



September 8, 2022

British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
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Vancouver, British Columbia V7Y 1L2

Attention: Victoria Yehl M.Sc., PGeo  
Manager Mining, Corporate Finance Division  
[vyehl@bcsc.bc.ca](mailto:vyehl@bcsc.bc.ca)

Re: NI 43-101 Consultation Paper Response

Ms. Yehl:

This letter provides responses by Hunter Dickinson Services Inc. to the April 14, 2022 request by the Canadian Securities Administrators for consultation on National Instrument 43-101. HDSI and its employees appreciate the effort by the Canadian Securities Administrators to engage with the mining community on this topic. We believe this is an important step in the ongoing review of the regulation and look forward to further dialogue as you analyze the responses to the Consultation Paper.

Yours truly,



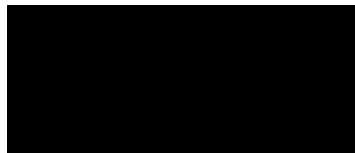
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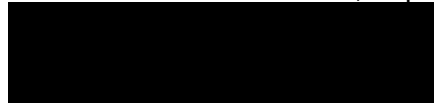
Marchand Snyman  
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## 1 Introduction

On April 14, 2022, the Canadian Securities Administrators (“**CSA**”) issued a request for consultation on National Instrument (“**NI**”) 43-101 (the “**Consultation Paper**”)¹. The Consultation Paper was to be read together with NI 43-101² and Form 43-101F1 Technical Report (the “**Form**”)³. The Consultation Paper also references the Companion Policy 43-101CP to National Instrument 43-101 Standards of Disclosure for Mineral Projects (the “**Companion Policy**”)⁴.

The purpose of the Consultation Paper “... is to obtain feedback from stakeholders regarding the efficacy of several key provisions of NI 43-101, priority areas for revision, and whether regulatory changes would address concerns expressed by certain stakeholders.” The comment period was scheduled to end on July 13, 2022 but was extended to September 13, 2022.

This document provides responses by Hunter Dickinson Services Inc. (“**HDSI**”) to the Consultation Paper. HDSI provides technical and other services, primarily to companies related to Hunter Dickinson Inc. Its employees include professionals who have served as Qualified Persons (“**QPs**”) for a number of companies and also who have acted as officers and members of boards of directors of mining companies. The comments contained herein reflect that experience as well as reviews of NI 43-101 technical reports for other non-related companies. Section 2 includes comments on issues raised in the preambles or other HDSI observations, and Section 3 includes responses to the specific questions.

HDSI and its employees thank the CSA for the opportunity to provide this feedback.

## 2 General

### 2.1 Original intent of technical reports

The original intent of NI 43-101 reports, to provide technical data on the subject projects, has evolved considerably over time. The requirement for non-QPs to provide key information upon which the QPs must rely has expanded and is the subject of several of the questions in the Consultation Paper. In some instances, the areas or factors where the QP is relying on other experts may overshadow the technical issues for which the QPs must take direct responsibility. Further, it is uncertain what perceptions a reader may have of this reliance.

These non-technical questions should be disclosed. However, disclosure within NI 43-101 reports creates two levels of responsibility – that which falls within the purview of the existing QPs and that of the increasing reliance on experts outside the current definition of a QP.

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<sup>1</sup> CSA 2022

<sup>2</sup> NI 43-101 2016

<sup>3</sup> Form 43-101F1

<sup>4</sup> NI 43-101 Companion Policy



This raises a number of questions:

- 1) With the current approach, what responsibility, if any, does a QP assume for their reliance on an expert opinion?
- 2) Is an NI 43-101 report the appropriate venue for these disclosures?
- 3) Is the reader properly aware of the distinction between the QPs' responsibilities and reliance upon others?

There are a number of ways to respond to these questions, namely:

- 1) Expand the definition of a QP to include these other experts. However, such an expansion is certain to create issues with other professional organizations. Further, this may require the expert to reside in a foreign jurisdiction. Whether a professional designation even exists in these locales raises further questions regarding the ability to make this change.
- 2) Limit the NI 43-101 reports to only those areas a QP can opine upon, which harks back to the original intent of NI 43-101 but will affect the ability of the NI 43-101 to provide a more fulsome report on a project.
- 3) Reorganize the NI 43-101 content such that the technical information is the only information in the body of the report and include all other information in annexures or companion documents – again not an elegant outcome.
- 4) Increase the warning to the reader that the QPs are relying on other non-QPs and that the QPs are not responsible for and have no liability for such disclosures.

## 2.2 Core principles

The Consultation Paper states “... one of the core principles of NI 43-101 ... is ... investors should be able to confidently compare the disclosure between different projects by the same or different issuers.” However, a search for such a “core principle” was not successful. A slide from a presentation by Toronto Stock Exchange and Ontario Securities Commission (“**OSC**”) staff at the 2018 PDAC<sup>5</sup> summarizes the core principles of NI 43-101 as “Disclosure with professional accountability”. A presentation from 2020<sup>6</sup> by the two OSC authors of the earlier presentation provides a similar view of the core principles. A presentation by RPA at the BMO conference in 2014<sup>7</sup> has a similar slide with the added statement “Objective of NI 43-101 is to ensure that disclosure is based on reliable information, reflecting professional opinions, based on industry best practices and using standardized terms.”

While this observation may seem superfluous, it raises two issues. First, given the differences between projects, comparisons between them are always going to be challenging, enforcing some measure of comparability will not always be successful, and too much standardization may be counterproductive.

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<sup>5</sup> Waldie et al 2018

<sup>6</sup> Waldie, Whyte 2020

<sup>7</sup> McCombe, Clow 2014



Second, if the goal of regulators is to create comparability of disclosure as a core principle of NI 43-101, it should be accomplished through an outreach and education program of both investors and preparers.

The 2020 OSC presentation<sup>8</sup> also states the information is to be “[r]eported in a manner which is understandable to a reasonable investor” but that NI 43-101 is not a “cookbook”. According to a 2015 published treatise<sup>9</sup>, a “reasonable investor is capable of reading and comprehending all the noise and signals in the marketplace that encapsulate formal disclosures, economic data, market trends, senseless speculation, and irresponsible rumors. As such, when given the requisite information, reasonable investors are able to properly price the risks and rewards of an investment.” This definition of a reasonable investor is at odds with the naivety of mining investors which the suggested amendments seem to presume.

Mining investments are inherently risky and an acknowledged purpose of NI 43-101 is to improve the understanding of that risk for investors, but not to negate risk. However, many of the suggested changes to NI 43-101 seem directed to naïve investors. If investors do not have some level of understanding of the issues associated with mining in general and the subject project in particular, no NI 43-101 report will provide the protection in every instance that seems to be the goal of regulators.

This issue is exacerbated by the requirement to reduce technical detail and jargon to enhance understanding of naïve investors on one hand and, on the other, the insistence on numerous technical details to support resource estimates, project parameters, and cost estimates. This requirement to simplify the reports also has some unintended consequences as the report becomes less useful for sophisticated investors.

For example, for the most recent PEA in which our firm participated, the geology and resource estimation sections, including the metallurgical inputs, accounted for 120 pages of approximately 290 pages (excluding the executive summary, conclusions, and recommendations). This detail was to re-report a resource estimate that had been updated only months before in a separate NI 43-101 report, which raises an ancillary point. Regulators have insisted the most recent NI 43-101 report stand as the only current version, enabling all the pertinent project data to be thus encapsulated. Given the example cited here, the question stands if such an approach should be modified.

### **2.3 Technical report reviews and audits**

The Consultation Paper indicates many of the issues identified have arisen via regulator reviews and audits of NI 43-101 reports. Avoidance of future repeats of the issues would be enhanced if CSA regularly published the results of these reviews and audits with this information distributed by the professional organizations to their members. This information could then become the basis of outreach and education programs. Major areas of concern or requiring changes could be addressed by updating the policies when required.

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<sup>8</sup> Waldie, Whyte 2020

<sup>9</sup> Lin 2015



## **2.4 Outreach and education**

While the intent of the Consultation Paper is laudable, it is evident there needs to be public fora regarding the requirements of NI 43-101 without the distraction of presentations on other topics such as TSX/TSXV structure and rules. When NI 43-101 was first promulgated, regulators held a number of in-person sessions to review the document. These sessions were subsequently held fairly regularly. The regulators directly provided useful information and guidance of their interpretation of the regulation and their expectations of NI 43-101 reports. The interaction between attendees, particularly reviews of past experience and alternate interpretations, further enhanced the dialogue and understanding.

These NI 43-101-specific sessions have not been held in some time, during which period many geologists, engineers, and lawyers have entered the industry and have not had the benefit of these sessions.

While it might have been useful if the Consultation Paper had been initiated through such sessions, we suggest regulators take the opportunity to hold such sessions to review the responses to the Consultation Paper. In this case, it would be worthwhile to involve some of the "other experts" who have been relied upon but ultimately could/should be authors of Section 20 for example. Such fora are likely to enhance the feedback and to improve adherence with regulators' expectations.

It may be of value to schedule two to four webinars annually through EGBC on current issues and requirements of NI 43-101. With the recent changes to Continuing Education requirements in BC, there may be a market for such opportunities.

## **2.5 Increased definitions within NI 43-101**

The Consultation Paper was developed by regulators based on documented inadequate disclosure of a number of items as required by NI 43-101. In general, the resulting questions ask if the NI 43-101 definitions of these items should be improved or additional requirements added. However, it is pertinent to ask if this inadequate disclosure is pervasive or is limited to a minority of NI 43-101 reports. The latter circumstance would indicate the requirements of NI 43-101 are adequate and the solution lies in additional outreach and increased enforcement. Even if many/most NI 43-101 reports are inadequate, that some are not indicates some QPs understand the requirements, again pointing to a different solution than adding more verbiage to NI 43-101, such as enforcement of existing standards.

## **2.6 Preliminary Economic Assessments**

Initial analyses of mineral projects provide a critical step in their advance from exploration to development. It is vitally important to understand early on if a mineral project has the possibility of successful development and what additional investigation is required to move the project forward. All projects, irrespective of the owner, pass through this process. For those companies which are required to report these analyses (i.e., PEAs for junior mining companies), the reports are critical for both investors and project owners to understanding the risks and opportunities associated with their investments. Continuous disclosure rules also require all material information be disseminated timeously and as a PEA is a pathway to a prefeasibility, most if not all project owners will have a PEA (or similar form report) and will need to disclose its contents. The continual focus on the negative



aspects of PEAs without an offsetting evaluation of the positive role they play is likely having an adverse impact on investors.

Regulators need to provide additional information to support the claim of supposed harm and should be identifying alternate means of adherence to both the letter and intent of the regulation.

## **2.7 Inferred resources**

The use of Inferred resources in studies has been a concern of NI 43-101 since its inception. However, the incongruity of this concern – Inferred resources must have zero certainty applied while Measured and Indicated resources are accorded 100% certainty – has never been addressed. All resource estimates, including Measured and Indicated, have uncertainty. A superior approach would be to utilize all levels of resources in all levels of study and assign appropriate levels of risk to the studies based on the uncertainties of the utilized resources.

## **2.8 Equivalency and consistency**

Grade equivalency calculations provide a metric whereby the grades of multiple metals found in a deposit can be converted to a single “grade”, thereby simplifying the assessment of the relative value of that deposit. The challenge with their use lies in the inconsistency of the method’s application and the definition of an acceptable technique and enforcement of same.

Equivalency calculations generally fall into three approaches:

- 1) A simple grade-based calculation, whereby the grades are multiplied by their defined prices and the product divided by the price of the nominated equivalency metal.
- 2) The simple grade-based calculation is adjusted by applying metallurgical recoveries of each of the measured metals.
- 3) The calculated total Net Smelter Return is divided by the unit Net Smelter Return of the nominated equivalency metal.

The challenge with anything beyond the simplest calculation is the requirement for data that typically are generated during an engineering study (e.g., metallurgical recoveries, realization charges). We recommend CSA evaluate an approach to equivalency calculations that recognizes the importance of this metric but provides an element of consistency, at least between disclosures of similar scope.

## **3 Responses**

### ***1 – Disclosure of pre-mineral resource projects***

The disclosure requirements of the Form provide for adequate information. Virtually all subject areas pertaining to a mineral project have sections devoted to them. The level of detail normally provided in these sections easily meets or exceeds the “reasonable investor’s” ability to understand these subject areas. If (and only if) the reasonable investor takes the time to read and understand the content will



they be adequately informed to make a judgement based decision on the risks associated with a project.

### ***3 – Alignment with other jurisdictions***

Our firm believes NI 43-101 is superior to equivalent policies in other jurisdictions.

### ***4 – 45 day filing delay***

The results of most studies are defined well in advance of completion of the study reports, with the draft reports requiring multiple levels of review and technical editing. The disclosure of these results with the 45 day delay for formal filing of the report thus ensures this material information is disclosed in a timely fashion. This raises two questions:

- 1) What are the risks of early unauthorized disclosure if the formal disclosure is delayed until the final report is complete?
- 2) Are potential conflicts created with continuous disclosure requirements by delaying the disclosure?

### ***5a – Use of innovative technologies in lieu of physical visits***

In some respects, innovative technologies such as drones could improve a QP's understanding of the project, particularly if there are no other means of obtaining an aerial view of the project site (e.g., helicopters).

However, the site visit requirement has many more objectives than gaining an appreciation of the site terrain and other physical features. These include core inspection, observation of drilling and core handling techniques, discussions with site personnel, on the ground "walk-arounds", and meetings with local people, none of which can be accomplished by innovative technologies.

COVID-19 rules forced adaptation to ensure the industry could move forward. As COVID-19 restrictions are now being relaxed, the adaptations are no longer necessary.

For these reasons, physical visits are still required.

### ***7 – Data verification***

One could consider expansion of QA/QC requirements to other quantitative aspects of the report. This could include, for example, metallurgical testing.

### ***9 – Current definition of historical estimates***

As with all disclosure governed by NI 43-101, historical estimates provide a key information piece in advancing a project. Communication of historical estimates enables investors to understand why a company has acquired or re-activated a project.



Section 2.4 is very explicit on the conditions required for reporting an historical estimate. If regulators are identifying ongoing issues, the issue is not with NI 43-101 but with practice and enforcement.

### ***10 – Disclosure requirements to protect investors from misrepresentation of historical estimates***

Comments were made in Section 2 regarding the issue of what a reasonable investor should understand versus the understanding of a naïve investor. The very explicit disclosure requirements for historical estimates are adequate to protect reasonable investors.

### ***11 – PEA definition to enhance precision***

Per the comment in Section 2 regarding the importance PEAs play in the development continuum of a project, imposing restrictions on the level of accuracy of a PEA will adversely affect the ability of companies and their investors to test and advance their projects. PEAs often are prepared before significant project-specific data are acquired. This results in a low level of engineering and cost estimating accuracy of which the reader is made aware. Setting a standard requiring a higher level of effort might preclude such a report, often to the detriment of a company and its investors.

The preferable alternative would be to require disclosure of the level of engineering and cost estimation parameters. Related to this, perhaps consideration should be given to naming the estimator as a QP.

### ***12 – Cautionary statement disclosure***

NI 43-101 requires a PEA to include the statement “...there is no certainty that the preliminary economic assessment will be realized ...” as cautionary language. It is challenging to understand what additional language could be added that would add additional clarity to investors. If PEA report authors are modifying the cautionary language, the issue is not with NI 43-101 but with the responsible authors and enforcement.

### ***13 – Threshold changes requiring PEA independence***

The foundation of the professional reliance model is the ability of professionals, at the very least, to weigh their professional obligations against other considerations. All professionals will be tested in this regard, whether it is through consulting business relationships or because they are non-independent. The issue, therefore, is one of degree.

The Consultation Paper question raises two discussion points:

- 1) Has the lack of independence created issues observed by regulators? If so, is this issue sufficiently pervasive that revising NI 43-101 is required versus enforcement?
- 2) Setting a standard for independence for resource estimate changes may be relatively simple; setting an independence standard for other potential changes to a PEA will be almost impossible.





#### **14 – Preclude disclosure if mineral reserves have been established**

There have been at least two recent well-reported instances where regulators have forced issuers to rescind PEAs on projects where mineral reserves had been previously established. In both instances, the issuers were attempting to disclose new opportunities that they had identified for their projects. To suggest these were “potentially misleading and harmful to investors” is disingenuous as the intent is obviously to the contrary, namely to provide investors with more information. Equally interesting is an instance where another company did add a PEA to a project with declared reserves, apparently without similar push back from regulators.

Securities regulations dictate disclosure, particularly for single-asset companies. Identifying opportunities and alternatives are a critical mission of owners of pre-development projects and, therefore, informing shareholders of these opportunities is equally important.

The three cases noted here referenced projects that either were not yet sanctioned or were under development. Yet even mines in operation are the subject of ongoing exploration and evaluation of new opportunities. Communication of those opportunities to shareholders and other stakeholders is an important objective.

Thus, the issue is not whether companies should continue to evaluate opportunities but rather what are the implications for declared reserves. In those instances where the new concepts do not incorporate, or materially incorporate, declared reserves, there should be no implications. For those instances with impacted reserves, the QPs should state whether the opportunities may impact the development plans upon which the reserves are based.

#### **15 – By-product credits in PEA cash flow models**

The evolution of resource estimates and cash flow models indicates by-product credits should not be included in cash flow models unless the by-product has been included in the resource estimate. This should apply at all levels of study, not just PEAs. However, as a PEA is providing investors with early insight into a project, and with the possibility that by-products were not identified during the initial exploration, application of a by-product credit to sensitivity analysis would be appropriate.

#### **16 – QP definition**

Our interpretation of the definition of a QP is at odds with that of CSA staff as identified in the Consultation Paper and as explained in the Companion Policy. NI 43-101 does not state a person must practice for five years after achieving professional status to be eligible to act as a QP. There are three issues with CSA’s current interpretation:

- 1) Subparagraph (b) of the QP definition only references experience relative to the professional degree while subparagraph (d) states the person must be in good standing with a professional organization. If the intent was to link the experience to professional standing, it would have been drafted in that manner.



- 2) Given the requirements for a person to achieve professional standing in Canada, it is superfluous to expect a person to have an additional five years of experience as a professional. The CSA staff interpretation trends towards the definition of an expert.
- 3) The Companion Policy cites subparagraph (e)(ii)(B) of the QP definition as the basis of its interpretation of “demonstrated expertise”<sup>10</sup>. Yet the purpose of that subparagraph is to align the accreditation requirements of foreign professional organizations to those of the Canadian associations. This *ipso facto* means a Canadian professional has met the QP requirements, no matter how many years of experience as a professional that person has. By applying its interpretation, CSA has actually penalized Canadian QPs relative to their foreign counterparts.

It is self-evident the reason CSA staff have “substantial evidence” of persons not understanding the QP definition is the CSA staff interpretation of the definition is not supported by the regulation. We believe the regulation is adequate as it is written and as we interpret it. If CSA proposes to continue to regulate in accordance with its interpretation of the definition, we recommend CSA initiates the process to revise the definition. If CSA does initiate this process, we recommend the process include disclosure of issues with the quality of NI 43-101 reports authored by QPs who do not meet CSA’s interpretation.

This third issue noted above raises a secondary point which was not addressed in the Consultation Paper but merits further discussion. The underlying intent of defining a QP was originally to insert the professional reliance model into NI 43-101, supported by the somewhat unique professional accreditation of engineers and geologists in Canada. That has been revised significantly over the intervening period, with accreditation now allowed under at least 14 different international organizations<sup>11</sup>.

Professional competence is not in question; neither was professional competence the fundamental question when the professional reliance model was imposed on NI 43-101. What effort has been made by regulators to confirm the reports authored by QPs who are not Canadian-registered professionals meet the expectations of professional reliance?

### **17 – Other disciplines**

NI 43-101 technical reports require significant reliance on opinions of other experts – legal, environmental, permitting, etc. In many jurisdictions, these opinions are as critical to defining the plan leading to the success of most projects as those required of the professional geologists and engineers. As noted in Section 2, given the critical nature of this of reliance, CSA should consider elevating these other professionals to QP status, revising the reporting format, or alternately identifying alternate means of communicating this information. Also as noted, defining appropriate and consistent credentials for these professionals may not be possible.

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<sup>10</sup> NI 43-101 Companion Policy

<sup>11</sup> NI 43-101 Companion Policy



### **18 – Test for independence**

Section 1.5 of NI 43-101 relies on the opinion of a reasonable person. As the Consultation Paper points out, the Companion Policy provides examples of metrics but the list is non-exhaustive. An option to the current definition would be to supplement examples in the Companion Policy and move it to the definition. However, the list will never be exhaustive and, in some instances, examples on the list may be inappropriate for specific projects.

The better approach would be to leave the definition as is and for regulators to provide greater guidance in determining the opinion of a “reasonable person”.

### **19 – Directors and officers as authors of technical reports**

The implications of the professional reliance model discussed in the response to Question #13 also apply to directors and officers. It is obvious the potential for conflict of interest exists in this situation. However, in addition to professional reliance, directors and officers have fiduciary responsibilities and other obligations which apply. More information is required to determine if this is a real issue and, if so, what other alternatives exist, such as enforcement. This should also involve the appropriate professional organizations.

### **20 – Current personal inspection**

As with the response to question #5, inspections are critical for a QP to fully understand the project. Given the vast differences between projects and even between events on the same project, creating an all-encompassing definition for a “current personal inspection” will be challenging if not impossible.

A better solution would be to require the QP to provide a summary of their observations during the site visit.

### **21/22 – Resource estimate QP site inspection / should all QPs conduct a site inspection**

Each QP will have different objectives for a site inspection and thus in most instances all QPs should conduct site inspections.

The issue with Section 6.2 is the uncertainty regarding the definition of “current” as it applies to a site inspection. The term infers the site inspection has been made recently. It could, however, also be based on the current status of the project relative to the last site inspection. In the latter instance, if there has been no pertinent activity since the last site inspection, a more recent inspection would be redundant.

At present, there is no requirement for the metallurgy QP to witness test work or to interview the persons who completed the test work at the test work facility. Perhaps consideration should be given to such a requirement or, alternately, to have the persons responsible for conducting the test work be named as QPs.



### **23 – Section 6.2(2)**

Given this section has been used in the past, albeit infrequently, it should remain. Enforcement is the best approach to dealing with non-compliance, along with the refiling requirement.

### **24 – Section 3.3**

Section 3.3 is sufficiently clear. Solutions to non-compliance may be enforcement and education, including webinars, sessions at association meetings, and examples included in the Companion Policy.

### **25 – Reasonable prospects**

Given NI 43-101 specifically references the CIM Standards<sup>12</sup> and Best Practice Guidelines, the requirements for reasonable prospects are, *ipso facto*, contained within NI 43-101. It is appropriate, therefore, that the report incorporate a description of how the reasonable prospects were determined.

### **26a – Resource estimate QP data verification**

Data verification is a key QP task. For the NI 43-101 reports our firm has recently worked on, one QP was responsible for data veracity and another responsible for the resource estimation; however, there was not a rigid wall between these people and their tasks. As both parties are QPs, we do not see this reliance adding or creating any risk.

### **26b – Legacy data verification**

If legacy data are to be incorporated into a resource estimate, the QP must take responsibility for it. Given this, it would be useful for CSA or the professional organizations to provide guidance on their expectations of the processes employed by QPs to establish the veracity of the legacy data.

### **27 – Risk disclosure**

As with many of the issues raised in the Consultation Paper, NI 43-101 adequately outlines the requirements for disclosure but relies on the reasonableness of the QPs to determine if the identified risks meet the standard of disclosure. In this regard, it is not reasonable to suggest a professional engineer or geologist acting as a QP should be the arbiter of what may constitute non-technical (e.g., environmental, permitting, legal) risk. Thus, reverting to question #17, the proper sources to determine non-technical risks should be experts in the appropriate fields.

### **28/29/30 – Environmental, Social, Community disclosure**

The requirements as defined by NI 43-101 are adequate.

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<sup>12</sup> CIM Standards 2014



### **31/32/33 – Indigenous Peoples’ rights**

As noted in the Consultation Paper, the role Indigenous Peoples play in our society and industry is evolving and we acknowledge that change and the importance mining companies must place on it. This evolution is leading to legal requirements with respect to Indigenous Peoples’ rights, with many jurisdictions enacting legislation enshrining responsibilities aligned with the UN Declaration on the Rights of Indigenous People (“**UNDRIP**”) and its inherent requirement for Free, Prior, and Informed Consent (“**FPIC**”)<sup>13</sup>.

The Consultation Paper notes identified rights of Indigenous Peoples may impact projects and states disclosure of these rights should form part of an issuer’s continuous disclosure obligations. Relative to NI 43-101, the Consultation Paper asks specific questions regarding disclosure of risks that may exist due to these rights. In many respects, the project risks attributable to Indigenous Peoples’ rights are at least analogous to geopolitical and other non-technical risks and are outside the purview of most technical QPs. Similar issues apply here as with our general comments regarding reliance on other experts.

Accordingly, an effort should be undertaken to modernize NI 43-101 in this regard. However, a number of challenges will impact how NI 43-101 reports address UNDRIP and when it would be reasonable for these reports to include such disclosure:

- 1) While some jurisdictions have enacted legislation aligned with UNDRIP (e.g., Canada and British Columbia), the resulting requirements for mining companies are not yet fully understood. Further, insufficient time has elapsed to assess how that legislation is to be applied and interpreted, particularly with respect to risks related to FPIC. The Federal Government states its action plan will not be put before Parliament before June 2023<sup>14</sup>. The Province of British Columbia UNDRIP action plan lays out a five year schedule<sup>15</sup>. Given these time frames and the likelihood of court decisions further defining the issues, it is conceivable the full implications of UNDRIP will not be fully understood for a decade or more. Articulating with certainty what risks might apply and assigning levels to these risks is difficult at this time.
- 2) While NI 43-101 applies to companies listed on Canadian exchanges, those companies are developing projects around the globe. Whether the pertinent jurisdictions have enacted UNDRIP enabling legislation and if enacted the form of that legislation will determine the extent of any associated risk. NI 43-101 reports should be limited to the requirement of the relevant jurisdiction and NI 43-101 should not become the basis for attempting to enforce standards that do not apply to that jurisdiction.

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<sup>13</sup> UN 2008

<sup>14</sup> Canada 2022

<sup>15</sup> BC 2022



- 3) This is an area which falls outside the expertise of most technical QPs and will require the opinion of an expert. However, defining an expert for this analysis may be challenging, particularly in foreign jurisdictions but even in locations like British Columbia.

Given these issues, it is pertinent and important that further consultation and discussion be completed prior to incorporating a requirement for definitive disclosure of UNDRIP-related risks in NI 43-101 reports. However, in the interim for a project located in a jurisdiction where UNDRIP has been adopted/promulgated and alignment with existing legislation has been promised or undertaken, the underlying general risk associated with achieving consent could be identified along with other permitting and associated risks.

### ***34/35 – Capital and operating cost disclosure***

As with many of the issues raised by the Consultation Paper, NI 43-101 already requires disclosure of the methodology of cost estimation. Further, per previously cited sources, NI 43-101 was specifically developed to avoid a “cookbook” approach. The range of types and locations of projects, on top of the level of accuracy, would render impossible the application of additional prescription for cost estimating details.

However, requiring disclosure of the cost estimate classification system, as described in the Consultation Paper, would advance an objective of uniformity.

### ***36 – Cost risks***

This issue is already addressed by NI 43-101. Item 25 of the Form<sup>16</sup> requires QPs to “[d]iscuss any significant risks and uncertainties that could reasonably be expected to affect the reliability or confidence in the ... projected economic outcomes ... [and] any reasonably foreseeable impacts of these risks and uncertainties on the project’s potential economic viability or continued viability.”

Again, education and enforcement are the solution.

### ***37- Economic analysis presentation***

This question again states a core principal of NI 43-101 is ability to compare reports between projects, a principal that only seems to have been articulated in the Consultation Paper.

Item 22 of the Form<sup>17</sup> lays out an extensive list of requirements for disclosure of economic analysis. It does not, however, suggest “standardized discount rates”, largely because industry practice for this factor varies between industry segments as well as locations (countries). An effort to demand consistent discount factors needs to begin with a discussion between segments.

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<sup>16</sup> Form 43-101F1

<sup>17</sup> Form 43-101F1



## References

British Columbia Securities Commission; “Form 43-101F1 – Technical Report”;

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