Alex Poole
Senior Legal Counsel Corporate Finance
Alberta Securities Commission
Suite 600, 20-5th Street SW
Calgary, Alberta T2P 0R4

alex.poole@asc.ca

20 October 2011

Matter 81968880

Proposed Amendments to National Instrument 41-101 General Prospectus Requirements

Dear Alex,

1. Introduction

This submission is made by the Australian Institute of Geoscientists (AIG) in response to the Proposed Amendments to National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101CP, and other proposed amendments published by the Canadian Securities Administrators (CSA) on 15 July 2011.

AIG is the leading professional institute representing geoscientists in all professional sectors throughout Australia. AIG is the only professional institute in Australia that exclusively represents the complete spectrum of geoscientists. Our members include professionals from the fields of mineral, coal and petroleum exploration, geophysics, geochemistry, environmental geoscience, engineering geology, mining geology and hydrogeology, as well as those who use geoscience skills in management, research, education, consulting, computing and information systems. AIG has over 2500 members, a significant proportion of which are qualified to act as Competent Persons (CP) or Qualified Persons (QP) in Canada in compliance with reciprocal recognition arrangements for overseas professionals incorporated in NI-43-101.

CSA has sought comments in response to the following questions:

a) Do you believe that it is appropriate to extend the requirement to file a non-issuer's submission to the jurisdiction and appointment of an agent for service form to foreign experts who have consented to the disclosure in a prospectus of information from a report, opinion or statement made by them given that these persons are liable under our statutory liability regime for misrepresentations in the prospectus that are derived from that report, opinion or statement? Why or why not?

b) If foreign experts are required to file a non-issuers' submission to the jurisdiction and appointment of an agent for service form, do you anticipate that this obligation will impose any significant practical or financial burden on these experts or issuers? If so, please explain why. Would your response change if the form requirement for foreign experts only concerned either submission to the jurisdiction or an appointment of an agent for service?

The Australian Institute of Geoscientists

PO Box 8463
Perth Business Centre
Perth W.A. 6849
Australia

Tel: 08 9427 0820

Fax: 08 9427 0821

Email aig@aig.org.au

AIG referred the proposal to members to seek individual feedback and also consulted legal advisors in Australia during the preparation of this submission. We consider that the CSA proposal will have negative and potentially detrimental impacts for both Canadian companies and, more broadly, existing international standards for provision of information to investors through reports detailing exploration results, mineral resources and ore reserves for mineral resource industry securities.

2. Proposed Amendments to General Prospectus Requirements

We understand that the proposed amendments will require all foreign experts or QPs to file a form on submission of a prospectus in which they will:

a) submit to the jurisdiction in which they are providing the expert report, opinion or statement that is to be included in a prospectus; and,

b) be required to appoint an agent for service in respect of any potential legal proceedings that could be brought against that expert in respect of that expert report, opinion or statement.

The proposed amendment would, in effect, require QPs to comply with the same requirements as solicitors, auditors, accountants, engineers or appraisers that are named in a prospectus as giving authority to a statement made in a prospectus.

This would be a novel requirement. As far as AIG is aware, it is not a current requirement in other jurisdictions, and it is not the case in our home jurisdiction, Australia.

We appreciate that the CSA is seeking to overcome any perceived difficulty in a plaintiff commencing civil proceedings against a foreign QP who has provided a report, opinion or statement for inclusion in a prospectus, however, it is important that the CSA understands the potential implications of these proposed amendments on the international system of mutual recognition of professional qualifications which has been developed in this industry.

AIG's primary purposes in this submission are to:

a) ensure that the CSA is fully informed about existing arrangements to ensure that QP's are subject to appropriate professional disciplinary procedures;

b) test whether there is a genuine problem which has led to this reform proposal, or whether it anticipates difficulties that rarely arise in practice;

c) outline how we anticipate that the reform may negatively impact upon our members; and,

d) explore whether there may be unintended or unanticipated consequences of the proposed reform which may be more avoided upon a more careful consideration of the issues.

AIG is also not aware of whether there is a genuine problem which has led to this reform proposal, or whether the proposal simply anticipates difficulties that rarely arise in practice.

3. Potential Implications

3.1 Agent for Service

As the proposal is currently put, international QPs will be required to appoint agents in foreign jurisdictions. While this sounds simple when applied only in Canada, the practical likelihood of implementation of this reform will be that other jurisdictions may see it as a barrier to their nationals, and will impose similar restrictions. This is likely to create an international system in which QPs will need to appoint agents in each jurisdiction in which they provide services, even sporadically.

This will, in turn, impose a significant administrative and financial burden on all QPs, including those in Canada, who will need to appoint agents in other jurisdictions in which they are engaged to provide expert reports. AIG believes that this may make experts less likely to be prepared to act as QPs, or may lead them to increase what they charge if they choose to act, particularly where they are only engaged to complete a single assignment in the jurisdiction.

AIG is also very concerned at the contents of an article written by Canadian law firm Fraser Milner Casgrain (FMC Law), in which it is suggested that where a QP is consulting on behalf of a firm or company in a particular Canadian jurisdiction, (say, British Columbia), that firm or company may be required to register in that jurisdiction as if it is carrying on business in that jurisdiction. If this is the case, it would impose a significant and additional financial burden on the firm or company in complying with the various financial reporting and taxation requirements imposed on firms and companies within the jurisdiction.

There is also the potential that a QP engaged to consult in, for example, British Columbia, would be required to register under any legislation in the jurisdiction, prior to accepting any consulting engagement. FMC Law has provided the Professional Engineers and Geoscientists Act in British Columbia as an example of this.

3.2 Submission to the Jurisdiction

The justification for requiring QPs to submit to the jurisdiction, and so removing what may at times represent a barrier to plaintiffs in Canada from bringing civil actions against QPs, raises two key concerns:

a) practicalities of its implementation – at this stage, it is not sufficiently clear how this will be implemented and any consequences that may arise as a result of these mechanisms; and,

b) whether the proposed amendments will have the practical consequence of encouraging plaintiffs to bring action against foreign entities with the expectation that they will be a “soft” settlement target because of their desire not to litigate in an unknown jurisdiction. Again, while this may be difficult to accept in a Canadian context, if this requirement is applied in multiple jurisdictions, one can well imagine how it will act as a practical disincentive to QP’s providing their services in those jurisdictions.

While AIG is open to mechanisms which may provide Canadian investors with comfort in this regard, it considers that the need for, and preferred mechanisms, of the proposed reform should be carefully considered before implementation.

4. AIG's Concerns

We contend that the proposed changes to 41-101 would create significant and unnecessary impediments to AIG members operating in Canada, especially QPs who act as independent, self-employed consultants and contractors, or are employed by small companies.

AIG is concerned that if its members are faced with a significant financial burden either to permit them to consult in foreign jurisdictions, or expose them to significant cost and legal uncertainty following the provision of their services, they will be disinclined to provide services in those foreign jurisdictions.

This will inevitably affect the Canadian mining industry in reducing the number of QPs willing to act in the jurisdiction.

Canadian companies participate in a global exploration and mining industry where it is frequently necessary for companies to use foreign QPs in overseas countries where they elect to pursue exploration, project development and acquisition opportunities. The proposed changes may have the unintended effect of restricting access to QPs to support overseas business activities of Canadian companies.

The proposal also has the potential to disrupt the international system of mutual recognition of professional qualifications established by QPs and their representative bodies over the past 20 years. This system is backed by the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) and the Recognised Overseas Professional Organisations (ROPO) system.

The CRIRSCO is a representative body formed in 1994 and made up of representatives that are responsible for developing mineral reporting codes and guidelines in Australasia (JORC), Canada (CIM), Chile (National Committee), Europe (National Committee PERC), South Africa (SAMREC) and the USA (SME). The aim of CRIRSO is to promote high standards of reporting of mineral deposit estimates and of exploration progress.

The ROPO system also ensures a consistent and reliable guide to quality of QPs.

AIG strongly supports the concept of the QP or CP embodied in the family of the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) compliant codes provides a high level of confidence that public reporting is transparent, material and correct. CRIRSCO is a representative body formed in 1994 and made up of representatives that are responsible for developing mineral reporting codes and guidelines in Australasia (JORC), Canada (CIM), Chile (National Committee), Europe (National Committee PERC), South Africa (SAMREC) and the USA (SME). The Recognised Overseas Professional Organisations (ROPO) system ensures a consistent and reliable guide to the quality of QPs.

The CRIRSCO/ROPO values and safeguards deliver a robust chain of accountability. Complaints against QPs are rare, and resort to legal action is even rarer – the proposed changes appear to be targeting a problem that does not exist. Given this, the benefits of finding and appointing agents in Canadian jurisdictions does not support the costs the exercise and AIG believes it is quite likely that it will result in unintended consequences detrimental to the Canadian capital markets as discussed above.

As with kindred bodies globally, the AIG is a strong supporter of CRIRSCO's efforts to bring consistency and stability within mining markets through promulgation of

standard reporting practices for Exploration Information, Mineral Resources and Mineral Reserves, using QPs that can freely practice within many countries.

The CSA's proposed requirements could likely result in equivalent regulations elsewhere (whether seen as retaliatory or simply to mimic the reform), further eroding the CRIRSCO reporting systems in both countries with existing CRIRSCO codes and in emerging markets which are looking to CRIRSCO and its members for assistance in developing their own reporting codes.

The underlying concept of the proposed changes – direct legal liability of QPs – is in our view an unnecessary and overly burdensome change. The responsibility for a prospectus must remain with the Issuer, not individual contributors. There is a very well established and functionally system already in place internationally to ensure that QPs are both personally liable to the Issuer for their reports and also subject to disciplinary sanctions from their professional body if they breach their obligations to their Code of Ethics.

We appreciate the opportunity to comment upon the proposed changes, and invite the CSA to engage further with the international geoscience community, including AIG, to ensure that the proposed amendments do not result in any unintended consequences for the Canadian or the international market.

The view of AIG, however, is that these proposed amendments have potential to restrict the practice of QPs generally, and particularly QPs from overseas jurisdictions. This will act to limit the ability of Canadian companies operating within a global industry to access appropriate professional services outside Canada, ultimately affecting their ability to comply with NI 43-101 and ensure investors benefit from the most appropriate and best quality advice available, in conflict with the principle objective of NI 43-101.

Yours sincerely,

Andrew Waltho
President, Australian Institute of Geoscientists