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Nova Scotia Securities Commission  
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Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
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Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

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Dear Commissioners:

Thank you for the opportunity to comment on issues outlined in the Consultation Paper on NI 43-101.

As a former commissioner of BCSC, (1998-2006), the views are made on my own behalf, and do not represent views of any individual or organization

My recommendations are:

- 1) That CSA avoid prescribing environmental, social and governance standards (ESG) in NI 43-101 but instead incorporate by reference, standards set by independent, third party technical organizations.
- 2) That the technical reports mandated by NI 43-101 not be the forum for corporate ESG information but instead companies file a separate ESG disclosure.
- 3) That NI 43-101 pay attention to risk analysis (either directly or by reference) particularly concerning mine tailings disposal.
- 4) That CSA resist the administratively expedient temptation of transforming NI 43-101 into a slimmed down version of an environmental impact assessment – they are separate and distinct.

I am concerned that CSA has chosen an inflexible style of consultation appropriate to prescriptive regulation instead of embracing a principles-based approach. The issues paper might have been improved by an independent third-party policy and technical analysis as the basis for public consultation.

At the outset NI 43 101 should;

- Provide investors with information that is consistent, comparable, proportionate and reliable;
- Promote investors' ability to efficiently allocate capital;
- Distinguish between material and other information;
- Reflect an appropriate balance of costs and benefits;
- Should avoid regulatory and market fragmentation;
- Be sufficiently flexible to respond to changing circumstances.

Does it do so ?

Since it's inception in 2001, the regulatory landscape of NI 43-101 has changed from an emphasis on market efficiency and investor protection to a wider panorama to also include stakeholder and shareholder protection, risk management, environmental, social and governance considerations -globally and nationally. Significantly, there has been a broadening of the concept of materiality from a purely financial concept to a broader double materiality concept.

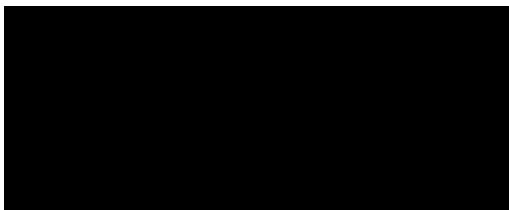
- 1) A criticism of the present proposal is that it is not based on an independent comprehensive regulatory analyses that sets out policy options, analyses and perspectives. The original NI 43-101 was developed from the 1998 TSX Task Force<sup>1</sup> . Without casting aspersions on the integrity of CSA analysts, it would have been prudent for the policy options and analyses to have been developed at arms-length from the regulators.
- 2) The 2001 version of NI 43-101 was oriented towards junior and advanced companies and less towards producing operators and inactive mines. Once the disclosure requirements are broadened to include ESG and risk management, a prudent question would be the balance between costs and benefits and regulatory flexibility – none of which is discussed by CSA.
- 3) Environmental, Social and Governance (ESG) is a recurring theme in modern policy analysis, While CSA refers to ESG elsewhere, it is striking that the NI-43-101 proposal not once used (as far as I can determine) the word **CLIMATE**. That omission may imperil broad public acceptance. For many investors, climate change risk is a material consideration
- 4) The NI 43-101 consultation leaves the broad impression that CSA wishes to retain the basic structure of the existing disclosure regulations and guidelines, and then integrate or incorporate broader regulatory perspectives. The omission of policy, regulatory and impact analyses is a critical omission. It is as if CSA is stuck in a 1990's model of regulation.
- 5) I strongly urge CSA to keep a separation between technical disclosure requirements similar to the present NI 43-101 and the ESG requirements that may be mandated nationally and globally. One of the struggles for ESG and Sustainable Development reporting is the appropriate forum for reporting. Adding it to or integrating ESG with NI 43-101 in the case of mining companies, is likely to be a regulatory disaster for junior mining companies.
- 6) My recommendation would be for a separate ESG annual corporate filing (separate from NI 43-101 filings) that lists permits, commitments, environmental impact assessment reports, corporate strategy.
- 7) Much of this information exists but is dispersed in various locations. If a separate filing system is adopted, it may not require exhaustive and costly duplication of existing information. This proposal ensures investors have information that is consistent, comparable, material and reliable.
- 8) Requirements for enhanced mineral industry ESG, climate and risk disclosure is in the public interest as well as investor interest. It is difficult to envisage a purely Canadian initiative that does not acknowledge global trends or incorporates by reference global standards.
- 9) Other items of interest are that Qualified Persons should not be company corporate executives and officers. It is a real and perceived conflict of interest.

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<sup>1</sup> 4 On June 8, 1998, the Mining Standards Task Force of the Toronto Stock Exchange (where Bre-X had been listed) and the Ontario Securities Commission proposed new stricter disclosure rules for mining companies. Whyte (1998, p. 1) characterizes the task force's interim report as "as a response to the plunge in investor confidence that followed the Bre-X Minerals scandal in 1997

10) Further, 43-101 may be an inappropriate framework for dealing with indigenous issues – it is appropriately a corporate disclosure separate from technical issues.

Yours sincerely



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