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Proposed Revisions to National Instrument 43-101, *Standards of Disclosure for Mineral Projects*

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On April 23, 2010, Canadian Securities Administrators (CSA) published for comment proposed revisions to National Instrument 43-101, *Standards of Disclosure for Mineral Projects* (NI 43-101). The proposed revisions are the culmination of a comprehensive review of the current instrument, which was announced in January 2009 and which included consultation with market participants on a range of issues. The CSA notice announcing the amendments to NI 43-101 (the CSA Notice) also includes a substantially revised form of technical report and a revised companion policy.

Technical Reports

Form. The form of technical report included with the amended instrument has been substantially revised. The amended instrument would retain a single form of technical report; however, the CSA's stated intention is to make the form less prescriptive and more adaptable for advanced stage development and producing properties.

Filing to support written disclosure of a preliminary economic assessment, mineral resources or mineral reserves. Subject to certain conditions, an issuer may delay the filing of a technical report for six months following the issuer's first disclosure of a preliminary economic assessment, mineral resources or mineral reserves regarding a property if another issuer that holds or previously held an interest in that property previously disclosed the preliminary economic assessment, mineral reserves or mineral resources and filed a technical report to support the disclosure.

Filing consents and certificates of qualified persons. The amended instrument would remove the requirement to file updated consents and certificates of qualified persons regarding written disclosure of scientific or technical information supported by a previously filed technical report, provided that (i) there is no new material scientific or technical information concerning the property not included in the previously filed technical report, and (ii) the technical report continues to meet applicable independence requirements.

Definition of qualified persons. The amended instrument proposes to replace the list of acceptable foreign professional associations to which a qualified person must belong with a list of requirements that such associations must meet in order to be acceptable.

Exemption from the independence requirement for qualified persons. Technical reports for producing issuers that are new reporting issuers in Canada and whose securities trade on certain specified exchanges would not have to be prepared by or under the supervision of an independent qualified person.

To discuss these issues, please contact the authors.

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This bulletin is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this bulletin with you, in the context of your particular circumstances.

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Exemptions from filing technical reports. The amended instrument would also include exemptions from the obligation to file a technical report for certain holders of royalty interests and for issuers that become reporting issuers and that have previously filed technical reports, subject, in each case, to certain conditions.

Short Form Prospectus Distributions

The CSA Notice indicates an intention to resolve certain practical issues regarding compliance with NI 43-101 within the time frames contemplated by short form prospectus distributions. The CSA Notice includes a proposed amendment to NI 44-101, *Short Form Prospectus Distributions* (NI 44-101), to permit an issuer that is required under NI 44-101 to obtain and file an expert consent from a qualified person concurrently with filing the short form prospectus to obtain a consent from the qualified person's firm rather than the qualified person, subject to certain conditions.

In addition, the CSA is seeking comment on a proposal to delete short form prospectuses from the list of documents whose disclosure may trigger the requirement to file a technical report.

Additional Disclosure Flexibility

Preliminary economic assessment. The amended instrument would allow issuers to disclose a preliminary economic assessment that includes or is based on inferred mineral resources, provided that disclosure includes the impact of the assessment on the results of any preliminary feasibility or feasibility study in respect of the relevant property. This amendment would allow for the preparation of preliminary economic assessments after a preliminary feasibility or feasibility study is completed. Disclosure of a preliminary economic assessment would no longer require that its results be a material change or a material fact with respect to the issuer, as is currently the case for preliminary assessments.

Historical estimates. The amended instrument would allow issuers to disclose historical estimates of the quantity, grade or metal or mineral content of a deposit prepared by a third party on or after February 1, 2001 but before the issuer acquired or agreed to acquire the property. The current instrument only permits disclosure of such historical estimates prepared before February 1, 2001. Issuers will be required to comment on the work needed to update or verify the historical estimate as a current mineral resource or mineral reserve and to include certain additional disclaimer language.

Alternative mineral resource and mineral reserve categories under certain prescribed foreign mining codes. The amended instrument proposes to replace the prescribed list of acceptable foreign mining codes with an objective test for determining which codes are acceptable and to delete the requirement to reconcile mineral resource and reserve categories under acceptable foreign codes to Canadian Institute of Mining, Metallurgy and Petroleum standards in the technical report.

Request for Comments

The CSA has requested comments on the proposed revisions, as well as on specific questions, by July 23, 2010. Please contact us if you have any questions or if we can assist with formulating comments on the amended instrument or transmitting your comments to the CSA.

For further information, please see [CSA Notice and Request for Comment](#). 