



Securities Administrators Streamline Disclosure Rules For Mining Projects

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New rules that make it simpler and cheaper for mining companies to disclose to investors new projects and other significant changes in their circumstances take effect June 30.

The new rules align Canada's disclosure standards for mineral projects more thoroughly with current global ownership and operating realities.

They are designed to eliminate or reduce the scope of certain disclosure requirements and, at the same time, maintain investor protection, provide greater flexibility to mining issuers and qualified persons, increase the recognition of foreign professional associations and reflect recent changes in the mining industry.

The new rules come in revisions by the Canadian Securities Administrators (CSA) to National Instrument 43-101 (Standards of Disclosure for Mineral Projects), Form 43-101F1 (Technical Report) and Companion Policy (43-101CP).

The new NI 43-101 simplifies the requirements for filing a technical report, provides flexibility as to the content of the technical report, broadens the scope of foreign professional credentials, and clarifies areas where the current NI 43-101 is not having the effect originally intended.

Here are some of the major changes in the disclosure requirements:

1. Obligation to File a Technical Report with a Short Form Prospectus

The new NI 43-101 narrows the circumstances in which technical reports must be filed.

In the current NI 43-101, an issuer must file a technical report with a short form prospectus if that prospectus contains new, material (significant) scientific or technical information not contained in a previously filed technical report, regardless of whether the technical information constitutes a material change in the affairs of the issuer. The current requirements impose high costs on the issuer and lengthen the process of completing a securities offering.

The new NI 43-101 restricts the application of the technical report trigger for a preliminary short form prospectus to situations where that prospectus discloses, *for the first time*, mineral resources, mineral reserves, or the results of a preliminary economic assessment that constitute a material change in relation to the issuer.

It also restricts the application to situations where the prospectus discloses a change in this information, if the change constitutes a material change in relation to the issuer. (The CSA has determined that first time disclosure of mineral resources, reserves or the results of a preliminary economic assessment on a property material to the issuer constitutes a material change in the affairs of the issuer.)

The deletion of the current short form prospectus trigger will allow issuers to complete an offering without having to file a concurrent technical report, unless the short form prospectus contains, for the first time, new material information that constitutes a material change.

2. Use of Foreign Codes

NI 43-101 expands the acceptance of certain foreign regulatory authorities and foreign standards and includes general guidance regarding an update of the lists of acceptable foreign codes and professional associations.

Issuers incorporated or organized in some foreign jurisdictions or incorporated in Canada with properties located in foreign jurisdictions may make disclosure and file technical reports using mineral reserve and categories of an acceptable foreign code without needing to reconcile foreign resource and reserve categories to those as defined by the Canadian Institute of Mining, Metallurgy and Petroleum.

The new NI 43-101 also allows foreign producing issuers listed on a specified exchange to comply with local foreign codes for disclosure requirements. This change removes the need for certain foreign producing issuers to prepare and file NI 43-101 compliant technical reports when becoming a reporting issuer in Canada. It should facilitate the listing of foreign producing issuers in Canada.

3. Changes to Certification and Consent Requirements

Issuers will no longer be required to provide updated certificates and consents for a previously filed, current technical report that continues to meet applicable independence requirements, provided that there is no new material information concerning the property. Under the new NI 43-101, the issuer's own internal qualified person may determine whether or not a technical report is still current. The removal of the updated certificate requirement will facilitate the rapid completion of transactions.

4. Changes Related to Qualified Persons and Qualified Persons Consent

In the current NI 43-101, disclosure of scientific or technical information made by an issuer must be prepared by or under the supervision of a qualified person. Under the new NI 43-101, an issuer can now disclose scientific or technical information taken from a technical report as long as a qualified person employee of the issuer approves the content being disclosed. New NI 43-101 also facilitates qualified person consents by limiting consents to part of the technical reports prepared by the qualified person.

5. Other Changes to NI 43-101

In the new NI 43-101, the definitions of qualified person and professional association are modified to expand the scope of the person that will qualify. The definition of historical estimates and the calendar date by which estimates made by third parties must be disclosed are also modified.

6. Changes to Form 43-101F1

The form of technical report will now be less rigid and more adaptable, especially for advanced-stage and producing properties. Qualified persons will have more control deciding the scope and level of information to be included in the technical report. They will be permitted to rely on, and disclaim responsibility for, certain information provided by the issuer and quote any information from previously filed technical reports (to the extent the information is still current and provided that the qualified person summarizes or quotes the information in the current technical report and has verified it).

New 43-101F also provides different technical report requirements, depending on the stage of development of the subject property. It contains new guidance regarding a property's history and drilling by previous operators. In addition, a requirement to disclose the results of relevant market studies and similar analysis has been eliminated.

7. Changes to the New Companion Policy

The Companion Policy to NI 43-101 has been amended to include guidance regarding acceptable foreign codes and professional associations. New guidance also has been added for the interpretation of qualified persons and the meaning of demonstrated expertise. The changes to NI 43-101 have also made necessary amendments to NI 44-101 (short form prospectus distribution); Form 51-102F1 (Management's discussion and analysis) and Form 51-102F2 (Annual information form).

Conclusion

Industry participants should welcome the new NI 43-101 as it will reduce the scope of certain disclosure requirements while maintaining investor protection. New deadlines to file a technical report in the case of a short form prospectus and new requirements that allow issuers to go to market without filing a technical report will enable issuers to access markets more rapidly.

Other revisions, such as the acceptance of foreign professional associations, reflect changes in the industry and provide more flexibility to the industry while making Canadian capital markets more attractive to issuers with operations abroad. ■