

Mining and Natural Resources Law

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CSA Reviews Mining Issuers' Investor Presentations

The Canadian Securities Administrators (CSA) have published CSA Staff Notice 43-309, which summarizes the findings of staff of the Autorité des marchés financiers, the British Columbia Securities Commission and the Ontario Securities Commission and outlines the CSA's expectations for website and investor presentation disclosure by mining issuers. The Staff Notice concludes that investor presentations found on many mining issuers' websites contain non-compliant disclosure. Incomplete information and overly promotional language were identified as key areas of concern. Mining issuers are expected to use the Staff Notice as a tool to strengthen their compliance with securities law.

Background

The CSA review was aimed at understanding the nature, extent and securities law compliance of disclosure in investor presentations of mining issuers with a view to assisting issuers improve the quality of their disclosure. To that end, staff reviewed investor presentations of 130 pre-production mining issuers listed on the TSX, TSXV and CSE for compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) requirements applicable to written disclosure. The Staff Notice summarizes the results of this review.

Key Findings

The CSA found that only 18% of the investor presentations reviewed substantially complied with NI 43-101. Fifty-seven per cent had items of minor non-compliance and 25% contained major non-compliance. As a result, the CSA sent letters

to 49 issuers requiring some sort of corrective measure, including providing undertakings with respect to future compliance, issuing a corrective press release or, in the most serious cases, filing or refile a technical report.

Of the 130 investor presentations reviewed, only 54 complied with the NI 43-101 requirement to specifically identify the qualified person (QP) who was responsible for approving the technical disclosure in the presentation. The CSA highlighted the fact that these 54 presentations had a much lower level of major non-compliance (only 15%) than presentations that did not name a responsible QP.

The most significant areas of non-compliance identified in the Staff Notice included:

- not identifying a responsible QP;
- not including required cautionary statements when disclosing financial results from a preliminary economic analysis level study;
- not clearly stating whether mineral resources disclosed in a presentation included or excluded mineral reserves; and
- non-compliant exploration target disclosure (i.e., failing to express the exploration target as a range, not including required cautions or both).

There were also a handful of instances where information included on an issuer's website included economic disclosure that was not supported by an existing technical report. Although those instances of non-compliance were relatively rare (occurring in only five of 81 presentations that included PEA or scoping study level results), the Staff Notice cautions that the CSA has significant concerns about this practice and reminds issuers that unsupported economic disclosure about a project may trigger a requirement for the issuer to file a technical report.

Goodmans^{LLP} Update

Finally, the Staff Notice highlights significant concerns over the use of overly promotional or potentially misleading language in investor presentations. Terms such as “world-class”, “spectacular and exceptional results”, “production ready” and “ore” (when used in relation to mineral reserves) were identified as the kind of statements that could be considered misleading, especially when used by exploration stage and mineral resource stage issuers.

Conclusion

Making investor presentations available on a website is a convenient and effective way for an issuer to communicate with its investors. While these materials are by their nature more “user friendly” and promotional in tone and content than core disclosure documents such as material change reports, annual information forms and prospectuses, the Staff Notice is a good reminder that all written disclosure, including investor presentations, must comply with NI 43-101 and other securities law requirements applicable to written disclosure. If the CSA identifies non-compliant disclosure on an issuer’s website or in an investor presentation, the issuer may be required to take actions to address the non-compliance. Should non-compliant disclosure come to light in the context of a prospectus offering, the offering itself might have to be deferred while deficiencies are corrected.

Please contact any member of our Mining and Natural Resources Group to discuss these latest developments.