

Notice and Request for Comment

Regulation replacing Regulation 43-101 respecting Standards of Disclosure for Mineral Projects, including Form 43-101F1 Technical Report, and replacement of Policy Statement to Regulation 43-101 respecting Standards of Disclosure for Mineral Projects

Date: April 23, 2010

Introduction

We, the Canadian Securities Administrators (CSA), are publishing for a 90-day comment period the following proposed documents:

- *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (the Amended Regulation), including Form 43-101F1 *Technical Report* (the Amended Form);
- *Policy Statement to Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (the Amended Policy Statement);

(together, the Amended Mining Regulation), and consequential amendments to

- *Regulation 44-101 respecting Short Form Prospectus Distributions* (Regulation 44-101);
- *Regulation 51-102 respecting Continuous Disclosure Obligations*, including Form 51-102F1 (MD&A) and Form 51-102F2;
- *Regulation 45-106 respecting Prospectus and Registration Exemptions*;
- *Regulation 45-101 respecting Rights Offerings*;

(together, the Consequential Amendments).

The Amended Mining Regulation would replace current *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (the Current Regulation), including current Form 43-101F1 (the Current Form), and current Policy Statement (the Current Policy Statement) (together, the Current Mining Regulation), which came into effect in all CSA jurisdictions on December 30, 2005.

Concurrently with this Notice, we are publishing the Amended Mining Regulation, blacklines showing all changes from the Current Regulation and the Current Form, and the Consequential Amendments. These documents are also available on the websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.sfsc.gov.sk.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.nbsc-cvmnb.ca

Substance and Purpose of the Amended Mining Regulation

We have been monitoring the Current Mining Regulation since we adopted it. In the spring of 2009, CSA members in British Columbia, Ontario, and Quebec carried out focus group discussions with market participants from various sectors, and consulted with their advisory committees, concerning a range of issues related to the Current Mining Regulation. These CSA members, as well as CSA members in Alberta and Saskatchewan, also solicited written comments from market participants. The proposed changes in the Amended Mining Regulation reflect our analysis of the results of these consultations and our own experiences with the Current Mining Regulation.

The proposed changes in the Amended Mining Regulation and the Consequential Amendments

- eliminate or reduce the scope of certain requirements;
- provide more flexibility to mining issuers and qualified persons in certain areas;
- provide more flexibility to accept new foreign professional associations, professional designations, and reporting codes as they arise or evolve;
- reflect changes that have occurred in the mining industry, and
- clarify or correct areas where the Current Mining Regulation is not having the effect we intended.

Summary of Key Proposed Changes

This section describes the key changes in the Amended Mining Regulation. It is not a complete list of all the changes.

Amended Regulation

Part 1 Definitions and Interpretation

We have:

- added a definition of “acceptable foreign code”, and amended the definitions of “professional association” and “qualified person”, to replace prescriptive lists with objective tests that will accommodate changes without formal amendment;
- amended the definition of “historical estimate” to permit disclosure of third party estimates made after 2001;
- expanded the definition of “preliminary economic assessment” to include preliminary economic analyses after the completion of a pre-feasibility or feasibility study.

Part 2 Requirements Applicable to All Disclosure

We have:

- clarified restricted disclosure in paragraphs 2.3(1)(b), (c), and (d) to reflect our interpretation of the current provisions;
- added paragraph 2.3(3)(c) to require disclosure of the impact of a preliminary economic assessment completed after a pre-feasibility or feasibility study;

- expanded section 2.4 to consolidate the existing disclosure requirements for historical estimates (sections 3.4 and 4.2(2) of the Current Regulation) and to require comment on the work needed to verify the historical estimates.

Part 3 Additional Requirements for Written Disclosure

We have expanded section 3.1 to allow an issuer to name the qualified person who approved the disclosure of the scientific and technical information, as an alternative to naming the qualified person who prepared or supervised the preparation of the information.

Part 4 Obligation to File a Technical Report

We are requesting specific comment on whether to keep or eliminate the technical report trigger in paragraph 4.2(1)(b) for a short form prospectus (see the discussion below under **Request for Comment on the Amended Mining Regulation and Consequential Amendments**).

In addition, we have:

- expanded the technical report trigger in paragraph 4.2(1)(j) to include any first time written disclosure of mineral resources, mineral reserves, or preliminary economic assessments;
- amended subsection 4.2(5) to require the issuance of a news release disclosing the filing of the technical report in all circumstances where the filing delay applies, to alert the market that the technical report has been filed;
- added a new exemption in subsection 4.2(7) that allows a conditional 6-month filing delay for a technical report supporting mineral resources, mineral reserves, or a preliminary economic assessment, if these estimates are supported by a current technical report filed by another issuer;
- removed the requirement in subsection 4.2(8) to file updated certificates and consents of qualified persons, and clarified that the previously filed technical report must meet any independence requirements for the subsequent trigger.

Part 5 Author of Technical Report

Subsection 5.3(2) provides a new exemption for producing issuers whose securities trade on a specified exchange, from the independence requirement in relation to a technical report filed only as a result of the producing issuer becoming a reporting issuer in Canada.

In subsection 5.3(3), we have expanded the current exemption for producing issuers from the independence requirement in relation to a technical report filed under section 4.2, to include all triggers under section 4.2.

Part 6 Preparation of Technical Report

Although the limitation on disclaimers in section 6.4 is unchanged, we have amended the permitted disclaimers in Item 3 of the Amended Form (see the discussion below under **Amended Form**).

Part 7 Use of Foreign Code

We have removed the prescriptive list of acceptable foreign codes and the requirement for issuers to reconcile foreign resource and reserve categories to current categories as defined by the Canadian Institute of Mining, Metallurgy and Petroleum.

Part 8 Certificates and Consents of Qualified Persons for Technical Reports

We have provided a new exemption, in subsections 8.3(2) and (3), from including certain statements in the consents of qualified persons for technical reports filed only as a result of the issuer becoming a reporting issuer in Canada.

Part 9 Exemptions

Subsection 9.2(1) provides a new exemption to royalty holders from the requirement to file a technical report, if the operator of the mineral project is subject to the Amended Regulation or its securities trade on a specified exchange and certain other conditions are met.

Amended Form

We developed the Amended Form with the assistance of a subcommittee of CSA's Mining Technical Advisory and Monitoring Committee.

We have substantially amended the Current Form to make it less prescriptive and more adaptable for advanced stage and producing properties. These changes will allow the qualified person more discretion regarding the amount of information and level of detail required under each section, based on their assessment of the relevance and significance of the information in the overall context and stage of development of the property.

In addition, we have:

- broadened Item 25 of the Current Form to apply to all advanced stage properties and replaced it with eight new items that reflect the major components or topics of a preliminary economic assessment, pre-feasibility study, or feasibility study;
- amended *Reliance on Other Experts* to allow the qualified person to rely on and disclaim responsibility for certain information provided by the issuer and certain pricing and valuation information provided by experts who are not qualified persons;
- amended Instruction (5) to allow qualified persons to refer to any information in previously filed technical reports, to the extent that it is still current, but require them to summarize or quote this information in the current technical report so the reader does not have to find and read multiple reports;
- under *Data Verification*, added a requirement for the qualified person to comment on the adequacy of the data;
- amended *Mineral Processing and Metallurgical Testing* to be more specific about the information required and to add a requirement to discuss any potential processing factors or deleterious elements;
- exempted producing issuers from the requirement to include information under *Economic Analysis* for their producing properties.

Amended Policy Statement

We have structured the Amended Policy Statement so that it tracks the sections of the Amended Regulation to which the guidance applies. We have also updated and streamlined much of the guidance in the Current Policy Statement, and eliminated guidance that is no longer useful.

In addition, we have:

- under *General Guidance*, added guidance on forward-looking information, and a property material to the issuer;

- in section 1.1, added guidance on certain definitions in the Amended Regulation, including the new definition of “acceptable foreign code”, the revised definitions of “professional association” and “qualified person”, and our interpretation of “property”;
- incorporated and updated Appendix A as guidance on recognized acceptable foreign associations (now in the Current Regulation);
- in subsections 2.3(3) and 2.4(1), expanded the guidance on the use of cautionary language, including our interpretation of “equal prominence”;
- in section 4.2, added guidance on certain technical report triggers in the Amended Regulation, and on related issues including property acquisitions, production decisions, shelf life of technical reports, preliminary economic assessments, and the filing of technical reports not required by the Amended Regulation;
- in subsection 4.2(13), proposed guidance on the impact of removing the short form prospectus trigger for a technical report, which will only be adopted if we decide to eliminate the trigger (see the discussion below under **Request for Comment on the Amended Mining Regulation and Consequential Amendments**);
- in Part 5, clarified certain issues regarding qualified persons, including relevant experience requirements for supervising qualified persons, the involvement of non-independent qualified persons in preparing independent technical reports, and taking responsibility for information incorporated from other reports;
- in section 5.3, added guidance on the independence requirement and what constitutes a 100 percent or greater change to a mineral resource or mineral reserve;
- in Part 8, added guidance on certificates and consents, including consents for technical reports not required by the Amended Regulation.

Consequential Amendments

The Consequential Amendments, as summarized below, are published with this Notice.

Regulation to amend Regulation 44-101

The proposed amendments permit an issuer that is required to obtain an expert consent from a qualified person, in connection with a previously filed technical report, to obtain the expert consent from the firm that employed the qualified person at the date of signing the technical report, rather than from the qualified person. This would ease the situation faced by an issuer filing a short form prospectus when the qualified person who authored the technical report is no longer available or able to provide the required consent.

Two conditions apply. First, the firm’s principal business must be providing engineering or geoscientific services. Second, the person signing the consent on behalf of the firm must be both an authorized signatory of the firm and a person who satisfies the conditions in paragraphs (a) and (c) of the definition of qualified person.

MD&A amendment

This proposed amendment requires a resource issuer to disclose in its MD&A whether a significant milestone such as a production decision is based on a technical report filed under the Amended Regulation.

During our public consultations in the spring of 2009, participants generally agreed that an issuer should fully disclose the associated risks if its production decision is not

based on a feasibility study or on mineral reserves. The proposed MD&A amendment, in conjunction with new guidance provided in subsection 4.2(5) of the Amended Policy Statement, would elicit this disclosure.

Other consequential amendments

The other proposed amendments eliminate outdated cross-references to the Current or Amended Regulation.

Anticipated Costs and Benefits

We are proposing the Amended Mining Regulation and the Consequential Amendments because of issues identified through regulatory reviews, applications for exemptive relief, and public comment and consultation. We think the proposed changes represent more efficient and effective regulation that will reduce issuers' costs to comply with the Amended Mining Regulation without compromising investor protection.

Some of the proposed changes codify current disclosure practices or improve drafting in the Current Mining Regulation. In addition, we have identified the following specific changes for which we considered the anticipated costs and benefits to various stakeholders.

Updated certificates and consents (subsection 4.2(8) of the Amended Regulation)

The Amended Regulation eliminates the requirement to provide updated certificates and consents for a previously filed technical report that is still current. There is no requirement in the Current Regulation to provide updated certificates and consents related to annual information forms or short form prospectuses and this change treats other filings in the same manner.

Qualified persons often work in remote locations and can be unreachable on short notice. Alternatively, at the time an issuer is seeking an updated certificate and consent, the qualified person might not work for the same firm as when they wrote the technical report. For these reasons, it can be difficult or impossible for an issuer to obtain an updated certificate and consent. In addition, unless the qualified person recently worked on the mineral property, the issuer is in the best position to determine if there is new material scientific or technical information about the property. We think investors are still protected without this requirement due to the transparency of the issuer's determination that there is no material scientific or technical information about the property that is not contained in an existing technical report.

Regulation to amend Regulation 44-101

As is the case with updated consents under the Current Regulation, issuers can have difficulties contacting qualified persons to provide expert consents necessary to complete a short form prospectus offering under Regulation 44-101. Issuers can therefore face an unpredictable delay or inability to obtain a prospectus consent, which might jeopardize completion of their offering.

The Regulation to amend Regulation 44-101 allows the consulting firm that employed the qualified person who prepared the issuer's technical report to consent, in place of the qualified person, to the use of the technical report in a short form prospectus. Allowing the consulting firm to provide a prospectus consent will eliminate this delay while ensuring a technically proficient person has reviewed the prospectus disclosure and consents to the use of the technical report. Moreover, the Regulation to amend Regulation 44-101 maintains the same liability regime for investors against the consulting firm in the event the prospectus contains materially misleading scientific or technical disclosure.

Comparable foreign standards

The Amended Regulation recognizes foreign standards for qualified persons and mining disclosure that are more consistent and comparable to standards in Canada and other international mining jurisdictions. For example, the Amended Regulation exempts a foreign producing issuer listed on a specified exchange from the requirement to have an independent qualified person prepare its technical report when it first becomes a reporting issuer. This exemption should facilitate additional Canadian listings by foreign producing issuers by recognizing that they already satisfy comparable foreign standards for scientific or technical disclosure.

Royalty holders (subsection 9.2(1) of the Amended Regulation)

The Current Regulation applies to issuers holding a royalty interest in a mineral project. Often the scientific or technical information on the mineral project underlying a royalty interest is material information about the issuer holding the royalty interest. However, because royalty holders have limited access to project data, their technical reports are often based on the scientific and technical information disclosed by the owner of the mineral project. This results in duplicative disclosure with no additional benefit to the users of the royalty holder's technical report.

The Amended Regulation exempts the royalty holder from the requirement to prepare a technical report if the information concerning the project is publicly available, and was prepared by an issuer that is subject to the Amended Regulation or a producing issuer listed on a specified exchange. This exemption will reduce the regulatory burden for royalty holders while providing investors with access to the same information currently available.

Property acquisitions (subsection 4.2(7) of the Amended Regulation)

We understand that in some cases when an issuer acquires a material property, the issuer's due diligence does not provide the necessary scientific and technical information to prepare a new independent technical report within the 45-day filing period. The Amended Regulation extends the deadline to file a technical report on a newly acquired property to six months if another issuer previously filed a technical report on the acquired property and that report is still current. We do not think this extension would compromise investor protection because investors would still have access to a current technical report on the acquired property.

Request for Comment on the Amended Mining Regulation and Consequential Amendments

We invite comment on the Amended Mining Regulation and the Consequential Amendments generally. In addition, we have the following specific questions for your consideration.

Short form prospectus trigger

We are considering whether to keep, modify or eliminate the short form prospectus trigger for a technical report (paragraph 4.2(1)(b) of the Amended Regulation). As well as soliciting comments, we are surveying certain issuers directly to assess the regulatory impact and costs associated with this requirement. Specifically, we are surveying issuers that filed a technical report solely to support disclosure in a preliminary short form prospectus, where the receipt was issued during the period March 2006 until December 2009. In addition, we are surveying a representative sample of issuers that were eligible to file a short form prospectus in 2009. We are not making these issuer surveys generally available because they are targeted at specific groups of issuers. However, you can view the questions in the surveys by [clicking here](#).

We understand that the requirement to prepare a new technical report imposes extra costs and limits an issuer's ability to complete these offerings on a timely basis. Feedback should confirm whether the extra costs and delays are a significant concern to industry and

whether investors think they will be disadvantaged if the scientific or technical disclosure in a short form prospectus is not supported by a technical report. Comments and survey responses will help us determine if the reduced costs to issuers of eliminating this requirement would outweigh the benefit to investors of keeping it.

The table below illustrates the effect of eliminating the short form prospectus trigger in three situations. In each situation, there is new material scientific or technical information about a property material to the issuer that is not supported by a previously filed technical report. (An issuer can rely on a previously filed technical report if there is no new material scientific or technical information.)

	<u>Case 1</u> New information is not a material change in the affairs of the issuer	<u>Case 2</u> New information is a material change in the affairs of the issuer but not first disclosure of, or a material change to, mineral resources, mineral reserves, or a preliminary assessment	<u>Case 3</u> New information is a material change in the affairs of the issuer and also first disclosure of, or a material change to, mineral resources, mineral reserves, or a preliminary assessment
Short form trigger	New technical report required	New technical report required	New technical report required
Delete short form trigger	No new technical report required	No new technical report required	No new technical report required with short form prospectus, but will be required under para. 4.2(1)(j) and filed after the offering is completed.

Examples of Case 2 are

- an issuer acquires a property that is material to the issuer, but which does not have a mineral resource or mineral reserve;
- an issuer completes a significant amount of drilling on a material property.

Whether we keep or eliminate the short form prospectus trigger:

- under section 3.1 of the Amended Regulation, the issuer would be required to name in its preliminary and final short form prospectus the qualified person who prepared or supervised the preparation of the new scientific or technical information, or approved the written disclosure;
- the qualified person would likely be considered an expert named in the prospectus and so would be required to provide an expert consent under Regulation 44-101 to the disclosure of the new scientific or technical information in the final short form prospectus.

In making our decision, it would be helpful to have feedback from both issuers and those on the buy side of short form prospectus offerings. We therefore encourage input from all stakeholders on this important issue.

Questions

1. Do you rely on technical reports when making, or advising on, investment decisions in a short form prospectus offering? If yes, please explain how the content of a technical report, or the certification of a technical report by a qualified person, could influence your investment decisions or your recommendations.
2. Do you think we should keep, or eliminate, the short form prospectus trigger? Please explain your reasoning.
3. Please discuss how your answers to questions 1 and 2 might change in each of the three cases described in the table.
4. If we decide to eliminate the short form prospectus trigger, is the proposed guidance in subsection 4.2(13) of the Amended Policy Statement useful? Do you have any suggestions concerning this guidance?

Depending on the comments received, we might consider removing the short form trigger for one of the three cases or for a combination of the three cases described in the table above.

New exemption for property acquisition with current technical report

The new exemption in subsection 4.2(7) of the Amended Regulation allows a conditional 6-month filing delay for a technical report supporting mineral resources, mineral reserves, or a preliminary economic assessment, if the estimates are supported by a current technical report filed by a previous owner. The 6-month period would permit the new owner additional time to have a new technical report prepared. This exemption is intended to provide the issuer with an additional option to disclosing the information as a historical estimate, or having the previous technical report re-addressed to it.

Question

5. Is the proposed new exemption relating to an acquired property helpful? Is it reasonable to expect that issuers will use the new exemption in light of the attached conditions?

Existing exemption from site visit requirement

Subsections 6.2(2) and (3) of the Amended Regulation carry forward an exemption from the requirement for a current personal inspection of a property that is the subject of a technical report.

Question

6. Do market participants use this exemption? Should we keep it in the Amended Regulation?

Alternatives Considered

We considered maintaining the status quo. However, in recent years we have received considerable feedback from market participants on how the Current Mining Regulation is working. Market participants have identified some problems they are having with the requirements and we have identified certain areas of concern. Since we adopted the original mining regulation in February 2001, we have made only one set of relatively minor amendments, in 2005. Given that the regulation has now been in force for nine years,

during all phases of the economic cycle, we felt that it was an appropriate time to consult industry on the regulation and contemplate more substantive amendments.

We considered no other alternatives.

Unpublished Materials

In developing the Amended Mining Regulation, we did not rely upon any significant unpublished study, report, or other written materials, except the results of the public consultations referred to above.

Local Notices

Certain jurisdictions will publish other information required by local securities legislation in Appendix E to this Notice.

Publishing Jurisdictions

The Amended Mining Regulation and the Consequential Amendments are initiatives of all CSA members. Each CSA member would replace the Current Mining Regulation with the Amended Mining Regulation. Each CSA member would adopt the Amended Regulation, the Amended Form, and the Consequential Amendments, as a rule, commission regulation, or regulation, and the Amended Policy Statement as a policy.

How to Provide Your Comments

Please provide your comments by **July 23, 2010**.

Please address your submission to all the CSA member commissions, as follows:

British Columbia Securities Commission
 Alberta Securities Commission
 Saskatchewan Financial Services Commission – Securities Division
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 New Brunswick Securities Commission
 Registrar of Securities, Prince Edward Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 Superintendent of Securities, Northwest Territories
 Superintendent of Securities, Yukon Territory
 Superintendent of Securities, Nunavut

You do not need to deliver your comments to all CSA members. Please deliver your comments **only** to the following addresses, and CSA members' staff will distribute your comments to all other jurisdictions.

Anne-Marie Beaudoin
 Corporate Secretary
 Autorité des marchés financiers
 800, square Victoria, 22^e étage
 C.P. 246, tour de la Bourse
 Montréal, Québec H4Z 1G3
 Fax: 514-864-6381
 E-mail: consultation-en-cours@lautorite.qc.ca

Sheryl Thomson
 Senior Legal Counsel, Corporate Finance
 British Columbia Securities Commission
 PO Box 10142 Pacific Centre
 701 West Georgia Street
 Vancouver, BC V7Y 1L2
 Tel: 604-899-6778
 Fax: 604-899-6581
 E-mail: sthomson@bcsc.bc.ca

If you are not sending your comments by e-mail, please send a CD-ROM containing your comments in MS Word format.

We cannot keep submissions confidential because securities legislation in certain provinces requires that we publish a summary of the written comments received during the comment period.

Questions

If you have any questions, please refer them to any of the following:

Autorité des marchés financiers

Luc Arsenault
Geologist
Autorité des marchés financiers
Tel: 514-395-0337, ext: 4373
E-mail: luc.arsenault@lautorite.qc.ca

Alexandra Lee
Senior Policy Advisor
Policy and Regulations Department
Autorité des marchés financiers
Tel: 514-395-0337, ext: 4465
E-mail: alexandra.lee@lautorite.qc.ca

British Columbia Securities Commission

Robert Holland
Chief Mining Advisor, Corporate Finance
British Columbia Securities Commission
Tel: 604-899-6719
E-mail: rholland@bcsc.bc.ca

Sheryl Thomson
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
Tel: 604-899-6778
E-mail: sthomson@bcsc.bc.ca

Gordon Smith
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
Tel: 604-899-6656
E-mail: gsmith@bcsc.bc.ca

Alberta Securities Commission

Michael Jackson
Legal Counsel
Alberta Securities Commission
Tel: 403-355-3893
E-mail: michael.jackson@asc.ca

Saskatchewan Financial Services Commission

Ian McIntosh
Deputy Director – Corporate Finance
Saskatchewan Financial Services Commission
Tel: 306-787-5867
E-mail: ian.mcintosh@gov.sk.ca

Ontario Securities Commission

Craig Waldie
Senior Geologist, Corporate Finance
Ontario Securities Commission
Tel: 416-593-8308
E-mail: cwaldie@osc.gov.on.ca

Michael Tang
Senior Legal Counsel
Ontario Securities Commission
Tel: 416-593-2330
E-mail: mtang@osc.gov.on.ca

James Whyte
Senior Geologist, Corporate Finance
Ontario Securities Commission
Tel: 416-593-2168
E-mail: jwhyte@osc.gov.on.ca

Andrew Lowe
Accountant, Corporate Finance
Ontario Securities Commission
Tel: 416-593-3734
E-mail: alowe@osc.gov.on.ca

New Brunswick Securities Commission

Pierre Thibodeau
Senior Securities Analyst
New Brunswick Securities Commission
Tel: 506-643-7751
E-mail: pierre.thibodeau@nb-sc-cvmnb.ca