

Annex A

Text of Proposed CSA Notice

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are proposing to repeal and replace the current National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Instrument**) and Form 43-101F1 *Technical Report* (the **Form**) with a streamlined instrument and form. We are also proposing to rescind and replace the current Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Companion Policy**) with a new companion policy. The Modernized Disclosure Requirements, as defined below, are intended to modernize and streamline Canada's mining disclosure regime and continue to protect investors, without imposing an undue regulatory burden on market participants.

We are preparing the following:

- proposed National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Proposed NI 43-101**) and Form 43-101F1 *Technical Report* (the **Proposed Form**), including a repeal of the Instrument and the Form;
- proposed Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Proposed Companion Policy**), including a rescission of the Companion Policy;
- proposed consequential amendments to existing rules:
 - National Instrument 44-101 *Short Form Prospectus Distributions*;
 - National Instrument 44-102 *Shelf Distributions*;
 - Form 45-106F3 *Offering Memorandum for Qualifying Issuers*;
 - Form 51-102F2 *Annual Information Form*;
 - Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*; and
- proposed consequential changes to Companion Policy 51-105CP to Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*

(collectively, the **Modernized Disclosure Requirements**).

Substance and Purpose

Canada plays a leading role in mining capital formation. Canada's mining disclosure regime is recognized internationally as the standard for mineral project disclosure. The Modernized

Disclosure Requirements will allow the CSA to continue to protect investors and preserve Canada's leading role in facilitating efficient capital formation for mining issuers.

The Modernized Disclosure Requirements aim to update and enhance Canada's mining disclosure regime to address evolving disclosure practices and policy considerations identified by CSA staff, and to reflect changes in the industry and investor expectations. As further discussed below in the Summary of the Modernized Disclosure Requirements section, the Modernized Disclosure Requirements are designed to:

- remove or replace certain definitions that have become outdated;
- modernize and streamline certain requirements to reflect current industry practice;
- remove certain requirements that have become outdated;
- provide clarification and guidance on certain definitions and requirements; and
- make other minor drafting changes to clarify disclosure requirements.

Background

Since the last amendments in 2011, the CSA have continually monitored the mineral disclosure requirements in the Instrument, and gathered data evidencing deficiencies identified through continuous disclosure reviews, prospectus reviews and targeted issue-oriented reviews.

In April 2022, the CSA published Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* (the **Consultation Paper**), seeking information to inform potential amendments to Canada's mining disclosure regime. We received a total of 85 comment letters from various market participants, including reporting issuers, individuals, consulting and law firms, regulatory organizations and advocacy groups, including groups representing Indigenous Peoples.

Summary of the Modernized Disclosure Requirements

The Modernized Disclosure Requirements are amendments and changes to address evolving disclosure practices and policy considerations. The Modernized Disclosure Requirements also address the comments expressed by various market participants from the Consultation Paper.

The Modernized Disclosure Requirements include the following amendments and changes:

Changes to terms and definitions

a. Mineral project

The current Instrument, Companion Policy and Form use the terms "mineral project", "project", "mineral property" and "property" interchangeably. The Modernized Disclosure Requirements add clarity by replacing these terms with "mineral project".

The current definition treats diamonds, base metals, precious metals and industrial metals as separate categories. The Modernized Disclosure Requirements clarify the definition of “mineral project” by removing these terms to reflect that we consider them as examples of natural inorganic material or natural solid fossilized organic material.

b. Early stage and advanced properties

The current Instrument defines “early-stage exploration property” and “advanced property”. The Modernized Disclosure Requirements remove these definitions to make the Proposed Form suitable for all mineral project stages, which addresses concerns raised by issuers that have projects at various stages.

c. Qualified person

The gatekeeping role of the qualified person is essential to protect the investing public. The Modernized Disclosure Requirements update the qualified person definition to:

- remove the education requirement as it is covered by professional licencing criteria,
- clarify that an individual’s experience in the minerals industry must be gained after registration as a professional geologist or engineer, and
- clarify the meaning of experience relevant to the subject matter of the mineral project.

The Modernized Disclosure Requirements also clarify that all disclosure of scientific or technical information for material or non-material projects must be based on information prepared or approved by a qualified person. This change aligns with current industry practice and will result in consistent disclosure to investors.

d. Foreign codes

Since 2011, all major international mining jurisdictions, including Canada, have harmonized their definitions for mineral resources, mineral reserves and mining studies to align with those of the Committee for Mineral Reserves International Reporting Standards (**CRIRSCO**), the international organization that represents more than 85% of global jurisdictions with mineral project reporting standards. The Canadian Institute of Mining, Metallurgy, and Petroleum (**CIM**) is the Canadian member of CRIRSCO and maintains the definitions in the Canadian context. The current Instrument incorporates by reference the CIM Definition Standards on Mineral Resources and Reserves (**CIM Definition Standards**), which aligns the CSA’s mining disclosure requirements with CRIRSCO standards. The current Instrument also permits foreign issuers to refer to similar definitions in standards in their jurisdiction that are similar to the CIM Definition Standards.

As CIM definitions standards are sufficiently similar to other jurisdictions, we no longer need to allow issuers to rely on other reporting codes. The Modernized Disclosure Requirements remove

these defined foreign codes so that technical report disclosure will require disclosure aligned with the CIM definitions of mineral resources, mineral reserves and mining studies.

New CIM definitions

As part of the CSA's initiative to align the Modernized Disclosure Requirements with industry practice, CIM has been working in parallel with the CSA to include additional definitions in the CIM Definition Standards.

The following definitions will be included in the CIM Definition Standards and incorporated by reference in the Proposed NI 43-101:

- “scoping study” – this new CIM definition replaces the definition of “preliminary economic assessment” (**PEA**) in the current Instrument. PEA disclosure has been an area of significant non-compliance, particularly related to disclosure of a PEA after establishing mineral reserves, which has led to staff interventions and refiling of technical reports. We continue to require specific cautionary statements to alert investors about the conceptual nature of scoping studies;
- “exploration target” – this CIM definition replaces the expression “target for further exploration” in the current Instrument to align with global standards;
- “life of mine plan” – this new CIM definition will be used when disclosing mineral project status while in production to align with global standards.

Royalty issuer technical reports

An issuer that has only a royalty or similar interest in a mineral project is currently required to file a technical report. These reports provide limited information, as a royalty issuer's qualified person does not usually have access to the owner's data and cannot complete a current personal inspection or verify technical information. The Modernized Disclosure Requirements remove the requirement for a royalty-only issuer to file a technical report.

Environmental and social issues

Over the last decade, CSA staff have seen an increase in public and investor awareness of environmental and social issues related to mineral projects. However, disclosure requirements related to environmental, permitting and social matters in a technical report have remained largely unchanged since 2001. The Modernized Disclosure Requirements enhance certain terminology, for example by using the broad term “rightsholders” and replacing outdated terms such “local” and “social and community impact”. The requirements in technical reports have also been adjusted to require the dates and sources of any environmental, permitting and social reporting disclosure so the public knows whether the information is current, given the non-periodic, milestone-driven nature of a technical report.

Indigenous Peoples, rightsholders and communities

We considered feedback from the Consultation Paper, including from groups representing Indigenous Peoples in Canada about whether specific disclosure of the risks and uncertainties related to the rights of Indigenous Peoples or an issuer's relationship with Indigenous Peoples should be mandatory in a technical report, and if we should require the qualified person or other expert to validate the issuer's disclosure of significant risks and uncertainties related to its existing relationship with Indigenous Peoples. Many commenters noted that technical reports are milestone-driven documents triggered to support an issuer's scientific and technical disclosure about its material mineral projects, and that disclosure of an issuer's relationship generally with Indigenous Peoples and the impact on its business generally should more appropriately form part of the issuer's ongoing continuous disclosure record. The Modernized Disclosure Requirements will instead require disclosure in a technical report specifically about permits, agreements and negotiations with Indigenous Peoples, rightsholders or communities concerning the mineral project, as that disclosure is relevant in a technical report in order for investors to fully understand and appreciate the risks and uncertainties relating to a mineral project.

We remind issuers that existing disclosure obligations under Canadian securities laws require issuers to disclose material information to investors. These disclosure obligations apply irrespective of specific disclosure requirements under the Instrument or Form. Issuers need to assess whether information related to the issuer's relationships, engagement and agreements with Indigenous Peoples, rightsholders or communities is material information that is required to be disclosed under Canadian securities laws.

Current personal inspection requirement

The current personal inspection requirement is a foundational element of the qualified person's role as a gatekeeper to the investing public. It enables the qualified person to become familiar with conditions on the property, to observe the property geology and mineralization, and to verify the work done on the property. The Modernized Disclosure Requirements enhance this current requirement by including a new standalone item in the Proposed Form for disclosure specific to the current personal inspection by each qualified person, highlighting this important element of the technical report.

Removal of deferred current personal inspection

The current Instrument allows for a deferral of the current personal inspection of the mineral project by a qualified person due to seasonal weather conditions, provided that the personal inspection is conducted as soon as possible and the technical report is refiled. In recent years, this provision has been rarely used and when it was used, there was non-compliance with the refiling requirement. The Modernized Disclosure Requirements remove the ability to defer a current personal inspection requirement and reinforce that at least one qualified person must conduct a current personal inspection on the mineral project before a technical report is filed.

Mineral resource disclosure

Mineral resource estimates represent a significant milestone for all issuers with mineral projects and these estimates are considered the foundation for all subsequent engineering studies and economic analysis of a mineral project. In November 2019, CIM published a review '*Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines*' to assist issuers and qualified persons in preparing mineral resource estimates. In June 2020, we published CSA Staff Notice 43-311 *Review of Mineral Resource Estimates in Technical Reports* in which staff noted several observed deficiencies in disclosure of mineral resource estimates. As a result, since 2020 we have generally seen enhanced disclosure by qualified persons in technical reports explaining how the mineral resource estimate was determined. To ensure fulsome, comparable disclosure continues to be provided, the Modernized Disclosure Requirements codify current industry practice by requiring:

- information about how reasonable prospects for eventual economic extraction were determined,
- enhanced disclosure about the classification of mineral resource estimates,
- the issuer's attributable percentage of resources for fractional ownerships, and
- project-specific risk disclosure requirements for mineral resource estimates.

Adjacent properties

Disclosure by an issuer about a property adjacent to its project is often used for promotional purposes in technical reports and other documents. The Modernized Disclosure Requirements ensure that while an issuer may still discuss neighbouring mineralization, it cannot focus on this type of disclosure and must include cautionary statements that this information is not necessarily indicative of mineralization on the issuer's mineral project.

Data verification

We have seen examples of inadequate disclosure of data verification at every development stage of a mineral project. Many qualified persons incorrectly apply data verification only to exploration and drilling activities and not to other technical data, such as metallurgy or mining methods. The Modernized Disclosure Requirements require specific disclosure about the data verification performed by qualified persons for each item of the technical report.

Disclaimers

The current Instrument limits the use of disclaimers in a technical report but not in other disclosure. Issuers have therefore used disclaimers in other documents without regard for the veracity of the disclosure of scientific and technical information about a mineral project. The Modernized

Disclosure Requirements clarify that an issuer's disclosure (including a technical report) cannot include any disclaimer of scientific or technical information.

Written disclosure and material mineral projects

Under the current Instrument, there are many prescribed requirements for written disclosure pertaining to scientific and technical information that only apply to an issuer's material mineral projects. The Modernized Disclosure Requirements clarify that the prescribed requirements for written disclosure apply to material and non-material mineral projects. The requirements apply to written disclosure regarding data verification, exploration information, and mineral resources and mineral reserves. This change aligns with current industry practice and will result in consistent disclosure to investors.

Relevant scientific and technical information

Technical reports are intended to provide a summary of scientific and technical information about an issuer's material mineral projects. The Modernized Disclosure Requirements replace the phrase "material scientific and technical information" with "relevant scientific and technical information" related to the content of a technical report. This change clarifies that the qualified person is not expected to determine materiality but is expected to determine what information is relevant to the mineral project for the purpose of the technical report.

Other amendments and changes

The Modernized Disclosure Requirements include several more minor changes to enhance and clarify mining disclosure for investors.

Companion Policy

The Modernized Disclosure Requirements introduce new Companion Policy guidance specific to disclosure in technical reports. This is the first time the CSA will offer guidance on the Form, which we expect will provide significant assistance to qualified persons who author technical reports.

Consequential Amendments and Changes

As part of this modernization project, the CSA also proposes to make consequential updates to existing instruments and policies to reflect the Modernized Disclosure Requirements' new numbering convention. In many cases, the proposed amendments involve revising or deleting references to provisions found in the current Instrument. In certain instruments, we propose to make certain housekeeping amendments, such as repealing or deleting transitional provisions that are no longer applicable and correcting grammatical or typographical errors.