



CIM Environmental & Social Responsibility Society

13 September 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Dear Canadian Securities Administrators Staff,

Re: CSA Consultation Paper 43-401, Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects

The members of the ESG Working Group of Canadian Institute of Mining, Metallurgy and Petroleum's (CIM's) Environmental and Social Responsibility Society (ESRS) would like to thank the Canadian Securities Administrators (CSA) staff for the opportunity to provide comments and feedback on Consultation Paper 43-401. This submission is made on behalf of the CIM ESRS ESG Working Group. Below you will find our responses in blue text under the NI 43-101 consultation questions that we would like to comment on.

A. Improvement and Modernization of NI 43-101

1. Do the disclosure requirements in the Form for a pre-mineral resource stage project provide information or context necessary to protect investors and fully inform investment decisions? Please explain.

The disclosure falls short on protecting and fully informing investors for pre-mineral resource stage properties. In the pre-mineral resource stage, the only environmental and social information required is in Item 4 Property Description and Location and Item 5 Accessibility, Climate, Local Resources, Infrastructure and Physiography. Item 20 is only required for advanced properties, so issuers could include additional environmental and social information, but it is not required. In our opinion, potential material information requirements missing for pre-mineral resource properties include:

- Clarification of surface title requirements, and preliminary information on the surface title acquisition limitations. Investors should be informed if there are significant risks or limitations on title acquisition.
- Limitations on future potential exploitation of a mineral resource.
- Current or past environmental permits for early exploration or prospecting and any reclamation and bonding requirements.
- Regulatory compliance (e.g., surface and sub-surface rights, access rights, restricted areas, exploration permits, environmental permits, notices of work, reclamation and financial securities requirements).
- Agreements with community or Indigenous groups regarding engagement protocols or requirement associated with property access.



- Local economics and constraints (e.g., saturated development areas, parks, biodiversity areas, etc.)

2. a) *Is there an alternate way to present relevant technical information that would be easier, clearer, and more accessible for investors to use than the Form? For example, would it be better to provide the necessary information in a condensed format in other continuous disclosure documents, such as a news release, annual information form or annual management's discussion and analysis, or, when required, in a prospectus?*

b) *If so, for which stages of mineral projects could this alternative be appropriate, and why?*

Yes, potentially. Information pertaining to corporate governance or ongoing compliance could be provided in annual management discussions. However, it is important that property-related risks and opportunities are at least briefly summarized or a cross-reference made in the Technical Report to ensure investors are informed for issues relevant for the property.

3. a) *Should we consider greater alignment of NI 43-101 disclosure requirements with the disclosure requirements in other influential mining jurisdictions?*

Yes.

b) *If so, which jurisdictions and which aspects of the disclosure requirements in those jurisdictions should be aligned, and why?*

Revisions should consider the 2021 PERC Reporting Standards on ESG (https://percstandard.org/wp-content/uploads/2021/09/PERC_REPORTING_STANDARD_2021_RELEASE_01Oct21_full.pdf), the 2016 SAMEG (<https://www.samcode.co.za/samcode-ssc/sameg>) standards, and the proposed ESG components of the proposed JORC revisions that are anticipated to be issued for public review in Q4 2022. Greater alignment with other securities jurisdictions helps investors with comparison and understanding of risks and uncertainties.

Issuers efforts and the amount of duplication can be reduced if ESG requirements cross-reference and/or are also aligned with international ESG investment or reporting standards. Other standards that should be considered for alignment include the Equator Principles, IFC Environmental and Social Performance Standards, the Sustainability Accounting Standards Board (SASB, Extractives and Mineral Processing Standards), the Global Reporting Initiative (GRI), United Nations Global Compact, and the Carbon Disclosure Project.

5. a) *Can the investor protection function of the current personal inspection requirement still be achieved through the application of innovative technologies without requiring the qualified person to conduct a physical visit to the project?*

b) *If remote technologies are acceptable, what parameters need to be in place in order to maintain the integrity of the current personal inspection requirement?*

With respect to environmental and social factors, inspections, whether in person or using remote technologies, need to be for current conditions. Imaging should be verifiably within the period of time representing the effective date of the report.



B. Data Verification Disclosure Requirements

6. *Is the current definition of data verification adequate, and are the disclosure requirements in section 3.2 of NI 43-101 sufficiently clear?*

Verification should be more clearly defined for environmental and social information. There should be less reliance or acceptance of environmental and social information provided by the owner without verification.

E. Qualified Person Definition

16. *Is there anything missing or unclear in the current qualified person definition? If so, please explain what changes could be made to enhance the definition.*

17. *Should paragraph (a) of the qualified person definition be broadened beyond engineers and geoscientists to include other professional disciplines? If so, what disciplines should be included and why?*

Yes, additional disciplines beyond geology and engineering are needed to address the definition of a resource, the modifying factors for defining a mineral reserve, and the liabilities, risks, and opportunities for a mineral property. Environmental and social disciplines should be allowed to sign off on applicable sections of the technical report. Or, at a minimum, environmental and social experts should be mentioned in the reliance on other experts. Either way, the disclosure would be strengthened by a requirement for a certificate to be issued for these disciplines that would allow investors to see the credentials, experience, and level of verification provided by appropriate professionals on ESG topics.

The AusIMM Chartered Professional Regulations could be referred to for definitions and qualifications needed in defined core areas including: environment, geology, management, mining, metallurgy, geotechnical (Mining), and social performance (AusIMM 2020, https://www.ausimm.com/globalassets/chartered-professionals/chartered_professional_regulations_guidelines_updated_november_2020.pdf).

Additionally, SAMESG's definition of Technical Specialists could be referred to, specifically, *A Technical Specialist must have an applicable academic qualification and a minimum of five years' relevant ESG experience. It is, further, recommended that he/she is also registered with an appropriate professional/statutory body or relevant Recognised Professional Organisation ("RPO"). The Technical Specialist must also comply with the provisions of the relevant promulgated Acts. Persons being called upon to sign as a Technical Specialist must, within the context of this definition, be clearly satisfied in their own minds that they are able to face their peers and demonstrate competence. (https://www.samcode.co.za/samcode-ssc/samesg)*

Similar to professional geologists and professional engineers, many Canadian jurisdictions have professional registration programs and/or legislation to ensure professionals have completed ethics training and are obligated to have the relevant level of education and experience for practicing



professionals (e.g., College of Applied Biologists in British Columbia, Alberta Society of Professional Biologists, Environmental Professionals certified by ECO Canada, etc.).

F. Current Personal Inspections

20. Should we consider adopting a definition for a “current personal inspection”? If so, what elements are necessary or important to incorporate?

Yes, the QP or the subject matter experts should have the opportunity to personally inspect the site to assure the investors that information provided is current and reflects the state of the site at the time of the report. There are many cases, where subject matter experts in environmental and social matters are relying on outdated information from the owner.

I. Environmental and Social Disclosure

28. Do you think the current environmental disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?

In principle, the requirements are written to cover the necessary information for advanced properties; however, the interpretation and reporting in practice is lacking and the quality of the disclosure by issuers varies. Therefore, more clarity in the disclosure requirements is recommended. The draft CIM ESG Practice Guidelines cannot specify disclosure requirements; therefore, this gap needs to be filled by the regulation.

A gap in the requirements of Items 4 and 20 is the current level of compliance with environmental and social regulations such as approvals, licences, permits, and authorizations. A compliance audit could provide a source of verification to support the reporting. Compliance is relevant to all stages of a property.

Data sources should be adequately described and referenced. Given the large volume of environmental and social information that can exist, the reporting should be a summary of key facts, opinions, recommendations, and commitments.

Item 20(b) requires clarification to indicate whether disclosure is just intended to report on specific measures or designs to mitigate potential waste and water management impacts and risks, or whether project-specific management plans and systems should be reported on. If specific measures are the intent, additional emphasis on mitigations, the process of alternative selection, and use of ALARP (as low as reasonably practicable) approach would be beneficial information for investors.

Clear definitions of materiality and Modifying Factors for ESG topics could be provided to guide authors in determining the information to include in a technical report and avoid unnecessary detail. An example of ESG materiality is included in SAMESG as,

For the purposes of ESG reporting, the following constitutes a material issue:



- i. *On the results of a comprehensive impact assessment, the level of impact within the mine's pre-defined Zone of Influence (Zoi) has been rated as a significant impact. These impacts are those that are still significant post mitigation action (should a competent EIA process be undertaken, in which a suitable impact assessment has been performed), or those impacts that cannot be mitigated;*
- ii. *Any relocation/resettlement of a community (number of households to be resettled is irrelevant);*
- iii. *Any permanent loss of ecosystem functionality (irrespective of area of impact), with specific focus towards sensitive ecosystems in critical biodiversity areas;*
- iv. *An issue that contravenes a legal requirement that can or will result in the issuance of directives, penalties, suspension of authorisations and/or prosecution; and*
- v. *Any major finding from a conformance audit.*

The SAMESG could be considered for specific language to fill the gaps in requirements. The SAMREC/SAMESG Table 1 provides a summary by property stage and is available at <https://www.samcode.co.za/samcode-ssc/samesg>.

29. Do you think the current social disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?

The requirements are written to cover the necessary information for advanced properties; however, the interpretation and reporting in practice is lacking. Therefore, more clarity in the disclosure requirements is recommended, similar to the notes on environmental disclosure as mentioned above.

30. Should disclosure of community consultations be required in all stages of technical reports, including reports for early stage exploration properties?

Yes, some indication of the level of community engagement should be reported for all stages of exploration. Section 20 should include disclosure of summarized community consultations at all stages. If no consultation was completed, that should also be stated and reasons for the decision given.

This information would provide investors with information about the level of risk for maintaining current and future community acceptance of exploration and/or development activities. Without community acceptance, exploration activities may be hindered and/or equipment and people could be at risk of harm.

J. Rights of Indigenous Peoples

31. What specific disclosures should be mandatory in a technical report in order for investors to fully understand and appreciate the risks and uncertainties that arise as a result of the rights of Indigenous Peoples with respect to a mineral project?



With respect to Rights of Indigenous Peoples, a description of the property and its relationship to Indigenous Peoples should be a minimum. Specific disclosures on Indigenous peoples with respect to mineral projects should include: which Indigenous group(s), if any, have potential rights to the surface and subsurface rights; any national or local legal requirements; and any agreements in place to meet the requirements of the United National Declaration on the Rights of Indigenous Peoples. Where sovereign Indigenous governments retain title, land is unceded, or land claims are settled or in progress, or traditional territory is identified, that should be described. This information is typically available to the public, but the QP may need to validate the disclosure under "Reliance on Other Experts". Actual and potential risk to title should be described.

The issuer can describe Reconciliation actions taken on their part if there is a recognized subject matter expert to validate the work under "Reliance on Other Experts".

32. What specific disclosures should be mandatory in a technical report in order for investors to fully understand and appreciate all significant risks and uncertainties related to the relationship of the issuer with any Indigenous Peoples on whose traditional territory the mineral project lies?

The names of current signed agreement(s) and the purpose of the agreement(s) would provide the necessary information on the relationship. Other information such as engagement or the statements on the state of the relationship are usually subjective and speculative. The presence and the purpose of agreement(s) can be independently verified.

33. Should we 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 with respect to a project? If so, how can a qualified person or other expert independently verify this information? Please explain.

The presence of, term, and purpose of agreement(s) can and should be verified by the qualified person or other expert.

K. Capital and Operating Costs, Economic Analysis

34. Are the current disclosure requirements for capital and operating costs estimates in Item 21 of the Form adequate? Why or why not?

Environmental and social capital and operating cost estimates should include, as applicable, permitting, permit maintenance, compliance monitoring and reporting, impact mitigation measures, management, general services such as lodging of permanent employees' camp and associated fly-in-fly-out, insurance, local taxes, telecommunications, community relations, agreements with Indigenous peoples and/or communities, progressive reclamation, and reclamation financial security costs. These costs should be specified if they are excluded or identified as sunk or issuer's costs, which could be a risk for project economics where the projected work is not yet complete as a sunk cost and/or where the issuer's financial management is tied to the project. Issuer's costs should be estimated and included where they are material to project economics. Explanation is required on the estimate assumptions to identify where



and how the costs are accounted for to fulfil the environmental and social requirements and commitments. Uncertainties in environmental and social costs should also be identified. The accuracy and detail of environmental and social cost estimates should be commensurate with the stage of planning and development.

Closure reclamation bond or securities requirements are also significant capital considerations that are often missing, or not disclosed. Operating capital could be affected by the level of bonding required for closure depending on the jurisdiction, which should be accounted for.

L. Other

38. Are there other disclosure requirements in NI 43-101 or the Form that we should consider removing or modifying because they do not assist investors in making decisions or serve to protect the integrity of the mining capital markets in Canada?

While the environmental and social factors in Technical Reports are intended to look at materiality, it should be recognized that Technical Reports are also used to assess the overall project from an investment standpoint. Therefore, information disclosed should also consider other investor interests such as project-specific information to meet investor requirements on topics such as climate change, biodiversity, closure, human rights, etc. In this sense, Technical Reports can be seen as an opportunity to provide this information for a mineral project where there may not be other opportunities for disclosure of this information in a verified, independent report.

Within appropriate sections of the Technical Report, the material effect and associated risks from environmental and social factors on project economics, schedule, ability to receive permits and social acceptance resulting from the environmental study should be clearly defined, with supporting rationale provided.

To facilitate transparent communication with communities and environmental regulators regarding the long-term vision for the property, it would be helpful to include a section that allows for a conceptual blue sky mine plan including Inferred Resource. Impact assessments and permitting often include plans for extraction of inferred resources since it can avoid delays for permitting amendments and regulators sometimes request it. Therefore, allowance for a blue sky mine plan could allow for better consistency between impact assessment documents and Technical Reports, both of which are public disclosures and reviewed by investors.

Under section 6 of the NI 43-101 Companion Policy, the term 'best practice' should be revised to 'practice' or 'industry practice' for referring to CIM's guidelines since best practice is a moving target and a controversial term.

Authors and issuers should be encouraged to cross-reference other ESG filings where necessary to reduce duplication (e.g., EIA government filing websites or company websites, GRI filings, etc.) and only include summaries of assumptions, risks, liabilities, and opportunities pertinent to the definition of the resource or reserve and assessment of the project. For example, an environmental and social impact assessment



(ESIA or similar document) filed on a government website should be referenced and only a summary of significant residual impacts and factors affecting the future extraction potential and/or definition of reserves should be presented. It should be clarified that the reference documents should be technical rather than promotional materials.

The focus of the summary of ESG factors should specify how ESG factors have been considered in the “reasonable prospects of eventual economic extraction” for resource estimates and modifying factors for reserve estimates, based on, for example:

- Test for importance to investors
- Climate change (carbon neutral considerations/costs)
- Biodiversity (meeting no net loss requirements/costs)
- Closure and reclamation (long-term risk considerations for design, financial assurance considerations)
- Indigenous peoples (rights considerations)
- Social licence
- Corporate governance
- Permitting (risk to project timelines / costs)

Thank you again for the opportunity to provide input to the consultation. Please feel free to contact us for clarification on any of our comments.

Yours truly,

Members of the CIM ESRS, ESG Working Group