

**AUSTRALASIAN
JOINT ORE RESERVES
COMMITTEE (JORC)**



AusIMM
THE MINERALS INSTITUTE



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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
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**Comment on CSA Proposed Repeal and Replacement of National instrument 43-101
Standards of Disclosure for Mineral Projects by the Australasian Joint Ore Reserves
Committee (JORC)**

JORC apologises for the lateness of its response to Request for Comment and requests that CSA accepts comments by JORC on two specific items matters related to Qualified Persons, firstly the definitions of a “qualified person” and the relationship of the definitions of a ‘qualified person’ and ‘professional association’ to the information included in “Appendix A Accepted Foreign Associations and membership Designations”. JORC will be most appreciative if these comments can be taken into account.

However JORC would like to acknowledge in general the improvements it notes in the amended NI 43-101 and the guidance provided on its application seems generally to be moving the Canadian reporting system away from the (perhaps interpreted) black letter approach of the first version of NI 43-101.

Qualified Person definition.

The definition of a 'qualified person' included in Part 1 Definitions and Interpretation of the revised National Instrument 43-101 is as follows:

““qualified person” means an individual who

(a) is an engineer or geoscientist with at least five years of experience in mineral exploration, mine development or operation, or mineral project assessment, or any combination of these, that is relevant to his or her professional degree or area of practice;

(b) has experience relevant to the subject matter of the mineral project and the technical report; and

(c) is in good standing with a professional association and, in the case of a professional association in a foreign jurisdiction, has a membership designation that

- (i) requires a university degree or equivalent accreditation in an area of geoscience, or engineering, relating to mineral exploration or mining;
- (ii) requires attainment of a position of responsibility in their profession that requires the exercise of independent judgment;
- (iii) requires or encourages continuing professional development; and
- (iv) requires
 - A. a favourable confidential peer evaluation of the individual's character, professional judgement, experience, and ethical fitness; or
 - B. a recommendation for membership by at least three peers, and at least ten years of post-degree practical experience or demonstrated prominence in the field of mineral exploration or mining;”

This definition is different in form to the CIM Definition Standards in that the NI 43-101 definition has separated the experience requirements into two items, placing more emphasis on the different experience requirements:

(a) is an engineer or geoscientist with at least **five years of experience in mineral exploration, mine development or operation, or mineral project assessment, or any combination of these, that is relevant to his or her professional degree or area of practice**” and

(b) **“has experience relevant to the subject matter of the mineral project and the technical report”**.

This NI 43-101 definition is different to all the other Competent Person definitions in the CRIRSCO¹ family of reporting Codes and Standards, which all have similar requirements to the 2004 JORC Code² which is:

“A ‘Competent Person’ must have a minimum of five years experience which is relevant to the style of mineralisation and type of deposit under consideration and to the activity which that person is undertaking”.

¹ CRIRSCO: Committee for Mineral Reserves International Reporting Standards

² PERC Code: “A ‘Competent Person’ must have a minimum of five years’ up to date experience, at an appropriate level of seniority, which is relevant to the style of mineralisation and type of deposit under consideration and to the activity which that person is undertaking”

SAMREC Code: “A Competent Person must have a minimum of 5 (five) years experience relevant to the style of mineralisation and type of deposit or class of deposit under consideration and to the activity which that person is undertaking.”

The key differences are emboldened. The effect of the difference is that, in Canada, a professional could qualify as a Qualified Person with only a few weeks or months experience relevant to the situation under consideration (as long as he or she had at least five years of more general experience), whereas in Australia, South Africa, Chile and Europe a Competent Person must have at least five years experience relevant to the situation under consideration.

JORC considers CSA should consider bringing the Qualified Person definition into line with accepted international practice, by including the requirement for the five years relevant experience to be tied to the matters involved in the mineral project and the technical report.

The definition has and is likely to have the perverse effect of creating the situation where individuals may accept Qualified Person responsibility for Canadian reporting on a particular deposit but do not feel able to accept Competent Person responsibility for the same matters in Australia, South Africa, Chile or Europe as a result of this difference in the NI 43-101 definition. The relevant experience requirement is not, in JORC's view, applied in a manner to provide adequate protection to investors under NI 43-101.

Professional Associations - Australian

JORC acknowledges the lead that Canada provided in the matter of recognising foreign professionals a matter that has been taken up enthusiastically by other members of CRIRSCO. However JORC notes the changes made to the definitions and guidance in the companion policy on the subject of professional associations and feels obliged to draw several matters to the attention of the CSA.

The definition of a professional association included in Part 1 Definitions and Interpretation of the revised National Instrument 43-101 is as follows:

““professional association” means a self-regulatory organization of engineers, geoscientists or both engineers and geoscientists that

(a) is

(i) given authority or recognition by statute in a jurisdiction of Canada, or

(ii) a foreign association that is generally accepted within the international mining community as a reputable professional association;

(b) admits individuals on the basis of their academic qualifications, experience, and ethical fitness;

(c) requires compliance with the professional standards of competence and ethics established by the organization; and

(d) has and applies disciplinary powers, including the power to suspend or expel a member regardless of where the member practises or resides;”

The information included in Part 1 Definitions and Interpretation of the revised the Companion Policy 43-101CP related to “professional association”, and “qualified person” is as follows:

(4) “**professional association**” – Paragraph (a)(ii) of the definition of “professional association” in the Instrument includes a test for determining what constitutes an acceptable foreign association. Appendix A to the Policy provides a list of the foreign associations that we think meet this test as of the effective date of the Instrument. We anticipate updating the list periodically. In assessing whether we think other foreign professional associations meet the test, we will consider the reputation of the association, the degree to which the association satisfies paragraphs (b), (c) and (d) of the definition, and whether it is substantially similar to a professional association in a jurisdiction of Canada.

The listing of a professional association on Appendix A is only for purposes of the Instrument and does not supersede or alter local requirements where geoscience or engineering is a regulated profession.

(6) “**qualified person**” – The definition of “qualified person” in the Instrument does not include engineering and geoscience technicians, engineers and geoscientists in training, and equivalent designations that restrict the individual’s scope of practice or require the individual to practise under the supervision of another professional engineer, professional geoscientist, or equivalent.

Canadian provincial and territorial legislation requires a qualified person to be registered if practising in a jurisdiction of Canada. It is the responsibility of the qualified person, in compliance with their professional association’s code of ethics, to comply with laws requiring licensure of geoscientists and engineers.

Paragraph (c) of the definition includes a test for what constitutes an acceptable membership designation in a foreign professional association. Appendix A to the Policy provides a list of the membership designations that we think meet this test as of the effective date of the Instrument. We anticipate updating the list periodically. In assessing whether we think a membership designation meets the test, we will consider whether it is substantially similar to a membership designation in a professional association in a jurisdiction of Canada.”

JORC notes the contents of Appendix A is as follows:

Appendix A

**Accepted Foreign Associations
and Membership Designations**

Foreign Association	Membership Designation
American Institute of Professional Geologists (AIPG)	Certified Professional Geologist (CPG)
The Society for Mining, Metallurgy and Exploration, Inc. (SME)	Registered Member
Mining and Metallurgical Society of America (MMSA)	Qualified Professional (QP)
Any state in the United States of America	Licensed or certified as a professional engineer
European Federation of Geologists (EFG)	European Geologist (EurGeol)
Institute of Geologists of Ireland (IGI)	Professional Member (PGeo)
Institute of Materials, Minerals and Mining (IMMM)	Professional Member (MIMMM), Fellow (FIMMM), Chartered Scientist (CSi MIMMM), or Chartered Engineer (CEng MIMMM)
Geological Society of London (GSL)	Chartered Geologist (CGeol)
Australasian Institute of Mining and Metallurgy (AusIMM)	Fellow (FAusIMM) or Chartered Professional (CP)
Australian Institute of Geoscientists (AIG)	Fellow (FAIG) or Registered Professional Geoscientist (RPGeo)
South African Institute of Mining and Metallurgy (SAIMM)	Fellow (FSAIMM)
South African Council for Natural Scientific Professions (SACNASP)	Professional Natural Scientist (Pr.Sci.Nat.)
Engineering Counsel of South Africa (ECSA)	Professional Engineer (Pr.Eng.) or Professional Certificated Engineer (Pr.Cert.Eng.)
Chilean Comision Calificadora de Competencias en Recursos y Reservas Mineras (Chilean Mining Commission)	Registered Member

The details related to Australian professional associations are:

Australasian Institute of Mining and Metallurgy (AusIMM)
Australian Institute of Geoscientists (AIG)

Fellow (FAusIMM) or Chartered Professional (CP)
Fellow (FAIG) or Registered Professional Geoscientist (RPGeo)

By comparison the necessary membership requirements as part of the Competent Person definition in the JORC Code are:

“A ‘Competent Person’ is a person who is a Member or Fellow of The Australasian Institute of Mining and Metallurgy, or of the Australian Institute of Geoscientists, or of a ‘Recognised Overseas Professional Organisation’ (‘ROPO’) included in a list promulgated from time to time.”

Thus the current categories of membership required to act as a Competent Person is to be a Member or Fellow, i.e. not an Associate, Graduate or Student. Chartered Professional status is not a class of membership as such. Under the JORC Code it is the class of membership that is specified not whether the individual is or is not a Chartered Professional. Clearly the membership class ‘Member’ which is part of the Australasian requirements is missing from NI 43-101 Appendix A.

It seems the relevant requirements for inclusion of a membership class in Appendix A as meeting the necessary membership requirements for a qualified person are included in the definition of a qualified person at (c) (iv) B.:

“B. a recommendation for membership by at least three peers, and at least ten years of post-degree practical experience or demonstrated prominence in the field of mineral exploration or mining;”

It seems strange to JORC that as well as the five years relevant experience requirement (as noted above in JORC’s view not applied in a manner to provide adequate protection to investors under NI 43-101), there is a requirement for a membership class with a length of membership not related to the relevant experience requirements. On the information available to JORC only 16% of The AusIMM membership are Fellows with in excess of 62% belonging to the Member class. Many Members of the AusIMM and AIG would have in excess of the NI 43-101 desired length of membership but not have upgraded their membership to Fellow.

With reference to the AIG the requirements for admission to Fellow go far beyond the stated requirements in NI 43-101:

“The AIG constitution, summarised on the membership application form, states that “to be eligible for election as Fellow (FAIG), an applicant must be a geoscientist with not less than fifteen years of experience in his/her field of practice, who has, in the opinion of Council, achieved prominence in such a field.”

That is there is a requirement not only for a length of service (in excess of the NI 43-101 requirement) but also for prominence in order to be admitted as a Fellow, and

To put in place a system which means that professionals qualified and entitled to act in one jurisdiction are barred from acting in another is seen by JORC as a backwards step and worthy of further consideration

Professional Associations – United States of America

Another matter JORC wishes to bring to the attention of CSA is the major difference between the professional associations listed in Appendix A and the list of ROPOs on the ASX website³ is the absence of any of the United States professional engineering bodies in the ASX ROPO list.

As you may be aware professional bodies are required to apply for inclusion on the list of ROPOs in Australia. The United States State Boards were invited to apply but none applied. As part of the application process professional bodies were required to assert that they would sanction members if the need arose for failure to comply with the JORC Code when this was required, that is for Public Reports to Australasian Securities Exchanges. The advice received by JORC from its United States CRIRSCO colleagues from the SME was that it is extremely unlikely that these State Boards have the power to discipline members in such circumstances. JORC imagines that the same circumstance exists in relation to reports to Canadian Securities exchanges under NI 43-101,

³ See the following link: http://www.asx.com.au/professionals/pdf/rope_letter_september_2007_standalone.pdf

and finds it difficult to reconcile the inclusion of the States of the United States licensed or certified professional engineers.

A handwritten signature in black ink, appearing to read "Peter Stoker". The signature is written in a cursive, flowing style with some loops and flourishes.

Peter Stoker
Chairman JORC