September 13, 2022

BY EMAIL

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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)
Office Superintendent Securities (Prince Edward Island)
Nova Scotia Securities Commission
Office of the Superintendent of Securities Service (Newfoundland and Labrador)
Office of the Superintendent of Securities (Northwest Territories)
Superintendent of the Yukon Securities
Office of the Superintendent of Securities, Nunavut

c/o

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Dear Sirs/Mesdames:

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

We are writing in response to CSA Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* (the "**Consultation Paper**"). We strongly support the Canadian Securities Administrators (the "**CSA**") in their initiative to periodically review reporting requirements under Canadian securities legislation, including those under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("**NI 43-101**").

Our comments are intended to address the specific questions identified in the Consultation Paper and, for ease of reference, use the same numbering. Many of our comments are provided at a high level due to the general nature of the questions. More specific and comprehensive feedback will be provided if and when detailed rule proposals are published in connection with this initiative.

A. Improvement and Modernization of NI 43-101

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

As noted in the opening statement of the Consultation Paper, "National Instrument 43-101 Standards of Disclosure for Mineral Projects is recognized globally as the pre-eminent standard for mineral project disclosure". Rather than pursuing alignment on a jurisdiction by jurisdiction basis – particularly where Canada is already considered the pre-eminent standard, we believe that it is more appropriate to leave it to the Committee for Mineral Reserves International Reporting Standards ("**CRIRSCO**") to establish reporting standards. Any alignment with other standards (whether of a single jurisdiction or those of CRIRSCO) should only be undertaken where the new standard fits within the Canadian disclosure system, with its emphasis on providing information that is material to a reader about properties material to an issuer.

4. Paragraph 4.2(5)(a) of NI 43-101 permits an issuer to delay up to 45 days the filing of a technical report to support the disclosure in circumstances outlined in paragraph 4.2(1)(j) of NI 43-101. Please explain whether this length of time is still necessary, or if we should consider reducing the 45-day period.

We believe that 45 days remains an appropriate length of time for an issuer to prepare and file a technical report upon the trigger in Section 4.2(1)(j) being engaged, as it affords a reasonable amount of time to complete what is a lengthy and detailed report which must be reviewed by internal mining, legal and finance teams. Reducing the period could be administratively burdensome and risk delaying important disclosure as issuers will not run the risk of publishing technical information unless they have certainty of being able to deliver a completed technical report within the prescribed time period under NI 43-101. As it stands, we believe that the 45 day period that an issuer has to file a technical report triggered under Section 4.2(1)(j) strikes the correct balance between the requirement to immediately disclose material changes in respect of an issuer in securities law generally, and the need to have scientific and technical information that relates to a mineral project on a property material to an issuer supported by a current technical report.

5. 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?

While remote technologies can provide certain information (e.g., topography, mineral type, etc.), there are certain elements that cannot be discerned from drone footage, such as accessibility, impact on local communities, and other "modifying factors" that are critical to converting mineral resources into mineral reserves. Similarly, attendance in person affords the qualified person an opportunity to speak to people near or on site, which can be a source of further information that cannot be obtained through the exclusive use of remote technologies.

That said, there may be circumstances where accessibility limits personal inspection of parts of a site, in which case drone and other technologies may be appropriate to satisfy some of the elements of personal inspection.

C. Historical Estimate Disclosure Requirements

9. Is the current definition of historical estimate sufficiently clear? If not, how could we modify the definition?

We submit that the definition of 'historical estimate' and Section 2.4 of NI 43-101 should be revised to allow an issuer that acquires another issuer with a current mineral resource and/or mineral reserve that complies with NI 43-101 to rely on those resource or reserve estimates and treat them as current mineral resources and/or reserves. It is not clear why NI 43-101 imposes a requirement for additional work to be undertaken by an acquiring issuer in regard to such an estimate where the target issuer's estimate is adequate public disclosure under NI 43-101 immediately prior to the acquisition (and the target issuer ultimately becomes a subsidiary, or is amalgamated with, the acquiring issuer). In our view, it should be sufficient for the acquiring issuer to take responsibility for the disclosure of the historical estimates in these circumstances since there is fundamentally no change to the underlying mineral resource or mineral reserve. If the acquiring issuer is not prepared or is unwilling to take responsibility for the estimates, only then should it be treated as a 'historical estimate' and be required to include the disclaimer.

Consistent with the foregoing, we suggest that the regime surrounding the use of mineral reserve and mineral resource estimates prepared by an acquired issuer (where such issuer is subject to NI 43-101 or an acceptable foreign code) and supported by a technical report prepared and filed by that issuer should be clarified to expressly permit reliance by the acquiring issuer on such estimates and technical report.

D. Preliminary Economic Assessments

14. Should we preclude the disclosure of preliminary economic assessments on a mineral project if current mineral reserves have been established?

The CSA should not prohibit the publication of a preliminary economic assessment ("**PEA**") where the property contains current mineral reserves. As a PEA is very broadly defined to include any study (other than a pre-feasibility study or a feasibility study) that includes an economic analysis of the potential viability of mineral resources, it would have the effect of preventing disclosure of an issuer's bona fide expectations for a mineral property. It is our experience that from time to time an issuer will want to 're-scope' a project to consider an expansion or make a development decision in respect of a property based in part on inferred mineral resources. In order to convey to investors the basis of the issuer's determination to proceed with such an expansion or development, the market requires information regarding the issuer's view of the economics of the project. A prohibition on disclosing a PEA where there are mineral reserves would therefore limit the issuer's ability to convey necessary information (and information on which the issuer may actually be basing its expansion or development decision) to the market. We believe that, provided the necessary disclaimers regarding the uncertainty inherent in a PEA are included, there is adequate protection for investors reviewing such disclosure.

If there is a prevalence of issuers disclosing conceptual alternative PEAs with different parameters that misleads the market, we suggest using a more targeted method to limit the use of a conceptual PEA on the same orebody.

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.

One issue with the qualified person ("**QP**") definition is that it leaves open to interpretation what constitutes "five years of experience in mineral exploration, mine development or operation, or mineral project assessment, or any combination of these…". Ultimately, the assessment of a QP's qualifications should be objectively discernable. This would suggest that the five years of experience should be obtained after the QP achieves the qualification of engineer or geoscientist with a university degree, or equivalent accreditation. The existing definition, as drafted, while requiring a professional qualification, is not clear as to whether the five years of experience must be measured after the professional qualification has been achieved.

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?

We are not aware of any professional disciplines that have been unnecessarily excluded from paragraph (a) of the definition of qualified person in NI 43-101. However, we would urge the CSA to resist using a technical report to act as a means to require issuers to obtain certifications of matters that go beyond scientific and technical information. Accordingly, we would resist the expansion of the certification requirements of the sort contemplated by Question 33 below, and the attendant changes to the definition of qualified person that would be required to make those work.

19. Should directors and officers be disqualified from authoring any technical reports, even in circumstances where independence is not required?

We think that the current rules regarding who is entitled to author a technical report sufficiently address the requirements for independence and that no changes are required at this time.

F. Current Personal Inspections

22. In a technical report for an advanced property, should each qualified person accepting responsibility for Items 15-18 (inclusive) of the Form be required to conduct a current personal inspection? Why or why not?

We believe it would be unduly burdensome to require each person who accepts responsibility for Items 15 through 18 of Form 43-101F1 to have conducted a current personal inspection of the property. Given the responsibilities of QPs under their membership in a professional association, it should be sufficient that each QP that is an author of one or more of Items 15 through 18 of the technical report be satisfied that the QP who conducted the current personal inspection had made all the inquiries that such QP would have made if he or she were conducting the current personal inspection. Such an approach would be consistent with the ability of a QP to "supervise" portions of a technical report set out in Section 5.1(4) of Companion Policy 43-101.

23. Do you have any concerns if we remove subsection 6.2(2) of NI 43-101? If so, please explain.

For projects that are located in remote areas which may not be accessible during certain periods of the year, the deletion of this exemption from the requirement for personal inspection

of a mineral project by a QP may delay the ability to publish technical reports until a site visit is feasible. Rather than eliminating the ability to defer inspection, enforcement of the related refiling provision that are already in place seems more appropriate.

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?

As a general proposition, we do not believe that securities laws should be used to remedy information deficiencies in other aspects of regulated behaviour. Accordingly, any disclosure regarding environmental and social matters should be limited to what is material in the context. In this regard, materiality should be interpreted in light of the general test for materiality in Canadian securities legislation, that is, whether the information would have a significant effect on market price or value. In this context we believe that the current standards are adequate for the purposes of a technical report.

We suggest that expanding the scope of environmental and social disclosure required in a technical report where it is already addressed elsewhere may be unnecessarily burdensome for some issuers. If the intention is to broaden the scope and content of a technical report, due consideration will have to be given to who is best positioned to prepare and supervise such disclosure in the report and whether there are appropriate well-established professional regulatory bodies and standards that would govern the preparers and preparation of such assessments.

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?

Please see our response to Question 28 above. As with Question 28, we believe that the current standards are adequate for the purposes of a technical report.

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

Please see our response to Question 28 above. Disclosure of community consultations should only be required where the status of any such consultations (given the stage of the project) would be reasonably expected to have a material effect on the project's economic or other feasibility.

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?

Please see our response to Question 28 above. We believe that the current requirements, specifically those subsumed in Items 4, 5, 14, 15 and 20 of Form 43-101F1, are adequate to cover all necessary information required by the reader of a technical report. We suggest that any incremental disclosure is best included in, and can be adequately provided to investors (to the extent it is material) through, an issuer's periodic disclosure, particularly as there is no technical lens through which these rights can be objectively assessed.

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.

We submit that 'validation' of an issuer's disclosure of significant risks or uncertainties related to its existing relationship with Indigenous Peoples should not be required. NI 43-101 requires certification of technical reports by qualified persons where there are well-established professional regulatory organizations and standards for the certifications to be provided. However, we do not believe that the professional qualifications currently required to satisfy the definition of "qualified person" in NI 43-101 would give such a person any expertise in assessing risks and uncertainties related to an issuer's relationship with Indigenous Peoples. Further, we are not aware of any professional body whose members would have this expertise.

We note that a technical report benefits from certification from one or more QPs as they are attesting to the disclosure of highly technical and complex matters of geology, metallurgy and engineering (among other things). This gives investor comfort that an expert in the relevant field(s) who is subject to professional obligations has assessed the disclosure and undertaken certain procedures to ensure its accuracy, as the non-QP reader does not necessarily have the technical capability to do so. An issuer's relationships with Indigenous Peoples that might affect a mineral project may be equally complex and/or equally important to the mineral project as the technical disclosure; however, there is no technical lens through which these relationships need be assessed. Adequate disclosure can be ensured by, and should be limited to, existing disclosure standards under securities laws.

K. Capital and Operating Costs, Economic Analysis

37. Are there better ways for Item 22 of the Form to require presentation of an economic analysis to facilitate this key requirement for the investing public? For example, should the Form require the disclosure of a range of standardized discount rates?

Discount rates are inherently tied to the risk profile of a project. Accordingly, the setting of standardized discount rates is arbitrary, and risks misleading the public. A project in a politically stable jurisdiction, for example, may appropriately have a much lower discount rate than a project in a jurisdiction that is unstable. Instead, we suggest that the CSA consider the usefulness of incorporating sensitivity analysis at various levels (*e.g.*, ± 0.5%, ± 1.0%, etc.).

That being said, consider whether guidance should be provided with respect to other factors used in the analysis. For example, economic analyses can be very sensitive to commodity prices and exchange rates. Consider whether it is appropriate to provide some additional guidance around these factors, or to provide for appropriate degrees of sensitivity to ensure that a technical report does not cease being current because of changes in commodity prices or exchange rates over time.

L. <u>Other</u>

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 not technically a requirement of NI 43-101, the CSA should consider expanding the exemption for alternative consents in Section 4.2.1 of National Instrument 44-101 to include circumstances where a QP has executed a technical report in her/his individual capacity (most

likely as a former employee of the issuer (a “former QP”)) and is no longer willing to provide a consent (whether the QP is no longer an employee or is deceased) and another QP is willing to take responsibility for the sections such former QP had authored.

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The following partners at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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