

**THE MANITOBA SECURITIES COMMISSION**

**NOTICE 2000-14**

**PROPOSED NATIONAL INSTRUMENT 43-101 AND  
COMPANION POLICY 43-101CP AND FORM 43-101F1  
STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS**

***THE SECURITIES ACT***

**Notice of Proposed Rule**

**A. Substance and Purpose of Proposed Rule, Companion Policy and Form**

***1. Introduction***

On July 3, 1998, the Canadian Securities Administrators (the "CSA") published the following two instruments (collectively, the "1998 proposed Instruments") for comment:

- (i) proposed National Instrument 43-101 Standards for Disclosure of Mineral Exploration and Development and Mining Properties (the "1998 proposed Instrument"); and
- (ii) proposed Companion Policy 43-101CP (the "1998 proposed Policy").

The 1998 proposed Instruments were published at (1998), 21 OSCB 4213. The accompanying notice (the "1998 Notice") summarized the 1998 proposed Instruments and requested comments generally and with respect to the following four specific matters:

- (i) the impact of the requirement for a qualified person;
- (ii) the proposed extension of the time period for filing technical reports in certain circumstances;
- (iii) the attributes and exemption available to a producing issuer; and
- (iv) the requirements for filing an independent technical report.

The CSA received comments on the 1998 proposed Instruments from 36 commenters. The list of commenters is contained in Appendix A of this Notice and a summary of their comments, together with the CSA's responses to those comments, are contained in Appendix B of this Notice.

In addition to considering the comments received on the 1998 proposed Instruments, the CSA also considered the Mineral Resource/Reserve Classification: Categories, Definitions and Guidelines prepared by the Canadian Institute of Mining, Metallurgy and Petroleum Ad Hoc Committee on Reserve Definitions (the "CIM Ad Hoc Committee") and the draft Mineral Exploration "Best

Practices" Guidelines (the "Best Practices Guidelines") prepared on the recommendation of the TSE-OSC Mining Standards Task Force by a committee comprised of mining and exploration industry professionals and regulators. The Best Practices Guidelines were published for comment by the Prospectors and Developers Association of Canada in October 1999 and are expected to be finalized early this year.

As a result of these considerations and further deliberations of the CSA, the Ontario Securities Commission (the "Commission") has revised the 1998 proposed Instruments and is republishing them for comment. One significant revision is to move the parts of the 1998 proposed Instrument that dealt with the contents of a technical report into a new instrument, Form 43-101F1. Certain provisions of the 1998 proposed Policy which provided guidance on the contents of the technical report have also been moved into proposed Form 43-101F1, as instructions.

Proposed Form 43-101F1 and the republished versions of the National Instrument and Companion Policy are referred to in this Notice collectively as the "proposed Instruments" and separately as the "proposed Form", the "proposed National Instrument" and the "proposed Policy".

This Notice summarizes changes of a substantive nature that have been made to the 1998 proposed Instruments. Other changes that may be of interest to readers are discussed in Appendix B Summary of Comments.

It is expected that the proposed Instruments will come into effect on or before December 31, 2000. Prior to that time the proposed new requirements will not be in force; however, issuers are encouraged to follow the standards set out in the proposed National Instrument in any oral statements or written disclosure of scientific or technical information made concerning a mining project.

## **2. *Substance and Purpose of National Instrument 43-101***

The proposed National Instrument 43-101 originated with the reformulation of National Policy Statement No. 2-A "Guide For Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators" ("NP2-A") and National Policy Statement No. 22 "Use of Information and Opinion Re Mining and Oil Properties by Registrants and Others" ("NP22"). NP2-A sets out requirements for the preparation of technical reports that must be filed by issuers with mineral projects in connection with certain prospectus offerings. NP22 addresses the use of information and opinions regarding natural resource properties by registrants and issuers and sets standards for references to technical data in reports, letters or other publications used directly or indirectly to sell securities.

The proposed National Instrument 43-101 consolidates and expands significantly on the current disclosure and reporting requirements. The purpose of the proposed National Instrument is to enhance the accuracy and integrity of public disclosure in the mining sector.

The proposed National Instrument 43-101 establishes standards for all oral statements and written disclosure made by an issuer concerning mineral projects and reasonably likely to be made available to the public. All disclosure concerning mineral projects, including oral statements and written disclosure in news releases, prospectuses and annual reports, is to be based on information prepared by or under the supervision of a qualified person. Disclosure of mineral resources and mineral reserves is to be made in accordance with standard definitions set out in the proposed National Instrument.

In certain circumstances, the disclosure must be supported by a written technical report prepared and certified by a qualified person in accordance with Form 43-101F and filed by the issuer with the securities regulatory authorities. In specified circumstances the technical report must be prepared and certified by a qualified person who is independent of the issuer.

The proposed National Instrument 43-101 is consistent with the recommendations of the Final Report of the TSE-OSC Mining Standards Task Force. The CSA are of the view that the proposed National Instrument will enhance investor protection and the fairness and efficiency of capital markets.

The proposed National Instrument 43-101 is expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland, as a Commission regulation in Saskatchewan and as a policy in all other jurisdictions represented by the CSA. NP2-A will be repealed and NP22 will be repealed insofar as it relates to mineral projects.

### **3. *Substance and Purpose of Form 43-101F1***

The proposed Form is new. It sets out the contents required in a technical report. These requirements had been included as Parts 6 and 7 of the 1998 proposed Instrument and parts 3 and 4 of the 1998 proposed Companion Policy. The change was made to make the Instrument easier to understand and comply with.

### **4. *Substance and Purpose of Companion Policy***

The purpose of the proposed Policy is to set forth the views of the CSA as to the manner in which the proposed National Instrument is to be interpreted and applied.

## **B. Summary of Changes to Proposed Instruments**

Changes of a substantive nature that have been made to the proposed Instruments are summarized here. Certain of these changes and other changes that are less substantive are discussed in greater detail in Appendix B.

### **National Instrument 43-101**

#### **1. *Definition of "disclosure"***

In response to comments, the definition of "disclosure" has been revised to exclude written disclosure made available to the public only by reason of having been filed with a government or agency of government pursuant to a requirement of law other than securities legislation.

#### **2. *Definitions of Mineral Resources and Mineral Reserves***

The CSA received a number of comments concerning the definitions of resource and reserve (including the categories within those definitions). In response to those comments and discussions with the CIM Standing Committee on Reserve Definitions (the "CIM Standing Committee"), certain changes were made to the definitions. The CSA are of the view that the definitions included in the proposed National Instrument reflect industry practice and are as similar as possible to the definitions of the CIM Ad Hoc Committee taking into account rule-making requirements. The principal changes made to these definitions are:

- (i) the deletion of the category of possible reserves;
- (ii) 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;
- (iii) guidance concerning the interpretation of the defined terms has been moved from the 1998 proposed Policy into the proposed National Instrument to consolidate all provisions regarding these definitions in sections 1.3 and 1.4 of the proposed National Instrument; and
- (iv) the definition of measured mineral resource now includes the requirement of a sufficient level of confidence that the estimate could be used as a basis for detailed mine planning.

- (v) a foreign issuer may file a technical report using the mineral resource and mineral reserve classifications of the Australasian Code for Reporting of Mineral and Ore Reserves, the mineral classification system and definitions approved by The Institution of Mining and Metallurgy in the United Kingdom or as set out in the circular published by the United States Bureau of Mines/United States Geological Survey entitled "Principles of a Resource/Reserve Classification for Minerals", provided that the foreign issuer includes a reconciliation to the classifications in the proposed National Instrument.

### **3. *Definition of "qualified person"***

The CSA received several comments concerning the definition of "qualified person". In response to these comments and further deliberations of the CSA, the definition has been amended. The principal changes are:

- (i) under the revised definition the qualified person must be an individual;
- (ii) the individual must have 5 years of experience relevant to the subject matter of the mineral project and the technical report; and
- (iii) as a result of changes to the definition of "professional association", geoscientists in Ontario and Quebec and other Canadian jurisdictions in which there is not at present a statutorily recognized self-regulatory organization, will be deemed to have the membership in a professional association necessary to be qualified persons, for a two year period commencing on the date of publication of the National Instrument in final form.

### **4. *Definition of "producing issuer"***

The CSA specifically asked for comments on the definition of "senior resource issuer". The definition (now using the term "producing issuer") has been amended to reduce the level of gross annual revenue required to \$30 million in the issuer's most recently completed financial year and to require a minimum aggregate gross revenue over the issuer's three most recently completed financial years of \$90 million. The term "senior resource issuer" has been changed to "producing issuer" to better reflect the rationale for the exemption from the requirement that a qualified person that prepares a technical report that discloses new or a 100 percent change in mineral resources or mineral reserves must be independent from the issuer.

**5. *Non-independence of qualified person***

The CSA gave further consideration to the tests for determining whether a qualified person is independent of the issuer for purposes of providing an "independent" technical report under the proposed National Instrument. The CSA are of the view that in certain circumstances a technical report prepared under the National Instrument must be prepared by a person who is free from real or apparent influence from the issuer. The tests for "non-independence" set out in section 1.5(4) of the proposed National Instrument have been chosen as indicators of situations in which the CSA have concerns that the impartial judgment of qualified person may be affected by economic factors. Certain changes have been made to this section to better meet the concerns of the CSA. The principal changes are that:

- (i) a qualified person is not independent of the issuer if he or she, or an entity affiliated with the qualified person, received the majority of his or her income from a particular issuer in the three years preceding the date of the technical report. This replaces the provision in the 1998 proposed Instrument which stated that a qualified person was not independent of the issuer if he or she received or expected to receive the majority of his or her income in the year preceding the date of the report from the issuer; and
- (ii) a new provision has been added that provides that a qualified person that is an employee of or retained by a producing issuer that has entered into or agreed to enter into a joint venture with another issuer will be considered independent of the other issuer for purposes of preparing technical reports concerning the property.

**6. *Disclosure Requirements***

Part 2 of the 1998 proposed Instrument set out the requirements for disclosure concerning mineral projects. In order to clarify which requirements apply only to written disclosure and which are applicable to all disclosure, in whatever form, this Part has been separated into 2 Parts, the first setting out requirements applicable to all disclosure (Part 2) and the second setting out additional requirements for written disclosure (Part 3). The provisions and additional guidance in the proposed Policy have been revised to make it clear that the disclosure is the responsibility of the issuer. The qualified person is responsible for performing his services in accordance with applicable professional standards and in accordance with generally accepted Canadian mining industry practice.

**7. *Obligation to File a Technical Report Upon Becoming a Reporting Issuer***

A new subsection has been added which permits an issuer to satisfy the requirement to file a technical report upon becoming a reporting issuer, by filing a technical report that it has previously filed in another Canadian jurisdiction in which it is a reporting issuer, updated to reflect material changes in the information.

**8. *Obligation to File a Technical Report With a Prospectus***

In the 1998 proposed Instrument a technical report was required to be filed with each long form prospectus and with any short form prospectus that contained information not included in a technical report already filed. The obligation arose on filing of the prospectus in final form. This provision has been amended to require that the technical reports be filed with the preliminary prospectus and that an updated report or an amendment be filed with the prospectus in final form if there has been a material change in the technical report or the information in the technical report.

**9. *Obligation to File a Technical Report With a Take-over Bid Circular or Directors' Circular***

The requirements regarding the filing of a technical report with a take-over bid circular have been clarified in the proposed National Instrument. If a take-over bid circular discloses mineral resources or mineral reserves of the offeror and the offeror is offering its securities on the take-over, the offeror is required to file a technical report.

A new subsection has been included in the proposed National Instrument which requires an issuer to file a technical report in connection with a directors' circular which includes new material information concerning a mineral resource or mineral reserve of the issuer. This technical report does not have to be filed at the time that the directors' circular is filed but must be filed not less than 3 business days prior to the expiry of the take-over bid to which the directors' circular relates.

**10. *Obligation to Disclose Reconciliation of Differences Between Disclosure and Subsequently Filed Technical Report***

The proposed National Instrument permits an issuer to file a technical report supporting disclosure of mineral resources or mineral reserves up to 30 days after the disclosure is made. The CSA are concerned that situations could arise where the information in the technical report is different from the disclosure. For that reason, a new clause has been added requiring the issuer to disclose a reconciliation of any material differences between the technical report filed and the previously released disclosure.

**11. *Obligation to File Independent Technical Report in Connection with Disclosure for the First Time of 100% Change in Mineral Resources or Mineral Reserves***

The 1998 proposed Instrument required that an issuer, that is not a producing issuer, file an independent technical report in a number of circumstances, including where the issuer disclosed in a news release mineral resources or mineral reserves for the first time or disclosed a 100% or greater change in previously announced mineral resources or mineral reserves. This provision has been expanded so as to require that an independent technical report also be filed by an issuer if that disclosure is made in any short form prospectus, information or proxy circular, offering memorandum, rights offering circular, annual information form, annual report, directors' circular, take-over bid circular or other document. Producing issuers are required to provide technical reports in the same circumstances but the qualified person preparing the technical report is not required to be independent.

**12. *Disclaimer*** The CSA received a number of comments expressing concern about the increased exposure, responsibility and consequent liability of a qualified person involved in disclosure. A 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 CSA recognize that the qualified person will need to rely on information prepared by legal and other experts concerning matters outside of the expertise of the qualified person. For that reason, the proposed National Instrument contains a new section which permits the author of the technical report to include a disclaimer regarding reports, opinions or statements of legal or other experts relied upon by the qualified person in preparing the technical report.

**13. *Publication of Name of Qualified Person***

The 1998 proposed Instrument required all written disclosure to name the qualified person who prepared or supervised the preparation of the underlying information. The CSA received a number of comments expressing concern about the increased exposure of the qualified person. The proposed National Instrument has been revised so that it no longer requires the name of the qualified person to be published in news releases.

**14. *Site Inspection***

The 1998 proposed Instrument included a requirement that each qualified person involved in the preparation of the technical report inspect the property that is the subject of the technical report. The CSA have revised this requirement so that only one qualified person is required to visit the site.



## **15. Certificate**

The form of certificate required to be filed with the technical report has been revised to require that the qualified person disclose any prior involvement with the property that is the subject of the technical report and disclose any factors that would make the qualified person not independent for purposes of the proposed National Instrument. In addition, the qualified person must certify that the technical report has been prepared in conformity with generally accepted Canadian industry practice.

### Companion Policy

#### **1. Interpretation**

The proposed Policy has been revised to move the sections providing guidance on the interpretation of the terms "mineral resource" and "mineral reserve" (including the categories of those definitions) into the Interpretation section of the proposed National Instrument.

#### **2. Industrial Minerals**

The guidelines for disclosure regarding industrial minerals have been amended to conform with the guidelines of the CIM Standing Committee. The new guidelines do not include a requirement that sales contracts be in place in order for an industrial mineral deposit to be classified as a mineral reserve.

#### **3. Guidelines for Exploration and Mineral Resource and Mineral Reserve Estimates**

The 1998 proposed Policy included guidelines for exploration and estimates of mineral resources and mineral reserves. The CSA have determined that guidelines for exploration are appropriately established by industry and have accordingly deleted these provisions from the proposed Policy and have instead included an instruction in the proposed Form encouraging qualified persons to follow the Best Practices Guidelines.

### **Transition**

The CSA anticipate that the proposed National Instrument will come into effect in December 2000. No transitional measures are proposed at this time.

The coming into force of the proposed National Instrument would not itself necessarily trigger an immediate obligation to file a technical report prepared in accordance with the proposed National

Instrument. For most issuers affected by the proposed National Instrument, the requirements concerning technical reports would first apply in connection with an annual report, annual information form or preliminary prospectus filed after the National Instrument comes into effect. In some cases these requirements would apply earlier, for example, in connection with disclosure of new or materially changed estimates of mineral resources and mineral reserves on a property material to the issuer, after the coming into force of the proposed National Instrument.

Issuers are urged to begin taking into account the proposed requirements, particularly in connection with the preparation of technical reports on which issuers may seek to rely after implementation of the National Instrument. Subject to any further notice to the contrary, a technical report prepared after the date of publication of this Notice in accordance with the proposed National Instrument (including use of terminology set out in the proposed National Instrument) will be considered to comply with NP 2A.

### **Comments**

Interested parties in Manitoba are invited to make written submissions with respect to the proposed National Instrument. Submissions received by June 16, 2000 will be considered by the following:

Submissions and questions should be sent to:

The Manitoba Securities Commission  
c/o Nancy Martin  
Assistant Counsel  
1130-405 Broadway Avenue  
Winnipeg, Manitoba  
R3C 3L6

A diskette containing the submissions (in DOS or Windows format, preferably Wordperfect) should also be submitted. As securities legislation in certain provinces requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Until May 24, 2000 questions may be referred to any of:

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### **Proposed National Instrument**

The texts of the proposed National Instrument, Companion Policy and Form follow, together with footnotes that are not part of the National Instrument and Companion Policy but that have been included to provide background and explanation.

**DATED** April 12, 2000.