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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

Calgary

New York

c/o

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Dear Sirs/Mesdames:

Notice and Request for Comment – 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 are submitting this comment letter in response to the CSA Notice and Request for Comment (the “Notice”) published at (2010) 33 OSCB 3703 in respect of the Amended Mining Rule. Capitalized terms used but not otherwise defined in this letter have the same meaning ascribed to them in the Notice.

General

We congratulate the CSA on its initiative to amend the Current Mining Rule and on working with focus groups, market participants and advisory committees in preparing the

Amended Mining Rule. We believe the Amended Mining Rule and the Consequential Amendments contain a number of improvements that will be of considerable assistance to reporting issuers without compromising investor protection, including: eliminating the requirement to file updated certificates and consents of qualified persons for a previously filed technical report that is still current and continues to meet applicable independence requirements; allowing the consulting firm that employed the qualified person who prepared the issuer's technical report to consent, in place of the qualified person, to the use of the technical report in a short form prospectus; and extending the deadline to file a technical report on a newly acquired property to six months if another issuer previously filed a technical report on the property and that report is still current.

Short Form Prospectus Trigger

We support the proposal to eliminate the short form prospectus trigger. We agree with the observations in the Notice that the current requirement imposes extra costs and limits an issuer's ability to complete an offering on a timely basis, and that it is possible to eliminate the short form prospectus trigger while still ensuring that investors are appropriately protected.

A short form prospectus must include full, true and plain disclosure of all material facts relating to the securities offered by the prospectus. This may require disclosure of new material scientific or technical information about a property material to the issuer that is not supported by a previously filed technical report. In these circumstances, we agree with the Amended Companion Policy's guidance in subsection 4.2(13) that the issuer should clearly identify the new information and state that it is not supported by a previously filed technical report. In addition, to the extent that circumstances requiring this disclosure trigger a requirement for the later filing of a new technical report under paragraph 4.2(1)(j) of the Amended Instrument, we agree that the issuer should clearly identify the potential risk that the information set out in the technical report might be different from the disclosure in the prospectus and the consequences of any material deviations. These two measures should provide sufficient disclosure to alert investors to the fact that there is new material scientific and technical information that is not supported by a current technical report, and allow market participants the freedom to make their own informed decision regarding whether or not to make an investment prior to the time that a supporting technical report is available.

The Amended Companion Policy also notes that to comply with section 3.1 of the Amended Instrument, the issuer must include in its prospectus the name and relationship to the issuer of the qualified person who is responsible for the new material scientific or technical information. This will provide comfort that the disclosure in the prospectus is accurate. Furthermore, underwriters, who are subject to statutory liability for misrepresentations in a prospectus subject to a due diligence defence, will also have an

incentive to conduct all appropriate due diligence necessary to ensure the accuracy of any material scientific and technical information included in a prospectus.

We note that eliminating the short form prospectus trigger will also address an asymmetry between the primary and secondary markets. Under the Current Instrument, if there is a material change that requires a technical report to be filed within 45 days, trading may continue in the secondary market before the technical report is filed. However, an issuer is currently precluded from issuing shares under a prospectus following such a material change until the technical report is filed. We also note that the current short form prospectus trigger has caused some issuers to undertake a special warrant transaction rather than a bought deal, as IIROC has granted exemptions allowing short form eligible issuers to use the special warrant structure in circumstances where the unavailability of a technical report precludes the use of a short form prospectus. This has had the unfortunate consequence of undermining the short form prospectus pre-marketing rules and the policies underlying them, as the pre-marketing rules do not apply to special warrant transactions.

For all these reasons, we support the elimination of the short form prospectus trigger and would support its elimination in all three cases described in the Notice. We also support the guidance in the revised draft Companion Policy in subsection 4.2(13).

Additional Technical Report Triggers

If the CSA decides to eliminate the short form prospectus trigger, we believe the CSA should also consider eliminating the technical report trigger in paragraph 4.2(1)(c) for an information or proxy circular concerning a direct or indirect acquisition of a mineral property where the issuer or resulting issuer issues securities as consideration, and in paragraph 4.2(1)(i) for a take-over bid circular that discloses a preliminary economic assessment, mineral resources, or mineral reserves on a property material to the offeror if securities of the offeror are being offered in exchange on the take-over bid.

We submit that if shares can be issued under a short form prospectus without requiring a technical report, then shares should also be able to be issued under an information circular or take-over bid circular. If the triggers in paragraphs 4.2(1)(c) and 4.2(1)(j) are retained, issuers may also have an incentive to structure their acquisitions using cash consideration raised through a short form prospectus offering, rather than as a share exchange transaction, given the potential timing delays associated with preparing a technical report in connection with a share exchange transaction. We do not believe that transaction structures should be driven by technical report triggers.

Amended Form – Item 19 “Market Studies and Contracts”

We are concerned that the requirement to disclose the results of “market studies, commodity price projections, production valuation...” casts too broad a net as drafted, as it could be read to include internally prepared, competitively sensitive studies the disclosure of which could be commercially harmful to an issuer.

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We thank you for the opportunity to comment on the Amended Rule. If you have any questions or comments please contact Jeremy Fraiberg at (416) 862-6505.

Yours very truly,

Osler, Hoskin & Harcourt LLP