information” in paragraph 9.2(1)(c) be replaced by “has disclosed a preliminary economic assessment, mineral resources or mineral reserves” or “has disclosed the scientific and technical information in all material respects” given that: (a) a producing issuer may not disclose the same level of scientific or technical information relating to the mineral interest that is subject to the royalty/stream given the potential difference in materiality of the mineral interest to the producing issuer, and given the reduced interest of the producing issuer in that mineral interest as a result of the royalty/stream; and (b) a producing issuer whose securities trade on a specified exchange will not be subject to NI 43-101 or other Canadian securities laws and will therefore not necessarily have

disclosed all scientific or technical information that would be required to be included in an annual information form under item 5.4 of Form 51-102F2 *Annual Information Form* or a prospectus under item 5.4 of Form 41-101 *Information Required in a Prospectus*.

We would also suggest making the following wording changes to the proposed amendments for clarification purposes:

- lead-in language in subsection 9.2(1) – add the underlined wording in the following: “An issuer whose interest in a mineral project on a property material to the issuer is only a royalty interest...”; and
- paragraphs 9.2(1)(a) and (c) – references to “the operator” could be replaced with “the operator and/or owner”.

**2. Subsection 10.1(c) of National Instrument 41-101 – Qualified Person Consents for Prospectuses**

To the extent that an issuer will be entitled to name a qualified person who approves the written disclosure in a document (and not necessarily the person who prepared or supervised the preparation of the information that forms the basis for the written disclosure) pursuant to the proposed amendment to Section 3.1 of NI 43-101, it would appear anomalous to then require a consent of the qualified person to the original technical report when filing a prospectus or a short form prospectus pursuant to subsection 10.1(c) of National Instrument 41-101 *General Prospectus Requirements* (“**NI 41-101**”).

For example, if an issuer has a royalty interest in a mineral project on a property that is material to the issuer and is not required to file a technical report as a result of either: (a) relying on the exemption contained in Section 9.2; or (b) relying upon a previously filed technical report pursuant to subsection 4.2(8), that issuer could, pursuant to Section 3.1, rely on its own internal qualified person(s) (the “**Internal QP**”) to approve any written disclosure based on the technical report or other document that supports the scientific and technical information, included in its annual information form (“**AIF**”). The issuer would be required to refer to the technical report or other document that supports the scientific and technical information in its AIF (whether as a result of subsection 9.2(1)(b) of amended NI 43-101 or Item 16.1 of Form 51-102F2 *Annual Information Form*), thereby naming in its AIF the original qualified person who authored the technical report or other document that supports the scientific and technical information (the “**Author QP**”) with no requirement to obtain a consent from the Author QP.

However, under subsection 10.1(c) of NI 41-101, if that issuer were to subsequently file a prospectus or a short form prospectus it would be required to obtain a consent from the Author QP because of the mere fact that it has named in its AIF the Author QP as having authored the technical report even if there had

been no material changes to the disclosure in its AIF. If no consent was required to rely on the technical report for the disclosure in the AIF in the first instance, we do not believe one should be triggered for a subsequent disclosure that incorporates by reference the AIF (which in turn refers to the technical report as a source of scientific and technical information). If the disclosure was sufficient in the initial document (the AIF), it should still be sufficient *when that same information* is incorporated by reference in a different document (the prospectus). This requirement is especially onerous given the time constraints typically encountered when filing a short form prospectus.

There would also not appear to be a compelling reason from an investor point of view to require that the Author QP consent be obtained in the context of a prospectus offering. Both existing investors relying on the AIF and new investors relying on the prospectus that incorporates by reference the AIF are relying on the Internal QP to have accurately summarized in the AIF the scientific and technical information contained in the technical report. In fact, by requiring a consent from the Author QP in the prospectus context, there would be the potential for greater recourse against the Author QP for a new investor relying upon the prospectus disclosure than for an existing investor relying upon the same disclosure in the AIF (keeping in mind that the Author QP did not provide a consent for the disclosure in the AIF in this example). In other words, the relevant qualified person should be the one approving the disclosure in the document (ie. the Internal QP), not the original author of the technical report (ie. the Author QP).

In summary, we would propose that a consequential amendment be made to subsection 10.1(c) of NI 41-101 to exempt from the requirement to obtain consent any qualified person named in a document solely for the purpose of describing a technical report. We acknowledge that any qualified person (whether an Internal QP or an Author QP) who approved the inclusion in the prospectus, including by way of incorporation by reference, of any scientific or technical information will be required to provide a consent.

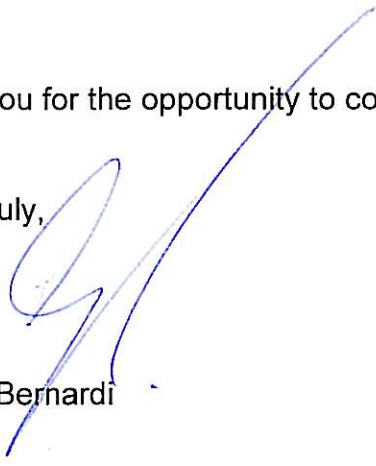
### **3. *Subsection 8.3(2) of proposed amendments to NI 43-101 – Qualified Person Consents for Technical Reports***

We would suggest that subsection 8.3(2) be clarified that paragraphs 8.3(1)(b), (c) and (d) do not apply where a technical report is filed as a standalone technical report, ie. a technical report that is not filed in support of scientific or technical information contained in a document referred to in subsection 4.2(1). The following is a suggestion for wording, blacklined to highlight our proposed change:

“Paragraphs (1)(b), (c) and (d) only apply to a consent filed with a technical report that is required to be filed as a result of subsection 4.2(1).”

Thank you for the opportunity to comment on the proposed amendments.

Yours truly,

  
Curt D. Bernardi