

NI 43-101 Drawing a New Line in the Sand

Regulatory Expectations under the New Mining Rules

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Agenda

- Changes to the Instrument
- Technical Report Triggers
- Changes to the Form
- Consequential Amendments to Other Instruments
- Transition to New Rules



Changes to the Instrument

Overview

- Not a comprehensive review of all changes
 - Focusing on key areas
 - Assume you are familiar with new rules
- Discuss reasons behind key changes
 - What is intended and not intended
- Discuss a few potential problem areas



Purpose of the changes

- Eliminated or reduced the scope of certain requirements
- More flexible for issuers and QPs in certain areas
- Easier to add new professional associations, QP designations and resource codes
- Reflected changes in the mining industry
- Clarified or corrected areas where NI 43-101 was not having the intended effect



Certificates and consents

- Updated certificates and consents not required
 - Only filed with original technical report

Intention

- Reduce regulatory burden
- Issuer to ensure is current & disclosure accurate
 - QP may not be in a position to determine
- QP only responsible at time prepared report
- QP not accountable for subsequent use



Consents of qualified person

- Consent identifies disclosure that report supports
 - Must be the triggering disclosure
- Consent limited to parts of report QP prepared

Intention

- Reduce evasively worded consents
- Ensure QP signing off on the important disclosure
 - Particularly important as only consent filed
- Reducing scope of QP liability



Professional associations

- Requires or encourages continuing professional development
- Admission also considers ethical fitness
- Applies disciplinary powers regardless of where QP practices
- Foreign associations
 - Generally accepted in international mining community



Professional associations

Intention

- Replaced prescriptive list with objective test
 - Increased flexibility to add new associations
- Raise the bar to better reflect current standards
 - CPD, ethical fitness, accountability
 - Ensure quality of new associations



Qualified Person

- University degree or equivalent relating to mining or mineral exploration
- Experience relevant to degree or area of practice
 - Consider relevancy of degree to project
 - Non-mining degree may relevant to some aspects of project

Intention

- To ensure QP is practicing within area of training and expertise



Qualified Person

- Foreign qualified person has an accepted membership designation based on:
 - Position of responsibility requiring independent judgment
 - Certain additional admission requirements

Intention

- Replaced prescriptive list with objective test
- Raising bar to reflect current standards
- Ensure we capture the right level of expertise
- Level the playing field amongst jurisdictions



Appendix A

- List of professional associations and designation we consider to meet the tests
- Must be listed in Appendix A to qualify
 - Onus is on issuers to prove should be on list
 - Expect formal submission with documentation
 - We will update list from time to time
- New associations included
 - SME, ECSA, Chilean Mining Commission
- No longer included
 - ASBOG, MAusIMM



Restricted Disclosure

- No economic analysis of exploration targets or historical estimates
- No gross metal or mineral value - misleading
- Metal equivalent grades include individual metal grades
- Cautionary language with equal prominence

Intention

- Clarify and emphasize previous interpretations
- Cautionary language often buried



Historical estimates

- Eliminated the arbitrary February 2001 date
- Now applies to any third party estimate
 - Not yet confirmed as current
 - made before issuer acquired an interest

Intention

- Flexibility for disclosing previous estimates that are material but not just verified
- Fixed a problem identified by industry



Historical estimates

What it is not

- A previous estimate by the current issuer
- A new estimate using historical data
- A modification of a historical estimate
 - Using different assumptions or new data
- An estimate made by or through a related party
 - E.g. a spin off, merger, JV
- An unverifiable estimate from an unknown or unreliable source



Preliminary Economic Assessment

- Expanded definition
 - Economic analysis other than pre-feasibility (PFS) or feasibility study (FS)
- Permitted for advanced properties

Intention

- Allow issuers to step backward to
 - Assess alternative development options
 - Take a fresh look if PFS or FS no longer current or relevant



Preliminary Economic Assessment

What it is not

- A study done concurrently with or as part of PFS or FS
- A way to include inferred resources in PFS or FS
- A way to modify a PFS or FS to include more optimistic assumptions

Calling something a PEA does not make it so if it is done to the level of a PFS or FS



Other significant changes

- Option to name QP who approved information
 - Alternative to naming QP who prepared

Intention

- Flexibility for issuers
 - Historical or foreign data can be a problem



Technical Report Triggers



Short form prospectus

- Eliminated in most but not all situations
- Still required to support a material MR/MR/PEA
 - Not in an existing technical report
- Essentially early filing of s.4.2(1)(j) trigger
 - Lesser of 45 days or the filing of short form

Intention

- Remove a significant barrier to market access
 - Allows issuer to rely on disclosure record
- Rely on AIF as trigger



Delayed filing of technical report

- Rely on 3rd party MR/MR/PEA if:
 - Supported by a 3rd party technical report
 - File technical report within 180 days
 - Other conditions are met

Intention

- More flexibility for property acquisitions
 - Timely disclosure of material information
 - Additional time for technical report
- Not intended to include JV estimates



Other changes to triggers

- All written disclosure of MR/MR/PEA
 - Websites, presentations and IR material
- Expanded filing exemption to include all situations where existing report is still current
 - Must meet any independence requirement

Intention

- Close a perceived loop hole
- Eliminate unnecessary triggers



Independent technical report triggers

- Expanded independence exemption for producing issuers to include most situations
- Clarified that all QPs must be independent
 - As of both the filing and effective dates

Intention

- Facilitate foreign majors listing in Canada
- Misconception that non-independent authors okay
 - Independent QP relying on in-house QPs



Royalty holder exemption

- Applies to royalty or similar interests
 - Includes metal streaming interests
- Not required to file technical report in most cases:
 - Comes with some conditions
- Kept limited exemption for exceptions

Intention

- Address ongoing concern about access to data needed to prepare technical report



Changes to the Form



Reliance and disclaimers

- Expanded disclaimer provisions includes
 - Legal, political, environmental and tax information from issuer
 - Non-QP report or opinion on price and valuation information with conditions



Reliance and disclaimers

Intention

- Allows QP to rely on issuer for certain types of information where no expert opinion available
- Allows QP to partially rely on non-QP industry experts for certain pricing & value information
- Does not allow QP to blindly rely on or disclaim responsibility for scientific and technical information provided by issuer



Other changes

- May summarize or quote information from previous reports
 - Can't disclaim responsibility
- Simplified, summarized and understandable
 - QP determines level of detail required (not issuer or lawyer)

Intention

- Smaller and more user friendly reports
- QP has more control & responsibility for what information is important



Consequential Amendments to Other Instruments

Prospectus consent (NI 44-101)

S.4.2.1 Alternative Consent

- Allow firm that employed QP to sign consent if
 - Principal business is engineering or geoscience
 - Signatory is a QP
 - Relevant experience not required

Intention

- Provide alternative option where individual QPs is not available



Proposed Submission to Jurisdiction

- Proposed amendments to NI 41-101 & 44-101
 - Out for comments – deadline Oct 15/11
- Considering extending requirement to submit to jurisdiction and appoint agent for service to all foreign experts, including QPs
 - Asking specific questions on this issue
- Significant implications to issuers and QPs
- We want to hear from the legal community, mining issuers and QPs



Transition to New Rules

Transition to the new rules

- No formal transition provisions
 - Talk to us if you anticipate a problem
 - Common sense approach where possible
 - Less flexible as move away from June 30
- Be aware of QP changes
 - ASBOG and MAusIMM not accepted
 - Applies to all disclosure, not just reports
 - Will consider date of information
 - QP at time information was prepared



Transition to the new rules

- New technical reports must use the new Form
 - May reject new reports prepared under old form even if dated before June 30
 - Issuer could be in default
 - May delay prospectus receipt
- Previously filed reports okay as long as they are still current



For further information

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