

Canadian Securities Administrators**Notice and Request for Comment****Proposed Repeal and Replacement of National Instrument 43-101
*Standards of Disclosure for Mineral Projects, Form 43-101F1 Technical Report, and
Companion Policy 43-101CP*****Date: April 23, 2010****Introduction**

We, the Canadian Securities Administrators (CSA), are publishing for a 90-day comment period the following proposed documents:

- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the Amended Instrument)
- Form 43-101F1 *Technical Report* (the Amended Form)
- Companion Policy 43-101CP (the Amended Companion Policy)

(together, the Amended Mining Rule), and

consequential amendments to

- National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101)
- Form 51-102F1 *Management's Discussion and Analysis* (MD&A)
- Form 51-102F2 *Annual Information Form*
- National Instrument 45-106 *Prospectus and Registration Exemptions*
- National Instrument 45-101 *Rights Offerings*

(together, the Consequential Amendments).

The Amended Mining Rule would replace current National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the Current Instrument), current Form 43-101F1 (the Current Form), and current Companion Policy 43-101CP (the Current Companion Policy) (together, the Current Mining Rule), which came into effect in all CSA jurisdictions on December 30, 2005.

Concurrently with this Notice, we are publishing the Amended Mining Rule, blacklines showing all changes from the Current Instrument and the Current Form, and the Consequential Amendments. These documents are also available on the websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com

- www.sfsc.gov.sk.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.nbsc-cvmnb.ca

Substance and Purpose of the Amended Mining Rule

We have been monitoring the Current Mining Rule since we adopted it. In the spring of 2009, CSA members in British Columbia, Ontario, and Quebec carried out focus group discussions with market participants from various sectors, and consulted with their advisory committees, concerning a range of issues related to the Current Mining Rule. These CSA members, as well as CSA members in Alberta and Saskatchewan, also solicited written comments from market participants. The proposed changes in the Amended Mining Rule reflect our analysis of the results of these consultations and our own experiences with the Current Mining Rule.

The proposed changes in the Amended Mining Rule and the Consequential Amendments

- eliminate or reduce the scope of certain requirements
- provide more flexibility to mining issuers and qualified persons in certain areas
- provide more flexibility to accept new foreign professional associations, professional designations, and reporting codes as they arise or evolve
- reflect changes that have occurred in the mining industry, and
- clarify or correct areas where the Current Mining Rule is not having the effect we intended

Summary of Key Proposed Changes

This section describes the key changes in the Amended Mining Rule. It is not a complete list of all the changes.

Amended Instrument

Part 1 Definitions and Interpretation

We have:

- added a definition of “acceptable foreign code”, and amended the definitions of “professional association” and “qualified person”, to replace prescriptive lists with objective tests that will accommodate changes without formal amendment
- amended the definition of “historical estimate” to permit disclosure of third party estimates made after 2001
- expanded the definition of “preliminary economic assessment” to include preliminary economic analyses after the completion of a pre-feasibility or feasibility study

Part 2 Requirements Applicable to All Disclosure

We have:

- clarified restricted disclosure in paragraphs 2.3(1)(b), (c), and (d) to reflect our interpretation of the current provisions

- added paragraph 2.3(3)(c) to require disclosure of the impact of a preliminary economic assessment completed after a pre-feasibility or feasibility study
- expanded section 2.4 to consolidate the existing disclosure requirements for historical estimates (sections 3.4 and 4.2(2) of the Current Instrument) and to require comment on the work needed to verify the historical estimates

Part 3 Additional Requirements for Written Disclosure

We have expanded section 3.1 to allow an issuer to name the qualified person who approved the disclosure of the scientific and technical information, as an alternative to naming the qualified person who prepared or supervised the preparation of the information.

Part 4 Obligation to File a Technical Report

We are requesting specific comment on whether to keep or eliminate the technical report trigger in paragraph 4.2(1)(b) for a short form prospectus (see the discussion below under **Request for Comment on the Amended Mining Rule and Consequential Amendments**).

In addition, we have:

- expanded the technical report trigger in paragraph 4.2(1)(j) to include any first time written disclosure of mineral resources, mineral reserves, or preliminary economic assessments
- amended subsection 4.2(5) to require the issuance of a news release disclosing the filing of the technical report in all circumstances where the filing delay applies, to alert the market that the technical report has been filed
- added a new exemption in subsection 4.2(7) that allows a conditional 6-month filing delay for a technical report supporting mineral resources, mineral reserves, or a preliminary economic assessment, if these estimates are supported by a current technical report filed by another issuer
- removed the requirement in subsection 4.2(8) to file updated certificates and consents of qualified persons, and clarified that the previously filed technical report must meet any independence requirements for the subsequent trigger

Part 5 Author of Technical Report

Subsection 5.3(2) provides a new exemption for producing issuers whose securities trade on a specified exchange, from the independence requirement in relation to a technical report filed only as a result of the producing issuer becoming a reporting issuer in Canada.

In subsection 5.3(3), we have expanded the current exemption for producing issuers from the independence requirement in relation to a technical report filed under section 4.2, to include all triggers under section 4.2.

Part 6 Preparation of Technical Report

Although the limitation on disclaimers in section 6.4 is unchanged, we have amended the permitted disclaimers in Item 3 of the Amended Form (see the discussion below under **Amended Form**).

Part 7 Use of Foreign Code

We have removed the prescriptive list of acceptable foreign codes and the requirement for issuers to reconcile foreign resource and reserve categories to current categories as defined by the Canadian Institute of Mining, Metallurgy and Petroleum.

Part 8 Certificates and Consents of Qualified Persons for Technical Reports

We have provided a new exemption, in subsections 8.3(2) and (3), from including certain statements in the consents of qualified persons for technical reports filed only as a result of the issuer becoming a reporting issuer in Canada.

Part 9 Exemptions

Subsection 9.2(1) provides a new exemption to royalty holders from the requirement to file a technical report, if the operator of the mineral project is subject to the Amended Instrument or its securities trade on a specified exchange and certain other conditions are met.

Amended Form

We developed the Amended Form with the assistance of a subcommittee of CSA's Mining Technical Advisory and Monitoring Committee.

We have substantially amended the Current Form to make it less prescriptive and more adaptable for advanced stage and producing properties. These changes will allow the qualified person more discretion regarding the amount of information and level of detail required under each section, based on their assessment of the relevance and significance of the information in the overall context and stage of development of the property.

In addition, we have:

- broadened Item 25 of the Current Form to apply to all advanced stage properties and replaced it with eight new items that reflect the major components or topics of a preliminary economic assessment, pre-feasibility study, or feasibility study
- amended *Reliance on Other Experts* to allow the qualified person to rely on and disclaim responsibility for certain information provided by the issuer and certain pricing and valuation information provided by experts who are not qualified persons
- amended Instruction (5) to allow qualified persons to refer to any information in previously filed technical reports, to the extent that it is still current, but require them to summarize or quote this information in the current technical report so the reader does not have to find and read multiple reports
- under *Data Verification*, added a requirement for the qualified person to comment on the adequacy of the data
- amended *Mineral Processing and Metallurgical Testing* to be more specific about the information required and to add a requirement to discuss any potential processing factors or deleterious elements
- exempted producing issuers from the requirement to include information under *Economic Analysis* for their producing properties

Amended Companion Policy

We have structured the Amended Companion Policy so that it tracks the sections of the Amended Instrument to which the guidance applies. We have also updated and streamlined much of the guidance in the Current Companion Policy, and eliminated guidance that is no longer useful.

In addition, we have:

- under General Guidance, added guidance on forward-looking information, and a property material to the issuer
- in section 1.1, added guidance on certain definitions in the Amended Instrument, including the new definition of “acceptable foreign code”, the revised definitions of “professional association” and “qualified person”, and our interpretation of “property”
- incorporated and updated Appendix A as guidance on recognized acceptable foreign associations (now in the Current Instrument)
- in subsections 2.3(3) and 2.4(1), expanded the guidance on the use of cautionary language, including our interpretation of “equal prominence”
- in section 4.2, added guidance on certain technical report triggers in the Amended Instrument, and on related issues including property acquisitions, production decisions, shelf life of technical reports, preliminary economic assessments, and the filing of technical reports not required by the Amended Instrument
- in subsection 4.2(13), proposed guidance on the impact of removing the short form prospectus trigger for a technical report, which will only be adopted if we decide to eliminate the trigger (see the discussion below under **Request for Comment on the Amended Mining Rule and Consequential Amendments**)
- in Part 5, clarified certain issues regarding qualified persons, including relevant experience requirements for supervising qualified persons, the involvement of non-independent qualified persons in preparing independent technical reports, and taking responsibility for information incorporated from other reports
- in section 5.3, added guidance on the independence requirement and what constitutes a 100 percent or greater change to a mineral resource or mineral reserve
- in Part 8, added guidance on certificates and consents, including consents for technical reports not required by the Amended Instrument

Consequential Amendments

The Consequential Amendments, as summarized below, are contained in Appendices A to D of this Notice.

NI 44-101 amendment

This proposed amendment permits an issuer that is required to obtain an expert consent from a qualified person, in connection with a previously filed technical report, to obtain the expert consent from the firm that employed the qualified person at the date of signing the technical report, rather than from the qualified person. This would ease the situation faced by an issuer filing a short form prospectus when the qualified person who authored the technical report is no longer available or able to provide the required consent.

Two conditions apply. First, the firm's principal business must be providing engineering or geoscientific services. Second, the person signing the consent on behalf of the firm must be both an authorized signatory of the firm and a person who satisfies the conditions in paragraphs (a) and (c) of the definition of qualified person.

MD&A amendment

This proposed amendment requires a resource issuer to disclose in its MD&A whether a significant milestone such as a production decision is based on a technical report filed under the Amended Instrument.

During our public consultations in the spring of 2009, participants generally agreed that an issuer should fully disclose the associated risks if its production decision is not based on a feasibility study or on mineral reserves. The proposed MD&A amendment, in conjunction with new guidance provided in subsection 4.2(5) of the Amended Companion Policy, would elicit this disclosure.

Other consequential amendments

The other proposed amendments eliminate outdated cross-references to the Current or Amended Instrument.

Anticipated Costs and Benefits

We are proposing the Amended Mining Rule and the Consequential Amendments because of issues identified through regulatory reviews, applications for exemptive relief, and public comment and consultation. We think the proposed changes represent more efficient and effective regulation that will reduce issuers' costs to comply with the Amended Mining Rule without compromising investor protection.

Some of the proposed changes codify current disclosure practices or improve drafting in the Current Mining Rule. In addition, we have identified the following specific changes for which we considered the anticipated costs and benefits to various stakeholders.

Updated certificates and consents (subsection 4.2(8) of the Amended Instrument)

The Amended Instrument eliminates the requirement to provide updated certificates and consents for a previously filed technical report that is still current. There is no requirement in the Current Instrument to provide updated certificates and consents related to annual information forms or short form prospectuses and this change treats other filings in the same manner.

Qualified persons often work in remote locations and can be unreachable on short notice. Alternatively, at the time an issuer is seeking an updated certificate and consent, the qualified person might not work for the same firm as when they wrote the technical report. For these reasons, it can be difficult or impossible for an issuer to obtain an updated certificate and consent. In addition, unless the qualified person recently worked on the mineral property, the issuer is in the best position to determine if there is new material scientific or technical information about the property. We think investors are still protected without this requirement due to the transparency of the issuer's determination that there is no material scientific or technical information about the property that is not contained in an existing technical report.

NI 44-101 amendment

As is the case with updated consents under the Current Instrument, issuers can have difficulties contacting qualified persons to provide expert consents necessary to complete a short form prospectus offering under NI 44-101. Issuers can therefore face an unpredictable delay or inability to obtain a prospectus consent, which might jeopardize completion of their offering.

The NI 44-101 amendment allows the consulting firm that employed the qualified person who prepared the issuer's technical report to consent, in place of the qualified person, to the use of the technical report in a short form prospectus. Allowing the consulting firm to provide a prospectus consent will eliminate this delay while ensuring a technically proficient person has reviewed the prospectus disclosure and consents to the use of the technical report. Moreover, the NI 44-101 amendment maintains the same liability regime for investors against the consulting firm in the event the prospectus contains materially misleading scientific or technical disclosure.

Comparable foreign standards

The Amended Instrument recognizes foreign standards for qualified persons and mining disclosure that are more consistent and comparable to standards in Canada and other international mining jurisdictions. For example, the Amended Instrument exempts a foreign producing issuer listed on a specified exchange from the requirement to have an independent qualified person prepare its technical report when it first becomes a reporting issuer. This exemption should facilitate additional Canadian listings by foreign producing issuers by recognizing that they already satisfy comparable foreign standards for scientific or technical disclosure.

Royalty holders (subsection 9.2(1) of the Amended Instrument)

The Current Instrument applies to issuers holding a royalty interest in a mineral project. Often the scientific or technical information on the mineral project underlying a royalty interest is material information about the issuer holding the royalty interest. However, because royalty holders have limited access to project data, their technical reports are often based on the scientific and technical information disclosed by the owner of the mineral project. This results in duplicative disclosure with no additional benefit to the users of the royalty holder's technical report.

The Amended Instrument exempts the royalty holder from the requirement to prepare a technical report if the information concerning the project is publicly available, and was prepared by an issuer that is subject to the Amended Instrument or a producing issuer listed on a specified exchange. This exemption will reduce the regulatory burden for royalty holders while providing investors with access to the same information currently available.

Property acquisitions (subsection 4.2(7) of the Amended Instrument)

We understand that in some cases when an issuer acquires a material property, the issuer's due diligence does not provide the necessary scientific and technical information to prepare a new independent technical report within the 45-day filing period. The Amended Instrument extends the deadline to file a technical report on a newly acquired property to six months if another issuer previously filed a technical report on the acquired property and that report is still current. We do not think this extension would compromise investor protection because investors would still have access to a current technical report on the acquired property.

Request for Comment on the Amended Mining Rule and Consequential Amendments

We invite comment on the Amended Mining Rule and the Consequential Amendments generally. In addition, we have the following specific questions for your consideration.

Short form prospectus trigger

We are considering whether to keep, modify or eliminate the short form prospectus trigger for a technical report (paragraph 4.2(1)(b) of the Amended Instrument). As well as soliciting comments, we are surveying certain issuers directly to assess the regulatory impact and costs associated with this requirement. Specifically, we are surveying issuers that filed a technical report solely to support disclosure in a preliminary short form prospectus, where the receipt was issued during the period March 2006 until December 2009. In addition, we are surveying a representative sample of issuers that were eligible to file a short form prospectus in 2009. We are not making these issuer surveys generally available because they are targeted at specific groups of issuers. However, you can view the questions in the surveys by [clicking here](#).

We understand that the requirement to prepare a new technical report imposes extra costs and limits an issuer’s ability to complete these offerings on a timely basis. Feedback should confirm whether the extra costs and delays are a significant concern to industry and whether investors think they will be disadvantaged if the scientific or technical disclosure in a short form prospectus is not supported by a technical report. Comments and survey responses will help us determine if the reduced costs to issuers of eliminating this requirement would outweigh the benefit to investors of keeping it.

The table below illustrates the effect of eliminating the short form prospectus trigger in three situations. In each situation, there is new material scientific or technical information about a property material to the issuer that is not supported by a previously filed technical report. (An issuer can rely on a previously filed technical report if there is no new material scientific or technical information.)

	<u>Case 1</u> New information is not a material change in the affairs of the issuer	<u>Case 2</u> New information is a material change in the affairs of the issuer but not first disclosure of, or a material change to, mineral resources, mineral reserves, or a preliminary assessment	<u>Case 3</u> New information is a material change in the affairs of the issuer and also first disclosure of, or a material change to, mineral resources, mineral reserves, or a preliminary assessment
Short form trigger	New technical report required	New technical report required	New technical report required
Delete short form trigger	No new technical report required	No new technical report required	No new technical report required with short form prospectus, but will be required under para. 4.2(1)(j) and filed after the offering is completed.

Examples of Case 2 are

- an issuer acquires a property that is material to the issuer, but which does not have a mineral resource or mineral reserve
- an issuer completes a significant amount of drilling on a material property

Whether we keep or eliminate the short form prospectus trigger:

- Under section 3.1 of the Amended Instrument, the issuer would be required to name in its preliminary and final short form prospectus the qualified person who prepared or supervised the preparation of the new scientific or technical information, or approved the written disclosure.
- The qualified person would likely be considered an expert named in the prospectus and so would be required to provide an expert consent under NI 44-101 to the disclosure of the new scientific or technical information in the final short form prospectus.

In making our decision, it would be helpful to have feedback from both issuers and those on the buy side of short form prospectus offerings. We therefore encourage input from all stakeholders on this important issue.

Questions

1. Do you rely on technical reports when making, or advising on, investment decisions in a short form prospectus offering? If yes, please explain how the content of a technical report, or the certification of a technical report by a qualified person, could influence your investment decisions or your recommendations.
2. Do you think we should keep, or eliminate, the short form prospectus trigger? Please explain your reasoning.
3. Please discuss how your answers to questions 1 and 2 might change in each of the three cases described in the table.
4. If we decide to eliminate the short form prospectus trigger, is the proposed guidance in subsection 4.2(13) of the Amended Companion Policy useful? Do you have any suggestions concerning this guidance?

Depending on the comments received, we might consider removing the short form trigger for one of the three cases or for a combination of the three cases described in the table above.

New exemption for property acquisition with current technical report

The new exemption in subsection 4.2(7) of the Amended Instrument allows a conditional 6-month filing delay for a technical report supporting mineral resources, mineral reserves, or a preliminary economic assessment, if the estimates are supported by a current technical report filed by a previous owner. The 6-month period would permit the new owner additional time to have a new technical report prepared. This exemption is intended to provide the issuer with an

additional option to disclosing the information as a historical estimate, or having the previous technical report re-addressed to it.

Question

5. Is the proposed new exemption relating to an acquired property helpful? Is it reasonable to expect that issuers will use the new exemption in light of the attached conditions?

Existing exemption from site visit requirement

Subsections 6.2(2) and (3) of the Amended Instrument carry forward an exemption from the requirement for a current personal inspection of a property that is the subject of a technical report.

Question

6. Do market participants use this exemption? Should we keep it in the Amended Instrument?

Alternatives Considered

We considered maintaining the status quo. However, in recent years we have received considerable feedback from market participants on how the Current Mining Rule is working. Market participants have identified some problems they are having with the requirements and we have identified certain areas of concern. Since we adopted the original mining rule in February 2001, we have made only one set of relatively minor amendments, in 2005. Given that the rule has now been in force for nine years, during all phases of the economic cycle, we felt that it was an appropriate time to consult industry on the rule and contemplate more substantive amendments.

We considered no other alternatives.

Unpublished Materials

In developing the Amended Mining Rule, we did not rely upon any significant unpublished study, report, or other written materials, except the results of the public consultations referred to above.

Local Notices

Certain jurisdictions will publish other information required by local securities legislation in Appendix E to this Notice.

Publishing Jurisdictions

The Amended Mining Rule and the Consequential Amendments are initiatives of all CSA members. Each CSA member would replace the Current Mining Rule with the Amended Mining Rule. Each CSA member would adopt the Amended Instrument, the Amended Form, and the Consequential Amendments, as a rule, commission regulation, or regulation, and the Amended Companion Policy as a policy.

How to Provide Your Comments

Please provide your comments by **July 23, 2010**.

Please address your submission to all the CSA member commissions, as follows:

British Columbia Securities Commission
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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

You do not need to deliver your comments to all CSA members. Please deliver your comments **only** to the following addresses, and CSA members' staff will distribute your comments to all other jurisdictions.

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If you are not sending your comments by e-mail, please send a CD-ROM containing your comments in MS Word format.

We cannot keep submissions confidential because securities legislation in certain provinces requires that we publish a summary of the written comments received during the comment period.

Questions

If you have any questions, please refer them to any of the following:

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Appendix A

Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*

1. National Instrument 44-101 *Short Form Prospectus Distributions* is amended by this Instrument.
2. Part 4 is amended by adding the following new section:

“4.2.1 Alternative Consent - (1) Despite subparagraph 4.2(a)(vii), the issuer may file the consent of the firm that employed the qualified person at the date of signing the technical report, rather than the consent of the qualified person if

 - (a) the person named in the short form prospectus is a qualified person as defined in NI 43-101,
 - (b) the person’s consent is required in connection with a technical report that was not required to be filed with the preliminary short form prospectus, and
 - (c) the principal business of the firm is providing engineering or geoscientific services.

(2) A consent filed under subsection (1) must be signed by an individual who is an authorized signatory of the firm and who satisfies the conditions in paragraphs (a) and (c) of the definition of “qualified person” in NI 43-101.”
3. This Instrument comes into force on *.

Appendix B

Amendments to Form 51-102F1 *Management's Discussion and Analysis* and Form 51-102F2 *Annual Information Form*

1. Form 51-102F1 *Management's Discussion and Analysis* ("F1") and Form 51-102F2 *Annual Information Form* ("F2") are amended by this Instrument.
2. F1 is amended by repealing paragraph (e) of section 1.4 and substituting the following:

“(e) for resource issuers with producing mines or mines under development, identify milestones such as mine expansion plans, productivity improvements, plans to develop a new deposit, or production decisions, and whether the milestones are based on a technical report filed under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;”
3. F2 is amended by repealing Instruction (i) to Item 16 Interests of Experts.
4. This Instrument comes into force on *.

Appendix C

Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

1. National Instrument 45-106 *Prospectus and Registration Exemptions* is amended by this Instrument.
2. Section 2.9 is amended by repealing subsection (18).
3. This Instrument comes into force on *.

Appendix D

Amendments to National Instrument 45-101 *Rights Offerings*

1. National Instrument 45-101 *Rights Offerings* is amended by this Instrument.
2. Subsection 3.1(1) is amended by repealing item 4 and substituting the following:
“4. A copy of the technical reports, certificates, and consents prepared under
National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.”
3. This Instrument comes into force on *.