

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

Addressed To:

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

Delivered By: Arik Collins, BASc

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The purpose of these comments is to provide feedback regarding potential areas of revision in the National Instrument 43-101 Standards of Disclosure for Mineral Projects. With 50% of global mining financing being completed on the Toronto Stock Exchange and the TSX Venture Exchange, there are thousands of communities worldwide affected by the methods of disclosure found in National Instrument 43-101. As such, this tool has far-reaching consequences to the social well-being and environmental health of communities impacted by mining activities. These comments were made based off my experience in the industry and my research for my Master of Applied Science thesis thus far, and answer the questions found in Section I of the CSA Consultation Paper 43-401.

Consultation Section I: Environmental and Social Disclosure

In recent years, CSA staff have seen an increase in public and investor awareness of environmental and social issues impacting mineral projects. Item 4: Property Description and Location and Item 20: Environmental Studies, Permitting and Social or Community Impact of the Form allow for disclosure of relevant environmental and social risk factors for the mineral project. However, these disclosure requirements related to environmental and social issues have remained largely unchanged since NI 43-101 was adopted in 2001.

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

Comments Regarding Consultation Section I: Environmental and Social Disclosure

28. I think that the current environmental disclosure requirements under Items 4 and 20 of the Form are not adequate to allow investors to make informed investment decisions. The disclosure requirements within the National Instrument 43-101 Standards of Disclosure for Mineral Projects are very broad in nature. For example, Item 4(f) of states “[Describe] To the extent known, all environmental liabilities to which the property is subject”. Meanwhile, Item 20(a) requires “a summary of the results of any environmental studies and a discussion of any known environmental issues that could materially impact the issuer’s ability to extract the mineral resources or mineral reserves.” These item subsections do not provide potential topics of interest or detail the level of which environmental liabilities must be defined. Item 20(b) asks for “requirements and plans for waste and tailings disposal, site monitoring, and water management both during operations and post mine closure,” while Item 20(e) requires “a discussion of mine closure (remediation and reclamation) requirements and costs.” These subsections could be improved by requiring additional details of plans that align with accredited standards, such as Global Reporting Initiative 303: Water and Effluents (Global Sustainability Standards Board, 2018) for Item 20(b) and the upcoming Global Sustainability Standards Board GRI Sector Standards Project for Mining for Item 20(e), which is set to be approved in Q4 2023 (Barbara Strozzi, 2021).

While progressive companies may describe potential environmental liabilities, waste disposal and closure plans in detail, adding additional subsections in Items 4 and 20 ensures all companies must report to a higher level of standard than what is currently required. Subsections of Items 4 and 20 could be further defined by providing more depth as to what environmental liabilities must be described within the NI 43-101, if the subsections are applicable to a project. Item 4(f) should be used to summarize the main environmental liabilities, while Item 20(a) should be used to summarize detailed analyses completed by a subject matter expert, whether part of the project's company or a recognized consultant. The following points are examples of environmental disclosures that, if relevant to the project's location, should be required to be included in Item 4 and Item 20 of the updated National Instrument 43-101 Standards of Disclosure for Mineral Projects.

- Potential for acid rock generation on or surrounding the property.
- Potential for acid/neutral/saline mine drainage on or surrounding the property.
- Potential for seismic/volcanic activity in the surrounding geological region.
- Potential for heavy rainfall/ice melt/flooding in the surrounding drainage basin.
- Potential effluent release in the surrounding drainage basin and its effects on local biota.
- Potential for dust generation and its effects on local biota.
- Other material disclosures set out in Global Sustainability Standards Board GRI Sector Standards Project for Mining and the Universal Standards.

29. Currently, examples of social disclosures are not explicitly mentioned in the National Instrument 43-101 Standards of Disclosure for Mineral Projects. While Item 4(h) suggests to “describe to the extent known, any other significant factors and risks that may affect access, title, or the right or ability to perform work on the property,” there are no specific social disclosures required in the NI 43-101. Similarly, Item 20(d) does not detail the how a company must discuss “any potential social or community related requirements and plans for the project and the status of any negotiations or agreements with local communities.”

The lack of specified social disclosures means a company may choose not to report on an item that could place a higher risk on a mining project. As an investor, social risk is very important to consider because the opinions of conducting mining operations activities varies by jurisdiction. Poor perception of mining activities can result in tensions between employees and community members, blockades which interrupt the rate of production, and the public perception of local security forces who attempt to minimize conflict between community members and mining companies. Mining activities also have the potential to negatively affect food security and community livelihoods, particularly in rural areas with subsistence farmers. This has become a notable issue because the majority of new mines are constructed in developing regions, where laws, regulations and policies evolve at a slower rate. This provides the opportunity for dishonest companies to circumvent standard disclosure practices and commence property development without community acceptance, leading to civil unrest. There are many examples where public disinterest and mistrust of mining companies and activities have been known to result in mine closures, negatively impacting employees, investors, contractors, financial services, and the public perception of the company (Zarsky & Stanley, 2013). As such, reducing

social risk is paramount to the success of mining companies; the acquisition of a “social licence to operate” from relevant communities is essential for maintaining continuous operations.

A “social licence to operate” defines local acceptance of a mining project from communities; once given it can be taken away at any time should the community feel that the mine is not operating in good faith. Acquiring a “social licence to operate” requires consistent, open communication with affected communities throughout the life of mine: before mineral exploration begins, throughout the mine’s life, and during post-closure/remediation activities. The addition of social disclosure subsections will aid companies in identifying risks they may not have considered and helps to protect investors who wish to finance socially responsible companies and projects. By identifying social risks earlier in the project’s life cycle, a mining company can be proactive to ensure their social licence to operate is not at risk of removal. While companies should surpass the minimum regulatory requirements, further defining what requirements companies should meet in National Instrument 43-101 Standards of Disclosure for Mineral Projects will lead to increased positive public perception of the mining industry as a whole. As such, I believe that the current social disclosure requirements are not adequate to allow investors to make informed investment decisions.

The following points are examples of social disclosures that, if relevant to the project’s location, should be required to be included in Item 4 and Item 20 of the updated National Instrument 43-101 Standards of Disclosure for Mineral Projects.

- Potential for human rights risks surrounding the construction and operation of the project, particularly in regions with lower standards of governance and justice.
- An explanation on how the project will increase the economic viability of the region without eliminating local career opportunities in other sectors.
- Potential for conflicts arising based on the local perception of mining in the region
- An explanation on whether the company has provided free, prior and informed consent to local communities surrounding the development, construction, production, closure, and reclamation of the mine.
- A company must disclose whether they have spoken with the local communities through FPIC and have gotten permission to develop said acquired lands, in addition to the typical governing bodies that permit land use licenses. This is useful for investors as it requires the operating company to establish healthy communications with the local community and removes uncertainty surrounding a company’s relationship with the local communities.
- A company must disclose any obligations to the local communities they are required to meet in order to retain the property. This is useful for shareholders as it provides concrete proof of the operating company’s “social license to operate”.

30. In my opinion, disclosure of community consultations should be required in all stages of technical reports, including reports for early stage exploration properties. As discussed earlier, community consultation is essential for obtaining a social licence to operate, allowing a mining company to better understand how they can positively impact the local community. Community consultation also provides the community with increased knowledge about a project that will

impact their local environmental and social landscape for decades. Community consultation should begin as early in the mining life cycle as possible, before exploration and development of the mine commences. During this stage, companies should focus on determining how the community operates economically, socially, and judicially. Understanding this allows a mining company to determine the potential for a local workforce, areas of community concern where the company can create shared value, and the main persons of contact to discuss mining-community relationships. This is particularly important for mining companies operating outside their home country because societal values in the host region may significantly differ. Each project is unique: while some assumptions can be expected from previous projects conducted by the company or in the planned mine's region, conducting community consultations verifies how a region will consider a new mining operation. Of note, community consultation is especially important in regions where Indigenous and tribal peoples live, as their rights and freedoms have historically been infringed upon. Their culture may vary significantly from the country in which the community resides within, requiring additional consultation to ensure both parties understand their roles in the project.

During the pre-development stage, community consultations also provide the mining company to develop baseline conditions of the community's public and environmental health. There are many examples of companies who faced public criticism or were served lawsuits surrounding the deterioration of a community's health (Alberta Cancer Board, 2009) (Birn, Shipton, & Schrecker, 2018). While many of said cases have merit, the level of fault that can be placed on a mining company is minimized through community consultations and research. Elevated levels of elements of interest, particularly those that are hazardous to human health like mercury and lead, may already exist naturally in the surrounding region. By performing human and environmental health assessments, a mining company can confirm whether decreases in community health are due to the development and operations of the mine or due to an external source. For investors, this reduces risk for legal actions against the mining company that are unrelated to the operations of the mine. For the company, investigating community and environmental health can highlight areas of potential improvement for the community that the company can assist with, thus creating shared value. Community consultations should continue throughout the life of mine to ensure there are no miscommunications and to ensure the company maintains their social licence to operate. As such, it is important for community consultations to be required in all stages of technical reports, including early stage exploration properties.

References

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