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## Purpose

Mine Technical Services (MTS) has prepared a set of commentary documents that may be useful as discussion points for those who may wish to comment on the proposed changes to Canada's National Instrument 43-101 Standards of Disclosure for Mineral Projects (NI 43-101). These are works in progress, and will be amended as needed. The documents consist of:

- Introduction to the changes;
- Table of changes, classified by impact to Qualified Person or issuer;
- Blackline and commentary comparisons between the proposed changes and the existing documents (in progress).

## Introduction

The Canadian Securities Administrators staff (CSA staff) provided proposed updates to NI 43-101 the Instrument (the Rule), Form 43-101F1 (the Form), and Companion Policy 43-101CP (the Companion Policy) on June 12, 2025, and gave the industry a 120-day comment period, expiring 10 October, 2025.

The news release entitled CSA Notice and Request for Comment Proposed Repeal and Replacement of National Instrument 43-101 Standards of Disclosure for Mineral Projects (the 2025 CSA news release) provided the following aims of the proposed updates, which the news release refers to as the "Modernized Disclosure Requirements":

*The Modernized Disclosure Requirements, as defined below, are intended to modernize and streamline Canada's mining disclosure regime and continue to protect investors, without imposing an undue regulatory burden on market participants*

Throughout this commentary, the proposed updates will be referred to following the CSA staff presentation, as the "Proposed Modernization Draft".

## Background to NI 43-101

In the late 1990s, Toronto Stock Exchange and the Ontario Securities Commission jointly oversaw the Mining Standards Task Force, which was tasked with evaluating how to enhance public and investor confidence in the mining industry. The taskforce in its final 1999 report (the 1999 Taskforce Report) made 66 recommendations to improve the standards governing operating activities and public disclosure in the mining industry, including:

*The establishment of national uniformity in regulation, and improved application/supervision;*

*Establishment of national standards in the mining industry, including exploration "best practices guidelines" based on industry standards in mining exploration;*

*Adoption of higher disclosure standards by exploration and mining companies, as well as development of national standards for all analysts who report their recommendations to the marketplace;*

*Formalization and enhancement of the role of the Qualified Person concept in the Canadian mining industry.*

The first draft of NI 43-101 was sent out for public comment in 2000, and NI 43-101 came into effect on 1 February, 2001. Subsequently, there have been two updates to the original NI 43-101 Rule, Form, and Companion Policy, one in 2005, and a second in 2011.

In this commentary, these earlier versions are referred to as editions, discriminated by date (e.g. 2001 edition; 2005 edition; 2011 edition).

Other than the original 2001 edition, each of the subsequent updates followed a similar presentation format: each was provided to industry initially for comment, with clean and blackline pdfs to the previous edition.

At the time the 2005 edition was referred to as a “light” update. The 2011 edition was explained to industry as a more comprehensive update. The significant changes in the 2011 edition involved, in particular, changes to the compulsory item headings and instructions in the 2011 edition of the Form, and additional guidance in the 2011 edition of the Companion Policy.

## Canadian Institute of Mining, Metallurgy and Petroleum

One of the taskforce recommendations was to establish national standards for the mining industry.

The Canadian Institute of Mining, Metallurgy and Petroleum developed a set of definitions for key industry terms, which became the CIM Definition Standards for Mineral Resources and Mineral Reserves (CIM Definition Standards). The definitions for Mineral Resources, Mineral Reserves and Pre-Feasibility and Feasibility Studies were incorporated by reference into the Rule. These CIM Definition Standards were updated in 2005, 2011 and 2014.

CIM also developed a series of practice guidelines (CIM guidelines) to act as guidance documents for industry, providing guidance on practice elements such as exploration, mineral processing, mineral resource and mineral reserve estimation, and environmental considerations. These CIM guidelines are incorporated by reference into the Companion Policy.

## 2022 Consultation Paper

In April 2022, CSA staff released a document “CSA Consultation Paper 43-401 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects” (the 2022 Consultation Paper) that was designed:

*“to obtain feedback from stakeholders about the efficacy of several key provisions of NI 43-101, priority areas for revision, and whether regulatory changes would address concerns expressed by certain stakeholders.”*

Stella Searston of MTS was not the only commentator on the 2022 Consultation Paper, but her response encapsulates the issues that a number of respondents had:

*“I am providing feedback on more than just the questions raised by the CSA*

*staff; I am also commenting on wording used in the preambles and questions within the “Consultation Questions” as I believe that the concepts are not well understood, that a portion of the wording used in the preamble introducing the questions, or in the questions themselves, has been carefully selected to influence the responses that will be provided, to the point of causing selection bias by encouraging commentators to agree with a predetermined position by the CSA staff. Otherwise, in my view responses can only be provided that reflect the CSA staff’s framing of their own judgement calls and viewpoints on a particular issue. Many of the issues raised, and the textural and contextual preamble framework in which the issue is raised, are not necessarily in accordance with the overall industry’s established and common practices, or with current guidance provided by the industry’s learned societies and advisory bodies such as the Canadian Institute for Mining, Metallurgy and Exploration (CIM). It is unclear whether the CSA staff consider the issue raised is truly a point of concern for the overall industry, such that it is an industry-wide failing, or is being posed only because the issue has been seen amongst a small number of disclosures from a small number of issuers.*

*I am also concerned when a consultation paper states that there is “substantial evidence” for something but does not provide examples of the types of issues that are being identified together with the reasons as to why that example is considered to be problematic either for the industry, to the maintenance of a balanced capital market, or for reasons of investor protection. It would have been very helpful in formulating my responses if examples had been provided by CSA staff to review of their issues with the Qualified Person and with the circumstance the regulators are taking exception to. This is a common issue throughout the consultation paper. There are very strong claims being made to what is poor industry practice, but there is no explanation why the CSA staff think the issue is industry-wide and a major industry failing, or a major impact to the capital market if allowed to go unaddressed”.*

The CSA staff, in the news release accompanying the Proposed Modernization Draft, appear to consider that the 2022 Consultation Paper constituted all of the necessary industry consultation that was required to have been completed when preparing the Proposed Modernization Draft, stating in the introductory letter announcing the Proposed Modernization Draft that:

*“The Modernized Disclosure Requirements are meant to address evolving disclosure practices and policy considerations. The Modernized Disclosure Requirements also address the comments expressed by various market participants in response to the Consultation Paper”.*

*“In April 2022, the CSA published Consultation Paper 43-401 Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects (the Consultation Paper), seeking information to inform potential amendments to Canada’s mining disclosure regime. We received a total of 85 comment letters from various market participants, including reporting issuers, individuals, consulting and law firms, regulatory organizations and advocacy groups, including groups representing Indigenous Peoples”.*

## Purpose of Proposed Modernization Draft

The stated purpose of the Proposed Modernization Draft in the introductory letter is:

*“intended to modernize and streamline Canada’s mining disclosure regime and continue to protect investors, without imposing an undue regulatory burden on market participants”.*

*The Modernized Disclosure Requirements aim to update and enhance Canada’s mining disclosure regime to address evolving disclosure practices and policy considerations identified by CSA staff, and to reflect changes in the industry and investor expectations.*

## Cost Benefit Analysis

A cost benefit analysis included as an annex to the Ontario Securities Commission (OSC) version of the introductory letter sets out a cost benefit analysis completed by OSC staff on Issuers in Ontario.

That analysis noted [what follows are key excerpts, using MTS captioning]:

### Those Affected

*The Modernized Disclosure Requirements will primarily affect reporting issuers with mineral projects that are required to comply with the disclosure requirements of the Instrument and the Form.*

*Overall, we anticipate that most Ontario reporting issuers with mineral projects will not incur a material increase in compliance costs related to the Modernized Disclosure Requirements, although we recognize there will be implementation and transition costs for issuers to become familiar with the proposed amendments.*

*The regulatory framework of the Instrument and the Form have been in place for over two decades in Canada and the proposed changes mostly relate to modernizing and streamlining the Instrument and the Form reflecting international harmonization and current industry practice.*

*In addition, we think the proposed guidance in the Companion Policy will benefit issuers and qualified persons preparing technical disclosure by potentially lowering the amount of intervention by regulators.*

### CRIRSCO Alignment

*The proposed amendments are also intended to align, where appropriate, the Instrument and the Form disclosure requirements with CRIRSCO-based disclosure standards which may benefit investors’ ability to compare and evaluate these disclosures across issuers fostering more efficient investment decisions.*

### Investor Values Alignment

*Additionally, investors seeking disclosure that may align with their values*

*related to environmental, permitting and other regional or local factors concerning the mineral project, and agreements with Indigenous Peoples, rightsholders or communities may benefit from the sources of online information provided in the Form. Investors will not incur any direct costs related to the proposed changes.*

#### *No Negative Effects on Qualified Person*

*We are of the view that the Modernized Disclosure Requirements will not negatively affect professional geoscientists and professional engineers who conduct technical work as qualified persons that form the basis for disclosure under the Instrument and in the Form.*

#### *No Increases in Burden for Issuers With Changes to Qualified Person Definition*

*The proposed amendments to the definition of a “qualified person” provides needed clarity to the industry and is better aligned with the requirements of the CRIRSCO definition of a competent person. We do however recognize that the proposed amendments may restrict a small number of junior geoscientists and junior engineers with limited professional experience or previously unregistered practitioners from acting as a qualified person. We do not anticipate any increase in compliance costs for issuers as most already engage a qualified person that meets the proposed clarification to the definition.*

#### *Indigenous Peoples*

*We considered feedback from the Consultation Paper from groups representing Indigenous Peoples in Canada to add the requirement for prescriptive disclosure in the Form related to rights of Indigenous Peoples and the relationship of issuers with Indigenous Peoples. We also considered whether we should require the qualified person or another expert to validate the issuer’s disclosure related to its relationship with Indigenous Peoples.*

*The Instrument is a disclosure-based regime specific to scientific or technical information about an issuer’s mineral project. The Instrument does not grant permits or licences for mineral exploration, development, or extraction activities, or directly affect the rights or title of Indigenous Peoples. The permits and licences required to explore, develop, or extract minerals are granted by various governmental agencies in the jurisdiction or country where the mineral project is located.*

*Technical Reports are milestone driven documents triggered to support an issuer’s technical information about their mineral project. Information related to the relationship of Indigenous Peoples, rightsholders or communities with issuers can shift quickly and may be outdated in the previously filed Technical Report if events change before the next Technical Report is triggered to support new technical information. For these reasons, it is staff’s view that disclosure of the relationship of Indigenous Peoples with issuers should more appropriately form part of the issuer’s ongoing continuous disclosure record.*



### OSC Mandate

*The Modernized Disclosure Requirements will impact the capital formation, competition, and efficiency components of the OSC's mandate. Specifically, the proposed amendments facilitate:*

- *Capital formation by continuing to require issuers provide timely continuous disclosure of material information and offering documents that are accurate, comparable, and complete and facilitating opportunities for investors to assess risks and make informed investment decisions.*
- *Harmonization by modernizing and streamlining many disclosure requirements to better align with international disclosure standards, changes in industry practices and evolving policy considerations.*
- *Confidence in capital markets by requiring enhanced disclosure in certain key areas related to mineral projects providing decision-useful information for investors to achieve more efficient capital allocation.*
- *Efficiency by reducing regulatory burden on issuers related to several areas of disclosure and removing outdated disclosure requirements that are no longer considered relevant.*
- *Competition by providing standardized disclosures that facilitate peer benchmarking and enhances competition among issuers for capital both across and within industries. Standardized reporting also reduces investors' costs associated with acquiring and processing disclosures by issuers with mining projects*

### Companion Policy

*The Modernized Disclosure Requirements introduce new Companion Policy guidance specific to disclosure in technical reports. This is the first time the CSA will offer extensive guidance on the Form in the Companion Policy, which we expect will provide significant assistance to qualified persons who author technical reports.*

## Key Issues From Review

MTS reviewed in turn, the Proposed Modernization Draft changes to the Rule, the Form, and finally the Companion Policy. Key issues arising from the review are summarized in the following sub-sections

### Major

- Changes to definition of Qualified Person;
- Significantly more responsibility placed on Qualified Persons, including additional commentary requirements on information outside the purview of a Qualified Person as defined;

- Additional constraints on when a Qualified Person is or is not independent; independence requirements set out in a CIM article (and not included in the Proposed Modernization Draft) are already being imposed on Issuers;
- Data verification on all disclosure, whether material or non material properties;
- Outcome of economic analysis for any type of study a report trigger (independence required for first time disclosure, 100% change); definition of outcome of economic analysis very broad;
- Removal of allowance to rely on another expert for marketing information;
- Currency of site visits;
- In effect prohibition on scoping study disclosure if Inferred Mineral Resources included as having no reasonable basis, based on outdated CIM definition of Inferred Mineral Resource.

## Potential Impact on Qualified Persons

- Changes to definition of Qualified Person around professional experience;
- Significantly more responsibility placed on Qualified Persons, including additional commentary requirements on information outside the purview of a Qualified Person as defined;
- More exceptions provided for when a Qualified Person is considered to be not independent. CSA staff policies are being enacted into law in the Proposed Modernization Draft. Former CSA staff have provided opinions in a June 2025 CIM Journal article on what constitutes independence and when a Qualified Person would be deemed to be independent that include more exceptions again than listed in the Rule;
- Will need to ensure all disclosure is reviewed by the Qualified Person, and the Qualified Person has provided “prior approval” and agreed to be named;
- Data verification required on all information in disclosure;
- Will need to understand what is required in the Form for technical report preparation and what are the additional requirements in the Companion Policy that are not in the Form to provide as compliant a report as practicable. Separation of the Form and instructions that were formerly in the Form and now in the Companion Policy, together with new guidance in the Companion Policy have not made understanding content requirements any easier. There are many areas of overlap and contradictions between Form and Companion Policy, and addition of new content requirements that are not guidance but must be addressed in the Companion Policy;
- A number of Items in the Form have more prescriptive requirements and more content that must be provided, which will be difficult for the Qualified Person to achieve while still meeting summarization instruction for presentation of that information;
- Reliance on other expert for marketing removed. Marketing information, particularly for non-freely traded commodities now considered the purview of the Qualified Person, including specialist knowledge of specific markets, market entry strategies, and price forecasting;
- If two or more Qualified Persons are jointly responsible for a particular Item or sub-section in a technical report, then each Qualified Person is equally responsible for the entire Item or sub-section.



## Potential Impact on Issuers

- Changes to definition of Qualified Person around professional experience; some Qualified Persons may no longer meet the definition;
- More exceptions provided for when a Qualified Person is considered to be not independent. CSA staff policies are being enacted into law in the Proposed Modernization Draft. Former CSA staff have provided opinions in a June 2025 CIM Journal article on what constitutes independence and when a Qualified Person would be deemed to be independent that include more exceptions again than listed in the Rule;
- With removal of foreign codes and specified exchange allowances, Issuers will have to have and prepare different documents in each jurisdiction in which they operate; no longer exempted from independence requirements where those are set out in the Rule.
- Will need to ensure all disclosure is reviewed by the Qualified Person, and the Qualified Person has provided “prior approval” and agreed to be named;
- Data verification required on all information in disclosure;
- Scoping study disclosure and information provision will need to be well understood. Proposed Modernization Draft in effect prohibits on scoping study disclosure if Inferred Mineral Resources included in the study as having no reasonable basis, based on outdated CIM definition of Inferred Mineral Resource;
- Changes to technical report triggers, in particular outcomes of an economic analysis, and currency of site visits will need to be monitored if study updates undertaken or prior to capital raising initiatives. Will need to check back against previous disclosure to ensure awareness of if a new technical report is required.

## Missed Opportunities

There are numerous places in the Form and Companion Policy where repetition and redundancies could have been addressed; where consolidation of information requirements in the Form Items could have occurred; and where clarification in the Companion Policy is warranted to provide clarity of what content the Qualified Person and Issuer should have included to ensure compliant disclosure.

## Caution on Implementation

This may be a draft out for comment, but Issuers and Qualified Persons need to be aware that in comment letters to certain issuers, the CSA staff are already implementing what is in the Proposed Modernization Draft as if the Rule, Form, and Companion Policy are promulgated.