### 1.1.5 CSA Staff Notice 43-302 - FAQs- NI 43-101 Standards of Disclosure for Mineral Projects

**CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 43-302**

**Frequently Asked Questions**
First published October 19, 2001, revised February 8, 2002 and January 24, 2003

**NATIONAL INSTRUMENT 43-101 (NI 43-101)**
**Standards of Disclosure for Mineral Projects**

NI 43-101 is a rule that governs how issuers disclose scientific and technical information about their mineral projects to the public. To assist mining industry participants and their advisors in understanding and applying NI 43-101, we compiled a summary of questions and CSA staff responses (Frequently Asked Questions or FAQs) that was first published on October 19, 2001 and was revised on February 8, 2002. Attached to this notice is an update to the FAQs.

We update the summary of FAQs from time to time to assist in the interpretation and application of NI 43-101 as new issues arise. We continuously update this summary of FAQs rather than create supplemental summaries in order to retain one repository of interpretative guidance for the rule. We intend to publish another comprehensive update later this year.

In this update, we have modified and expanded the guidance in the FAQs in order to respond to questions that have frequently been asked over the last year. The key matters that have been clarified are as follows:

**Section 3.6** – The CIM standard definitions should be used for estimating and reporting diamond mineral resources and mineral reserves pending the updating of the Guidelines for Reporting of Diamond Exploration Results, Identified Mineral Resources and Ore Reserves, published by the Association of Professional Engineers, Geologists and Geophysicists of the Northwest Territories.

**Section 4.2** – An issuer must generally file a complete and current technical report rather than an addendum containing new material information. Two exceptions are noted in this section. One relates to the prospectus filing process and the other to reports prepared under National Policy Statement No. 2-A or another reasonable format and filed prior to February 1, 2001.

**Section 4.7** – If an issuer is required to file a technical report under subsections 4.1(1) or 4.2(1), it may rely on a technical report that it has previously filed under NI 43-101 if that report is still current and it files an updated certificate and consent from the qualified person. The issuer does not have to re-file the technical report.

**Section 4.10** – In connection with the filing of an offering memorandum, an issuer may file a letter that states the name and SEDAR project number of a previously filed technical report that is still current and is being relied upon. The issuer need not file another copy of the report. If a current technical report has not been filed on SEDAR, the issuer must file a hard copy of the technical report with the hard copy of the offering memorandum.

**Section 4.12** – An issuer need not file a technical report when it has agreed to acquire a property with mineral resources and perhaps mineral reserves if the announcement of the acquisition includes disclosure cautioning that the resource and reserve estimates are historical in nature, have not been verified by the issuer's qualified person, and should not be relied upon.

**Section 4.18** – An issuer that holds a royalty interest in a mineral property may not refer to or rely upon the disclosure filed by the operating company.

**Canadian Securities Administrators Staff Notice 43-302**

**Frequently Asked Questions**
**(First published October 19, 2001, revised February 8, 2002 and January 24, 2003)**

**NATIONAL INSTRUMENT 43-101**
***Standards of Disclosure for Mineral Projects***

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Certificate of Author
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**Canadian Securities Administrators Staff Notice 43-302**

**Frequently Asked Questions**
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**NATIONAL INSTRUMENT 43-101**
***Standards of Disclosure for Mineral Projects***

To assist mining industry participants and their advisors in understanding and applying NI 43-101, Canadian Securities Administrators (CSA) staff has compiled this summary of questions and CSA staff responses.

## PART 1 APPLICATION OF NI 43-101

### 1.1 What is NI 43-101?

NI 43-101 is a rule that governs how issuers disclose scientific and technical information about mineral projects to the public. It covers oral statements as well as written documents and websites. It requires that all disclosure be based on advice by a "qualified person" (a term defined in NI 43-101) and in some circumstances that the person be independent of the issuer and the property. NI 43-101 also requires issuers to file technical reports at certain times and there is a prescribed format for the technical report. Issuers are required to make disclosure of reserves and resources using definitions approved by the CIM, except for coal.

NI 43-101, together with its Companion Policy 43-101CP and Form 43-101F1*Technical Report,* can be found on our websites:

| | |
|---|---|
| BC | www.bcsc.bc.ca |
| Ontario | www.osc.gov.on.ca |
| Quebec | www.cvmq.com |
| Alberta | www.albertasecurities.com |

Exchanges may impose requirements on their listed issuers that are in addition to the requirements contained in NI 43-101.

### 1.2 Does NI 43-101 apply to both reporting and non-reporting issuers?

Yes. NI 43-101 applies to any issuer that discloses scientific and technical information to the public about a mineral project.

An **issuer** is any entity that issues a security. Issuers can include partnerships and grubstakes, as well as companies. **Securities** include interests in properties, profits, earnings and royalties, as well as shares and options.

It does not matter whether the issuer is listed on an exchange, or whether it is a "reporting issuer" under securities legislation or a non-reporting issuer. For example, if an issuer raises money under an offering memorandum before it goes public, NI 43-101 applies and the issuer is required to file a technical report that a qualified person prepares.

### 1.3 Does NI 43-101 apply to all of an issuer's scientific and technical disclosure?

No. NI 43-101 only applies to scientific and technical disclosure that an issuer makes concerning mineral projects on properties that are material to the issuer. However, issuers should be aware that materiality of a property may change over time. Therefore, issuers are encouraged to apply NI 43-101 to all scientific and technical disclosure to the extent possible. For guidance on whether a property is material to an issuer, issuers should refer to subsections 2.4 (1) to (5) of the Companion Policy 43-101CP. The assessment of materiality should be made for properties held, or to be acquired, by the issuer.

In addition to the requirements under NI 43-101, an issuer also has obligations under general securities laws regarding all disclosure that it makes. Guidance on selective disclosure and insider trading prohibitions are contained in a new national policy, NP-51-201 *Disclosure Standards*. Issuers should seek the advice of a lawyer experienced with securities laws to ensure that all its obligations under general securities laws are met.

### 1.4 Are assessment work reports covered by NI 43-101?

No. NI 43-101 does not cover assessment work reports that an issuer files to keep its properties in good standing. NI 43-101 also does not cover reports an issuer files to support permit applications or environmental legislation. However, NI 43-101 does apply to any public disclosure made by or on behalf of the issuer that is based on the technical information in these reports or which refers to the results and findings of these reports. NI 43-101 also applies to the reports themselves if they will be disseminated directly to the public by or on behalf of the issuer.

### 1.5 Does NI 43-101 apply if the issuer is doing a "private" placement?

Yes. Certain kinds of "private" placements involve public disclosure and therefore NI 43-101 applies. For example, a rights offering circular that contains scientific or technical disclosure about a mineral project is covered by NI 43-101 because when it is filed with securities regulators it is available to the public on request.

### 1.6 Does a prospector have to be concerned with NI 43-101?

No, a prospector who is carrying out the ordinary business of prospecting mineral properties and selling the properties to an exploration or mining company, does not have to be concerned about NI 43-101.

However, the situation changes if the prospector decides that he or she wants to raise money to finance exploration on the property. As soon as there is a "security" involved, securities legislation applies and if the prospector makes disclosure available to the public, NI 43-101 applies.

The *Securities Act* covers all "issuers" of securities, including individuals and partnerships, as well as companies. A security is not only a share of stock in a company. Profit sharing agreements and other arrangements where the investor's return is based primarily on the efforts of the prospector can also be securities.

As an example, if a prospector meets with his family and close personal friends and raises money to do work on a mineral property to increase its value before the prospector plans to sell it to a junior company, and offers a return to those investors that is based on the sale of the property, the prospector is probably offering a "security". Even in that case however, the prospector is not likely to be making disclosure that will be available to the public and therefore NI 43-101 does not apply.

If the circle gets wider, and friends of friends are investing, the "public" is involved. The prospector should make sure an exemption from the registration and prospectus requirements of the *Securities Act* is available. If the prospector relies on an exemption from registration and prospectus requirements that requires the use of an offering memorandum, NI 43-101 will apply, and the scientific and technical disclosure the prospector makes will have to be based on a technical report or other information prepared by a qualified person.

Prospectors engaged in the ordinary business of selling their properties should avoid calling the property information they prepare a "technical report" or an "investment package" as those terms could be misleading.

## PART 2 THE QUALIFIED PERSON REQUIREMENT

### 2.1 How can a person satisfy the "professional association" requirement to be a qualified person?

One of the conditions to be a qualified person is membership in a "professional association" as defined in section 1.2 of NI 43-101. Any self-regulatory organization of engineers and/or geoscientists that meets the definition is a professional association, wherever it is located in the world.

For example, the following Canadian associations are professional associations:

- Association of Professional Engineers and Geoscientists of the Province of British Columbia (APEGBC)
- Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA)
- Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS)
- Association of Professional Engineers and Geoscientists of Manitoba (APEGM)
- Association of Professional Geoscientists of Ontario (APGO)
- Professional Engineers of Ontario (PEO)
- Ordre des ingenieurs du Québec (OIQ)
- Ordre des Géologues du Québec (OGQ)
- Association of Professional Engineers of Prince Edward Island (APEPEI)
- Association of Professional Engineers and Geoscientists of New Brunswick (APEGNB)
- Association of Professional Engineers of Nova Scotia (APENS)
- Association of Professional Engineers and Geoscientists of Newfoundland (APEGN)
- Association of Professional Engineers of Yukon (APEY)
- Association of Professional Engineers, Geologists & Geophysicists of the Northwest Territories (NAPEGG) (representing NWT and Nunavut Territory)

Geoscientist associations in other Canadian provinces that do not have associations that are created or recognized by statute qualify as professional associations until February 1, 2003, when it is anticipated that these associations will be recognized by statute. Geoscientists that are members of these associations meet the requirement of belonging to a professional association.

There are other self-regulatory organizations outside of Canada that may not entirely meet the definition of "professional association" in NI 43-101 because they have not been given authority or recognition by statute. However, for the purpose of being a "member of a professional association" under NI 43-101, CSA staff will accept a person who

- is licensed or certified in a state in the United States that is a member of the National Association of State Boards of Geology (ASBOG). Currently these include: Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Oregon, Pennsylvania, Puerto Rico, South Carolina, Virginia, Washington, Wisconsin and Wyoming
- is certified by the American Institute of Professional Geologists (AIPG) as a Certified Professional Geologist
- is a professional engineer licensed or certified in a state in the United States
- holds the title European Geologist from the European Federation of Geologists (EFG)
- is a Fellow or Member of the Australasian Institute of Mining and Metallurgy (AusIMM)
- is a Fellow or a Member of the Institute of Materials, Minerals and Mining (IMMM)
- is a Fellow or Member of the Australian Institute of Geoscientists (AIG)
- is a Fellow of the South African Institute of Mining and Metallurgy (SAIMM)
- is a professional natural scientist of the South African Council for Natural Scientific Professions (SACNASP)
- is a Professional Member of the Institute of Geologists of Ireland (IGI)

This list is not exhaustive and may be amended in the future.

Any self-regulatory association of geoscientists and/or engineers that meets the definition of "professional association" in NI 43-101 is a professional association. If a qualified person is not a "member of a professional association" (as set out in NI 43-101 or in this FAQs), then the issuer will require exemptive relief.

**2.2 How can a geoscientist who is a member of AGO satisfy the professional association requirement to be a qualified person after February 1, 2002?**

One of the conditions to be a qualified person is membership in a "professional association" as defined in section 1.2 of NI 43-101. When NI 43-101 came into effect, it was anticipated that an Ontario based professional association for geoscientists, APGO, would be established by February 1, 2002. Until then, geoscientists who belonged to the Association of Geoscientists of Ontario were considered to belong to a professional association. Unfortunately, the application process for membership in APGO was delayed and could not be completed by February 1, 2002.

After February 1, 2002, an issuer that retains a geoscientist who is a member of AGO, but not a member of a professional association for purposes of the rule, must submit an application for exemptive relief to the appropriate securities regulators for that person to be considered a qualified person under the rule. We anticipate that, until the APGO membership process is completed, relief will be granted in virtually all cases where the geoscientist is a member in good standing of AGO and has submitted his/her application to become a member of APGO. An application for relief is not required in British Columbia because an instrument providing blanket relief for these types of applications is in effect in that province until February 1, 2003.

**2.3 What can an issuer do in order to rely on the advice or technical report of a foreign person who does not satisfy the professional association requirement, but would otherwise be a qualified person?**

The issuer may

- look to a person in its own organization or, if an independent technical report is required, retain an outside consultant that is a qualified person to review and take responsibility for the foreign person's advice or technical report
- arrange for the person to join one of the Canadian associations that accepts foreign citizens/residents as members or licensees, for example the APGO or APEGBC
- apply for an exemption from the professional association requirement for the foreign person.

**2.4 Will securities regulators grant an exemption from the requirement that a qualified person belong to a professional association?**

Yes, but only in very unique circumstances. If granted, we will likely limit the exemption to a particular property or area, or to a particular task, and grant the exemption for a limited period of time.

Where an issuer wishes to retain a person who is well qualified and who does not belong to a professional association because no association exists in his or her jurisdiction or because it is not common practice for members of his or her profession to be registered in the jurisdiction, we will consider granting an exemption. However, if there is any other qualified person known to the issuer who has been to the site and is able to co-author the report, then we will not likely grant an exemption.

In the event an exemption is granted, if the person wishes to continue to provide services either to the same issuer or to another issuer that makes public disclosure in Canada, then the person will be urged to join a professional association, as we will not provide continued relief.

We will generally not grant relief to an issuer that has qualified persons available to it in management positions, as these qualified persons should take responsibility for the issuer's scientific and technical disclosure on their mineral projects.

An exemption does not relieve the issuer of the responsibility to ensure that the person that the issuer plans to rely on has the required experience to carry out the responsibilities of a qualified person for the tasks at hand.

We remind issuers to comply with local laws governing the practice of engineering and geoscience. If the property is located in Canada, we expect that the qualified person will have the appropriate Canadian registration. We encourage issuers to check with the local professional association where the property is located.

**2.5 Does every person who works on a mineral project have to be a qualified person?**

No. Only the person who the issuer relies on in making public disclosure of scientific and technical information on its mineral projects must be a qualified person. Other people may work on the project. If a qualified person relies on the work of people who are not qualified persons (under the definition in NI 43-101) to prepare a technical report or to provide information or advice to the issuer, it is up to the qualified person to take whatever steps are appropriate, in his or her professional judgment, to ensure that the information that he or she relies upon is sound. A qualified person is required to visit the site.

**2.6 If an independent qualified person must prepare a technical report, does every person who contributes information to the technical report have to be independent?**

No. As in the example in 2.5 of these FAQs, provided that the independent qualified person has taken whatever steps are appropriate, in his or her professional judgment, to ensure that the information he or she relies on is sound, and takes responsibility for that information, the independent qualified person may rely on work done and information provided by others. However, the independent qualified person must visit the site.

**2.7 When does an issuer have to name the qualified person it is relying on?**

NI 43-101 requires issuers to name the qualified person they are relying on and that person's relationship to the issuer, if any, in all written disclosure of scientific and technical information, except in news releases. However, the exchanges require that listed issuers name the qualified person they are relying on and that person's relationship to the issuer, if any, in news releases that disclose scientific and technical information. Non-listed issuers are not required to name the qualified person in a news release.

**2.8 In deciding whether a qualified person is not independent, do you calculate his or her aggregate income over a three-year period?**

No. The test is whether the qualified person has received the majority of his or her income in each of the previous three years from the issuer and its affiliates and insiders.

**PART 3 RESOURCES AND RESERVES**

**3.1 When a qualified person reclassifies an issuer's previously disclosed resources and reserves to the definitions in NI 43-101, does this issuer have to name the qualified person?**

Yes. A listed issuer is required to name the qualified person and disclose the relationship of the qualified person to the issuer in all written disclosure. See 2.7 of these FAQs for more information on naming the qualified person.

**3.2 Is an issuer required to retain an independent qualified person to reclassify the issuer's previously disclosed resources and reserves to the categories required by NI 43-101?**

The answer depends on what triggers the disclosure of the reclassified reserves and resources.

The answer is yes if the reclassified resources and reserves are disclosed in a document that requires a technical report prepared by an independent qualified person. This includes a long form prospectus, a valuation and documents filed when an issuer becomes a reporting issuer for the first time in any jurisdiction.

**3.3 Will securities regulators permit disclosure of preliminary feasibility and feasibility studies that include inferred resources?**

NI 43-101 prohibits the inclusion of inferred resources in an economic evaluation in a preliminary feasibility or feasibility study. The prohibition is based on the guidance under the CIM definition of Inferred Mineral Resource that reads, in part:

> "…Confidence in the estimate is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure. Inferred Mineral Resources must be excluded from estimates forming the basis of feasibility or other economic studies."

If the economic evaluation in the issuer's preliminary feasibility or feasibility includes inferred resources, the issuer must "back out" the inferred resources in public disclosure of the economic evaluation contained in the study.

However, there will be some circumstances where securities regulators will grant an exemption to permit the issuer to disclose, as an alternative case, an evaluation that includes inferred resources. One example is an evaluation of an open pit that is designed based on proven and probable reserves or measured and indicated resources, and contains inferred resources within the pit. Securities regulators will not generally grant an exemption if the pit's design is based on inferred resources.

If securities regulators permit disclosure, the issuer will be required to disclose both cases: a base case without inferred resources, and an alternative case that includes inferred resources. The alternative case must be accompanied by the disclosure required for preliminary assessments in section 2.3 (3)(b) of NI 43-101.

Whether securities regulators will grant an exemption to permit disclosure will depend on the particular circumstances of each deposit. The test will be stringent in view of the CIM's expressed concern. We will consider granting relief where the pit or mine plan has been developed based on proven and probable reserves and it is reasonable to defer further development of the inferred resources. We will look at various factors including the percentage of inferred resources, their location in the deposit and other technical factors.

**3.4 Can issuers report resources and reserves under any other foreign codes in addition to the JORC Code, USGS Circular 831 and the IMMM system?**

These are the only codes permitted by NI 43-101. If an issuer wishes to report using another foreign code, the issuer must apply to securities regulators for exemptive relief.

We have granted relief to permit an issuer to report using the South African Code for Reporting of Mineral Resources and Mineral Reserves (the "SAMREC Code") on terms consistent with those set out in section 7.1 of NI 43-101, including reconciliation to the CIM definitions.

**3.5 What definitions should be used for estimating and reporting coal resources and reserves?**

Coal resources and reserves should be estimated and reported using the Geological Survey of Canada (GSC) Paper 88-21, A Standardized Coal Resource/Reserve Reporting System for Canada. We acknowledge that this is not clear in NI 43-101 and we intend to clarify this in a future amendment to NI 43-101.

**3.6 What definitions must be used for estimating and reporting diamond resources and reserves?**

Diamond resources and reserves should be estimated and reported using Canadian Institute of Mining, Metallurgy and Petroleum – Definitions Adopted by CIM Council August 20, 2000 as amended, supplemented, or replaced. The Guidelines for Reporting of Diamond Exploration Results, Identified Mineral Resources and Ore Reserves, published by the Association of Professional Engineers, Geologists and Geophysicists of the Northwest Territories is currently being updated. Therefore, the CIM standard definitions should be used until it is updated.

**3.7 Do the CIM Standards on Mineral Resources and Reserves Definitions and Guidelines apply to the estimation and reporting of industrial minerals?**

Yes, plus the additional guidelines set out in section 1.5(a) of Companion Policy 43-101CP.

## PART 4 TECHNICAL REPORTS

### 4.1 When must issuers file technical reports?

Issuers must file technical reports in each circumstance set out in subsections 4.1(1) and 4.2(1) of NI 43-101. In these circumstances, technical reports are only required on properties (or groups of properties) that are material to the issuer. For guidance on whether a property is material to an issuer, issuers should refer to section 2.4 of the Companion Policy 43-101CP.

In subsections 4.2(1)2., 6. and 10.(ii) relating to POP prospectuses, AIFs, annual reports, and news releases, the issuer is only required to file a technical report if:

- in the case of a news release, the work done on the property amounts to a material change in the affairs of the issuer from the most recently filed technical report or,
- in the case of a POP prospectus, AIF, or annual report, material scientific and technical information about the property is not contained in:
  - (i) a disclosure document (defined in NI 43-101) or a report prepared under National Policy Statement No. 2-A filed by the issuer before February 1, 2001, or
  - (ii) a previously filed NI 43-101 report.

### 4.2 Can an issuer file an addendum to update a previously filed technical report?

No, (however, there are exceptions, as outlined below). Any time an issuer is required to file a technical report, that report must be complete and current. Therefore, where an issuer which has previously filed a technical report is required to file another technical report because of the occurrence of one of the circumstances listed under subsections 4.1(1) or 4.2(1) of NI 43-101, and if the contents of the previously filed technical report are no longer current, the issuer must update the outdated sections of the previously filed report and file a new, complete, current technical report. **It is not sufficient for the issuer to only file the updated portions.** However, if there has been no change to the content required under Items 6 through 11 of Form 43-101F1 from that disclosed in the previously filed technical report, the issuer is not required to repeat that information, provided those items in the previous report are referred to in the new, current technical report.

There are exceptions to this principle. An issuer can file an addendum to a technical report that originally was:

- filed with a preliminary short form prospectus or preliminary long form prospectus and there is a material change in the information before the issuance of the final receipt, or
- prepared under National Policy Statement No. 2-A or another reasonable format and filed with a regulator prior to February 1, 2001 and the addendum contains additional information required to bring the report into compliance with the contents of Form 43-101F1 (see 4.4 of these FAQs).

For each exception, the addendum must be attached to and filed with the previously filed technical report. They must also be filed with an updated certificate and consent of the qualified person.

### 4.3 Who can prepare a technical report?

A technical report is required to be prepared by, or under the supervision of, a qualified person. Persons who are not “qualified persons” under NI 43-101, but have the experience and skill necessary may prepare portions of the technical report provided that a qualified person takes responsibility for the person’s work. The qualified person must take whatever steps are appropriate, in his or her professional judgment, to ensure that the work is sound. A qualified person must conduct the site visit.

### 4.4 Must a technical report follow Form 43-101F1?

Yes, the form is mandatory.

We will however allow an issuer to file a report prepared prior to February 1, 2001 under National Policy Statement No. 2-A or in another reasonable format and filed with a regulator prior to February 1, 2001, provided there has been no significant work done on the property since the report was prepared, and the report is accompanied by:

- an addendum that includes any information required by NI 43-101 that is not included in the report, and
- the certificate and consent of a qualified person required by NI 43-101.

The addendum should include an update on the status of the property and the new information required by NI 43-101. If the changes to the existing report are considerable or the work that has been done since the report affects the interpretation, conclusion or recommendations, a new technical report will be required.

If the issuer is required to file a technical report that is prepared by an independent qualified person and the prior report was not, the issuer can satisfy this requirement by having an independent qualified person prepare the addendum and give the certificate, taking responsibility for the information in the report, amended by his or her addendum.

Where the technical report is required to be filed with an exchange, the exchange may have additional requirements.

**4.5 Where are the requirements for the qualified person's certificate and consent that must accompany the technical report that the issuer is required to file?**

The requirements can be found in Part 8 of NI 43-101. The certificate must address the specific requirements listed under subsection 8.1(2) of NI 43-101. The consent must address the requirements listed under section 8.3 of NI 43-101. Issuers are required to provide a certificate and consent from the qualified person who visited the site. We are attaching as an appendix to these FAQs a sample certificate and a sample consent, with instructions, for the qualified issuer to use as a template These samples illustrate the level of detail we expect the qualified person to include in these documents.

The consent cannot be included in the certificate because the qualified person typically provides them to the issuer at different times. A qualified person provides the issuer with the certificate at the same time as the technical report. The qualified person provides the issuer with the consent to the disclosure in the disclosure materials after the issuer has prepared the disclosure materials and the qualified person has read the disclosure materials that the issuer is filing.

**4.6 When must an issuer file a qualified person's certificate and consent?**

An issuer must file a qualified person's certificate and consent to the filing of the technical report and the technical information in the disclosure materials each time the issuer files, or is required to file, a technical report under subsections 4.1(1) or 4.2(1) of NI 43-101.

NI 43-101 does not require the issuer to get a qualified person's consent to all disclosure that an issuer makes in reliance on the qualified person's technical report or other advice, although issuers may wish to check their disclosure with the qualified person they are relying on.

**4.7 If an issuer is required to file a technical report under subsections 4.1(1) or 4.2(1) of NI 43-101, may it rely on a technical report that it has previously filed under NI 43-101 if that report is still current?**

Yes. However, the issuer must file an updated certificate and consent from a qualified person who will take responsibility for the technical disclosure in that report and the new disclosure material it supports. **The issuer does not have to re-file the technical report.**

Issuers are reminded to consider, when structuring contractual arrangements with the qualified person, that they may have to:

- obtain the qualified person's consent sometime after they receive the technical report and certificate, and
- obtain, subsequent to receiving the initial certificate and consent, an updated qualified person's certificate and consent to support a technical report that the issuer is not re-filing because it has been previously filed under NI 43-101 and is still current.

**4.8 Must preliminary feasibility and feasibility studies be filed in full?**

No. Preliminary feasibility and feasibility studies typically provide more technical detail than the investing public requires. In addition, they are difficult to file in full on SEDAR. Rather than filing these studies in full, we would prefer that issuers file a technical report that provides a summary in NI 43-101 format of the material information contained in the preliminary feasibility or feasibility study. However, we may request a paper copy of the full study for our review.

**4.9 Must an issuer file a technical report with a rights offering circular?**

An issuer is only required to file a technical report if there is scientific or technical disclosure in the rights offering circular. There is no specific requirement that a rights offering circular contain scientific and technical disclosure.

**4.10 Must an issuer file a technical report with an offering memorandum?**

Yes. An issuer is required to file a technical report to support the scientific or technical disclosure in the offering memorandum. However, if an issuer is filing an offering memorandum under MI 45-103 *Capital Raising Exemptions* in BC or Alberta and the issuer is a qualifying issuer (as defined under MI 45-102 *Resale of Securities*), the issuer is not required to file a technical report in some circumstances. The circumstances are if the disclosure about the mineral project is contained in:

- an AIF, prospectus, material change report or annual financial statement filed by the issuer with a regulator before February 1, 2001, or
- a previously filed technical report filed by the issuer either before February 1, 2001 or under NI 43-101.

If a current technical report has been previously filed on SEDAR and is still current, then instead of re-filing that technical report with the offering memorandum, an issuer may file a letter with the offering memorandum that states the name of the previously filed technical report and its SEDAR project number. The issuer must also file an updated certificate and consent with the letter filed with the offering memorandum. If a current technical report has not been filed on SEDAR, then the issuer must file a hard copy of the technical report, certificate, and consent concurrently with the hard copy of the offering memorandum. In this case, the issuer may voluntarily file the current technical report, certificate, and consent as an attachment to a press release or material change report if it wishes to have that report available on SEDAR.

**4.11 Can an issuer obtain an extension of time to file a technical report?**

The time for filing technical reports is contained in subsections 4.2(2) to (6) of NI 43-101. If an issuer needs an extension of time, it should apply to the securities regulators for an exemption order. See 7.1, 7.2 and 7.3 of these FAQs for more information on applying for an exemption.

**4.12 When an issuer agrees to buy a property with resources and perhaps reserves, must the issuer disclose the resources and reserves using NI 43-101 definitions? Must the issuer file a technical report, and if so, when?**

When an issuer options or agrees to buy a property, the issuer can disclose an estimate of resources and reserves made before February 1, 2001 using the terminology of the estimate as long as the issuer follows section 2.4 of NI 43-101.

The announcement of the acquisition and the historical estimate will not trigger the requirement to file a technical report under subsection 4.2(1)(10) of NI 43-101, if the issuer's disclosure states that the issuer has disclosed the historical estimate as a resource or reserve and includes the following cautions:

- the issuer has not done the work necessary to verify the classification of the resource or reserve,
- the issuer is not treating them as a NI 43-101 defined resource or reserve verified by a QP, and
- the historical estimate should not be relied upon.

If the issuer's disclosure shows that the issuer is treating the historical estimate as a NI 43-101 defined resource and reserve verified by a QP, then the issuer is required to file a current technical report on the property within 30 days of the issuer's disclosure if

i. the property, or interest in the property, is material to the issuer and
ii. the acquisition of the resources and reserves is a material change in the affairs of the issuer.

In most cases, the 30 day period will not begin to run until the issuer enters into a formal purchase or option agreement, which should allow the issuer time to complete its due diligence and have the technical report prepared. If the issuer, at the time of the disclosure, has not signed a formal agreement, but is conducting its day to day operations in reliance on the terms of a letter of intent or MOU, then the 30 day period will begin to run from time of the issuer first discloses the historical estimate as a resource or reserve without the three cautionary statements set out two paragraphs above.

If the agreement is subject to conditions such as the approval of a third party or the completion of a 60 day due diligence review, the technical report is still required to be filed within 30 days after the issuer enters into the agreement. However, the issuer may apply for relief to extend the 30 day period. Whether or not the securities regulators will grant such relief depends on the circumstances. See 7.1, 7.2 and 7.3 of these FAQs for more information on how to apply for an exemption order.

**4.13 Must an issuer file technical reports on SEDAR?**

Yes, technical reports are required to be filed electronically. However, an offering memorandum cannot be filed on SEDAR. For the filing requirements for an offering memorandum and its supporting technical report, see 4.10 in these FAQs.

Technical reports can be lengthy and costly to file on SEDAR if they are not prepared with SEDAR filing in mind. We have the following suggestions:

- Do not insert photographs or maps that are larger than 8 ½" x 11". Maps and photographs omitted from filing must be retained for six years after the date of the filing of the report.
- Limit the image resolution of the document. The image resolution must not exceed 300 dots per inch in any event, and may be less provided the document remains readable.
- Limit the use of colour.

- Do not scan documents into electronic format.
- Wherever possible, have technical reports prepared and transmitted in electronic format.
- Wherever possible, limit the size of the technical report. Many personal computers have limited ability to download larger files.

**4.14 Can an issuer correct errors in a document filed on SEDAR?**

Yes. Please refer to Part 9 of the SEDAR Manual for complete instructions on how to correct errors. In general, the issuer is not able to remove the original document from SEDAR. The issuer must file the corrected document on SEDAR under the same SEDAR project number and label the filing "Amended and Restated". It must also file a cover letter with the corrected document explaining what corrections were made to the original document (no blacklined version is necessary). Both the incorrect and the corrected versions will remain on SEDAR.

**4.15 How can an electronic document be signed and sealed?**

The qualified person must date, sign and, if possible, seal the technical report, certificate and consent. If a person's name appears in an electronic document with (signed by) and (sealed) next to the person's name or there is a similar indication in the document, we will consider that the document has been signed and sealed by that person. Although we do not require it, maps and drawings may be signed and sealed in the same manner.

**4.16 If a TSX Venture Exchange listed issuer must become a reporting issuer in Ontario because it has a "significant connection to Ontario", must the issuer file technical reports on all its material properties with the OSC?**

An issuer is required to file a technical report upon becoming deemed a reporting issuer in Ontario. Requests for relief from this requirement will be considered where an issuer is applying to be deemed a reporting issuer in consequence of the recent re-organization of Canadian exchanges and the issuer having a "significant connection with Ontario". OSC staff anticipates that this relief will be granted in virtually all cases. The relief may be denied in exceptional circumstances such as where an issuer is unable to demonstrate a reasonably up-to-date and accurate record of continuous disclosure.

An issuer should include the request for relief in the application to the OSC to be deemed to be a reporting issuer. OSC staff also anticipates that exemptions from the fee associated with this request for relief will be granted in virtually all cases.

**4.17 In a circumstance other than the one described in 4.16, will an issuer that is a reporting issuer in one or more Canadian jurisdictions and becomes a reporting issuer in another Canadian jurisdiction be required to file technical reports on all its material properties in the new jurisdiction?**

Yes, and if the issuer is not a producing issuer the qualified person that prepares the technical report is required to be independent. If a report has been previously filed in another jurisdiction, the issuer should update it and file a complete, current technical report as set out in 4.2 of these FAQs. If an issuer needs relief from these requirements, it should make application to the securities regulator in the new jurisdiction.

**4.18 Can a royalty holder which is an issuer refer to and rely on the disclosure filed by the operating company?**

No. A royalty holder that holds any interests in mineral properties or mineral projects must comply with all of the requirements under NI 43-101. It is not sufficient for a royalty holder simply to refer to the operating company's disclosure regardless whether the documents would be exactly the same. The royalty holder must file its own technical report anytime one is required under subsections 4.1(1) and 4.2(1) of NI 43-101 for each of its royalty interests that are material to it affairs. The extent to which the royalty holder chooses to rely on the same qualified person as the operating company, or have its qualified person rely on the work of that same qualified person, will be a matter to be determined by the royalty holder and the qualified person of the operating company in light of their contractual obligations.

**PART 5 PRELIMINARY ASSESSMENTS**

**5.1 What is a "preliminary assessment"?**

A preliminary assessment, commonly known as a "scoping study", is an assessment of the potential viability of the mineral project taken at an early stage of the project, prior to a preliminary feasibility study. It is generally used as a tool for management decisions on further advancement of the project. The term "preliminary assessment" is used in NI 43-101 to identify this type of study that contains an economic evaluation that includes inferred mineral resources. We consider an economic evaluation to include disclosure of forecast mine production rates that may contain capital costs to develop and sustain the mining operation, operating costs, and projected cash flows.

**5.2 Why are there restrictions on disclosure of preliminary assessments?**

Although preliminary assessments can provide important information to the market, because of the early stage of the project, the information has a high degree of uncertainty and can be used as the basis for abusive market tactics.

An issuer must disclose a preliminary assessment that is a material change in its affairs. An issuer must follow subsection 2.3(3)(b) of NI 43-101 when it discloses a preliminary assessment. This subsection was included in NI 43-101 to help an investor understand the information.

A preliminary assessment must be either in the form of a technical report, or be supported by a technical report. If the issuer is reporting in Ontario, the issuer is required to pre-file with the OSC, 5 days in advance of the proposed disclosure. The issuer must deliver to the OSC the proposed disclosure, the preliminary assessment and, if there is a separate technical report, the technical report. In other jurisdictions the issuer may file these documents at the time of the disclosure.

**PART 6 GENERAL DISCLOSURE QUESTIONS**

**6.1 Can an issuer put some of the disclosure required by NI 43-101 on its website, instead of in the body of its news release?**

Yes. The issuer may put detailed information of a background nature on the issuer's website, provided the news release clearly refers the reader to the issuer's website for the information and a hard copy of the website information is filed with the securities regulators

Each news release must include the name and relationship to the issuer of the qualified person (required by the exchanges) and whether or not the data has been verified. If the data has been verified, the news release may refer to the issuer's website for the full description of its data verification of its program. A hard copy of the information published on the website must be filed with the securities regulators to the attention of "Records".

Issuers are reminded that their news releases must not be misleading. Therefore, disclosure in a news release must also contain the prescribed statements that are required to be "proximate" to certain disclosure as required under NI 43-101. For example, the statements that are required to be made proximate to disclosure of a preliminary assessment under subsection 2.3(3)(b) of NI 43-101 cannot be omitted from a news release.

**6.2 Can an issuer cross reference to other disclosure it has previously made?**

Yes, but only in the circumstances prescribed under section 3.5 of NI 43-101. That section permits an issuer to cross-reference the information required under sections 3.3 and 3.4 (ie. quality assurance and control information) only if that information is contained in a previously filed disclosure document. "Disclosure document" is defined under NI 43-101 and means an annual information form, prospectus, material change report or annual financial statement.

Also, although a news release is not included in the definition of disclosure document, an issuer may cross-reference to a previous news release but only if the issuer has filed that news release on SEDAR.

**6.3 Do the rules for disclosure in Form 43-101F1 apply to written disclosure other than technical reports?**

No, not specifically. However, where the requirements in Form 43-101F1 reflect good professional practice, we strongly suggest issuers follow these requirements in all their written disclosure.

Good examples to follow for any written technical disclosure are:

- item 19(j) of the Form that requires an issuer that is reporting a quantity of contained metal to state the grade or quality, quantity and category of resources and reserves. We consider that the representation of a gross or *in situ* contained mineral value is misleading because it does not take into account mining and metallurgical recoveries and capital and operating cost parameters.
- item 19(k) of the Form that requires an issuer that is reporting the grade of a polymetallic resource as a metal equivalent to report the individual grade of each metal, among other things. We consider that polymetallic grade equivalents that are based only on price considerations are misleading because they do not take into account metallurgical recoveries, treatment costs and other relevant economic factors.

## PART 7 EXEMPTION ORDERS

### 7.1 Where should an issuer apply for an exemption order?

An issuer that wants to obtain an exemption from any of the requirements of NI 43-101 or the form of technical report should apply to the securities regulators in all of the jurisdictions where the issuer is a reporting issuer for an order granting the exemption. A separate fee may apply in each jurisdiction. If the issuer is reporting in more than one jurisdiction please see National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* for details on the application process.

### 7.2 When should an issuer apply for an exemption order?

Please apply well in advance of the time the relief is required. Where more than one jurisdiction is involved the process typically takes several weeks. **Exemption orders cannot cure a default that has already occurred.**

If an issuer plans on using a technical report to support disclosure, the issuer should apply for any relief from NI 43-101 **before** the issuer is required to file the technical report. For example, if the issuer requires relief from the requirements of NI 43-101 in connection with a technical report it plans to file with a preliminary prospectus, the issuer must make application for that relief before it files the preliminary prospectus.

### 7.3 Does an issuer need a separate exemption order if it obtains a prospectus receipt?

No. An issuer that requires relief from the requirements of NI 43-101 for disclosure in a prospectus is required to specifically request the securities regulator for the relief in its cover letter when it files the prospectus (or before it files the prospectus—see 7.2 above). If the regulator grants the exemption, the prospectus receipt will be the evidence that the exemption was granted. The issuer is not required to make a separate application for an exemption order in this situation.

### 7.4 What if someone has questions about NI 43-101?

If you have any questions about NI 43-101, please call:

| | |
|---|---|
| Terry Macauley, Chief Mining Consultant, BCSC | (604) 899-6723 |
| Deborah McCombe, Chief Mining Consultant, OSC | (416) 593-8151 |
| Greg Gosson Senior Mining Advisor, BCSC | (604) 899-6519 |
| Pamela Egger, Senior Legal Counsel, Corporate Finance, BCSC | (604) 899-6867 |
| Pierre Martin, Legal Counsel, CVMQ | (514) 940-2199(x4557) |
| Bill Lawes, Securities Analyst, ASC | (403) 297-6454 |

We will be pleased to discuss your questions and to assist you in deciding whether you need to apply for an exemption. Please note that staff cannot guarantee that their commissions will grant the relief requested in a particular application.

### 7.5 Where can I find exemptions that securities regulators have granted?

Most of our exemption orders are posted on our websites.

For orders granted by the BC Securities Commission visit the BCSC website at www.bcsc.bc.ca. Click on “Commission Documents Database” and “Search” for “43-101” for a list of documents relating to NI 43-101. To view exemption orders, look at the documents classified as “D&O” (Decisions and Orders).

For orders granted by the Ontario Securities Commission visit the OSC website at www.osc.gov.on.ca. Click on “Rules and Regulation” followed by “Orders and Rulings” to find a list of orders and rulings organized in alphabetical order.

### 7.6 Does the CSA foresee changes to NI 43-101 in the future?

Yes. However, changes are not likely in the near future. In the interim, with the assistance of the Mining Technical Advisory and Monitoring Committee (MTAMC), we are monitoring NI 43-101 and identifying areas where relief is required and issues that need clarification. We established MTAMC for this purpose. MTAMC’s members are drawn from the Canadian mining and exploration industry and represent a broad geographic and professional spectrum. We also welcome industry input and comments. Until NI 43-101 is amended, we will provide relief through orders and clarification through these FAQs.

## APPENDIX

*This is a sample of each a Certificate and Consent for an author of a technical report prepared in accordance with National Instrument 43-101 and Form 43-101F1. These samples contain sections of text in brackets with italics to provide instructions to the Qualified Person, the content of which should be included, as applicable. The brackets and bracketed text should be removed after the instruction has been followed. The final form of each of the Certificate and Consent which is signed, dated and filed should not contain any bracketed text.*

*[QP's Letterhead] or*
[*Insert name of QP*]
[*Insert name of QP's company*]
[*Insert address of QP or QP's company*]
Telephone:
Fax:
Email:

### CERTIFICATE of AUTHOR

I, [*insert name of QP*], [*insert, as applicable, P. Eng., P.Geol*.] do hereby certify that:

1. I am [*insert title of position*] of:

   [*ABC Mining Co.*
   *Suite 000, 0 Avenue W.,*
   *City, Province, Country,*
   *Postal/Zip Code*].

2. I graduated with a degree in [*insert full title of degree/s*] from the University of [*insert name*] in [*insert year of graduation*]. In addition, I have obtained a [*insert other additional academic achievement (title, year and educational institution), if any*].

3. I am a member [fellow] of the [*insert names of all professional associations registered with*].

4. I have worked as a geologist for a total of [*insert number of years*] since my graduation from university.

5. I have read the definition of "qualified person" set out in National Instrument 43-101 ("NI 43-101") and certify that by reason of my education, affiliation with a professional association (as defined in NI 43-101) and past relevant work experience, I fulfill the requirements to be a "qualified person" for the purposes of NI 43-101.

6. I am responsible for the preparation of section [*insert all sections of technical report responsible for*] of the technical report titled [*insert title of report*] and dated [*insert mo/day/yr of report*] (the "Technical Report") relating to the [*insert name of each property disclosed in the report*] property. I visited the [*insert name*] property on [*insert mo/day/yr*] for [*insert number*] days. [*repeat this last sentence (i.e. disclose the date and duration of site visit) for each property visited*]. [*if this certificate is being prepared for a Technical Report that has been previously filed and there has been no change in the information contained in that Technical Report, state the SEDAR project number for which the Technical Report was originally filed and confirm that there has been no change in the information contained in that Technical Report*].

7. I have [*have not*] had prior involvement with the property [*ies*] that is [*are*] the subject of the Technical Report. The nature of my prior involvement is [*briefly describe previous involvement with the property/ies*].

8. I am not aware of any material fact or material change with respect to the subject matter of the Technical Report that is not reflected in the Technical Report, the omission to disclose which makes the Technical Report misleading.

9. I am [*am not*] independent of the issuer applying all of the tests in section 1.5 of National Instrument 43-101. [*if not independent, state the reasons why not*].

10. I have read National Instrument 43-101 and Form 43-101F1, and the Technical Report has been prepared in compliance with that instrument and form.

11.[1] I consent to the filing of the Technical Report with any stock exchange and other regulatory authority and any publication by them for regulatory purposes, including electronic publication in the public company files on their websites accessible by the public, of the Technical Report.

Dated this [*insert date*] Day of [*insert month*], 200X.

_____
Signature of Qualified Person

[Seal or Stamp
of Qualified Person]

_____
Print name of Qualified Person

[1] If an issuer is using this certificate to accompany a technical report that it will file only with the exchange, then the exchange recommends that this paragraph is included in the certificate.

*[QP's Letterhead] or*
[*Insert name of QP*]
[*Insert name of QP's company*]
[*Insert address of QP or QP's company*]
Telephone:
Fax:
Email:

**CONSENT of AUTHOR**

**TO:** [*Insert names of relevant securities commissions and stock exchanges with which the technical report will be filed*]

I, [*name of QP*], do hereby consent to the filing of the written disclosure of the technical report titled [*insert title of report*] and dated [*insert date of report*] (the "Technical Report") and any extracts from or a summary of the Technical Report in the [*insert type of disclosure document (i.e. prospectus, AIF, etc.)*] of [*insert name of company making disclosure*], and to the filing of the Technical Report with the securities regulatory authorities referred to above.

I also certify that I have read the written disclosure being filed and I do not have any reason to believe that there are any misrepresentations in the information derived from the Technical Report or that the written disclosure in the [*insert type of disclosure document (i.e. prospectus, AIF, etc.)*] of [*insert name of company making disclosure*] contains any misrepresentation of the information contained in the Technical Report.

Dated this [*insert date*] Day of [*insert month*], 200X.

_____
Signature of Qualified Person

[Seal or Stamp
of Qualified Person]

_____
Print name of Qualified Person