CASSELS BROCK
LAWYERS

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BY EMAIL

aboivin@casselsbrock.com
tel: 416-860-6580
fax: 416-640-3157

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 Territory

Sheryl Thomson
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission

sthomson@bcsc.bc.ca

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers

Consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

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, dated April 23, 2010 ("Request for Comments")

This letter is provided to the Canadian Securities Regulatory Authorities (the "CSA") in response to the Request for Comments. Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Request for Comments.

Introduction and Overview

Our firm has an extensive mining and securities law practice and we have reviewed the proposed Amended Mining Rule and the Consequential Amendments with great interest.

We believe the proposed amendments constitute a very positive step towards improving National Instrument 43-101 ("NI 43-101") and we wish to express our general support for the CSA's initiative. The Amended Mining Rule and Consequential Amendments, in our view, better addresses the realities and challenges faced by mining issuers in the current business and regulatory environments.

In particular, we agree with the proposed changes to sections 2.1 and 3.1 of NI 43-101 to allow technical disclosure to be "approved by a qualified person" as an alternative to being based upon "information prepared by or under the supervision of a qualified person". This change is helpful for issuers in complying with their timely disclosure obligations where qualified persons who prepared or supervised information may not be readily available or where the number of qualified persons makes it impractical to seek multiple consents prior to the release of technical disclosure.

Similarly, we strongly support section 4.2.1 *Alternative Consent of NI 44-101* allowing the alternative of the consulting firm to provide the consent for disclosure contained in or incorporated by reference in a short form prospectus as in our view, this proposal balances investor protection and the potential costs and delay involved in obtaining consents from an individual qualified person. Mining issuers are frequently faced with the challenge of contacting and locating qualified persons to sign consents in connection with disclosure made subsequent to filing of a technical report has been completed, as a result of such qualified persons being in the field, changing firms or retiring. We would ask that the CSA consider whether the same exemption could be extended to disclosure in other documents such as information circulars, rights offering circulars and take-over bid circulars provided the document is not first time disclosure of the technical information.

We are also in favour of the proposed change to section 2.3 of NI 43-101 to allow mining issuers to disclose a preliminary economic assessment that includes, or is based on, inferred mineral resources even if the property is beyond early stage (i.e. after a pre-feasibility or feasibility study has been conducted on the property). This change will allow issuers with mining operations with future economic potential beyond the current scope of operations supported by mineral reserves and mineral resources to disclose the full potential of their assets within reasonable parameters and with appropriate cautionary language.

The following sets out our comments and suggestions in connection with certain specific sections of NI 43-101 for consideration by the CSA in an effort to help further improve the Amended Mining Rule.

Short form Prospectus Trigger

The CSA is considering whether to keep, modify or eliminate the short form prospectus trigger for a technical report (paragraph 4.2(1)(b) of the Amended Mining Rule). We have the following comments in this respect.

We believe the proposed elimination of the short form prospectus trigger is consistent with the policy objectives of allowing issuers to utilize the short form prospectus system to permit issuers to access capital markets in a timely and cost efficient manner. The current necessity for a technical report for a preliminary short form prospectus can operate to negate the opportunity for a mining issuer to access capital markets following the announcement of new material scientific or technical information on an existing material mining project or with respect to an acquisition of a material mining project where a technical report addressed to the issuer is not available.

We submit that it would be appropriate to eliminate the short form prospectus trigger, based on the fact that the Amended Mining Rule and the Consequential Amendments require that a current technical report be filed in support of an annual information form on which the short form prospectus disclosure (other than disclosed subsequent to the annual information form) is based through incorporation by reference, and require that the technical information disclosed subsequent to the annual information form must be approved by a qualified person who would be required to provide an expert consent.

We believe that the CSA should also consider whether other types of filings such as take-over bid circulars, information circulars in connection with the acquisition of a mineral property, an offering memorandum and a rights offering circular should also be exempted from triggering a technical report filing provided that the issuer is eligible to file a short form prospectus. The current triggers under paragraphs 4.2(1)(c), (d), (e) and (i) of the Amended Mining Rule can affect the ability of mining issuers to complete capital market transactions other than financings (i.e. acquisitions, take-over bids, rights offerings, etc.) in a timely manner and again, the absence of a technical report for such filing does not alleviate the fact that certain technical disclosure included in the issuer's filing is incorporated by reference through an issuer's annual information form and any subsequent technical disclosure must also be approved by a qualified person.

Section 1.1 of the Amended Mining Rule

The definition of "development property" does not appear to be necessary in the Amended Mining Rule. It is used only once, in the instruction to Item 26 to Form 43-

101F1, where it arguably does not need a precise definition. All other instances of this term have been removed from the Amended Mining Rule.

In part (b) of the definition of a "producing issuer" consider including gross revenues, derived from mining operations on properties, directly or indirectly acquired by the issuer in the last three years. If an issuer that does not have $90 million in revenue from mining operations over the last three years acquires a producing property (either as an asset acquisition or share acquisition) the issuer should be able to utilize this revenue when calculating whether it qualifies as a producing issuer. When acquiring such producing properties, it is customary that the employees (including any internal qualified persons) of the producing mine continue to be employees of the mine following completion of the transaction and therefore the issuer will have the necessary expertise to draft technical reports internally.

Consider including a definition of "economic analysis" as there may be inconsistencies between how Form 43-101F1 is organized and the explanation in Companion Policy 43-101CP. In Form 43-101F1 Item 21 is Capital and Operating Costs and Item 22 is Economic Analysis. This would suggest that capital and operating costs do not constitute an economic analysis. However, in the Companion Policy 43-101CP under the definition of "preliminary economic assessment", it states that "these types of economic analyses to include…capital costs…, operating costs…" A definition of what is included in an economic analysis may be useful to clarify or reconcile the statements above. In the alternative, the CSA's interpretation of the term "economic analysis" could be addressed in the Companion Policy.

Section 3.5 of the Amended Mining Rule

Section 3.5 provides an exception for disclosure for written disclosure in subsections (a), (c) and (d) of Section 3.4. We submit that this exception should extend to subsection 3.4(b) as well. When issuers disclose any information on the quality of mineral reserves and mineral resources it can be costly to include tables in press releases and other summary documents disclosing the grade or quality of each category of mineral reserves and mineral resources when the issuer would be able to refer to a previously filed document that complies with this requirement, particularly as cross-referenced documents are readily available in electronic formats..

Section 4.2(1) of the Amended Mining Rule

The language as currently drafted in the introduction of this section could be read to mean that a technical report is required to be filed to support any scientific or technical information contained in a listed document (even if in respect of a non-material property) if the listed document also describes a mineral project on a material property. We suggest the following amendment to the wording to clarify the intention of section 4.2(1), which we have underlined for ease of reference:

> "An issuer must file a technical report to support scientific or technical information that relates to a mineral project on a property material to the issuer, or in the case of paragraph (c), the resulting issuer, and that is contained in any of the following documents filed or made available to the public in a jurisdiction in Canada:"

Section 4.2(7) of the Amended Mining Rule

We agree with the newly proposed six-month deadline to file a technical report in support of first time disclosure of scientific and technical information on a property acquired by an issuer, provided that the current preliminary assessment, mineral resources or mineral reserves are supported by a current technical report filed by another issuer. This six month period should allow the acquiring issuer to prepare a technical report in a more reasonable time frame and provide issuers with an alternative to disclosing the information as an historical estimate or having the previous report re-addressed to the acquiring issuer.

In addition, we believe that the six-month filing deadline should also apply in situations where the previous owner is a producing issuer whose securities trade on a specified exchange and who has filed or made available a technical report or similar type of disclosure on its mineral resources and mineral reserves under an acceptable foreign code. We note similar clarification is provided in part 9.2 in connection with the explanation of the "operator" of a mineral project. We feel further clarification is also necessary in respect of the references to "another issuer" or "other issuer" and "filed" in part 4.2(7). We suggest the following wording changes to the proposed amendments for your consideration:

- part 4.2(7)(a)(i) – after the words "another issuer" the following should be added: "…or a producing issuer whose securities trade on a specified exchange and that discloses mineral resources and mineral reserves under an acceptable foreign code…".

- part 4.2(7)(a)(ii) – after the words "other issuer" the following should be added: "…or a producing issuer whose securities trade on a specified exchange and that discloses mineral resources and mineral reserves under an acceptable foreign code…".

- part 4.2(7)(a)(iii) – after the words "other issuer" the following should be added: "…or technical report or other similar disclosure filed or readily available by a producing issuer whose securities trade on a specified exchange and that discloses mineral resources and mineral reserves under an acceptable foreign code".

- part 4.2(7)(b)(i) – after the words “technical report” the following should be added: “or similar disclosure” and after the words “other issuer” the following should be added: “…or producing issuer whose securities trade on a specified exchange and that discloses mineral resources and mineral reserves under an acceptable foreign code, as applicable,…” and after the word “filed” delete “it” and add “or made it readily available, as applicable”.

Section 4.2(8) of the Amended Mining Rule

There appears to be an inconsistency between section 4.2(8)(a) and section 4.2(8)(b) of the Amended Mining Rule, (each of which must be met in order to rely on this exemption), that would make this exemption unavailable in most circumstances. While there is an inconsistency present in the Current Instrument, the Amended Mining Rule makes this inconsistency more apparent as a result of the changes in section 4.2(8) and the elimination of certain qualifications to the technical report triggers in section 4.2(1).

The exemption contemplates both that the previously filed technical report is able to **support** scientific or technical information contained in the document if there is a change in scientific or technical information (material or otherwise) and that there may have been changes in the scientific or technical information, provided the changes do not consist of “new material scientific or technical information”.

By way of example: if there is a change to mineral reserves that is disclosed in a document that is not a material change, the test in section 4.2(8)(b) of the Amended Mining Rule would be met, as there is no new **material** scientific or technical information, however, the test in section 4.2(8)(a) of the Amended Mining Rule would not be met as the technical report would not support all of the information in the document. If this revised reserve information is included in an issuer’s annual information form the information in the document would not be supported by the technical report and the test in section 4.2(8)(a) would not be met. Section 4.2(8)(b) has a materiality threshold where section 4.2(8)(a) does not.

Either the technical report supports the scientific and technical information in the document and section 4.2(8)(b) is unnecessary or section 4.2(8)(a) should be revised to remove the word "support" and should read something similar to "the issuer previously filed a technical report regarding the subject property". We believe the objective is to not trigger a new technical report for each non-material change in scientific and technical information. We would suggest that section 4.2(8)(a) is in need of revision or clarification to ensure that the exemption works as we believe it is intended to.

Section 9.2 of the Amended Mining Rule

We suggest that the exemption from the requirement to file a technical report for issuers with a royalty interest should also be extended to issuers with other similar interests, such as issuers who have a metal streaming agreement with the property owner/operator. Such agreements are similar in concept to royalty agreements in that the holder of the royalty or streaming interest does not have working interests in the property, and therefore does not have any obligation to contribute additional funds for any reason, assume liabilities (including environmental or reclamation) or provide expertise.

The unique characteristics of royalties and streams provide the holders of the royalties or streams with special commercial benefits not available to the property owner because they enjoy the upside potential of the property with reduced risk. These streaming agreements are economically similar to royalty interests, however, they have different legal and tax attributes. Streaming agreements are completely dependant on production and metal prices and not cost of production.

Issuers such as Silver Wheaton Corp., Gold Wheaton Gold Corp. and Sandstorm Resources Ltd. would benefit from the extension of this exemption and would otherwise be at a competitive disadvantage to royalty companies.

We would propose that this comment be addressed by the following proposed language: 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.

We would also suggest that the reference to "scientific and technical information" in paragraph 9.2(1)(c) be replaced by either "a preliminary economic assessment, mineral resources or mineral reserves" or "material scientific and technical information" given that the project may not be material to the operator and therefore will not be subject to the disclosure requirements of NI 43-101 relating to the mineral interest that is subject to the royalty or streaming agreement. Additionally, 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 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 clarifying the lead-in language in subsection 9.2(1) by adding the wording denoted by underlying: "An issuer whose interest in a mineral project on a property material to the issuer is only a royalty interest…";

Form 43-101F1

Item 23(3)

We suggest that compliance with new paragraphs (f) and (g) of section 2.4 of the Amended Mining Rule be "carved out" for an issuer to comply with his part of the form in making disclosure of historical estimates regarding adjacent properties. Adjacent properties are not properties of the issuer and, as such, the issuer would not be treating the historical estimate as a current mineral resource or mineral reserve, with or without additional work, and would not be assessing the additional work that would be needed to treat the historical estimate as a current mineral resource or mineral reserve.

We trust you will find the foregoing helpful, and we would be pleased to discuss or provide any additional information or explanation as you may require.

Yours truly,
Cassels Brock & Blackwell LLP

Per: **"**André Boivin**"**