

## Corporate Securities and Mining Law

June 21, 2011

### Final Amendments to National Instrument 43-101 “Standards of Disclosure for Mineral Projects” – in force June 30, 2011

The Canadian Securities Administrators (CSA) have announced amendments to National Instrument 43-101 (NI 43-101), the related companion policy and technical report form. The amendments to NI 43-101 were initially released for comment in April 2010. Following extensive consultation with industry stakeholders, the final amendments to NI 43-101 were released in March 2011. Subject to obtaining necessary ministerial approvals, the amendments will come into force on June 30, 2011.

The amended rules maintain the core principles of NI 43-101, including: (i) a prescriptive technical reporting format triggered on filing prescribed disclosure documents; (ii) reliance on individual qualified persons for technical disclosure; and (iii) prescriptive guidelines that regulate key mining industry disclosure. The amendments are designed, in large part, to give issuers greater flexibility within the existing NI 43-101 framework. The CSA has stated that one of their goals is to reduce compliance costs for issuers without compromising the investor protection inherent in NI 43-101’s rigorous reporting standards.

The amendments will affect all reporting issuers who operate in the mining industry, and will have an impact on disclosure at each level of property development from exploration, through to development and producing properties.

Some of the key amendments are discussed below:

#### A. Changes to the Technical Report Trigger when filing a Short Form Prospectus

- The obligation to file a technical report when filing a short form prospectus has been limited to situations where the short form prospectus discloses for the first time mineral resources, mineral reserves, or the results of a preliminary economic assessment that constitutes a material change for the issuer or a change in this information, if the change constitutes a material change for the issuer. This will greatly streamline the short form offering process for most issuers.

#### B. Changes Relevant to Producing Issuers

- A producing issuer (i.e. one having gross revenues, derived from mining operations, of (i) at least \$30 million for its most recently completed financial year, and (ii) at least \$90 million in the aggregate for its three most recently completed financial years) will no longer have to include an economic analysis in a technical report covering a property that is already in production (unless a material expansion of current production is contemplated).
- A producing issuer already listed on a “specified exchange” (the Australian Stock Exchange, the Johannesburg Stock Exchange, the London Stock Exchange Main Market, the Nasdaq Stock Market, the New York Stock Exchange, or the Hong Kong Stock Exchange) will not need to have an independent qualified person prepare technical reports for filing upon first becoming a reporting issuer in Canada.

#### C. Changes Relevant to Development Properties

- Disclosure of a preliminary economic assessment on a development property (i.e. an economic study, other than a pre-feasibility study or a feasibility study, that analyzes the potential viability of mineral resources) will be permitted after the disclosure of reserves.
- The currently prescribed form of technical report will be amended to make it less prescriptive and more adaptable for advanced development properties and producing properties, giving the qualified person more discretion regarding the amount of information and level of detail required based on the qualified person’s assessment of the relevance and significance of the information in the overall context and stage of development of the property.
- A production decision on a development property, whether or not based on a pre-feasibility study or a

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feasibility study, will not, in and of itself, trigger an obligation to file a technical report (but would require specific MD&A disclosure).

## D. Changes Relevant to Exploration Properties

- There will be greater scope to report historical resource estimates prepared prior to the issuer having acquired an interest in the property (only historical resource estimates prepared prior to 2001 are currently permitted).
- There will be greater latitude, in the case of a property acquisition, to disclose scientific and technical information on a newly-acquired (or soon to be acquired) property supported by a current technical report previously filed by another issuer provided that the acquiring issuer prepares and files its own technical report within six months of making the disclosure.

## E. Changes to Technical Reports

- There is no obligation to file updated qualification certificates and consents for the filing of a disclosure document containing scientific and technical information supported by a previously filed technical report that remains current.
- Greater scope for qualified persons to rely on and disclaim responsibility for certain information provided by the issuer and certain pricing and valuation information provided by experts who are not qualified persons.
- A revised definition of “qualified person” and “professional association” that replaces prescriptive lists with objective qualification criteria.
- A flexible approach to reporting resources and reserves based on a wider range of international classification codes.

## F. Other Key Amendments

- An exemption for royalty holders and other holders of a passive interest in a mineral property from the

requirement to prepare a technical report if the information concerning the project is publicly available, and was prepared by an issuer that is subject to NI 43-101 or a producing issuer listed on a specified exchange.

- Prohibits disclosure of the gross contained metal or mineral value of a deposit and restricts disclosure of a metal or mineral equivalent grade for a multiple commodity deposit unless the grade of each metal or mineral used to establish the metal or mineral equivalent grade is also disclosed.

Please contact any member of Goodmans Mining and Natural Resources Group to discuss these amendments.

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