APPENDIX B
SUMMARY OF COMMENTS
RECEIVED ON 1998 PROPOSED NATIONAL INSTRUMENT
AND 1998 PROPOSED POLICY

RESPONSES OF THE CSA

The CSA received 36 submissions on the 1998 proposed Instruments.

The CSA considered the submissions received and thank all commenters for providing their comments.

The following is a summary of the comments received, together with the CSA's responses, organized by topic. The summary begins with topics concerning which comment was specifically requested in the 1998 Notice and then addresses topics covered by submissions received in response to the general request for comment on the 1998 proposed Instruments.

PART I. SPECIFIC REQUESTS FOR COMMENT

A. Impact of Requirement for Qualified Person

The CSA specifically requested comment on whether:

(a) the requirement that disclosure concerning exploration, development and mining operations reflect the views of a "qualified person" would impose excessive costs on junior issuers and the extent of those costs;

(b) the requirement would negatively affect timely disclosure by issuers of all material changes; and

(c) there are alternative measures that should be considered to ensure equivalent investor protection.

The CSA received a number of comments specifically in response to the request for comments on this matter. The commenters were generally supportive of the requirement for the involvement of a "qualified person". With regard to (a) it was agreed by most commenters that the requirement would impose additional costs on those issuers that did not already have a qualified person assisting in these matters. One commenter expressed the view that this requirement would provide a deterrent to unscrupulous operators and opportunists and accordingly the additional cost was warranted.

A concern was expressed regarding the requirement in the 1998 proposed Instruments that all qualified persons involved in the report inspect the site. The commenter stated that this

would lead to excessive expense. The CSA have amended the requirement for site inspection (now found in part 7 of the proposed National Instrument) to make it clear that one of the qualified persons involved in the preparation of the technical report is required to visit the site. In addition, section 5.2 of the Policy states the CSA's recognition that there may be circumstances in which it is not possible or beneficial to conduct a site visit. In these cases application can be made for an exemption from the requirement.

A commenter suggested that a qualified person should not be required to be involved in disclosure of results from preliminary exploration programs or assay results. The CSA considered this suggestion but determined that it would not be appropriate to permit an exception for these situations as disclosure of this type of information often has an impact on market activity and should be based on a qualified person's work.

Most commenters felt that the improvement in the quality of the disclosure expected to result from the increased participation of qualified persons would be worth the additional costs.

With regard to (b) and the effect on timely disclosure, most commenters recognized that the new requirements might make timely disclosure more difficult; however the commenters were supportive of the requirements. Many commenters noted that the provisions permitting disclosure of material changes, in some instances, without the concurrent filing of a technical report, would help alleviate some of the timely disclosure concerns. In particular, most supported the 30 day extension for filing technical reports in connection with disclosure of mineral resources and mineral reserves other than disclosure made in ordinary course continuous disclosure filings or offering documents.

A number of commenters were concerned that as a practical matter the qualified person might be out of contact in the field and unable to "support" the public disclosure before it was made. The CSA considered these comments and concluded that satisfactory steps could generally be taken by an issuer so that this would not be a practical problem.

Commenters agreed that the involvement of a qualified person was an appropriate manner in which to improve the quality of disclosure and the CSA did not receive any suggestions on alternative measures to ensure equivalent investor protection.

B. <u>Extension of Time Period for Filing Reports</u>

The CSA specifically asked for comments on subsection 3.2(3) of the 1998 proposed Instrument (now subsection 4.2(4)) which relaxes the general requirement that a technical report be filed not later than the filing of the document that it supports and permits the technical report, in certain circumstances, to be filed up to 30 days after disclosure is made. The CSA received several comments on this matter. A number of commenters were

concerned that this provision could be problematic as there might be situations when the disclosure did not correspond to the information in the technical report filed later. The CSA have responded to this concern by adding a new provision to the proposed National Instrument (paragraph 4.2(4)(b)) requiring disclosure that reconciles any material differences between a subsequently filed technical report and the earlier disclosure.

Some commenters felt that provision should be made for extension of the 30 day period in certain circumstances. The CSA considered this and determined that no change would be made on the basis that in most instances, the 30 day period will be sufficient.

A new provision has been added (subsection 4.2(5)) which provides an extension of the time period for filing of a technical report that supports disclosure in an annual report or annual information form concerning a new material property if the property first becomes material to the issuer less than 30 days before the filing of the annual report or annual information form. The technical report must be filed within 30 days of the date that the property first becomes material to the issuer. In addition, as discussed under "D. Requirements for Filing an Independent Technical Report", a new provision has been added (subsection 4.2(6)) permitting the technical report required to be filed to support disclosure in a directors' circular relating to a take-over bid, to be filed up to 3 business days prior to expiry of the take-over bid.

C. Attributes and Exemption of Senior Resource Issuer (now "producing issuer")

1. Definition

A number of comments were received on the definition of senior resource issuer (now "producing issuer"). Certain of the comments dealt with the fact that the definition would cause a practical problem for issuers close to the threshold who would fall outside the definition if revenues were to dip below the cap due to a fall in metal prices. In response to this comment the CSA have amended the definition so that instead of the test being based on annual revenue for each of the three most recent financial years, the test is to be met in the most recent financial year and in the aggregate over the three most recently completed years.

While many commenters believe that gross annual revenues of $50 million is an appropriate measure of seniority others argued that this threshold was too high and that gross revenues of $25 million would be an appropriate test. The CSA considered the suggestions made and performed their own review of statistical data and concluded that gross annual revenues from mining operations of $30 million would be the appropriate test for a producing issuer. The definition has been amended accordingly.

A number of commenters suggested that gross revenue was not a good indicator of seniority and that market capitalization or net assets might be better. One commenter suggested that eligibility to use a short form prospectus would be an appropriate indicator of producing issuer status. The CSA considered these comments but determined not to include market capitalization, short form prospectus eligibility or gross assets as an indicator of seniority as these tests would allow speculative pre-production companies to be producing issuers for purposes of the proposed National Instrument. The CSA are of the view that only those issuers that have revenue generated from mining operations should be exempted from the independent reporting requirements under the proposed National Instrument. Those issuers meeting the mining revenue test have a mining operation which is of a size where the issuer is likely to have qualified professional staff, appropriate structures for reporting and review and would be producing information for operating purposes, all of which support the reliability of the information.

2. Exemption of Senior Resource Issuer (now "producing issuer")

The CSA asked for comments on the provisions which relieve producing issuers of the obligation to have an independent qualified person prepare the technical report that is required to be filed.

A number of commenters felt that the exception for producing issuers was philosophically unsound. In their view large issuers are not necessarily technically more proficient than smaller issuers. Some commenters also misunderstood and thought that producing issuers were being relieved from the obligation to file any technical reports. The proposed National Instrument only relieves the producing issuer from the requirement to file an independent technical report in connection with the filing of a document that discloses for the first time mineral resources or mineral reserves on a material property or discloses a 100% or greater change in mineral resources or mineral reserves from the most recently filed independent technical report. In these circumstances the producing issuer must still file a technical report but it can be prepared by a non-independent qualified person.

The CSA have considered the concerns expressed and determined that it is appropriate to provide this limited relief for producing issuers. The rationale for this exemption is that an issuer with substantial revenue from mining operations will typically have developed professional expertise and be exposed to continuing external monitoring, both viewed by the CSA as motivators for the maintenance of high standards for disclosure. In addition, the production activity substantiates, to a certain degree, the previously reported estimates of mineral resources and mineral reserves. The added protection of independent reporting is not therefore viewed by the CSA as necessary.

D. Requirements for Filing an Independent Technical Report

The CSA asked for comments on the requirement in the 1998 proposed Instrument that an independent technical report be filed with the regulators to support certain disclosure. A number of comments were received. This requirement was clearly controversial. Each of the commenters recognized that there were some situations in which the technical report should be prepared by an independent qualified person, such as for listings or public financings. However, a number of commenters expressed the view that the independence requirement should not extend to disclosure documents such as offering memoranda and directors' circulars in connection with take-over bids. One commenter did not believe that independent technical reports should be required in connection with the reporting of mineral reserves.

The CSA recognize the difficulties that could be encountered in the production of an independent technical report to accompany a directors' circular in a hostile take-over bid situation. The CSA consider, however, that if the directors' circular contains new material information on mineral resources or mineral reserves, it should be supported by a technical report. The proposed National Instrument has been amended to add a provision (subsection 4.2(6)) permitting the technical report in this situation to be filed up to 3 business days prior to the expiry of the take-over bid. Furthermore the technical report filed in this regard need not be independent unless the directors' circular discloses mineral resources or mineral reserves for the first time on a material property or at least a 100% change in mineral resources or mineral reserves from the last independent report filed.

A commenter was concerned that the requirement to file independent technical reports to support mineral reserve disclosure would encourage issuers to stay in the mineral resource category. The CSA do not agree with this comment. They expect that issuers that have mineral reserves will be willing to get an independent technical report to disclose the mineral reserves.

It was suggested that the regulators could ask for independent reports when they felt that it was warranted. The CSA are of the view that this would lead to inconsistency and uncertainty. The CSA have determined that the proposed National Instrument will mandate the circumstances in which independent technical reports are to be filed and allow for exemptions to be granted in appropriate circumstances.

A number of commenters were concerned about the requirements for independent technical reports to be filed by a junior issuer that is involved in or has agreed to become involved in a joint venture on a property with a producing issuer. It was reported that frequently in these circumstances a producing issuer would perform work on a property which would be material to the junior issuer but not to the producing issuer. In this situation the junior issuer would have a disclosure obligation and a further obligation to file a technical report.

In many cases the only available technical report would be one prepared by the staff of the producing issuer. That qualified person would not be independent for purposes of the proposed National Instrument and the junior issuer would be forced to engage an independent qualified person to prepare a technical report. The CSA recognize the difficulty that this can cause. The CSA also recognize that there will be factors in the joint venture relationship which support the reliability of the information prepared by the producing issuer participant in the joint venture. Accordingly, the CSA have amended the proposed National Instrument to provide that employees of a producing issuer are independent vis a vis the junior issuer that is or has agreed to be in a joint venture on the property with the producing issuer for purposes of preparing a technical report on the property under the proposed National Instrument. The technical report filed must be prepared in accordance with Form 43-101F1.

PART II. OTHER COMMENTS ON THE NATIONAL INSTRUMENT

A. Scope of Qualified Person's Liability

A number of commenters asked for clarification of the scope of the qualified person's liability. The qualified person is responsible for preparing the technical report and providing scientific and technical advice in accordance with applicable professional standards. This is unchanged by the proposed National Instrument. The proper use of the technical report and other scientific and technical information provided by the qualified person is the responsibility of the issuer and its directors and officers. The onus is on the issuer and its directors and officers to ensure that published disclosure is consistent with the contents of the related technical report or advice. The qualified person should not be liable for a misquote or misuse of the technical report or other scientific and technical information provided by the qualified person to the issuer, unless the qualified person has consented to the disclosure which contains the misquote or the misuse.

One of the causes of concern was the requirement that the technical report and certain written disclosure include a discussion of the extent to which exploration rights and mineral resource and mineral reserve estimates could be affected by environmental, legal, title and political issues. The responsibility of the qualified person does not extend to opining on legal, environmental, political or other issues which are outside that person's area of expertise. In order to clarify this, the CSA have amended the proposed National Instrument to include a new section (6.3), which permits the author of the technical report to rely on the statements or opinions of others for information concerning legal, environmental, political and other non-technical matters and to include a disclaimer to this effect.

B. Mineral Projects and the Title of National Instrument 43-101

A commenter suggested that the term "mineral projects" should encompass mineral (i) exploration; (ii) development; and (iii) producing properties and that the title of the proposed National Instrument should be amended to be "Standards of Disclosure for Mineral Projects". The proposed National Instrument has been amended to change the title and to include a definition of "mineral projects" to replace the definition of mining project.

C. Part 1 - Application, Definitions and Interpretation

1. Section 1.1- Application

A number of commenters expressed concern regarding the scope of the application of the proposed National Instrument. They requested that the section be amended to clearly state that the proposed National Instrument applies only to "scientific and technical" disclosure, not other disclosure. This section has been amended to state that the proposed National Instrument "applies to all oral statements and written disclosure of scientific or technical information including disclosure of a mineral resource or mineral reserve made by or on behalf of an issuer in respect of a mineral project of the issuer".

2. Definition of "adjacent property"

A commenter was concerned that the definition of "adjacent property", which sets a 2 kilometre limit, is inappropriate and that the boundary should be left to the discretion of the qualified person. Another commenter suggested that the word adjacent is commonly understood and did not need to be defined in the proposed National Instrument.

In response to the first comment, the CSA are not willing to leave the definition without a geographic guideline. Accordingly, no change has been made in this regard. In response to the second comment, the CSA disagree with the commenter and believe that, without a definition, "adjacent" might be interpreted as meaning "adjoining".

3. Definition of "disclosure"

A number of commenters expressed concern that the definition of "disclosure" is too broad as it includes oral statements made by or on behalf of an issuer. It was suggested that the proposed National Instrument should only apply to disclosure intended to be filed under securities legislation.

The CSA do not agree with these comments. The CSA intend that parts of the Instrument apply to all disclosure including oral disclosure statements(see sections 2.1 and 2.2) because

oral statements by the issuer concerning mineral projects may be relied upon by market participants as a basis for investment decisions and must therefore be reliable and in conformity with standards.

A commenter was concerned that the definition of disclosure would include assessment reports and other reports submitted to government agencies other than securities regulators. While the CSA are of the view that these reports would not be caught by the definition as they are not "intended to be, or reasonably likely to be, made available to the public", in order to clarify this, the definition has been amended to specifically exclude these documents.

4. Definition of "document"

A commenter noted an inconsistency between the definition of "document' and the way in which that word is used in the proposed National Instrument. In response to this comment the proposed National Instrument has been revised to delete the definition of "document" and include a definition of "written disclosure".

5. Definition of "exploration information"

A commenter suggested that the word "drilling" be added to this definition. This change has been made.

Another commenter suggested that the words "prospect" and "deposit" used in this definition be defined. The CSA believe that these terms are well understood in the mining industry and, accordingly, no change has been made in response to this comment.

6. Definition of "feasibility study"

Comments were received regarding the definition of "feasibility study". A commenter suggested that the definition be revised to include a standard for the quality of the study, such as a study in a form sufficient to satisfy the assessment requirements of international financial institutions. The CSA considered this comment but determined not to amend the definition in this regard as it is the responsibility of the qualified person to ensure that he or she is satisfied that the feasibility study is sufficiently comprehensive to serve as a basis for a decision on production.

It was suggested by a number of commenters that the definition should be amended to expand the factors considered to include socio-economic factors and legal and other matters. The CSA agree that there are many factors to be considered and accordingly the definition has been amended to add "other relevant" factors.

7. Definition of "geoscientist"

Comments were received suggesting that the definition of "geoscientist" be amended to require a standard of qualification or professionalism. A commenter recommended the inclusion of the words "qualified by a recognized university or equivalent academic institution in the field of earth sciences".

The CSA determined that no change should be made to the definition of "geoscientist". This definition has been included to allow the collective reference to geologists, geochemists and geophysicists. The CSA are sensitive to the substance of these comments because at present, there are no self-regulatory associations for geoscientists in Ontario, Quebec, New Brunswick or in Nova Scotia and certain foreign jurisdictions. This issue was addressed during the CSA's consideration of the definition of "professional association" (see 9 below).

8. Definition of "preliminary feasibility study"

Commenters found the definition of "preliminary feasibility study" unnecessarily complicated and confusing. All of the comments received on this matter noted that the definition failed to define the critical role of these studies in the business plan of an issuer which is to determine if all or part of the resources of a deposit may be classified as mineral reserves.

The CSA considered these comments but determined that no change would be made to the definition because it is the responsibility of the qualified person to ensure that he or she is satisfied that the preliminary feasibility study is sufficiently comprehensive to support an estimation of mineral reserves.

9. Definition of "professional association"

Comments were received concerning the definition of "professional association". Of greatest concern was the fact that geoscientists at present need not or cannot be members of a professional association, as defined, in Ontario, Quebec or certain other provinces or in certain foreign jurisdictions. Accordingly, these people could not be "qualified persons" for purposes of the Instrument. It was felt however by most commenters that only associations created by statute should be recognized as professional associations because these associations establish and maintain professional standards through their powers of self regulation.

A number of changes have been made to the definition in response to the comments. Under the amended definition, only associations that have been given authority or recognition by statute are professional associations. However for a period of two years from the date of publication of the National Instrument in final form, geoscientists in a Canadian jurisdiction

that does not have a statutorily recognized self-regulatory association will be included in the definition of professional association, enabling them to be "qualified persons" during this period.

10. Definition of "qualified person"

The CSA received a number of comments regarding the definition of "qualified person". Many commenters were concerned that the definition went beyond the concept of "competent person" established under the Australasian Code for Reporting of Mineral Resources and Ore Reserves and included corporations and other legal entities who could not be disciplined by the self-regulatory organizations whose members are individuals. The CSA agree with this comment and have amended the definition so that only individuals can be recognized as qualified persons.

Many commenters suggested that it would be appropriate to use the competent person concept used in other places in the world. The CSA have resolved to use a concept which is different from the concept of "competent" used elsewhere in the world.

A number of commenters questioned the experience requirement, some suggesting that 5 years of experience was not sufficient, others suggesting that 5 years of experience was sufficient provided that the experience was current and another suggesting the appropriate number of years of experience should be left to the professional associations governing qualified persons. Most commenters felt that the experience should be relevant to the particular mineral project. The CSA have maintained the 5 year requirement but have amended the definition to require that the experience be relevant to the subject matter of the mineral project. The CSA are not comfortable with leaving the determination of requisite experience to various professional organizations. Issuers need to be able to look to the proposed National Instrument for the appropriate standard.

One commenter suggested that the qualified person requirement is unnecessary and burdensome for producing issuers and that the requirement should only be imposed on issuers which do not have the required expertise within the company. The CSA have retained the requirement of qualified person involvement for all issuers. The CSA are of the view that the involvement of qualified persons will enhance the integrity of the information provided to the investing public.

11. Definitions of "mineral resources" and "mineral reserves"

Comments were received concerning the definitions of "mineral resources" and "mineral reserves" (including the categories within those definitions). Most of the comments suggested that the definitions should either conform exactly with the definitions of the CIM Ad Hoc Committee or with some other international code such as the JORC Code. Some commenters suggested that the definitions adopted by the Canadian Institute of Mining, Metallurgy and Petroleum could be incorporated by reference. Other comments made detailed suggestions for revisions to the definitions. As discussed in the Notice, the CSA spent a great deal of time considering the definitions of mineral resources and mineral reserves and met several times with representatives of the CIM Standing Committee and representatives from industry and other securities regulatory authorities. The definitions included in the proposed National Instrument reflect the definitions currently generally accepted in the Canadian mining industry. The definitions are consistent with the definitions adopted by the CIM Ad Hoc Committee in 1996 and have been changed only to conform to legislative drafting standards or to reflect developments in the industry since the adoption of the Ad Hoc Committee definitions. The CSA recognize that this is an evolving area and changes are expected to be proposed by industry following a completion of work currently underway by the CIM and internationally by the Council of Mining and Metallurgical Institutes.

Certain specific changes which have been made to the definitions are noted below.

(a) the deletion of the category of possible reserves;

(b) the definition of "measured mineral resource" includes a requirement that there be sufficient confidence in the estimate that it can be used as a basis for detailed mine planning;

(c) the definition of "proven mineral reserve" has been amended to the effect that only a deposit that is being mined or being developed may be classified as a proven mineral reserve. The revised definition is consistent with the definition of the CIM Ad Hoc Committee,

(d) the guidance concerning the interpretation of the defined terms has been moved from the proposed Policy into the proposed National Instrument so that all of the provisions regarding interpretation of these terms can be found in sections 1.3 and 1.4 of the proposed National Instrument;

(e) the word "mineral" has been added to each of the terms as many commenters felt that the words resource and reserve were too generic and needed the qualifier;

(f) the term quantity is used throughout the definitions and the proposed National Instrument rather than tonnage and a definition of quantity has been added to make it clear that this term refers to either tonnage or volume depending on which term is standard in the mining industry for the type of mineral; and

(g) the Instrument has been amended to permit foreign issuers to file a report using the mineral resource and mineral reserve classifications of certain foreign codes as long as a reconciliation to the classifications and categories in the Instrument is included (section 6.4). A provision has also been added to the proposed Form (Instruction 3 of Item 18 of Form 43-101F1) which permits issuers incorporated or organized in a foreign jurisdiction to file a technical report that utilizes the mineral resource and mineral reserve categories of the Australasian Code for Reporting of Mineral and Ore Reserves (the "JORC Code"), the mineral classification system and definitions approved by The Institution of Mining and Metallurgy in the United Kingdom (the "IMM System") or the circular published by the United States Bureau of Mines/United States Geological Survey entitled "Principles of a Resource/Reserve Classification for Minerals" ("USGS Circular 831"), provided that a reconciliation is filed with the technical report.

12. Definitions to be Added

A commenter suggested that a definition of junior resource issuer be added and that these issuers be exempt from certain obligations to obtain information or technical reports from qualified persons. The suggestion was to exempt issuers with a market capitalization of less than $10 million.

The CSA do not agree with the suggestion. Small issuers and their investors are often the most vulnerable and for that reason the requirements of the proposed National Instrument are particularly important to them.

A commenter suggested that a definition of "non-destructive sampling" be added to the Instrument and used whenever sampling and analysis is used. The CSA are of the view that specific references to this term are not necessary.

A commenter suggested that the definition section be amended to include definitions of such terms as "must" and "should". These terms are interpreted in the local legislation and so will not be defined in the proposed National Instrument. This same commenter also suggested that verification guidelines should be set out in the proposed National Instrument. The CSA believe that the appropriate forum for the development and publication of verification guidelines is an industry association.

13. Section 1.5- Interpretation (formerly section 1.3)

A number of commenters suggested that subsections (1),(2) and (3), which interpret the phrase "affiliated entity", should be deleted. The CSA have retained these subsections as they contain a broader concept than is currently in securities legislation in that they extend to unincorporated entities. These subsections are identical to interpretation sections found in other Instruments and Rules.

14. Subsection 1.5(4)- Non-Independence of Qualified Person (formerly subsection 1.3(4)

The CSA received a number of comments concerning the provisions stipulating when a qualified person is not independent for purposes of the proposed National Instrument. A commenter asked why the fact that a qualified person at a mineral consulting firm sits on the board of directors of an issuer should disqualify another qualified person at the same firm from delivering an independent report. The CSA are of the view that board membership may in fact affect the ability of other members of the same firm to render independent advice. The provisions of the proposed National Instrument were drafted to be consistent with the comparable provisions of the Ontario Securities Commission's Policy 9.1 which prohibit a firm from preparing a valuation if a valuator at the firm sits on the board of the issuer.

The CSA received a number of comments regarding the provisions of paragraph (b) (now (d) which stated that a qualified person who receives a substantial portion of his or her annual income in the prior year from one client is not independent of that issuer. It was suggested that it is not unusual for a particular consultant to work for an issuer for a substantial period of time during which he or she becomes increasingly knowledgeable with respect to the issuer's properties. The CSA acknowledge that a qualified person who is a sole practitioner or involved in a small or medium sized firm and who is actively managing a work program may receive a substantial portion of his or her income from a particular issuer. This situation may continue if, for example, the issuer chooses to retain the same qualified person to continue work on further stages of the work program in light of the qualified person's experience and knowledge of the mineral property. The CSA are of the view, however, that the longer the situation prevails the less independent the relationship between the qualified person and the issuer becomes. At some point the CSA consider that, where independence is required, another qualified person must be retained. Accordingly, the CSA have amended this paragraph to provide that the qualified person is no longer independent of a particular issuer if he or she receives the majority of his or her income from the issuer in the three years preceding the date of the technical report.

A commenter asked for a definition of the phrase "reasonable expectation of future employment". This phrase has been removed from the Instruments.

A commenter raised concerns with the provisions of paragraph 1.3(4)(d) (now section 1.5(4)(c)) which could be read to include any person involved in the preparation of the report including those who handle the assay samples, type the manuscript or draft the figures. The CSA have made a number of changes to this subsection to address the concerns raised.

The same commenter was also concerned that paragraph (d) would apply to a qualified person who accepted shares in settlement of debt. In this limited situation, if the issuance of shares does not affect the qualified person's ability to render independent advice, application can be made for an exemption. A related comment concerns the ownership of incentive stock options by the qualified person. The CSA view these options in the same way as they view shares. Accordingly, no amendment has been made in this regard and ownership or expected ownership of any securities of the issuer will result in non-independence.

D. Part 2 - Disclosure

1. All Disclosure

It is apparent that there was a great deal of confusion over what was intended in Part 2 of the 1998 proposed Instrument. Some commenters mistakenly believed that this Part dealt with requirements for inclusion in the technical report. Other commenters mistakenly believed that the qualified person was responsible for the disclosure referred to in this Part. Another commenter did not appreciate that the 1998 proposed Instrument was intended to apply to oral statements.

A number of changes have been made to this Part in an attempt to clear up the confusion. Firstly, Part 2 has been divided into two parts, the first dealing with all disclosure, both oral and written, and the second (now Part 3) including additional provisions applicable only to written disclosure.

An issuer making disclosure of a scientific or technical nature concerning mineral projects on properties material to the issuer, must base that disclosure on a technical report or other information prepared by or under the supervision of a qualified person. In addition, if the issuer wants to make written disclosure of mineral resources or mineral reserves, the proposed National Instrument stipulates what must be included in the written disclosure so that readers can expect consistent disclosure and regulators will be assured that the written disclosure is complete and not misleading.

Part 3 of the proposed National Instrument requires that certain information be included in written disclosure concerning a mineral project on a material property. A commenter requested that the term "material" be defined. The CSA does not believe this is appropriate. The securities legislation in each jurisdiction provides guidance on interpreting materiality and the proposed Policy contains further guidance. Materiality is a relative term and can only be determined on the basis of the particular facts and in the context of the particular issuer.

A commenter asked that the word "immediate" be added before the word supervision in the last line of what is now section 2.1. The CSA do not agree with this comment as the addition of that word makes the provision too restrictive.

A commenter requested a number of specific changes to the mineral reserve and mineral resource disclosure requirements that are now part of section 2.2. As most of these comments were, in effect, comments concerning the definitions of mineral reserve and mineral resource or the manner of determining these, changes have not been made. This section has, however, been revised by deleting subparagraph 2.1(b)(ii), which required a statement that only reserves have demonstrated economic viability. The CSA had concerns that some readers might find this statement confusing. Instead, a new paragraph (e) has been added to section 3.4 (formerly 2.5) to the effect that mineral resources which are not mineral reserves do not have demonstrated economic viability.

A commenter wondered whether disclosure could be based on oral statements or information prepared by a qualified person or whether disclosure must always be supported by a technical report. The proposed National Instrument makes clear that disclosure does not need to be based on a technical report and can be based on oral statements of a qualified person unless the disclosure appears in one of the documents listed in section 4.2 (formerly section 3.2).

A commenter suggested that it was necessary to refer to the qualified person on whose information the disclosure was based. The CSA consider that the requirement for identification of the qualified person in major written disclosure documents is sufficient and have not extended the requirement to oral disclosure.

2. Section 3.1 (formerly section 2.2)- Written Disclosure to include the Name of Qualified Person

Concern was expressed over the requirement to name the qualified person in all written disclosure, including news releases. While the CSA believe that the terminology and background information contained in a news release should generally be consistent with such disclosure required in other written disclosure, they agree that the added detail of the

identity of the qualified person is less crucial in a news release. This requirement has been amended to state that qualified persons do not need to be named in news releases.

A commenter suggested that only those qualified persons who have prepared a technical report required to be filed should be named in written disclosure. In fact all disclosure of a technical or scientific nature must be based on information prepared by or under the supervision of a qualified person, not just the type of disclosure that triggers the requirement to file a technical report.

A number of commenters noted that the 1998 proposed Instrument amended the provisions of the current NP22 which require that technical facts and opinions be quoted from verbatim. The CSA are of the view that the accuracy of the reflection of the qualified person's work is still protected by the requirements of Part 2 and Part 3. The issuer is liable for the disclosure made and has a responsibility to ensure that it is accurate. Prudent issuers will ensure that their qualified person has approved the disclosure.

3. Section 3.2 (formerly section 2.3) - Data Verification

A commenter suggested that qualified persons should be obligated to collect check samples as part of the verification. Other commenters recommended that the proposed Instrument stipulate what verification is required. The CSA are not prepared to specify what tasks must be performed by the qualified person in carrying out his or her duties. The focus of the proposed Instruments is on the quality of information disclosed to investors, not on geoscientific field practice.

The term "verification" has been changed to "corroboration" in the proposed Instrument as the CSA are of the view that this term more accurately describes the process of checking data.

A commenter asked whether it was necessary to require a junior mining company that participates or has agreed to participate in a joint venture with a producing issuer to have its own independent qualified person carry out data verification. As noted above, the producing issuer's personnel will be considered independent of that junior issuer for the purpose of preparing the technical report. This commenter also asked if the verification requirement is applicable to producing properties. The CSA are of the view that the verification requirement should apply to all properties. The nature of the data verification will depend on the particular circumstances applicable to a property, as determined by the qualified person, and is required to be included in all written disclosure.

A commenter suggested that the proposed Instrument should require the issuer to disclose whether any aspect of the sample preparation was done in-house. The CSA agree with this comment and has added this to paragraph (a) of section 3.2.

A number of commenters mentioned a concern regarding the relevance of historical data and the limited ability to corroborate this data. The CSA are sympathetic with this concern and have added a new paragraph, (c) requiring disclosure of the relevance of any historical data being disclosed. In addition, a new section has been added (section 2.4) which permits disclosure of an historical quantity and grade estimate which does not utilize the applicable mineral resource and mineral reserve categories set out in sections 1.3 and 1.4 provided that certain disclosure is made regarding the relevance and reliability of the estimate.

4. Section 3.3 (formerly section 2.4)-Written Disclosure of Exploration Information

A commenter suggested that the proposed Instrument should not apply the same blanket requirements to all written disclosure. The commenter noted that a news release is a different document from an annual information form or offering memorandum and as a result the CSA should consider more liberal standards for news releases. The CSA do not agree with this comment. While a press release is certainly a different document than an annual information form, the reliability of the content should be the same. The CSA are of the view that it would be inappropriate to apply less stringent reliability standards to news releases.

A commenter requested that the words "containing technical information" be substituted for the words "any results of geological, geophysical or geochemical surveys". This clause has been amended to refer to disclosure containing scientific or technical exploration information.

A commenter asked that the word "all" be inserted before the word surveys in paragraph (1)(a). The CSA do not agree with this suggestion. The same commenter asked that the words "with a critical review of the geological model used" be added at the end of paragraph(1)(b). The CSA are of the view that this change should not be made as technical reports do not always depend on models, but on deposit types. This commenter also requested that the words "and a description of the quality control measures used during the execution of the work" be added to the end of paragraph (1)(c). Paragraph (c) has been amended in response to this comment.

A commenter suggested that more detail should be required in this section. The CSA have decided to leave this to the discretion of the issuer.

A commenter suggested that in paragraph(1)(c) the disclosure should not be whether the issuer or a contractor did the work but whether the work was supervised by a qualified person. The CSA did not think that this addition was necessary in light of the requirements in the proposed Instrument for the involvement of a qualified person. The CSA have changed this paragraph to require a statement as to quality control measures applied during execution of the work. Item 11 of Form 43-101F1 retains the requirement that a technical

report include a statement as to whether the surveys and investigations have been carried out by the issuer or a contractor and requires the identity of the contractor.

5. Subsection 3.3(2) (formerly subsection 2.4(2)) - Sample or Analytical Results

(i) paragraph (a)

A commenter suggested that it was not adequate to require a summary description in this paragraph as a summary can be used to disguise poor understanding of the fundamental controls on the geological continuity of the mineralization. The CSA considered this comment but determined not to make the change suggested. The CSA require an abbreviated but accurate presentation of results but do not want to require overly long disclosure.

(ii) paragraph (b)

A commenter suggested that the words "structural controls" should be changed to "interpreted geological control". The CSA agree with this comment and accordingly this change has been made.

(iii) paragraph (c)

A commenter asked whether the CSA intended to require a "summary" or "details" as he felt that the use of both words in this sentence was inconsistent. The CSA agree and have amended this paragraph.

(iv) paragraph (d)

A commenter suggested that the word "factors" should replace the word "problems". This change has been made.

(v) paragraph (e)

A number of commenters had drafting comments on this paragraph. One asked that the words "and the status of each regarding certification" be added after the word "used". The words "particulars of any known certificate" have been changed to "the certification of each laboratory".

A commenter suggested that the issuer should be required to disclose whether the laboratory has any relationship with the issuer. This change has been made.

(vi) paragraph (f)

A number of drafting changes have been made to this paragraph in response to comments received.

A commenter requested that a new subsection be included dealing with disclosure of the results on the ongoing deposit appraisal work, on the basis that these activities are essential components of the eventual feasibility study. The CSA do not believe that it is necessary to include the new subsection requested.

6. Section 3.4 (formerly section 2.5)- Disclosure of Mineral Resources and Mineral Reserves

(i) paragraph (a)

A new paragraph (a) has been added in response to a comment requiring the effective date of the estimate of each category of mineral resources and mineral reserves to be included.

(ii) paragraph (b)

A commenter requested that the word "quality" be added after the word "grade" and that the words, "including mineral processing and metallurgical characteristics" be added at the end of the paragraph. The word quality has been added. As to the second comment, the CSA are of the view that no change is necessary as the impact of metallurgical factors is taken into account and disclosed in connection with estimates of mineral reserves (see section 1.4(3)).

(iii) paragraph (c)

A number of commenters felt that the qualified person should determine what relevant data should be included in the disclosure. A commenter asked that the following clause be added after the word "including": "The grid cell dimensions characteristic of each resource/reserve category, the various types used and their location". The CSA have not made this change as it is of the view that the relevance of these items can be determined by the qualified person and the issuer.

(iv) paragraph (d)

As noted above a number of commenters expressed a concern that the requirements in this paragraph transfer liability to the qualified person for disclosure of matters normally outside the qualified person's area of expertise. The CSA hope that these

concerns have been addressed above. A disclaimer clause has been added as section 6.3.

E. Part 4 (formerly Part 3)- Obligation to File Technical Report

1. Section 4.1 - Obligation to File a Technical Report upon Becoming a Reporting Issuer

Most commenters were supportive of the requirement to file a technical report upon a company becoming a reporting issuer. Some commenters expressed concern about the additional time and expense; however other commenters and the CSA agree that this obligation is essential to providing information to the investors and justifies the additional cost and time.

A commenter thought that it would be useful to state with whom the reports are to be filed and what the recipient would do with the report. This provision has been amended to state the report will be filed with the securities regulatory authority. The CSA have not attempted to describe what will be done with the report by the regulators.

A new subsection has been added which provides that the issuer can satisfy the filing obligation by filing a technical report that it has previously filed in another jurisdiction, updated to reflect material changes in the information contained in the previously filed technical report.

2. Section 4.2 - Obligation to File a Technical Report in Connection with Certain Disclosure

(i) paragraph 2 (short form prospectus)

A commenter noted that it was not clear what was meant by the word "new information". This paragraph has been amended to clarify that any new information that is material concerning mining projects on properties material to the issuer must be supported by a technical report.

A commenter expressed concern that the obligation to file a technical report with the filing of a preliminary short form prospectus would interfere with the ability of a short form prospectus issuer to raise funds in a timely manner through the system. The CSA are of the view that a short form prospectus issuer that includes disclosure in its short form prospectus concerning mining operations must base that disclosure on a technical report. An issuer would not include information in a short form prospectus that was not material and viewed by the issuer and the underwriters as

necessary information for investors. For that reason it is important that this information be supported.

(ii) paragraph 3 (take-over bid circular)

The CSA received many comments concerning the requirement to file a technical report in connection with a take-over bid circular. A number of commenters misunderstood the paragraph and believed that it required the hostile bidder to prepare a report on the target's mineral properties. This paragraph was in fact intended to require a bidder that is offering its securities in exchange for securities of a target to file a technical report to support statements made in the take-over bid circular concerning the bidder's mining projects. Paragraph 3 has been amended to remove the take-over bid reference and a new paragraph 9 has been added to deal with the obligation of bidders in a take-over bid where the bidder's securities are being offered, to file a technical report to support disclosure of the bidder's mining projects included in take-over bid circulars. A further new paragraph 8 has been added which obligates a target to file a technical report where it discloses for the first time mineral resources or mineral reserves, or discloses a material change in mineral resources or mineral reserves, in a directors' circular prepared in response to a take-over bid. Pursuant to subsection (6) this technical report does not need to be filed at the time of filing the directors' circular but must be filed not less than 3 business days prior to the expiry of the take-over bid.

(iii) paragraph 4 (offering memorandum) and paragraph 5 (rights offering circular)

A number of commenters suggested that the requirement for a technical report in connection with an offering memorandum or a rights offering circular was not justified. The CSA are of the view that any document prepared in connection with an offering of securities that contains information of a technical or scientific nature concerning mineral projects should be supported by a technical report. These documents are prepared to encourage investors to buy securities. Information in these documents has been determined by the issuer and the agent or underwriter to be material to investors.

(iv) paragraph 6 (AIF or Annual Report)

A commenter suggested that this paragraph be amended so that only material new information would have to be supported by a technical report. This change has been made.

(v) paragraph 10 (First Time Disclosure of Mineral Resources or Mineral Reserves)

Some commenters asked for clarification of the meaning of material and what constitutes a material change. As noted above, materiality is a relative concept. It is one that issuers grapple with in connection with all disclosure obligations because the question of materiality must be considered in each instance on the basis of the circumstances applicable to that particular case. Local securities legislation and the proposed Policy provide guidance on "materiality".

3. Subsection 4.2(3) (formerly subsection 3.2(2)) - Time of Filing a Technical Report

The CSA received a number of comments concerning the problem of requiring the filing of technical reports contemporaneously with the documents they support. This can be very difficult where the issuer has a filing obligation, such as an obligation to file an annual information form, by a certain date and new material information becomes available only shortly before that time. After considering how to deal with this late-breaking information, the CSA have added a provision to the proposed National Instrument in subsection (5) which provides that if property materiality first occurs within 30 days of the filing deadline for an Annual Information Form or Annual Report, the issuer may file the technical report within 30 days of the date on which the property first became material. The CSA expect that in all other situations, the issuer is in control of the timing of the disclosure and with respect to other disclosure in an annual information form or annual report triggering the filing obligation, the issuer will have already have a technical report in place which may be updated.

4. Subsection 4.2(4)(formerly subsection 3.2(3) - Thirty Day Relief for Filing Independent Technical Report

A number of comments were received concerning the timing of filing an independent report. Commenters noted that while a 30 day period might be adequate for producing issuers, it might not be sufficient for other issuers. A concern was expressed that, depending on the level of exploration activity in the mining industry generally, the majority of independent qualified persons might be engaged on other matters and not able to complete a technical report within the prescribed time frame. The CSA have considered this concern and determined that it is not necessary to extend the time frame for this reason. An issuer that has a practical problem such as this should apply for an exemption.

A number of commenters were concerned that there may be situations in which the initial disclosure would be different from the technical report filed some 30 days later. The CSA have considered this matter and have added a new provision to the proposed National

Instrument requiring the issuer to make disclosure reconciling any material differences at the time of filing the technical report.

F. Part 5(formerly Part 4)- Author of Report

1. Section 5.1 Technical Report Prepared by a Qualified Person

A number of comments were received asking who is required to sign a technical report and questioning the place and manner of endorsement. This section has been revised to delete any reference to signing and dating. Section 5.2 deals with execution of technical reports and requires that the technical report be dated, signed and, if the qualified person has a seal, sealed, by the qualified person who prepared it or supervised its preparation. If the qualified person is an employee, director or associate of an engineering or consulting company or partnership, the technical report may be signed by that company or partnership. Pursuant to section 8.1 of the proposed National Instrument, the technical report filed must be accompanied by a certificate or certificates dated, signed and, if appropriate, sealed by the qualified persons who have been primarily responsible for the technical report.

A commenter suggested that it is unnecessary to have the technical report signed as the certificate will suffice. The CSA disagree with this comment. The certificate and the signature on the technical report serve different purposes.

2. Section 5.2 Execution of Technical Report

A number of comments were received concerning the obligation to have the technical report sealed, which was included in section 4.2 of the 1998 proposed Instrument. The CSA recognize that the professional seal cannot be mandated by the securities regulatory authorities but rather is subject to the relevant legislation and the by-laws of the professional association to which the qualified person belongs. This section has been revised to provide that the technical report need only be sealed if the person has a seal.

One commenter asked how a technical report that is filed electronically under SEDAR can be sealed. The common practice is for the original to be sealed and the electronic version to indicate this with a note that says "original signed and sealed by [name]".

3. Section 5.3 Independent Technical Report

One commenter suggested that a non-independent report should be acceptable provided that it had been reviewed and endorsed by an independent qualified person. The CSA do not believe any change is required to the proposed National Instrument to accommodate this situation. If a non-independent qualified person has carried out work and has written a technical report, and the issuer is required to submit a technical report prepared by an

independent qualified person, the CSA expects that an independent qualified person will review the work, carry out appropriate verification procedures, and take all such other steps as he or she determines, in his or her professional opinion, are necessary to take in order for the independent qualified person to take responsibility for the content and recommendations of the technical report. If this procedure is followed, the technical report will be considered a technical report prepared by or under the supervision of a qualified person who is independent of the issuer for purposes of the Instrument.

One commenter was concerned that the 100% change threshold could be circumvented by an issuer filing a series of in-house technical reports showing incremental increases of less than 100%. It was suggested that in order to avoid this situation, the section could be amended to require the filing of an independent technical report if there was a substantial increase in mineral resources or mineral reserves (less than 100% but perhaps greater than 25%) which is disclosed in a relatively short period of time after the last disclosure. The CSA have addressed this concern by revising the paragraph so that the relevant test is the change from the most recently filed **independent** technical report.

G. Part 6 (formerly Part 5) - Nature of Technical Report

1. Engineering Document

A number of commenters suggested that the title of the section should not refer to "engineering" as that term is not accurate because most of the technical report may be geological. We have changed the references made in the 1998 Instruments to the "report" to read "technical report" in the proposed National Instrument and in this particular title.

A commenter suggested that a clear distinction needed to be made between the normal technical reports prepared for internal use and the "reports" required under the proposed National Instrument. The CSA have added a definition of "technical report" as being a report prepared, filed and certified under the Instrument and Form 43-101F1.

2. Judgment of Author

A commenter suggested that when a qualified person expresses an opinion on the merits of a property, the qualified person should provide a summary of his or her reasoning. The CSA are of the view that requiring a statement of the qualified person that the property merits the recommended program is sufficient.

A commenter was concerned that this statement would expose the qualified person to liability. The CSA expect that the qualified person would only recommend programs which he or she believes, on the basis of the technical report, are worthwhile in view of the merits

of the property. The CSA are of the view that it is appropriate for the qualified person to be responsible for this recommendation.

H. Part 7 Personal Inspection (formerly Part 6)

1. Personal Inspection

Many comments were received concerning the requirement that all qualified persons inspect the property that is the subject of the technical report. The concern was generally based on the view that this requirement would impose unreasonable expense and delay. Certain commenters suggested that site visits were a waste of the issuer's money. A number of commenters noted situations in which a site visit would not be necessary, such as if the report is based on results of a regional airborne survey. It was also suggested that the CSA should recognize that there will be situations in which examination of the ground would be of little use or where the location and climate conditions make a site visit impractical.
The CSA considered each of the comments received and have determined that it is important to maintain the personal inspection requirement with exemptions only to be provided in exceptional circumstances upon application made pursuant to the proposed National Instrument. The requirement has been amended however to provide that only one of the qualified persons involved in the preparation of the technical report needs to conduct a site visit.

One commenter urged that the qualified person be required to take samples during the property inspection for the purpose of corroborating sample data. Although the CSA consider data corroboration to be an important aspect of a site inspection, the focus of the proposed Instruments is on the quality of disclosure, not geoscientific practice which is the subject of industry guidelines. The CSA also recognize that circumstances may arise in which sampling is not feasible. For these reasons, subsection 3.2(b) is limited to a requirement for disclosure of whether or not there has been sample corroboration.

2. Sources of Information

A number of commenters strongly suggested that subsection (2) be deleted. This subsection required an opinion on the quality of information prepared by another qualified person. The CSA agree that a qualified person should not be required to comment on the quality of another qualified person's work. This subsection has been deleted.

I. Form 43-101F1 (formerly Part 7)

1. General Comments

A number of comments were received concerning the content of the technical report. Some commenters were of the view that these provisions should be guidelines only. One commenter suggested that the Ontario Guidelines for Professional Engineers Reporting on Mineral Properties should be incorporated in the proposed National Instrument.

The CSA considered all of the comments received in this regard. The purpose of setting out the requirements for the content of the report is to make certain matters mandatory so that readers of the report can expect to receive a consistently prepared report covering the same basic areas. The suggestion that these provisions be replaced with a cross reference to the Guidelines of the Professional Engineers is not acceptable to the CSA as it is the CSA's responsibility to mandate the content of disclosure. While the CSA regard these guidelines as helpful, they do not include all of the information that the CSA consider to be essential for the protection of investors and efficiency of the capital markets.

A commenter was concerned that Part 7 focuses on exploration properties and thought that other types of technical reports should be acknowledged. The CSA do not agree with this comment. The proposed Form includes a list of additional topics to be covered in technical reports on development or producing properties. Other types of technical reports for special purposes are too varied in subject matter to justify adding a new section to the proposed Form.

As noted above, a number of commenters expressed a concern that the responsibilities of the qualified person have been enlarged through requirements to discuss environmental, legal and other matters outside a qualified person's area of expertise. It was recommended that the author be permitted to include a disclaimer regarding these matters. A provision to this effect has been added as section 6.3 of the proposed National Instrument.

A commenter was concerned that if fraud is committed, it can be difficult to detect at the mineral resource or mineral reserve estimation stage. It was suggested that at least two independent estimates by qualified persons should be made and that they should fall within at least 10% of each other. The CSA believe that the quality and reliability of mining industry disclosure will be considerably enhanced by the requirements of the proposed Instruments governing terminology, disclosure content, technical reports and the involvement of experienced, qualified professionals. The CSA do not believe that a further requirement for the involvement of two qualified persons is warranted.

A comment was received to the effect that the sections concerning content of the technical report need greater consideration of the various stages of a mineral project. The CSA do not agree with this comment.

2. Property Description and Location (Item 5 of Form 43-101F1)

A number of specific comments were received concerning the list of items to be covered. Many commenters felt that the list was over inclusive and would not apply to all mineral projects. The CSA recognize this. The purpose of section 7.1 is to provide a comprehensive list of matters which, if relevant to the property and its stage of development, should be commented on. Therefore, in response to the comments raised, the matters which are relevant to an exploration property must be addressed. An introductory phrase has been added to this item and many other items of the proposed Form to the effect that reporting is required only to the extent applicable or relevant.

A commenter suggested that, to the extent known, permits applied for should be noted. This change has been made.

A commenter asked that the word "area" be changed to the "size of the property in hectares or other appropriate units". This change has been made.

A number of commenters suggested that the reference to "patented and unpatented" should be changed to a more generic term as claims are only described this way in certain jurisdictions. In response to this comment, the CSA have included a reference to the applicable characterization in the jurisdiction.

It was suggested that the requirement to "comment on the sufficiency of rights for mining operations" is unduly onerous unless the report is a feasibility study. The CSA agree with this comment and have moved the requirement to Item 6 paragraph (d).

J. Part 8 - Certificates of Qualified Persons

In response to comments received the CSA have amended section 8.1 of the proposed National Instrument to provide that the certificate need not be attached to the technical report but must be filed with it. In addition, a separate certificate of each qualified person primarily responsible for a portion of the technical report will be filed by the issuer.

A commenter suggested that it was inappropriate to require that the certificate include disclosure concerning the other sources of information contained in the technical report and the limitations imposed on the qualified person's access to the property and other information. The CSA agree that these provisions are most appropriately included in the

technical report, not the certificate, and no longer require that they be included in the certificate.

A number of commenters suggested that the statement "...the omission to disclose (any material fact) which makes the report misleading..." is unnecessary. The CSA have not made any change to this provision. As drafted, it is consistent with the definition of misrepresentation in securities legislation and provides a more narrow test of materiality.

K. Part 9 - Exemption

One commenter suggested that there should be a specific exemption from the requirements of "qualified person" status in addition to the general exemptive provisions of Part 9.
The CSA do not believe a specific exemption from meeting the requirements of a qualified person is necessary or appropriate. Section 9.1 covers all situations in which an issuer may need to seek exemptive relief from a requirement of the proposed National Instrument, including the requirement that the issuer ensure that a technical report is prepared by an expert who meets the definition of "qualified person". As noted above, some interim relief is proposed for geoscientists in jurisdictions which do not have professional associations (as that term is defined in the proposed National Instrument) at the present time.

PART III. ADDITIONAL COMMENTS ON COMPANION POLICY

A. General

A number of commenters were concerned that readers were confused by the concept of two documents, one an Instrument having the force of law and the other a Policy representing guidelines and interpretation. It was suggested that any operative provisions should be moved into the proposed National Instrument and that the proposed Policy should be clearly identified as guidance only so that if there was any inconsistency it would be clear that the proposed National Instrument would be determinative.

Section 1.1 of the Policy attempts to describe the purpose of the proposed Policy. In addition, a number of the provisions of the proposed Policy have been moved into an interpretation section of the proposed National Instrument or into the Instructions to the proposed Form. The CSA hope that these changes will reduce the confusion.

B. Part 1 - Purpose and Definitions

1. Application

A commenter suggested that the reference to Part 4 in the last sentence of this section should be changed to section 4.3 (now 5.3). This change has been made. That same commenter also suggested that the last sentence of this section be revised to add the words "and the property" at the end of that sentence, on the basis that situations arise where the qualified person is independent of the issuer but not the property as a result of work done for prior owners. This change has also been made.

A commenter suggested that defined terms were not used consistently in this section and that the word "mining" in the second sentence should be deleted. This word has been deleted.

2. Definitions

A number of comments were received by the CSA concerning the interpretation of the definitions of mineral resources and mineral reserves contained in the 1998 Proposed Policy. It was suggested again that the definitions should be identical to the definitions of the CIM Ad Hoc Committee. There was also confusion created by having definitions in the proposed National Instrument and the interpretation of those definitions in the 1998 Proposed Policy. The interpretation of these terms has been moved into the proposed National Instrument so that all provisions concerning the meaning and interpretation of these terms are in one place. In addition, the CSA have adopted definitions similar to and based upon the CIM Ad Hoc Committee. The CSA will monitor any amendments to the definitions proposed by the CIM Standing Committee and will consider further amendments to the definitions in the proposed National Instrument from time to time.

3. Professional Association

Several comments were received concerning the interpretation of the term "professional association" included in the 1998 Proposed Policy. Some commenters noted that the interpretation was inconsistent with the 1998 Proposed National Instrument. In response to these comments the CSA have deleted this discussion of "professional association" in the 1998 Proposed Policy.

4. Non-Metallic Mineral Deposits

The CSA received several comments concerning the interpretation of non-metallic mineral deposits. Many commenters expressed the view that, as drafted, the guidelines could make

it very difficult or impossible for a company to secure financing as it would be impossible for most companies to have "reserves", as they would not have the necessary sales contract in place. The CSA have revised this section to adopt the approach of the CIM Standing Committee to classification of industrial minerals.

A commenter suggested that there should be provision made for gemstones other than diamonds. The CSA do not agree with this comment. There are no industry guidelines in place at this time for other gemstones. Accordingly, for the time being, these deposits will be dealt with on a case by case basis.

A concern was expressed regarding the acceptance and reference to the Northwest Territories' Guidelines for Reporting as these are not recognized outside of Canada. The CSA have decided to keep the reference to the Northwest Territories Guidelines as that is the only standard that they are aware of that has received acceptance in Canada.

C. Part 2 - Disclosure

1. Disclosure

Several commenters were concerned about the requirement for disclosure to be understandable and in an easy to read format. The commenters stated that plain language translations done by non-technical people often result in logical or factual errors in the simplified disclosure. This section has been significantly revised in response to these comments. Firstly, the disclosure being referred to is stipulated to be disclosure made by or on behalf of the issuer. Secondly, the issuer is reminded that the qualified person should be consulted when the data and conclusions of the qualified persons report are being summarized.

2. Materiality

A commenter stated that the definition of "material" as discussed in the Policy does not take into account that a property could be very material as reflected in the issuer's share price but would not be material on the basis suggested in the proposed Policy. The CSA do not agree with this comment. If the property is material to the share price then it would be material, applying the test of significance to the investors and other users of the disclosure.

It was suggested that "material" should be defined in the proposed National Instrument. The securities legislation of each Province (other than Quebec) has a definition of material fact and material change and other guidance concerning the assessment of materiality which the CSA consider sufficient. It is not intended that the term when used in this proposed National Instrument will have any different meaning than when it is used in other contexts

in securities legislation. Issuers determine materiality for purposes of satisfying their continuous disclosure responsibilities in many contexts.

A commenter was confused about the meaning of subsection 2.2(4) which discusses the grouping together of multiple claims. This subsection is intended to remind an issuer that it might be appropriate to group together claims for purposes of assessing materiality and determining whether a particular property should be subject to the standards in the proposed National Instrument.

A number of comments were received concerning the attempt to quantify materiality using a book value approach, particularly for junior companies. Mature but inactive properties could be material applying a book value test even though the issuer does not propose any development on the property. The CSA do not intend that the book value test be applied in every instance. In fact the purpose of this subsection to advise issuers that a property with a book value of less than 10% of the book value of the total of the mineral issuer's property will generally not be considered material. This is not meant to imply that everything else is material. The determination of whether a property is material is a subjective one based on the issuer's overall business and financial condition, taking into account all factors.

3. Material Information Not Yet Confirmed

A number of comments were received regarding this section; all related to timely disclosure and the involvement of a qualified person. There was general agreement that the requirements of the proposed National Instrument should not delay timely disclosure of material information. No specific changes were requested and none have been made in response to the comments.

D. Part 3 Guidelines for Exploration and Estimates of Resources and Reserves

The CSA received many comments concerning this Part of the Policy. In general, the commenters believed that the guidelines were too detailed. It was felt that the selection of appropriate techniques and methodology should be left to the qualified person. As drafted, the guidelines were perceived more as rigid rules than suggestions for best practices. A number of other more specific drafting comments were received with respect to certain clauses of this Part.

The CSA agree that "best practices" guidelines are most appropriately developed by the industry. A committee comprised of representatives of the mining industry, the Toronto Stock Exchange and the Ontario Securities Commission has developed the Best Practices Guideline which was published for comment in October 1999 by the Prospectors and Developers Association of Canada. Accordingly, the CSA have deleted Part 3 from the proposed Policy and in the Instructions to Item 18 to From 43-101F1 "Mineral Resource

and Mineral Reserve Estimates" urge issuers and qualified persons to follow the Best Practices Guidelines when estimating mineral resources and mineral reserves.

E. Part 4 Availability of Assay Certificates

A commenter suggested that all references to assays should be changed to analyses. The CSA have added a reference to analysis or analytical certificates where there is a reference to assays in the proposed National Instrument, proposed Policy or proposed Form. This particular Part has been moved to be an Instruction to Item 13 of the Form, "Sampling Method and Approach".

A commenter suggested that it would be better to specify the circumstances in which the assays and other supporting documentation would have to be available for presentation. No change has been made in response to this comment. The assays will be kept by the issuer and may be requested by the CSA.

F. Part 5 (now Part 3) Author of the Report

A commenter expressed his view that in order for the concept of qualified person to be effective this section of the proposed Policy, concerning selection of the qualified person, is one of the most important sections. In his view obtaining the appropriate qualified person will not be a straightforward process and only management and the directors of an issuer are close enough to the situation to make sufficient enquiries to select a person with the appropriate experience for the particular deposit . He wanted these responsibilities of the board to be clearly articulated.

Another commenter expressed the view that the responsibility is not limited to the board but is a responsibility of the issuer and its officers as well. Furthermore this commenter felt that the language should refer to the qualified person having the experience and competence appropriate not only for the type of deposit, but for the purpose of the report and disclosure being made.

The CSA agree with these comments. This section has been revised in response to these comments.

One commenter suggested that qualified persons should be appointed by a document that summarizes the scope of responsibility and duration of appointment of the qualified person. The CSA recognize the wisdom of documenting the issuer/qualified person relationship for the benefit of the parties but are not prepared to mandate such documentation in the proposed National Instrument.

A commenter suggested that there should only be limited grounds for exceptions to the requirements that qualified persons be both experienced and subject to discipline. The CSA agree with this comment. Exceptions to the requirements that qualified persons be members of a legislated professional association (and therefore subject to discipline) will be permitted for two years for geoscientists who are members of associations in Canadian jurisdictions in which there are no legislated professional associations. Otherwise exemptions from these requirements are available only by application under the proposed National Instrument. Some commenters suggested that geoscientists in jurisdictions without legislated professional associations join legislated professional associations as extra-provincial members. However, a professional association may not have disciplinary powers over extra-provincial residents and, as a matter of principle, the CSA determined that it would be inappropriate at this time to mandate geoscientists to belong to associations outside their jurisdiction of practice without allowing them sufficient opportunity to arrange for a legislated professional association in their own jurisdictions. For that reason, specific provision has been made in the definition of "professional association" in the proposed National Instrument to the effect that until March 31, 2002, an association of geoscientists in Canadian provinces that do not have a statutorily created organization will constitute a "professional association" for purposes of the proposed National Instrument.

G. Part 6 (now Part 4) Use of Information

A commenter suggested that analysts should be required, not just encouraged, to include the opinion from the technical report on the basis that many analysts have extremely limited practical experience in mining or exploration. The CSA share the commenter's concern. However, regulation of statements by analysts is beyond the scope of the National Instrument, which addresses disclosure by or on behalf of issuers.

A commenter noted that a qualified person should not be held responsible for misinterpretation, misuse or misquoting of information generated and approved by the qualified person where he or she cannot reasonably be expected to be in a position to control such nature, contents or circumstances. The CSA agree with the commenter. The qualified person should not be liable in this circumstance.

H. Part 7 Personal Inspection

As discussed above, in connection with this requirement in the proposed National Instrument, a number of comments were received concerning the requirement for personal inspection of the property. It was suggested that no qualified person worth retaining would issue any report without a site visit if, in his or her professional judgment, a site visit was necessary or desirable. Accordingly, it was suggested that this matter should be left to the discretion of the qualified person.

The CSA are not prepared to leave the matter of site visits to the discretion of the qualified person. The CSA are of the view that site inspections are crucial to the corroboration of information. Exemptions from this requirement will be considered, on application, if a property visit is impossible or would provide little benefit.

I. Part 8 (now Part 6) Regulatory Review

A number of commenters suggested that any review by the Canadian securities regulatory authorities must be done by a qualified person with excellent experience in geology/mining. They recommended that regulators recruit and build permanent staffs of qualified persons to perform the oversight function. The CSA appreciate the comments received in this regard and will give the matter of appropriate staffing further consideration. No change is required to be made to the proposed Policy in response to these comments.

A commenter suggested that all information filed must be read and approved by the regulators for compliance to basic standard practice. The CSA do not agree with this suggestion.

PART IV TRANSITIONAL MATTERS

One commenter asked a number of questions concerning the application of requirements in the proposed National Instrument. The commenter asked whether NP2-A reports submitted by the issuer before the proposed National Instrument came into effect would be acceptable or whether these reports would have to be restated to comply. In general old reports would not have to be redone; however any technical report required to be filed after the proposed National Instrument comes into effect would have to comply. An issuer would however be permitted to refer to NP2-A reports in the new technical report.