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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

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RE: Comment letter regarding Proposed Changes to National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* ("NI 43-101")

Dear Sirs:

We are writing this letter in response to the Notice and Request for Comment ("Notice") on the Proposed Repeal and Replacement of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* issued by the Canadian Securities Administrators ("CSA") on April 23, 2010.

We would like to commend the CSA for its efforts to update and streamline NI 43-101 in many areas which, we believe, will benefit investors, issuers and the mining sector of the Canadian capital markets.

This letter summarizes our comments including our responses to the questions set forth in your Notice.

CSA Questions

1. Do you rely on technical reports when making, or advising on, investment decisions in a short form prospectus offering? If yes, please explain how the content of a technical report, or the certification of a technical report by a qualified person, could influence your investment decisions or your recommendations.

While our role as legal advisers to various participants in the Canadian capital markets including, in particular, issuers, investors, underwriters, agents, qualified persons and others involved in the mining sector, does not involve our making or providing investment advice on investment decisions in a short form prospectus offering, our experience strongly suggests that the basic disclosure framework for a short form prospectus offering – direct or incorporated by reference disclosure constituting "full, true and plain disclosure of all material facts relating to the securities offered by th[e] short form prospectus" – affords an adequate and acceptable basis upon which investment decisions are made and investment advice is given. In practice, technical reports can include and contribute meaningful information to the broad mix of total information available to investors under the short form prospectus disclosure regime. Similarly, certification of a technical report by a qualified person may enhance the quality and/or reliability of the information in the report. However, the strength of the short form prospectus disclosure regime results from the interaction of Canadian securities legislation's timely and continuous disclosure requirements with the legislation's "material fact" disclosure requirements for short form prospectuses. Through this interaction, all material facts relating to any offered securities must be included in the short form prospectus directly or through incorporation by reference of disclosure from, among other things, filed material change reports. This two-pronged approach to disclosure is designed to ensure that all relevant material facts and material changes are disclosed in a short form prospectus offering. In our experience, the disclosure required by these basic principles underlying the short form prospectus offering regime are more relevant to investment decisions or investment advice than the content of a technical report or the certification of a technical report.

2. Do you think we should keep, or eliminate, the short form prospectus trigger? Please explain your reasoning.

On the basis of our comments relating to question 1, we would expect all "material facts" and/or "material changes" relating to a short form prospectus offering of securities to already be directly disclosed in the short form prospectus or be incorporated therein by reference. Accordingly, we support the elimination of the existing short form prospectus trigger for the discrete preparation and filing of a technical report. In our view, a short form prospectus should contain adequate disclosure of all material facts and material changes without the necessity of the existing trigger for the preparation and filing of a technical report.

3. Please discuss how your answers to questions 1 and 2 might change in each of the three cases described in the table.

Our comments relating to questions 1 and 2 would not change in each of the three cases described in the table set forth in the Notice due to the operation of the basic disclosure principles for short form prospectus offerings under existing Canadian securities legislation.

4. If we decide to eliminate the short form prospectus trigger, is the proposed guidance in subsection 4.2(13) of the Amended Companion Policy useful? Do you have any suggestions concerning this guidance?

In our view, subsection 4.2(13) addresses the issues adequately.

5. *Is the proposed new exemption relating to an acquired property helpful? Is it reasonable to expect that issuers will use the new exemption in light of the attached conditions?*

Yes, we would expect the proposed new exemption relating to acquired properties with a current technical report filed by a previous owner to be helpful and we support its inclusion in NI 43-101. The availability of such an exemption should facilitate the ability of issuers in certain circumstances to access the capital markets on a more timely basis.

6. *Do market participants use the exemptions in subsections 6.2(2) and (3)? Should we keep it in the Amended Instrument?*

Although in our recent experience, subsections 6.2(2) and (3) may not be frequently used, we support the continued inclusion of the exemption in NI 43-101.

Comments on selected amendments to NI 43-101

Section 1.1 Definitions

“Specified Exchange” We strongly urge that this definition be reformulated and moved to the Companion Policy. While the definition may continue to list specific exchanges, its scope should be expanded by including permissive generic language permitting in prescribed circumstances other exchanges to be specified in the Companion Policy in order to provide flexibility to amend the list of foreign exchanges as international mining capital and secondary markets develop over time.

“qualified person” clause (c) (iv) B – Foreign qualified persons will require “ten years” of experience compared to Canadian qualified persons who will require five years. We suggest that these prior experience periods be identical to each other and set at five years.

Section 3.4(e) “equally prominent statement” - We suggest that the meaning of this requirement be discussed in the Companion Policy together with any other pertinent guidance for issuers and their advisors including confirmation that tabular or graphic disclosure may be accompanied by footnoted narrative disclosure in satisfaction of this requirement.

Section 4.2 Obligation to File a Technical Report in Connection with Certain Written Disclosure about Mineral Projects on Material Properties - We suggest that the 45 day period for filing technical reports be extended to a uniform six month period in NI 43-101. If there is no existing technical report, our experience strongly suggests that a filing period of 45 days will be inadequate in most cases for the preparation, approval and filing of a compliant technical report for a single property let alone for multiple properties. In our experience, the likelihood of boiler-plate formulaic disclosure in public filings generally increases in circumstances involving unduly short or aggressive filing periods.

Section 9.2 Exemptions for Royalty Interests - We support the expansion of section 9.2 to holders of carried interests in mineral properties provided that they do not have to contribute funds to maintain their interest (which may be inherent in the meaning of a carried interest) in the property and do not have access to the underlying scientific and technical information on the mineral property.

NI 43-101F1 – While we support the content of the proposed Form generally, we note the following:

Item 14: Mineral Resource Estimates – Instructions (2) – By way of clarification, we suggest the wording in the second sentence of the Instructions be amended as follows: “All mineral resources reported for each of the cut-off grade scenarios must meet the test of reasonable prospect of economic extraction.” (Amended wording underlined)

Item 19: Market Studies and Contracts - We strongly urge serious reconsideration and reformulation of Item 19. The required information and analyses for disclosure are confidential, competitively sensitive, forward looking and beyond the scope of a mineral property technical report and the professional expertise of a qualified person. As an alternative approach, we suggest that disclosure requirement focus on the qualified person confirming that there is a market entry strategy and that the strategy supports the assumptions in the technical report. By virtue of such disclosure requirements, mining issuers would be placed in a disadvantageous position compared to other comparable public issuers such as industrial, retail and financial services firms.

Item 22: Economic Analysis – We strongly urge this item be deleted from the Form. The required disclosure is highly confidential and competitively sensitive and by its nature future oriented. In our view, the provision of any such Economic Analysis extends beyond the scope and scale of a mining property technical report and the core expertise and experience of a qualified person. By virtue of such disclosure requirements, non-producing mining issuers would be placed in a disadvantageous position compared to other comparable public issuers including industrial, retail and financial services firms.

Item 23: Adjacent Properties – This item should be moved and inserted as a separate item under the general heading "Requirements for All Technical Reports" at the beginning of the Form.

NI 43-101CP: – General Guidance Item (6) – We suggest that a further clause to the following effect be added to Item (6) of the Companion Policy's General Guidance to enhance its flexibility and utility to issuers and their advisers on a going-forward basis: "(e) any other relevant best practice guidelines for the mining industry published by CIM."

Should you have any questions regarding this letter, please do not hesitate to contact either Eden Oliver (olivere@bennettjones.com; 416-777-7499) or the undersigned at your convenience.

Yours sincerely,



F.R. Allen