



September 13, 2022

VIA EMAIL: ccollins@bcsc.bc.ca

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

c/o Mr. Chris Collins
Chief Mining Advisor, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

Dear Mr. Collins,

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

Submission of the First Nations Major Projects Coalition

The First Nations Major Projects Coalition (FNMPC) is pleased to submit this letter and the attached document in response to the consultation on National Instrument 43-101 (NI 43-101). The FNMPC supports the efforts of Canadian Securities Administrators to enhance the current mineral disclosure requirements, to provide investors with more relevant and improved disclosure, and to continue to foster fair and efficient capital markets for mining issuers.

FNMPC

The FNMPC was established as a not-for-profit society in January 2017. FNMPC members mandated the organization to be non-political and business focused. FNMPC's primary function is to provide capacity support to member First Nations to strengthen their ability to make informed business decisions about major projects planned or occurring within their traditional territories. The FNMPC also contributes business and negotiation capacity to help First Nations seeking to acquire equity positions in major projects in Canada. A large portion of the FNMPC work is focussed on First Nations participation in mineral projects and the alignment of investor interests with First Nations interests.

National Instrument 43-101

The NI 43-101 does not require disclosure of sufficient information for investors to evaluate and respond to project related risks arising from environmental and social factors or relationships with Indigenous Peoples. The FNMPC has provided recommendations for improvements to the NI 43-101 in the attached submission.

Environmental, Social and Governance Factors

The FNMPC has contributed to public discourse on the development of effective standards for environmental, social and governance factors. We invite you and your colleagues to review the following materials that have been developed by the FNMPC on this topic. These materials are available on the FNMPC website at <https://fnmpc.ca/resources/>.

- [Top Ten List for Roadmap for Investing in Canada: Indigenous Investment In ESG](#)
- [Roadmap to Investing to Canada: Indigenous Inclusion in ESG \(May 2021\)](#)
- [Indigenous Sustainable Investment: Discussing Opportunities in ESG \(January 2021\)](#)

Declaration on the Rights of Indigenous Peoples

The Parliament of Canada and the Legislature of British Columbia have both passed legislation to implement the *Declaration on the Rights of Indigenous Peoples*.

In British Columbia, the B.C. *Securities Act*, securities regulation, and securities rules are subject to the *Declaration on the Rights of Indigenous Peoples Act*. As a Crown corporation, the British Columbia Securities Commission is bound to take “all measures necessary to ensure” that its operations, instruments and policies are consistent with the Declaration.

Similarly, the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.

In order to operationalize the Declaration within the context of securities regulation, the FNMPC recommends the following preliminary actions:

- Establish an Indigenous Advisory Committee to provide advice on how to operationalize Indigenous participation in decision making (Article 18) and implement the right of free, prior and informed consent in relation to administrative measures that may impact Indigenous interests (Article 19);
- Develop and apply standards which recognize that Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use (Article 26); and,
- Promote respect for and full application of the provisions of the Declaration by educating securities market participants and members of the public about investing, financial matters or the operation or regulation of securities markets (Article 42).

Thank you for your consideration of this submission.

Your truly,



Niilo Edwards
Chief Executive Officer
First Nations Major Projects Coalition



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

FIRST NATIONS MAJOR PROJECTS COALITION

September 2022

The FNMPC has focussed this submission on opportunities for Canadian Securities Administrators to respond to increased investor desire for reliable information about Indigenous participation in mineral project development. The FNMPC is concerned that inadequacies in environmental and social disclosure, particularly regarding the rights of Indigenous peoples, impair investor confidence, impede collaboration between Indigenous Peoples and proponents, and undermine fair and efficient capital markets for mining issuers.

SUMMARY

Reliable and transparent disclosure of business risks related to mineral projects contributes to investor confidence and motivates improved corporate performance in relation to social, environmental and governance factors. The NI 43-101 defines what information must be shared, the level of specificity and expectations for the reliability of information being provided to investors. Most importantly, through the administration of NI 43-101 disclosure standards, securities administrators delineate what will and will not be considered material in terms of disclosure obligations.

The current iteration of the NI 43-101 does not provide a foundation for investor confidence in environmental and social disclosure, particularly in relation to the rights of Indigenous Peoples. Increased investor awareness of risks relating to environmental, social and governance factors combined with inadequate disclosure requirements, have inspired extensive standard development outside of the securities regulation framework. As alternative frameworks for disclosure take hold, the status of the NI 43-101 as the pre-eminent standard for mineral project disclosure diminishes and investors face a patchwork of standards lacking the reliability of regulation and enforcement.

The FNMPC encourages Canadian Securities Administrators to embrace this opportunity to improve and modernize the NI 43-101 to ensure that investors have access to the information they need to make informed investment decisions.

KEY OPPORTUNITIES FOR IMPROVEMENTS

- ***Include and Operationalize Indigenous Specific Disclosure Requirements***

Current mineral disclosure requirements do not require detailed disclosure of project risks relating specifically to the rights and interests of Indigenous Peoples. Indigenous Peoples are uniquely situated as rights bearing nations with defined territories, governance powers and complex socio-economic circumstances. The standards set out in the NI 43-101 do not effectively compel mining issuers to communicate how those factors may be relevant to project development and project success. The FNMPC recommends that Canadian Securities Administrators develop and apply Indigenous specific disclosure requirements as part of an improved and modernized NI 43-101.

- ***Set and Communicate Clear Standards for Effective Implementation***

In order to be effective, disclosure must be mandatory, detailed and specific. Disclosure requirements must also be clear and enforceable. Securities administrators must be prepared to reinforce robust standards of disclosure through education, communications and regulatory tools. The acceptance of boiler plate responses is contrary to the objectives of disclosure and fails to protect investors from erroneous, misleading or fraudulent statements. In the absence of clearly communicated expectations regarding what information will and will not be considered to materially affect development of mineral resources or mineral reserves, mining issuers are free to rely upon boiler plate responses of little value to investors.

Securities regulators in Canada have the legal and technical capacity to uphold accountability and provide clear direction to mining issuers by setting and enforcing clear expectations regarding the materiality of various types of risks. The choice to exercise that capacity has not always been fully embraced. The FNMPC invites securities administrators to set, communicate and uphold high standards of disclosure for mining issuers as part of the transition to a modernized NI 43-101.

- ***Ongoing Disclosure Obligations***

The development of relationships with Indigenous Peoples in relation to mineral projects is iterative and evolves over time. The NI 43-101 provides a snap shot of a moment in time when relationships may still be developing and information is incomplete. Investors would benefit from ongoing disclosure requirements relating to project relationships with Indigenous Peoples in order to make informed investment decisions. On-going disclosure requirements relating to relationships with Indigenous Peoples would also serve to motivate strengthened collaboration with Indigenous partners which may reduce investor risk. The FNMPC encourages Canadian Securities Administrators to develop and apply ongoing disclosure requirements relating to relationships with Indigenous Peoples to ensure that investors have access to up-to-date information on project risk.

CONSULTATION QUESTIONS

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?

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 current environmental and social disclosure requirements under Items 4 and 20 are not adequate to allow investors to make informed investment decisions. Items 4 and 20 do not require sufficient specificity to compel mining issuers to disclose risks related to mineral project development arising from relationships with Indigenous peoples or the rights of Indigenous Peoples.

The FNMPC recommends that Canadian Securities Administrators develop a series of Indigenous specific questions to complement existing social and environmental disclosure requirements in the NI 43-101.

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

Yes. Relationships with Indigenous Peoples in relation to mineral projects evolve over time. Ongoing disclosure of community consultations, including reports for early-stage exploration properties, will motivate early and effective engagement with Indigenous partners. It will also permit investors to have confidence that information disclosed remains reliable over time.

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?

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 FNMPC recommends that a renewed NI 43-101 include a series of questions focused on risks and uncertainties arising from unresolved concerns premised on the rights and interests of Indigenous Peoples.

In order for investors to fully understand and appreciate the risks and uncertainties associated with the rights of Indigenous Peoples or relationships between issuers and Indigenous Peoples, investors require, at a minimum, the following information:

- Identification of affected or potentially affected Indigenous groups;
- Location and governance structures of affected or potentially affected Indigenous groups;
- Descriptions of any agreements between affected or potentially affected Indigenous groups and governing authorities relating to land use, regulatory processes or environmental protection measures that may affect project development; and,
- Disclosure of any litigation involving affected or potentially affected Indigenous groups, proponents or governments with regulatory responsibilities that may impact project development.

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 FNMPC acknowledges that some form of certification from a qualified person or other expert to independently verify issuer's disclosure of significant risks and uncertainties related to its relationships with Indigenous Peoples would permit a higher degree of confidence. However, relationships are dynamic and subject to both evolution over time and varying opinions on their status and effectiveness. As an alternative, the FNMPC recommends that Canadian Securities Administrators consider including an opportunity for issuers to append letters of support from affected Indigenous groups as a means of providing clear assurance to investors. Not all issuers will be successful in securing letters of support from affected or potentially affected Indigenous groups. Nonetheless, the opportunity to append letters of support will motivate issuers to explain the status of dialogues with Indigenous partners if letters of support are not obtained. For issuers that have secured the support of Indigenous partners, the ability to share that information with investors will offer substantial assurance that risks and uncertainties have been effectively addressed.