

AMENDMENTS PROPOSED TO THE DISCLOSURE RULES FOR MINERAL PROJECTS

The Canadian Securities Administrators (CSA) have published for comment proposed revisions to National Instrument 43-101 - *Standards of Disclosure for Mineral Projects* (NI 43-101). These represent the most substantive changes to NI 43-101 since it was first adopted in 2001. The CSA have indicated that the proposed amendments are intended to provide more flexibility to mining issuers and qualified persons, while at the same time seeking to maintain investor protection.

The most significant changes in the proposed amendments to NI 43-101 are:

Removal of Short Form Prospectus Trigger for Technical Report

The proposed amendments would eliminate the “short form prospectus trigger”, so that an issuer would no longer be required to file a technical report to support technical information in a preliminary short form prospectus at the same time that the issuer files the preliminary short form prospectus, if there was not a prior technical report on file. The CSA invites comments on this proposed significant change, to obtain the views of market participants on whether this short form prospectus trigger imposes unwarranted costs and delays on mining issuers and limits their ability to complete short form prospectus offerings on an expedited basis. We expect that the comments received by the CSA in response to this significant proposal will be critical to the eventual decision by the CSA as to whether to adopt this change. We understand that different jurisdictions within the CSA are split on the issue.

The preparation and filing of a new technical report is often a significant barrier to be overcome by an issuer in advance of a proposed short form prospectus offering. This proposed change should allow issuers to access the market on a more timely basis.

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Technical Reports Required for Initial Disclosure of Certain Preliminary Information

The CSA is proposing that an issuer would be required to file a technical report where any written disclosure is made by an issuer for the first time of any preliminary economic assessment, mineral resource or reserve information that constitutes a material change in the affairs of the issuer. Currently, NI 43-101 only requires an issuer to file a technical report where this information is published for the first time in a company news release or in a directors' circular and the new information constitutes a material change to the issuer. This proposal is a deliberate response by the CSA to past examples of certain issuers seeking to evade the requirement to file a technical report in situations where, for example, the issuer has made public disclosure of mineral resource or reserve information on its website.

Disclosure of Preliminary Economic Assessments

There is proposed expanded flexibility for the disclosure of the results of preliminary economic assessments that are based on or include inferred mineral resources. An issuer would be allowed to disclose such preliminary economic assessments, subject to the disclosure containing certain cautionary language and information on the impact of the assessment on the results of any pre-feasibility or feasibility study.

Increased Flexibility for Qualified Person Consents and Certificates

There are proposed changes to assist an issuer in locating a specific qualified person on a timely basis where the issuer faces a filing deadline for that qualified person's consent or certificate. The issuer would no longer need to file an updated consent or certificate from the qualified person for a technical report that was previously filed, provided that the technical report is still current after any triggering event. This change will be particularly helpful where an issuer is seeking to do a short form prospectus financing on an expedited basis and it faces the often common problem of having to locate the specific qualified person who previously authored the applicable technical report, where for example that person is

no longer employed by the same consulting firm or is otherwise unavailable or inaccessible. The alternative that is being proposed is that the firm that employed the qualified person could now sign the updated consent, subject to certain conditions.

Expanded Definitions for Professional Designations and Foreign Codes

NI 43-101 currently contains a prescribed list of acceptable professional designations and foreign associations for qualified persons. Another proposed change would allow for a more flexible set of objective standards that a foreign professional association could meet in order to have its members qualify as qualified persons under NI 43-101. This would allow additional foreign professional associations to be able to work with mining issuers, particularly where the issuers have properties in foreign jurisdictions.

There is also a similar proposed change to the current prescribed list of acceptable foreign mining codes. This would be replaced with a more flexible objective test for determining the foreign codes that are acceptable, which would eliminate the often time-consuming task of seeking to reconcile mineral resource and reserve categories listed under foreign codes with the applicable standards of the Canadian Institute of Mining, Metallurgy and Petroleum.

Technical Reports for Newly-Acquired Properties

Mining issuers often confront difficult timing issues regarding the preparation and filing of a technical report for a property that they have recently acquired. NI 43-101 currently allows an issuer, subject to certain conditions, to disclose a historical estimate of certain information. This requirement would be amended so that disclosure could be made of a historical estimate that was prepared by a third party before the issuer acquired or agreed to acquire the property.

These proposed changes would also give an issuer an additional six months, instead of the current deadline of 45 days, to prepare and file a technical report to support disclosure of a preliminary economic assessment or mineral resource or reserve information that was covered by a technical report previously filed by another issuer. This will give the issuer that acquires a

property considerably more flexibility in the timing of preparing a technical report for its shareholders, to give them additional information concerning the newly-acquired property.

Other Proposed Changes

There are additional proposed exemptions from certain existing independence requirements in NI 43-101 for the preparation and filing of technical reports, which will be of assistance to producing issuers that are already reporting issuers in Canada or that are new reporting issuers in Canada themselves and whose securities are already listed on certain specified exchanges.

There is also a proposed exemption from having to prepare a technical report where an issuer only holds royalty interests, provided that

the operator of the mineral project is subject to NI 43-101 or its securities trade on a specified exchange, and certain other conditions are met.

Conclusion

These changes proposed by the CSA to NI 43-101 seek to provide much needed flexibility for mining issuers in Canada to access the markets and also to deal with the often considerable requirements for a technical report. The public comment period for the proposed changes is scheduled to expire on July 23, 2010 and it will be interesting to see the progress of the proposed amendments.

If you have any questions concerning this bulletin and the proposed changes to NI 43-101, please contact the authors or your usual contact at Davis LLP.

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