

May 2010

Comments Sought on Proposed Amendments to National Instrument 43-101 *Standards of Disclosure for Mineral Projects*

The Canadian Securities Administrators are requesting comments on proposed amendments (the “**Proposed Amendments**”) to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (“**NI 43-101**”). NI 43-101 contains the requirements respecting the disclosure of technical and scientific information in respect of mineral properties and the content and timing of technical reports that are required to be filed when such information is included in a “**disclosure document**”¹.

The deadline for submitting comments on the proposed changes is July 23, 2010. In our experience, comments that are submitted directly by affected companies are most persuasive. If you would like to submit comments on the Proposed Amendments, please contact us and we would be pleased to assist you.

Some of the more significant elements of the Proposed Amendments include the following:

Broadened trigger for updated technical report in response to certain written disclosure

NI 43-101 currently requires that a technical report be filed within 45 days of issuing a news release or directors’ circular that contains (i) first time disclosure of a preliminary economic assessment, mineral resources or mineral reserves that constitutes a material change in the affairs of the issuer, or (ii) a change in a preliminary economic assessment, mineral resources or mineral reserves from the most recently filed technical report that constitutes a material change in the affairs of the issuer².

The Proposed Amendments would make this trigger for the issuance of a technical report a catch-all provision that requires a technical report to be filed in connection with any other written disclosure that includes first time disclosure of a preliminary economic assessment, mineral resources or mineral reserves that is material to the issuer or a material change in such information. This new requirement would arguably extend to documents such as investor presentations.

Requirement to issue a News Release Announcing Filing of a Technical Report

When an issuer is required to file a technical report within 45 days of making certain written disclosure (as discussed immediately above), the Proposed Amendments would require that a news release be issued announcing the filing of the report. The news release must also reconcile any material differences in the preliminary economic assessment, mineral resources or mineral reserves as between the filed technical report and the initial disclosure. Currently, NI 43-101 only requires the issuance of a news release announcing the filing of a technical report if the report discloses

¹ “Disclosure documents” are a long form preliminary prospectus, an information circular concerning a shareholders’ meeting for an acquisition of a mineral property, an offering memorandum, a rights offering circular, an annual information form, a valuation required under securities legislation, a TSX-V short form offering document, certain takeover bid circulars for share exchange takeover bids, and, by virtue of the Proposed Amendments, any other written disclosure that makes first time disclosure of a preliminary economic assessment, mineral resources or mineral reserves on a material property or a change therein that is material.

² This is an exception to the general rule that if scientific or technical information is contained in a disclosure document that is not supported by a current technical report, a new technical report must be filed concurrently with such disclosure document.

material differences from disclosure in the initial news release that triggered the requirement to file the report.

Additional Time to File Technical Report in Respect of Acquired Property

As discussed above, the Proposed Amendments would require an issuer to file a technical report regarding a material property within 45 days of making “any other written disclosure” containing first time disclosure for that property of a preliminary economic assessment, mineral resources or mineral reserves or a material change in any such information. The Proposed Amendments would extend the 45-day period to 6 months if this information is already contained in another issuer’s technical report.

Requirement to File a Technical Report in Connection with a Short Form Prospectus

NI 43-101 currently requires an issuer to prepare and file a technical report in respect of material scientific or technical information about a mineral project contained in a preliminary short form prospectus that is not supported by a previously filed technical report. The regulators are specifically considering whether to retain, modify or remove this requirement, and are soliciting comments to assess the regulatory impact and costs associated with the requirement. Feedback should address whether the extra costs and delays associated with preparing a new technical report are a significant concern to industry and a barrier to accessing the short form prospectus system.

New consent requirements for short form prospectus offerings

The Proposed Amendments would allow the consulting firm that employed a qualified person who authored a technical report to consent, on behalf of that qualified person, to reference to and use of the technical report in a short form prospectus. Currently, every author of a technical report referred to or used in a short form prospectus (directly or indirectly through an annual information form incorporated by reference in the prospectus) must consent to the filing of the final short form prospectus. This is often problematic where the author is no longer with the consulting firm that prepared the technical report or is otherwise unavailable.

Additional technical report form requirements for “advanced properties”

Under the current rule, technical reports for “development and production properties” must contain disclosure of additional items (so-called Item 25 disclosure). This additional disclosure covers mining operations and certain economic and environmental aspects of the property.

The Proposed Amendments introduce the concept of an “advanced property” as one for which:(i) the potential economic viability of its mineral resources is supported by a preliminary economic assessment, or (ii) the economic viability of its mineral reserves is supported by a preliminary feasibility study or a feasibility study. Under the Proposed Amendments, Item 25 will apply to all “advanced properties”. As a consequence, the additional disclosure required by Item 25 will be required at an earlier stage of development than is currently the case.

The Proposed Amendments would also replace Item 25 with additional disclosure in eight new items that are intended to address the major components of a preliminary economic assessment, pre-feasibility study or feasibility study.

Broadened scope of “historical estimates”

NI 43-101 currently defines “historical estimates” as estimates in respect of mineral resources or reserves made prior to February 1, 2001. Historical estimates are permitted to be disclosed in limited circumstances and even if they do not conform with the requirements of NI 43-101 (i.e., do not follow the rules for categorizing mineralization as proven or probable mineral reserves or measured, indicated or inferred mineral resources). The Proposed Amendments would broaden the definition of historical estimates to include those made by third parties at any time (i.e., including after February

1, 2001) if the estimates were prepared prior to the issuer acquiring, or entering into an agreement to acquire, an interest in the subject property. The Proposed Amendments require enhanced disclosure and cautionary language with regard to all historical estimates.

Project development and production decision disclosure in management’s discussion and analysis

Consequential amendments to the required form of MD&A would require issuers with producing mines or mines under development to identify milestones such as mine expansion plans, productivity improvement plans or production decisions, and to state whether those milestones are supported by a technical report.

Use of Foreign Codes

The Proposed Amendments would allow issuers to make disclosure and file a technical report that complies with a foreign mining code that is generally accepted in a foreign jurisdiction without providing reconciliation to NI 43-101 mineral resource and mineral reserve categories where (i) the issuer is incorporated in a foreign jurisdiction, or (ii) the mine which is the subject of the technical report is located in a foreign jurisdiction.

The Proposed Amendments would also revise the definitions of “professional association” and “qualified person” to replace prescriptive lists with objective standards to expand the scope of eligible associations and persons.

Exemption from independence requirement for secondary listings in Canada

The Proposed Amendments would exempt “producing issuers” with securities traded on a “specified exchange”³ from the requirement to file an independently prepared technical report upon becoming a reporting issuer in Canada.

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If you would like a copy of the proposed amendments to NI 43-101 or would like to discuss any of the proposed amendments or assistance in preparing any comments on them, please contact any of our partners listed below, each of whom is familiar with NI 43-101.

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³ The list of “specified exchanges” currently includes the Australian Securities Exchange, the Johannesburg Stock Exchange, the London Stock Exchange Main Market, the Nasdaq Stock Market, the New York Stock Exchange and the Hong Kong Stock Exchange.