Commentary on the June 2025 Proposed Changes; NI 43-101 The Rule and Companion Policy 43-101CP Part A

The Form and Companion Policy need to be read in tandem to understand the content that should be provided in a compliant technical report. This document provides the following:

- In table format, a direct comparison between Rule content and Companion Policy guidance
- A blackline comparison back to the 2011 edition where the content is in the 2011 edition;
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Comment

A number of stylistic changes are contributing to the blackline changes in the table of contents:

- The decision to change sub-titles from Title Case presentation to Sentence case;
- The change of all numbering such that the subtitles are no longer linked to the part number, but run consecutively between each different part. This is a significantly different approach to that used in prior editions.

Spelling out of numbers has been changed to use of Arabic numerals.

General Guidance

Application of the Instrument

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (1) Application of the Instrument – The Instrument establishes standards for disclosure of scientific and technical information regarding mineral projects and requires that the disclosure be based on a technical report or other information prepared by or under the supervision of a qualified person. The Instrument does not apply to disclosure concerning petroleum, natural gas, helium, bituminous sands or shales, groundwater, coal bed methane, or other substances that do not fall within the meaning of the term "mineral project" in section 1 of the Instrument. We consider that solid minerals extracted from brines are captured under the term "mineral project".

Blackline

(1) Application of the Instrument ~~– The definition of "disclosure" in the Instrument includes oral and written disclosure.~~ The Instrument establishes standards for disclosure of scientific and technical information regarding mineral projects and requires that the disclosure be based on a technical report or other information prepared by or under the supervision of a qualified person. The Instrument does not apply to disclosure concerning petroleum, natural gas, helium, bituminous sands or shales, groundwater, coal bed methane, or other substances that do not fall within the meaning of the term "mineral project" in section 1.~~1~~ of the Instrument. We consider that solid minerals extracted from brines are captured under the term "mineral project".

Comments

As noted in the commentary on the Proposed Modernization Draft Rule, there is a fundamental flaw with the definition of a mineral project. Coal is not a fossilized organic substance, and it is scientifically incorrect to class coal as such a material. This point was raised a number of times during industry consultation when the CIM Definition Standards were first proposed.

An additional issue is that this definition contradicts the CIM definition of Mineral Resources which explicitly specify coal and diamonds. If coal cannot be fossilized organic material, then what commodity are the CSA staff thinking of that falls into this category? As coal is not a fossilized material, it should be with the exempted materials here in the Proposed Modernization Draft Companion Policy.

Supplements Other Requirements

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (2) Supplements other requirements – The Instrument supplements other continuous disclosure requirements of securities legislation that apply to reporting issuers in all business sectors

Blackline

(2) **Supplements** ~~**Other Requirements**~~**other requirements** – The Instrument supplements other continuous disclosure requirements of securities legislation that apply to reporting issuers in all business sectors.

Comment

The edits made are cosmetic.

Forward-Looking Information

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (3) Forward-looking information – Part 4 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) sets out the requirements for disclosing forward- looking information. Frequently, scientific and technical information about a mineral project includes or is based on forward-looking information. A mining issuer that is a reporting issuer must comply with the requirements of Part 4A of NI 51-102, including only disclosing forward-looking information for which the issuer has a reasonable basis, identifying material forward-looking information, stating material factors and assumptions used, and providing the required cautions. Examples of forward-looking information include metal price assumptions, cash flow forecasts, projected capital and operating costs, metal or mineral recoveries, mine life and production rates, and other assumptions used in a scoping study, pre-feasibility study or feasibility study.

Blackline

(3) **Forward-~~Looking Information~~looking information** – Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) sets out the requirements for disclosing forward- looking information. Frequently, scientific and technical information about a mineral project includes or is based on forward-looking information. A mining issuer that is a reporting issuer must comply with the requirements of Part 4A of NI 51-102, including only disclosing forward-looking information for which the issuer has a reasonable basis, identifying material forward-looking information, stating material factors and assumptions used, and providing the required cautions. Examples of forward-looking information include metal price assumptions, cash flow forecasts, projected capital and operating costs, metal or mineral recoveries, mine life and production rates, and other assumptions used in ~~preliminary economic assessments~~a scoping study, pre-feasibility ~~studies, and~~study or feasibility ~~studies~~study.

Comment

The presentation in (3) of instructions in NI 51-102 that include the Qualified Person understanding what forward-looking information comprises should, if the example of “initial deposit period” is used, be a defined term in the Rule. The inconsistency should be addressed; the obvious method being to strike out the definition of “initial deposit period” since it is the only term borrowed from another rule that is defined in the Rule.

There is still no clarity that forward-looking information is a legitimate inclusion in a technical report. The CSA staff have, anecdotally, taken the position that it cannot be in a technical report,

since this guidance is tied to the issuer, not the Qualified Person. This, however, is a false premise, since the technical report is filed by the issuer and used by the issuer to support its other disclosure. There is an obligation for the forward-looking information in the technical report to be identified, since technical reports on mining studies include:

> *metal price assumptions, cash flow forecasts, projected capital and operating costs, metal or mineral recoveries, mine life and production rates.*

There is no explanation as to why the Life-Of-Mine Plan is not included in the list of mining studies. Life-Of-Mine Plan, as defined by CIM, is a type of mining study and should be part of the list of mining studies.

Materiality

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (4) Materiality – An issuer should determine materiality in the context of the issuer's overall business and financial condition considering qualitative and quantitative factors, assessed in respect of the issuer as a whole. In making materiality judgments, an issuer should consider a number of factors that cannot be captured in a simple bright-line standard or test, including the potential effect on both the market price and value of the issuer's securities considering the current market activity. An assessment of materiality depends on the context. Information that is immaterial today could be material tomorrow; an item of information that is immaterial alone could be material if it is aggregated with other items.

Blackline

~~(4)~~ **Materiality** – An issuer should determine materiality in the context of the ~~issuer's~~issuer's overall business and financial condition ~~taking into account~~considering qualitative and quantitative factors, assessed in respect of the issuer as a whole.

(4) In making materiality ~~judgements~~judgments, an issuer should consider a number of factors that cannot be captured in a simple bright-line standard or test, including the potential effect on both the market price and value of the issuer's securities ~~in light of~~considering the current market activity. An assessment of materiality depends on the context. Information that is immaterial today could be material tomorrow; an item of information that is immaterial alone could be material if it is aggregated with other items.

Comment

The concept of materiality remains as the overarching consideration for the information required in the technical report, and in an issuer's disclosure.

The materiality filter on information in the technical report is removed in many places, and has been replaced with "relevant". There is no definition, explanation, or guidance provided for the Qualified Person and issuer to understand what "relevant" entails in terms of compliant content, compliant presentation, and in the case of the technical report, how to reconcile provision of relevant information with the summarization requirement.

A summary of the changes around materiality include:

- There is no definition of relevant that can be readily found in the securities acts; there are definitions that include "material";
- There is an instance where both relevant and material are used as clearly non-interchangeable terms;

- There is an instance where material is replaced by relevant;
- In places only material is used, and has not been replaced with relevant;
- In places only relevant is used and does not replace material;
- Not relevant must always be used in a technical report instead of not applicable.

Definition of Material

To understand "material", the following definitions were reviewed.

The TSX Policy Section 407 states:

> *Material information is any information relating to the business and affairs of a company that results in or would reasonably be expected to result in a significant change in the market price or value of any of the company's listed securities.*
>
> *Material information consists of both material facts and material changes relating to the business and affairs of a listed company.*

The Ontario securities legislation defines material facts and material change as:

> *Material fact: a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;*

The Canadian Bar association notes:

> *"This formulation of the materiality test, called the market impact test, asks whether a fact would be reasonably expected to have a significant effect on the price or value of the security. The market impact test, as the Ontario Superior Court has once held, is "built into" the definition of a material fact".*

The definition of material change for investment fund issuers in NI 81-106, the typical source for the definition, reads:

> *"(a) a change in the business, operations or affairs of the investment fund that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the investment fund"*
>
> *(b) a decision to implement a change referred to in paragraph (a) made*
>
> *(i) by the board of directors of the investment fund or the board of directors of the manager of the investment fund or other persons acting in a similar capacity,*
>
> *(ii) by senior management of the investment fund who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or*
>
> *(iii) by senior management of the manager of the investment fund who believe that confirmation of the decision by the board of directors of the manager or such other persons acting in a similar capacity is probable;*

Material change is commonly interpreted to require two levels of assessment:

- Whether a change in the business, operations or capital of the issuer has occurred;
- If there was such a change, whether it could reasonably be expected to have, or have had, a significant impact on the issuer's share price.

As a result, the definition of "material" under most securities laws is reasonably well understood: what would cause an investor to buy, trade, or sell shares. That concept can readily be applied to information provided to an investor as part of public disclosure.

However, in the Companion Policy, materiality guidance is provided, which contradicts some of the definitions above, including the market impact test:

> ***Materiality*** *– An issuer should determine materiality in the context of the issuer's overall business and financial condition considering qualitative and quantitative factors, assessed in respect of the issuer as a whole. In making materiality judgments, an issuer should consider a number of factors that cannot be captured in a simple bright-line standard or test, including the potential effect on both the market price and value of the issuer's securities considering the current market activity. An assessment of materiality depends on the context. Information that is immaterial today could be material tomorrow; an item of information that is immaterial alone could be material if it is aggregated with other items.*

Concept of Relevant

MTS could not find a definition of "relevant" in the BC Securities Act. Understanding of this term, however, is critical to both the issuer and the Qualified Person. In the absence of a term or concept not being defined in a National Instrument or Companion Policy, MTS checked the dictionary definition

> *Closely connected, or appropriate to the matter in hand* [Concise Oxford]

2022 Consultation Paper

A point was made as part of the consultation process that the Canadian regulators initiated in April 2022 (CSA Consultation Paper 43-401 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects) that consultants are generally not in a position to know what influences an investor in a mining company. The company's management is in the best position to understand what influences their investors:

- The company management has a solid track record of developing projects;
- The risk profile of the company appeals;
- The commodity is attractive in the current market;

It was a consideration, therefore as to whether it was appropriate for a Qualified Person to be making statements on materiality in disclosures such as a technical report, since that was actually a management purview.

If one aim of the Proposed Modernization Draft was to remove instances where the Qualified Person was asked to make statements on materiality, this has been a failure. There are numerous instances in the Rule, Form, and Companion Policy where the Qualified Person must make materiality determinations:

> *Rule:*
>
> *Exploration information: material results of surveys and investigations*
>
> *Exploration information: any sampling, drilling, recovery or other factors that could materially affect the accuracy or reliability of the sample, analytical or testing result*
>
> *Disclosure: on the date on which the issuer becomes a reporting issuer, there is no new material scientific or technical information concerning the mineral project that was not included in the previously filed technical report*
>
> *Disclosure: If an issuer files a technical report under paragraph (1) (a) or (b), and there is new material scientific or technical information concerning the mineral project before the filing of the final prospectus or short form prospectus, the issuer must file with the final prospectus or short form prospectus a revised technical report including the new information*
>
> *Disclosure of Mineral Resources and Mineral Reserves: any known legal, political, environmental or other risks that could materially affect the potential development of the mineral resources or mineral reserves*
>
> *Disclosure: issue a news release at the time the issuer files the technical report disclosing the filing of the technical report and reconciling any material differences in the mineral resources, mineral reserves or economic analysis disclosed in the technical report filed under paragraph (a) and the disclosure under paragraph (1) (h)*
>
> *Disclosure: with the same prominence as and proximate to the disclosure, a statement that, to the best of the issuer's knowledge, information and belief, there is no new material scientific or technical information that would make the disclosure of the mineral resources, mineral reserves or economic analysis inaccurate or misleading*
>
> *Disclosure: on the date a document referred to in subsection (1) is filed by the issuer, there is no new material scientific or technical information concerning the mineral project that is not included in the issuer's previously filed technical report*
>
> *Form:*
>
> *Drilling: any drilling, sampling or recovery factors that could materially impact the accuracy and reliability of the results*

Mineral Resources: any environmental, permitting, legal, title, taxation, rightsholder, socio- economic, marketing, political and other relevant factors that could materially affect the mineral resource estimate

Mineral Reserves: any mining, metallurgical, infrastructure, environmental, permitting, rightsholder and other relevant factors that could materially affect the mineral reserve estimate

Market studies: a summary of available information concerning markets for the issuer's production, including the nature and material terms of any agency relationships

Cost estimates: the extent to which any known environmental, permitting, legal, title, taxation, rightsholder, socio-economic, marketing, political or other relevant factors could materially affect the capital and operating cost estimates

Economic analysis: Other than for a mineral project of a producing issuer for which the issuer is not materially expanding current production, provide an economic analysis for the mineral project.

Companion Policy

Technical report: When an issuer files a new technical report, it will replace any previously filed technical report as the current technical report on that mineral project. This means the new technical report will include any material information documented in a previously filed technical report, to the extent that this information is still current and relevant

Technical report: Subsection 16 (7) of the Instrument provides an exemption from the technical report filing requirement if the disclosure document does not contain any new material scientific or technical information about a mineral project that is the subject of a previously filed technical report. In our view, a change to mineral resources or reserves due to mining depletion from a producing mineral project will not constitute new material scientific or technical information as the change should be reasonably predictable based on an issuer's continuous disclosure record

Mineral Resources: Each mineral project has its own set of risks and uncertainties, any of which could materially affect the mineral resource estimate. Disclosure under Item 14 (g) should be relevant to the particular mineral project. Failure to provide known risks specific to the mineral project may make the mineral resource estimate disclosure potentially misleading

Recommendations: In some specific cases, the qualified person may not be in a position to make meaningful recommendations for further work. Generally, these situations will be limited to mineral projects under development or in production where material exploration activities and engineering studies have

> *largely concluded. In such cases, the qualified person should explain why they are not making further recommendations*

Relevant Experience

Relevant is used in a number of instances when assessing whether the Qualified Person has sufficient experience to act as a Qualified Person for the purposes of disclosure, including technical reports. This is discussed in the MTS document on Qualified Person experience.

A Reasonable Person Aware Of All Relevant Facts

In this instance, the Qualified Person is judged on what is both reasonable and relevant:

> *In this Instrument, a qualified person is independent concerning a technical report if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment concerning the preparation of the technical report*

> *Where a determination about the definitions or application of a requirement in the Instrument turns on reasonableness, the test is objective, not subjective. It is not sufficient for an officer of an issuer or a qualified person to determine that they personally believe the matter under consideration. The individual must form an opinion as to what a reasonable person would believe in the circumstances*

It is clear that in this instance relevant is not being used in the same context as material.

With no definition of relevant, and no definition of what constitutes a reasonable person is, since that wording is used as the discriminator, not an investor, the Qualified Person is left with significant uncertainty as to how to assess what would be relevant, and what would be a reasonable basis for the Qualified Person's opinions and determinations.

Exploration Information

The Rule requires the issue, and hence the Qualified Person that has to sign on the disclosure to provide:

> *(c) a summary of each relevant analytical value, each width and, to the extent known, the true width of each mineralized zone;*

The requirement does not address who or what the "relevant" instruction applies to. Is this what would be relevant to the issuer, the Qualified Person, or the investor?

The requirement does not address that regulators typically expect an issuer to provide not just each relevant value, which issuers often would allow the issuer to disclose only the higher grade samples, but balanced disclosure to provide context for the values.

Effective Date

In the definition of effective date, reference is made to the "most recent scientific or technical information":

> *"effective date" means, with reference to a disclosure, the date of the most recent scientific or technical information included in the disclosure;*

This would suggest that the Qualified Person has to tie the effective date to literally the most recent scientific or technical information in the disclosure, not to the date of the most recent relevant or material information.

By the time the Rule gets to report triggers, however, that definition has been qualified by inclusion of "material":

> *(15) (1) (3) (b) on the date on which the issuer becomes a reporting issuer, there is no new material scientific or technical information concerning the mineral project that was not included in the previously filed technical report;*
>
> *(16) (3) If an issuer files a technical report under paragraph (1) (a) or (b), and there is new material scientific or technical information concerning the mineral project before the filing of the final prospectus or short form prospectus, the issuer must file with the final prospectus or short form prospectus a revised technical report including the new information.*
>
> *(16) (6) (b) (iii) with the same prominence as and proximate to the disclosure, a statement that, to the best of the issuer's knowledge, information and belief, there is no new material scientific or technical information that would make the disclosure of the mineral resources, mineral reserves or economic analysis inaccurate or misleading;*
>
> *(16) (7) (b) (b) on the date a document referred to in subsection (1) is filed by the issuer, there is no new material scientific or technical information concerning the mineral project that is not included in the issuer's previously filed technical report;*

The assessment is not whether the information is relevant, it is if it is material.

Site Visits

The Companion Policy requires the Qualified Person to assess whether there is "new relevant scientific or technical information" available since the site visit to make their own determinations on currency and what would constitute relevant changes in the information.

> *However, since the qualified person is certifying that the technical report contains all relevant information about the mineral project, the qualified person should consider taking the necessary steps to verify independently that there has been no additional work done on the mineral project since their last personal inspection.*

The interpretation of relevant in this instance for the Qualified Person is extremely broad:

> *The observations by the qualified person conducting the current personal inspection may include anything the intended audience might need to know that*

> *could impact further advancement of the mineral project*

In this instance, relevant is obviously intended to be anything at all in terms of scientific or technical information; it is not used as a synonym for material.

Not Applicable/Not Relevant

The Form requires:

> *(5) Include all headings and information specified under Items 1 to 12 and 23 to 27 of this Form. For all other headings and Items in this Form, include the headings and information that are relevant to the mineral project. Disclosure included under one Item is not required to be repeated under another Item.*

The Companion Policy states:

> *For mineral projects without information to disclose under any item, rather than providing disclosure that an item is "not applicable" or "n/a", the technical report should explain that there is no relevant information under those headings. For example:*
>
> - *if metallurgical testing was not conducted at the effective date, the technical report should indicate that no metallurgical test work has been completed rather than "not applicable";*
> - *if a mineral project does not have a mineral resource estimate, the technical report should indicate that there are no current mineral resources on the mineral project under Item 14.*
>
> *We consider such information to be relevant to the mineral project, as such, it is not sufficient to only indicate "Not Applicable" under a heading.*

In this context, relevant obviously has meaning to the regulatory staff. If the Proposed Modernization Draft can use "as applicable" in the Item instruction, why does the Proposed Modernization Draft tell the Qualified Person that they cannot say something is not applicable in response?

Not relevant and not applicable have different meanings:

> *"Not applicable" means a question or requirement doesn't apply to the subject at hand*
>
> *"not relevant" means information is unrelated to the topic being discussed.*

In the context of the technical report, not applicable is actually the most appropriate wording to be using. It is, in fact, a summary of the applicability of the instruction to the response provided by the Qualified Person.

It is strange to make this a guidance point. For a resource-only report, claiming that a Qualified Person stating that Items 15 to 22 are "not applicable" could be considered to be a type of

misleading disclosure is a very large step. What then is not misleading about stating something is “not relevant”? That appears to be contingent on an understanding of what is, and is not, relevant.

Mineral Project Material To The Issuer

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (5) Mineral project material to the issuer – An actively trading issuer, in most circumstances, will have at least one material mineral project. Some issuers may hold multiple mineral projects at similar stages of development and will need to assess whether all mineral projects are material. We will assess an issuer's view of the materiality of a mineral project based on its disclosure record, its deployment of resources, and other indicators. For example, we will likely conclude that a mineral project is material if any of the following apply: (a) the issuer's disclosure record is focused on the mineral project; the issuer's disclosure record indicates or suggests the results are significant or important; (b) the cumulative and projected acquisition costs or proposed exploration expenditures are significant compared to the issuer's other mineral projects; or (c) the issuer is raising significant money or devoting significant resources to the exploration and development of the mineral project. In determining if a mineral project is material, the issuer should consider how important or significant the mineral project is to its overall business, and in comparison to its other mineral projects. For example: (a) mineral projects with mineral resources, economic analyses, mineral reserves, or in production, in most cases, will be more likely to be material than mineral projects without these; (b) historical expenditures or book value might not be a good indicator of materiality for an inactive mineral project if the issuer is focussing its resources on new mineral projects; (c) a small interest in a sizeable mineral project might, in the circumstances, not be material to the issuer; (d) a royalty or similar interest in a mineral project with mineral resources, economic analyses, mineral reserves, or in production could be material to the issuer in comparison to its active mineral projects; or (e) several non-material mineral tenures in an area or region, when taken as a whole, could be a material mineral project of the issuer.

Blackline

(5) **~~Property~~ ~~Material~~ Mineral project material to the ~~Issuer~~issuer** – An actively trading ~~mining~~ issuer, in most circumstances, will have at least one material ~~property.~~mineral project. Some issuers may hold multiple mineral projects at similar stages of development and will need to assess whether all mineral projects are material. We will ~~generally~~ assess an issuer's view of the materiality of a ~~property~~mineral project based on ~~the issuer's~~its disclosure record, its deployment of resources, and other indicators. For example, we will likely conclude that a ~~property~~mineral project is material if any of the following apply:

(a) the issuer's disclosure record is focused on the ~~property~~mineral project;

(b) the issuer's disclosure record indicates or suggests the results are significant or important;

(c) the cumulative and projected acquisition costs or proposed exploration expenditures are significant compared to the issuer's other ~~material properties~~mineral projects; or

(d) the issuer is raising significant money or devoting significant resources to the exploration and development of the ~~property~~mineral project.

In determining if a ~~property~~mineral project is material, the issuer should consider how important or significant the ~~property~~mineral project is to ~~the issuer's~~its overall business, and in comparison to its other ~~properties.~~mineral projects. For example:

~~(e)~~(a) ~~more advanced stage properties will~~mineral projects with mineral resources, economic analyses, mineral reserves, or in production, in most cases, will be more likely to be material than ~~earlier stage properties~~mineral projects without these;

~~(f)~~(b) historical expenditures or book value might not be a good indicator of materiality for an inactive ~~property~~mineral project if the issuer is focussing its resources on new ~~properties~~mineral projects;

~~(g)~~(c) a small interest in a sizeable ~~property~~mineral project might, in the circumstances, not be material to the issuer;

~~(h)~~(d) a royalty or similar interest in ~~an advanced property~~a mineral project with mineral resources, economic analyses, mineral reserves, or in production could be material to the issuer in comparison to its active mineral projects; or

~~(i)~~(e) several non-material ~~properties~~mineral tenures in an area or region, when taken as a whole, could be a material ~~to~~mineral project of the issuer.

Comment

There are a number of issues to unpick with this set of guidance.

Same Level of Development = Equally Material

The requirement for the issuer to assume that all properties at the same level of development will be equally material is a fallacy. This is an exploration mentality; exploration projects may all be at the same stage because of the limited work done. However, by the time the issuer has a project with a completed mining study, projects that have similar study types will already be showing differences:

- Mine life;
- Capital costs to build;
- Internal rate of return, net present value;
- Risk profile;
- Potential ability to permit.

There is a concerning statement in the introduction as well:

> *We will assess an issuer's view of the materiality of a mineral project*

If materiality really is tied to an investor's decision to buy, sell, or trade shares in a company, then it is in fact the issuer's management who actually do understand what is material to their investors, not the CSA staff.

If the CSA staff take the position that all properties at the same study level require technical reports, this adds another level of burden to issuers, and one that has been imposed without a cost benefit analysis.

Companion Policy General Guidance (5)(a)

The standard in (a) for materiality determination uses two subjective terms to "Indicate" and "suggest as examples of materiality determinations; and are both being treated as different concepts:

> *Indicate: to point out, show something*
>
> *Suggest: put forward for consideration* [Concise Oxford Dictionary]

This appears to be trying to negate the 2013 Canaco hearing decision by implying that just because a news release has issuer management being up-beat about information, that information is important and so must be material. The Canaco hearing demonstrated that information provided by a company to their investors may not necessarily be seen by those investors to be material information:

> *"the manner in which an issuer's management (or others, such as the TSX-V) characterize the allegedly material facts, whether in internal communications or in public disclosures, is irrelevant to the assessment of materiality. The*

> *panel's rejection, in its materiality analysis, of evidence of management's use of superlatives thus reduces the risk of management becoming ensnared by unguarded internal communications"* [https://stikeman.com/en-ca/kh/canadian-securities-law/bcsc-panel-finds-spectacular-drill-results-not-a-material-change]

There are a number of reasons why a company may put out information on a project, but informing investors on project activity does not make a project material.

The statement in part (a) of assessment of project materiality to the overall business is flawed. It makes a basic assumption that the more work done on a project, the more expenditure completed, the more likely the project is to be material. That is not correct in many instances. As noted earlier, a lot of money may have been expended on a project, but that work has shown that the project, from the investor perspective is "drilled and killed".

A mining operation that is in the last stages of mine life, even though it may have mineral reserves, an economic analysis, and be in production, may not be of as much interest to investors as a project with a Pre-Feasibility Study, that also has mineral reserves and an economic analysis, if that study indicates a long-life project.

It also does not recognize that a property's materiality to the issuer may reflect market interest and sentiment regarding the major commodities that are the project target. In times of low prices, a commodity may not be of interest to an investor; conversely, when prices for a commodity are high, the property now may well be considered to be material. This is particularly common for many of the battery and critical minerals which have a long history of commodity price cycles.

Companion Policy General Guidance (5)(b)(c)(d)

The requirement in (b), (c), and (d) for materiality determination to use actual work program costs to determine materiality is also flawed. If these tests remain, they are likely to generate too many false positives to be useful in determining materiality.

A lot of money may have been expended on a project, but that work has shown that the project, from the issuer perspective is "drilled and killed". A proposed exploration decline is a planned exploration expenditure that requires a significant budget allocation, the focus of (c) and (d), but may not make a project a material project. In fact, that expenditure may be what holds the project back from being a material property: investors see the proposed expenditure as a lot of risk. Expenditure, whether historical or planned, is a poor test of materiality.

The CSA staff themselves actually acknowledge the fallacy, stating in the next subsection that:

> *(b) historical expenditures or book value might not be a good indicator of materiality for an inactive mineral project if the issuer is focussing its resources on new mineral projects;*

thereby contradicting the instructions in (b), (c), and (d) of the materiality determination.

Part (b) of assessment of project materiality to the overall business reinforces that historical expenditure is not a good metric for determining materiality.

Part (c) of assessment of project materiality to the overall business is a statement of the obvious. What was the regulatory need that the CSA staff were seeing for this type of statement to be considered to be guidance?

Part (d) of assessment of project materiality to the overall business makes incorrect assumptions.

Royalty companies don't have mineral projects as the CSA staff have now defined the term. Royalty companies are not the mineral tenure holders as a mineral project will be defined; and it would be a very rare occurrence for a royalty company to hold a mineral project under the proposed definition. Such issuers most commonly hold an interest in the Mineral Resources or Mineral Reserves estimates for a deposit that is hosted in the mineral tenure; or will hold an interest in such if a deposit is discovered; i.e. the royalty interest lies with the mineralization, not the ground holding.

A royalty interest on a project with a Mineral Resource or Mineral Reserve estimate where the property clearly cannot be developed for years is unlikely to be a material property to the royalty holder.

Companion Policy General Guidance (5)(e)

Part (e) of assessment of project materiality to the overall business requires additional guidance to be provided as the statement as currently written is completely unclear. This is one of many instances in the Proposed Modernization Draft Companion Policy where the guidance is inadequate and guidance to the guidance must be provided to enable Qualified Persons and issuers to understand how to make compliant disclosure. The definition of what is and is not a material project is critical and guidance that is uncertain as to interpretation, and moreover guidance that appears to contradict earlier guidance is problematic.

In this instance the confusion is caused by the CSA staff redefinition of the mineral project to no longer be the activity undertaken on a mineral title, but to be the mineral title itself. This has created a problem in a number of instances with deletion of the use of mineral property and replacement with mineral project.

The instruction appears to contradict the original understanding, which is still retained in the guidance to the definition of a mineral project:

> *"mineral project" – We consider a mineral project to include multiple mineral tenures that are contiguous or in such close proximity that any underlying mineral deposits would likely be developed using common infrastructure.*

Does part (e) of assessment of project materiality to the overall business over-ride the mineral project definition guidance? If so, what considerations would the issuer need to evaluate to determine if mineral claims that are not contiguous, and are not contemplated to be developed using common infrastructure, still constitute a single mineral project?

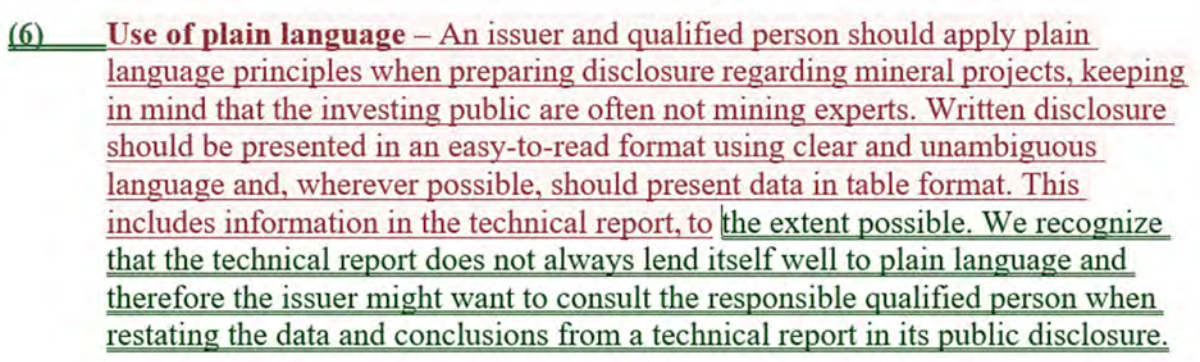
How big is an area or region? For example, if a company holds 10 widely separated claims or claims groups in the Abitibi, but all are prospective for narrow vein underground gold deposits, is this sufficient for the CSA staff to determine all of the 10 claims/claims groups have to be the one mineral project; even if the issuer would not develop the claim groups using common infrastructure due to haulage distances or other project constraints?

Use Of Plain Language

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (6) Use of plain language – An issuer and qualified person should apply plain language principles when preparing disclosure regarding mineral projects, keeping in mind that the investing public are often not mining experts. Written disclosure should be presented in an easy-to-read format using clear and unambiguous language and, wherever possible, should present data in table format. This includes information in the technical report, to the extent possible. We recognize that the technical report does not always lend itself well to plain language and therefore the issuer might want to consult the responsible qualified person when restating the data and conclusions from a technical report in its public disclosure.

Blackline


(6) **Use of plain language** – An issuer and qualified person should apply plain language principles when preparing disclosure regarding mineral projects, keeping in mind that the investing public are often not mining experts. Written disclosure should be presented in an easy-to-read format using clear and unambiguous language and, wherever possible, should present data in table format. This includes information in the technical report, to the extent possible. We recognize that the technical report does not always lend itself well to plain language and therefore the issuer might want to consult the responsible qualified person when restating the data and conclusions from a technical report in its public disclosure.

Comment

The use of plain language is provided in the Form and repeated in the Companion Policy.

However, much of the revised content in the Proposed Modernization Draft is not easy to read, does not use unambiguous language, and requires content that may not be readily tabulated.

Many of the instructions in the Proposed Modernization Draft Form have “any”, “all”, “relevant” and “as available” instructions that would appear to require Qualified Persons to provide significantly more information than if the materiality filter on information in a technical report had been retained. A similar issue arises with the extension of the Qualified Person concept to non-material properties and all disclosure requirements. Asking for data dumps doesn’t support provision of scientific and technical concepts in plain language. Nor will tabulating data dumps provide any more clarity or remove ambiguity.

Materiality is a critical component of plain English presentation, and should be acknowledged as such. Simply asking a Qualified Person to “restate the data and conclusions from a technical

report in its public disclosure" is explicitly saying that the Form requirements are designed to force the Qualified Person to provide disclosure that is not meeting the plain language principles in this instruction. If the Qualified Person could present the information in the Form using the plain language principles, then an issuer would not need to "consult the responsible qualified person when restating the data and conclusions from a technical report in its public disclosure".

Industry Practice Guidelines

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (7) Industry practice guidelines – While the Instrument sets standards for disclosure of scientific and technical information about a mineral project, the standards and methodologies for collecting, analysing and verifying this information are the responsibility of the qualified person. CIM has published and adopted several industry practice guidelines to assist qualified persons and other practitioners. These guidelines, as amended and supplemented, are posted on https://mrmr.cim.org/ and include Exploration, Estimation of Mineral Resources / Mineral Reserves, Mineral Processing, Environmental Social and Governance, and others. The Instrument does not require a qualified person to follow CIM practice guidelines. However, we think that a qualified person, acting in compliance with the professional standards of competence and ethics established by their professional association, will use procedures and methodologies that are consistent with industry standard practices, as established by CIM or similar organizations in other jurisdictions. Issuers that disclose scientific and technical information that does not conform to industry standard practices could be making misleading disclosure, which is an offence under securities legislation.

Blackline

~~(6)~~(7) **Industry ~~Best Practices Guidelines~~practice guidelines** – While the Instrument sets standards for disclosure of scientific and technical information about a mineral project, the standards and methodologies for collecting, analysing~~,~~ and verifying this information are the responsibility of the qualified person. ~~The Canadian Institute of Mining, Metallurgy and Petroleum ("~~CIM~~")~~ has published and adopted several industry ~~best~~ practice guidelines to assist qualified persons and other ~~industry~~ practitioners. These guidelines, as amended and supplemented, are posted on ~~www.cim.org, and~~ https://mrmr.cim.org/ and include Exploration, Estimation of Mineral Resources / Mineral Reserves, Mineral Processing, Environmental Social and Governance, and others.

~~(a) Exploration Best Practice Guidelines – adopted August 20, 2000;~~

~~(b) Guidelines for Reporting of Diamond Exploration Results – adopted March 9, 2003; and~~

~~(c) Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines – adopted November 23, 2003, and related commodity-specific appendices.~~

The Instrument does not ~~specifically~~ require ~~the~~a qualified person to follow ~~the~~ CIM ~~best practices~~practice guidelines. However, we think that a qualified person, acting in compliance with the professional standards of competence and ethics established by their professional association, will ~~generally~~ use procedures and methodologies that are consistent with industry standard practices, as established by CIM or similar organizations in other jurisdictions. Issuers that disclose scientific and technical information that does not conform to industry standard practices could be making misleading disclosure, which is an offence under securities legislation.

Comment

The rewording mis-represents what the CIM guidance is. The list cited should not be capitalized; these are not defined CIM terms in the form of documents that can be used and interpreted as extensions of the Proposed Modernization Draft Rule and Form. They are discussions on major topic areas that are provided as general guidance for Qualified Persons to read and consider when collecting and interpreting scientific and technical information. They cannot and do not purport to apply to every Qualified Person in every instance that scientific and technical information is being discussed in disclosure.

The CIM website should not be in as a url link; this should just cite the CIM.

The last sentence is concerning:

> *Issuers that disclose scientific and technical information that does not conform to industry standard practices could be making misleading disclosure, which is an offence under securities legislation.*

Industry practices are guidance; they are not law. Practices are not project or commodity specific in many cases; they are overviews and rules of thumb that can provide background for the Qualified Person to use in conjunction with their own professional judgment and in the light of their industry experience.

The paragraph has no materiality threshold, but to provide misleading disclosure would mean the information has to be material. Claiming not following industry practices could be providing misleading disclosure is worrying language in the current regulatory environment. Providing misleading disclosure is an offence under securities laws. How can not following something that is presented simply as an industry accepted practice, and as guidance be held to be misleading?

Objective Standard Of Reasonableness

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (8) Objective standard of reasonableness – Where a determination about the definitions or application of a requirement in the Instrument turns on reasonableness, the test is objective, not subjective. It is not sufficient for an officer of an issuer or a qualified person to determine that they personally believe the matter under consideration. The individual must form an opinion as to what a reasonable person would believe in the circumstances.

Blackline

~~(7)~~(8) **Objective ~~Standard~~standard of ~~Reasonableness~~reasonableness** – Where a determination about the definitions or application of a requirement in the Instrument turns on reasonableness, the test is objective, not subjective. It is not sufficient for an officer of an issuer or a qualified person to determine that they personally believe the matter under consideration. The individual must form an opinion as to what a reasonable person would believe in the circumstances.

Comment

The edits made are cosmetic. However, issues remain with the wording, even though what is presented is substantially unchanged from the original 2001 edition, because of the changes in interpretation by the CSA staff over the 25 years since most of this wording was adopted.

The CSA staff reserve the right to have the final opinion on whether an issuer or a Qualified Person is meeting a rule requirement when providing disclosure on a mineral project. What is not clear is when the CSA staff have the right to apply this interpretation to their opinions on areas of practice when staff opinions differ from the Qualified Person providing the expert opinion on scientific and technical information, interpretations, and opinions in that specific area of practice.

A ”reasonable person” may not be a regulator. A reasonable person may not necessarily be a technical person either since the reasonable person may not have sufficient background to understand the technical disclosure. Additional comment is made on this point under the commentary on independence later in this document.

Many of the instructions in the Proposed Modernization Draft Form have “any”, “all”, “relevant” and “as available” instructions that require Qualified Persons to provide significantly more information than if the materiality filter on information in a technical report had been retained. A similar issue arises with the extension of the Qualified Person concept to non-material properties and all disclosure requirements. Asking for data dumps doesn’t support provision of scientific and technical concepts in plain language. Nor will tabulating data dumps provide any more clarity or remove ambiguity.

Materiality is a critical component of plain English presentation, and should be acknowledged as such. Simply asking a Qualified Person to "restate the data and conclusions from a technical report in its public disclosure" is explicitly saying that the Form requirements are designed to force the Qualified Person to provide disclosure that is meeting the plain language principles in this instruction. If the Qualified Person could present the information in the Form using the plain language principles, the issuer would not need to "consult the responsible qualified person when restating the data and conclusions from a technical report in its public disclosure".

Improper Use Of Terms In The French Language

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (9) Improper use of terms in the French language – For an issuer preparing its disclosure using the French language, the words "gisement" and "gîte" have different meanings and using them interchangeably or in the wrong context may be misleading. The word "gisement" means a mineral deposit that is a continuous, well-defined mass of material containing a sufficient volume of mineralized material that can be or has been mined legally and economically. The word "gîte" means a mineral deposit that is a continuous, defined mass of material, containing a volume of mineralized material that has had no demonstration of economic viability.

Blackline

~~(7)~~(9) **Improper ~~Use~~use of ~~Terms~~terms in the French ~~Language~~language** – For an issuer preparing its disclosure using the French language, the words "gisement" and "gîte" have different meanings and using them interchangeably or in the wrong context may be misleading. The word "gisement" means a mineral deposit that is a continuous, well-defined mass of material containing a sufficient volume of mineralized material that can be or has been mined legally and economically. The word "gîte" means a mineral deposit that is a continuous, defined mass of material, containing a volume of mineralized material that has had no demonstration of economic viability.

Comment

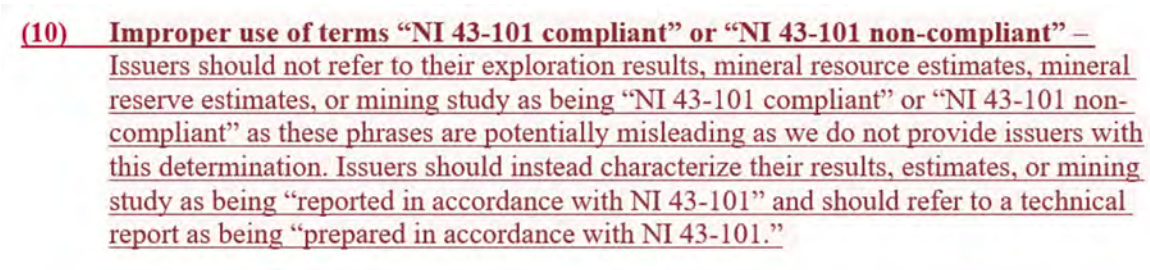
The edits made are cosmetic.

Improper Use Of Terms “NI 43-101 Compliant” Or “NI 43-101 Non-Compliant”

Proposed Modernization Draft

Rule	Companion Policy
	Companion Policy (10) Improper use of terms “NI 43-101 compliant” or “NI 43-101 non-compliant” – Issuers should not refer to their exploration results, mineral resource estimates, mineral reserve estimates, or mining study as being “NI 43-101 compliant” or “NI 43-101 non- compliant” as these phrases are potentially misleading as we do not provide issuers with this determination. Issuers should instead characterize their results, estimates, or mining study as being “reported in accordance with NI 43-101” and should refer to a technical report as being “prepared in accordance with NI 43-101.”

Blackline



(10) Improper use of terms “NI 43-101 compliant” or “NI 43-101 non-compliant” – Issuers should not refer to their exploration results, mineral resource estimates, mineral reserve estimates, or mining study as being “NI 43-101 compliant” or “NI 43-101 non-compliant” as these phrases are potentially misleading as we do not provide issuers with this determination. Issuers should instead characterize their results, estimates, or mining study as being “reported in accordance with NI 43-101” and should refer to a technical report as being “prepared in accordance with NI 43-101.”

Comment

The wording is new in the Companion Policy, and clarifies positions taken in CSA staff presentations that issuers and Qualified Persons must state whether information is, or is not, NI 43-101 compliant.

There are content requirements that need to be reviewed prior to disclosing non-compliant information, which are discussed in the “Restricted Disclosure” sections of the Proposed Modernization Draft, and discussed in this document under that sub-heading.

Part 1 Definitions and Interpretation

Definitions Changes

Acceptable Foreign Code

Proposed Modernization Draft

Definition has been struck out.

Blackline

Definitions

~~1.1~~1. In this Instrument:

~~**"acceptable foreign code"** means the JORC Code, the PERC Code, the SAMREC Code, SEC Industry Guide 7, the Certification Code, or any other code, generally accepted in a foreign jurisdiction, that defines mineral resources and mineral reserves in a manner that is consistent with mineral resource and mineral reserve definitions and categories set out in sections 1.2 and 1.3;~~

Comment

This definition has been deleted from the Proposed Modernization Draft.

In the current (2011) rule, any of the CRIRSCO family of codes is acceptable to use when reporting Mineral Resources and Mineral Reserves. Where there are differences, these just need to be stated.

S-K 1300, however, did not allow other reporting codes. When that rule was introduced, the industry still kept reporting using any of the CRIRSCO reporting codes in its technical report summaries and registration statements. The SEC did not accept this, and sent out a lot of comment letters telling the industry that it was S-K 1300 only in filings with the SEC. It would appear that the CSA staff propose to take the SEC position.

Once the Proposed Modernization Draft is promulgated, the CSA will no longer accept the use of foreign codes. Any issuer providing information on Mineral Resources and Mineral Reserves will now have to report using the CIM Definition Standards. Issuers will no longer use be able to report estimates using JORC, SAMREC, S-K 1300, for example. However, if the estimate was prepared correctly under those CRIRSCO-based codes, then it is a reasonable expectation that conversion of the terminology to that required by NI 43-101/CIM will be straightforward.

MTS assumes that the reason for the change is the number of countries within the CRIRSCO family of codes, and that it can be difficult for CSA staff to keep up with the countries being added. A further concern may have been the regulatory difficulty in ensuring that the mineral resources and mineral reserves were being reported in compliance with the reporting standard used.

No explanation or guidance has been provided as to how CSA staff will be treating companies that will have current disclosure under one of the foreign codes at the date the former NI 43-101 edition is rescinded, and the Proposed Modernization Draft becomes law. Are those reports immediately stale-dated and cannot be relied upon? Will the reports be allowed a normal shelf-

life process and only require updates once the (material) scientific and technical information is stale-dated?

Nowhere in the Proposed Modernized Draft are the Multi-Jurisdictional Disclosure System (MJDS) allowances addressed. Do these continue unchanged for those issuers and registrants who are MJDS-eligible?

Adjacent Property

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"adjacent property"** means a property~~

~~(a) in which the issuer does not have an interest;~~
~~(b) that has a boundary reasonably proximate to the property being reported on; and~~
~~(c) that has geological characteristics similar to those of the property being reported on;~~

Comment

This definition has been deleted from the Proposed Modernization Draft. The content on adjacent properties in the Form is now included in Item 7 (Geological Setting and Mineralization).

The issue with the change is that the adjacent property allowance is now firmly for geology only. This change has not been properly thought through. The former Item 23 (Adjacent Properties) in the Form was not just used by issuers and Qualified Persons for geology disclosure; it was also where issuers discussed infrastructure that was not owned by the issuer but was integral to the life-of-mine plan being presented. A common example included discussion of the process plant when the owner of the process plant was in a joint venture with the issuer on the mineral project, but the plant was not within the mineral project that was the subject of the technical report. A second example consisted of discussion of toll treatment arrangements. There is now no clearly defined place for these types of discussions. They are more than just "other relevant data" since they can be integral to the life-of-mine plan for some mineral projects.

This change is also be discussed in the context of MTS' Form commentary.

Missed Opportunity

There is cautionary language required around adjacent property disclosure in the Form and in the Rule. The repetition could be removed in the Form.

Advanced Property

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"advanced property"** means a property that has~~

~~(a) mineral reserves, or~~
~~(b) mineral resources the potential economic viability of which is supported by a preliminary economic assessment, a pre-feasibility study or a feasibility study;~~

Comment

This definition has been deleted from the Proposed Modernization Draft.

However, the concept has been retained in the Proposed Modernization Draft Form instructions on the contents of a Title Page, where instruction (c) requires a statement as to:

> *(c) the stage of the mineral project;*

The Proposed Modernization Draft Form provides no clarity as to what a "stage of the mineral project" means. This is only provided in the Proposed Modernization Draft Companion Policy:

> *The Form requires issuers to provide the current stage of the mineral project on the first or front page of the technical report. Also, a stage or level of work completed on a mineral project should be clearly identified for the intended audience. Suitable stages include:*
>
> - *"early" or "exploration" – meaning without a mineral resource estimate;*
> - *"resource" – meaning with a mineral resource estimate but no economic analysis;*
> - *"scoping study" – within the meaning of the Instrument;*
> - *"pre-feasibility study" – within the meaning of the Instrument;*
> - *"feasibility study" – within the meaning of the Instrument;*
> - *"life of mine plan" – within the meaning of the Instrument.*

Here are clearly definitions that are meant to be part of the Rule, some of which, indeed, are explicitly stated to be defined in the Rule. Others are not defined but are being used as if they were part of the Rule. This type of blurring of what is actually required content and guidance is endemic in the Companion Policy. Instructions are not guidance.

Certification Code

Proposed Modernization Draft Rule

Definition has been struck out.

Blackline

~~**"Certification Code"** means the Certification Code for Exploration Prospects, Mineral Resources and Ore Reserves prepared by the Mineral Resources Committee of the Institution of Mining Engineers of Chile, as amended;~~

Comment

This definition has been deleted from the Proposed Modernization Draft because if the Proposed Modernization Draft wording is adopted, no foreign code will be accepted for use in disclosure documents. Any issuer in Canada will have to report using the CIM Definition Standards.

CIM

Proposed Modernization Draft

Rule	Companion Policy
"CIM" means the Canadian Institute of Mining, Metallurgy and Petroleum	No guidance provided

Blackline

"CIM" means the Canadian Institute of Mining, Metallurgy and Petroleum;

Comment

This is discussed later under what the Proposed Modernization Draft incorporates under the heading in Part 1 "CIM Defined Terms".

Stylistically it is jarring to find an acronym in and of itself being a defined term.

Data Verification

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"data verification"** means the process of confirming that data has been generated with proper procedures, has been accurately transcribed from the original source and is suitable to be used;~~

Comment

This definition has been deleted from the Proposed Modernization Draft.

Requirements for data verification have changed; Form requirements for data verification have changed; and the Companion Policy requires significantly more understanding of what is required of a Qualified Person to complete data verification.

This leaves the Qualified Person with significant disclosure obligations that they must meet, but having to do so without the CSA staff providing a clear definition of what they are obviously regarding as a core concept. Core concepts should always be defined.

Discussion on this topic is included in this document with the comments on Part 3 (11).

Disclosure

Proposed Modernization Draft

Rule	Companion Policy
"disclosure" means any oral statement or written disclosure made by or on behalf of an issuer and intended to be, or reasonably likely to be, made available to the public, but does not include written disclosure that is made available to the public only by reason of having been filed with a government or agency of government under a requirement of law other than securities legislation;	No guidance provided

Blackline

"disclosure" means any oral statement or written disclosure made by or on behalf of an issuer and intended to be, or reasonably likely to be, made available to the public ~~in a jurisdiction of Canada, whether or not filed under securities legislation~~, but does not include written disclosure that is made available to the public only by reason of having been filed with a government or agency of government ~~pursuant to~~under a requirement of law other than securities legislation;

Comment

The comparison of the definition in the Proposed Modernization Draft to that in the 2011 edition shows a critical change.

The text is now intended to apply to **any** documentation made available to the public. It does not restrict that disclosure to that made in a Canadian jurisdiction, it is disclosure that could be made anywhere, globally.

The new wording broadens the application of NI 43-101:

- Not limited to reporting issuers in Canada;
- Not limited to material mineral properties or material information;
- Not just what gets filed with Securities Commissions or stock exchanges;
- Not limited to scientific and technical information.

It is unclear how a Canadian regulator has jurisdiction of disclosure made outside Canada. It is a potential over-reach to assume that a Canadian regulator can have enforcement powers in any non-Canadian jurisdiction. It also undermines the credibility of the regulators.

Such a broad application of NI 43-101 would normally bring up consideration of infringements on freedom of speech. Earlier iterations of NI 43-101 were subject to such freedom of speech reviews; the classic example being the removal of "prohibited disclosure" as used in the 2001 edition to the "restricted disclosure" used from the 2005 edition onwards.

Concerns with "disclosure" are also discussed under the Part 2, Part 3, and Part 4 sub-headings in this document

Early Stage Exploration Property

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"early stage exploration property"** means a property for which the technical report being filed has~~

~~(a) no current mineral resources or mineral reserves defined; and~~
~~(b) no drilling or trenching proposed;~~

Comment

This definition has been deleted from the Proposed Modernization Draft.

Please see the comments under "Advanced Property" in this document for a discussion of the requirements to provide the property stage in the Title Page to a technical report.

Effective Date

Proposed Modernization Draft

Rule	Companion Policy
"effective date" means, with reference to a disclosure, the date of the most recent scientific or technical information included in the disclosure;	(a) "effective date" – This is the cut-off date for the scientific and technical information included in the disclosure. Under section 24 of the Instrument, the qualified person must provide their certificate as at the effective date of the technical report and specify this date in their certificate. The effective date can precede the date of signing the technical report but if there is too long a period between these dates, the issuer is exposed to the risk that new material or relevant information could become available, and the technical report would then not be current. Please see additional guidance in Part B. Guidance to the Form: Dates and Signatures of this Companion Policy.

Blackline

Rule

"effective date" means, with reference to a ~~technical report~~disclosure, the date of the most recent scientific or technical information included in the ~~technical report~~disclosure;

Companion Policy

~~(2)~~(a) "effective date" – This is the cut-off date for the scientific and technical information included in the ~~technical report.~~disclosure. Under section ~~8.1~~24 of the Instrument, the qualified person must provide their certificate as at the effective date of the technical report and specify this date in their certificate. The effective date can precede the date of signing the technical report but if there is too long a period between these dates, the issuer is exposed to the risk that new material or relevant information could become available, and the technical report would then not be current. Please see additional guidance in Part B. Guidance to the Form: *Dates and Signatures* of this Companion Policy.

Comment

The changes proposed to effective date are not appropriate, since the effective date is no longer the date required only for a technical report, it has been extended to apply to every piece of disclosure. All disclosure will now need to have an effective date.

In the 2011 edition, Qualified Persons for the Mineral Resource and Mineral Reserve estimates were expected to provide effective dates for those estimates, but those were the only other data other than the date of the technical report itself that required the effective dates to be stated.

The proposed changes have the potential to create a compliance burden for issuers when dealing with disclosure documents that have different dates at which information were provided, such as

a technical report. The dates given for the relevant information in a technical report (note that in many places in the technical report, “material” has been replaced by “relevant”, so a materiality filter no longer applies; see discussion in this document under “materiality”) will cover a significant amount of input information given that there are 27 sections in a technical report, of which the majority have data inputs with cut-off dates.

The guidance provided is also confusing when referring to the elapsed time advice, because that appears to be blurring the distinction in securities law between material and material change. To be a material change, the expectation would be that the information was previously disclosed, was material information, and what is currently being disclosed modifies that earlier disclosure.

Exploration Information

Proposed Modernization Draft

Rule	Companion Policy
"exploration information" includes geological, geophysical, geochemical, sampling, drilling, trenching, analytical testing, assaying, mineralogical, metallurgical and other similar information concerning a mineral project that is derived from activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit;	No guidance provided

Blackline

"exploration information" ~~means~~includes geological, geophysical, geochemical, sampling, drilling, trenching, analytical testing, assaying, mineralogical, metallurgical~~,~~ and other similar information concerning a ~~particular property~~mineral project that is derived from activities undertaken to locate, investigate, define~~,~~ or delineate a mineral prospect or mineral deposit;

Comment

The changes are likely to be problematic for issuers and Qualified Persons alike, as the definition is now wide-open. "Includes" is likely to be interpreted by CSA staff when reviewing disclosure to be anything that CSA staff think should be considered to be exploration information; this is already a CSA staff practice in comment letters.

It would have been helpful if the CSA staff had removed the equivalent of etc. from the rule; such that "other similar information" was quantified as to what would be considered to be exploration information.

The substitution of "means" by "includes" is a far lower bar for CSA staff to find disclosure by an issuer and Qualified Person to be "potentially misleading" or non-compliant.

Again the issue here is that the CSA staff have been disinclined in recent years to advise industry of their internal policy changes and when those will be implemented, including when they will be retroactively applying those policy changes. Industry typically only learns these through word of mouth following a confidential comment letter to an issuer, and only then if the target issuer is prepared to anecdotally share with peers. Meeting the CSA staff interpretation of the definition is likely to become a significant issue for issuers and Qualified Persons.

There is no clear rationale as to why metallurgical information is classified as a type of exploration information. Classifying metallurgical data as exploration information strictly would require the Qualified Person and issuer to provide all of the information that is required for typical geochemical samples to also be provided for the metallurgical samples:

> *(a) the procedures and parameters relating to surveys and investigations;*
>
> *(b) the sampling methods and sample quality, including whether samples are representative, and any factors that may have resulted in sample biases;*

> *(c) the location, number, type, nature and spacing or density of samples collected and the size of the area covered;*
>
> *(d) the significant results and interpretation of the exploration information.*

This is not in line with current industry practices when presenting metallurgical testwork summaries.

Historical Estimate

Proposed Modernization Draft

Rule	Companion Policy
"historical estimate" means an estimate of the quantity, grade or metal or mineral content of a deposit that an issuer has not verified as a current mineral resource or mineral reserve and prepared before the issuer acquired, or entered into an agreement to acquire, an interest in the mineral project that contains the deposit;	No guidance provided

Blackline

"historical estimate" means an estimate of the quantity, grade or quality, or metal or mineral content of a deposit that an issuer has not verified as a current mineral resource or mineral reserve, and which was prepared before the issuer acquiringacquired, or enteringentered into an agreement to acquire, an interest in the propertymineral project that contains the deposit;

Comment

Concerns with "historical estimates" are discussed under the heading "Part 2 Disclosure Requirements: Historical Estimates" in this document.

Broadly, the term should be discontinued as a disclosure allowance except in the narrow confines of a takeover or acquisition.

JORC Code

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"JORC Code"** means the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves prepared by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia, as amended;~~

Comment

This definition has been deleted from the Proposed Modernization Draft because if the Proposed Modernization Draft wording is adopted, no foreign code will be accepted for use in disclosure documents. Any issuer in Canada will have to report using the CIM Definition Standards.

Initial Deposit Period

Proposed Modernization Draft

Rule	Companion Policy
"initial deposit period" has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 Take-Over Bids and Issuer Bids;	No guidance provided

Blackline

"initial deposit period" has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*;

Comment

The definition needs to be removed.

It is really unclear why the CSA staff would take this one instance of a specific term and bring it into the Proposed Modernization Draft Rule definitions. There are numerous places in the Proposed Modernization Draft Companion Policy where other Canadian securities laws are cited in the context of applicability to NI 43-101, or where an issuer needs to be aware of additional content in those regulations. In all of these instances the wording from each instrument is provided. This reference to NI 62-104 is the only time a specific definition is included in the Proposed Modernization Draft NI 43-101 term definitions. Nothing similar is done when the prospectus rule or the continuous disclosure rule, for example, are cited.

This definition should be removed.

Mineral Project

Proposed Modernization Draft

Rule	Companion Policy
"mineral project" means an activity that involves or will involve exploration for, or development or production of, natural solid inorganic or natural fossilized organic material, or a royalty or similar interest in the activity;	(b) "mineral project" – We consider a mineral project to include multiple mineral tenures that are contiguous or in such close proximity that any underlying mineral deposits would likely be developed using common infrastructure. If an issuer discovers or acquires a mineral deposit that may benefit from shared infrastructure or synergies with other mineral deposits, we will consider all underlying mineral deposits to be part of a single mineral project for the purpose of a technical report. We do not consider the definition of mineral project to include standalone roasters, smelters, refineries, process plants, or other facilities that are not developed in conjunction with a specific deposit, mineral resource or mineral reserve.

Blackline

Rule

"mineral project" means ~~any~~an activity that involves or will involve exploration~~,~~ for, or development or production ~~activity, including a royalty or similar interest in these activities, in respect of diamonds~~of, natural solid inorganic ~~material,~~ or natural ~~solid~~ fossilized organic material ~~including base and precious metals, coal, and industrial minerals~~, or a royalty or similar interest in the activity;

Companion Policy

~~(3) **"mineral project"** – The definition of "mineral project" in the Instrument includes a royalty or similar interest. Scientific and technical disclosure regarding all types of royalty interests in a mineral project is subject to the Instrument.~~

(b) "mineral project" – We consider a mineral project to include multiple mineral tenures that are contiguous or in such close proximity that any underlying mineral deposits would likely be developed using common infrastructure. If an issuer discovers or acquires a mineral deposit that may benefit from shared infrastructure or synergies with other mineral deposits, we will consider all underlying mineral deposits to be part of a single mineral project for the purpose of a technical report.

We do not consider the definition of mineral project to include standalone roasters, smelters, refineries, process plants, or other facilities that are not developed in conjunction with a specific deposit, mineral resource or mineral reserve.

Comment

Definition

This change is problematic. The CSA staff in numerous presentations had previously made a major distinction between a mineral property and a mineral project, with mineral property equated to the mineral tenure, and a mineral project equated to the activity being undertaken on that mineral tenure.

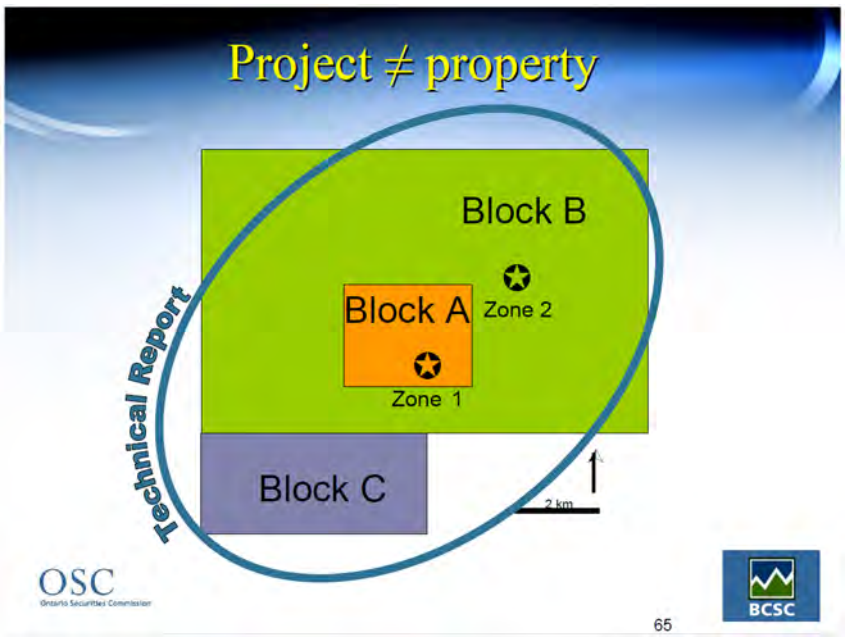


Figure from Holland, R., Waldie, C., Whyte, J., and Bartsch, C., 2012: NI 43-101: What You Need to Know About the New Mining Rules; CSA staff presentation January 20, 2012.

Throughout the Proposed Modernization Draft, the revised definition makes it difficult now to distinguish between the mineral property and the activity being reported on. Issues that arise from this revised definition include:

- Blurs the guidance in the Proposed Modernization Draft Companion Policy where compliant mineral project disclosure is to incorporate all of the mineral tenures that are contiguous or in sufficiently close proximity that the mineralization on those mineral tenures would be treated using common infrastructure;
- Blurs the battery limits for issuers and Qualified Persons as to what must be in the technical report. Historically, for most projects, the technical reports were considered complete at the point of the mine gate or point of loading for sales. The technical reports did not typically cover facilities such as refineries and smelters;
- Too many different ways that the definition can be interpreted. Based on content in the Proposed Modernization Draft, it is already likely that CSA staff will have interpretational differences that are counter to what industry considers to be general industry practice.

The definition of a mineral project from the activity to the mineral tenure does not work in in all areas, and has not been thought through. The definition of project used to encompass all activities, for example, from the mining study to the access road, to the port, powerline, and other transportation infrastructure. It was much more than just what was encompassed by the mineral tenure boundary. The mineral tenure boundary definition proposed does not support the many instances where key infrastructure will be off-site.

Mineral Project Material to the Issuer

See also Companion Policy statements around “mineral project material to the issuer” in the General Guidance section of this document.

Historical Estimates

See also discussion around historical estimates under the sub-heading Part 2 of this document.

PERC Code

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"PERC Code"** means the Pan-European Code for Reporting of Exploration Results, Mineral Resources and Reserves prepared by the Pan-European Reserves and Resources Reporting Committee, as amended;~~

Comment

This definition has been deleted from the Proposed Modernization Draft because if the Proposed Modernization Draft wording is adopted, no foreign code will be accepted for use in disclosure documents. Any issuer in Canada will have to report using the CIM Definition Standards.

Preliminary Economic Assessment

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"preliminary economic assessment"** means a study, other than a pre-feasibility or feasibility study, that includes an economic analysis of the potential viability of mineral resources;~~

Comment

The deletion of the term from the Proposed Modernization Draft is helpful because it is more appropriate for the CIM to be the source of such terms. This is an instance where the CSA staff did take on board feedback from the 2022 Consultation Paper.

The CIM have proposed to discontinue the use of "preliminary economic assessment" and have provided a replacement term that uses the CRIRSCO terminology, "scoping study".

Producing Issuer

Proposed Modernization Draft

Rule	Companion Policy
"producing issuer" means an issuer with annual audited financial statements that disclose gross revenue derived from mining operations of: (i) not less than $55 million Canadian for the issuer's most recently completed financial year, and (ii)not less than $165 million Canadian in the aggregate for the issuer's 3 most recently completed financial years;	No guidance provided

Blackline

"producing issuer" means an issuer with annual audited financial statements that disclose gross revenue~~,~~ derived from mining operations~~,~~ of ~~at least $30~~

(a) not less than $55 million Canadian for the issuer's most recently completed financial year~~;~~, and

~~gross revenue, derived from mining operations, of at least $90~~

(b) not less than $165 million Canadian in the aggregate for the issuer's ~~three~~3 most recently completed financial years;

Comment

The changes in the Proposed Modernization Draft are to increase the monetary thresholds that companies must use when assessing if the company can classify itself as a producing issuer.

It would have been helpful for the CSA staff to have provided guidance for issuers once the Proposed Modernization Draft is effective. What guidance can be provided to producing issuers that formerly did meet the thresholds under the 2011 edition but no longer do so under the Proposed Modernization Draft requirement, particularly when those issuers are incorporating already-filed documents into current disclosure under the Proposed Modernization Draft once that draft is effective. There are exemptions provided to producing issuers that will no longer be applicable.

It would have been helpful to provide guidance to those same issuers as to whether the technical reports on file remain current, since they may have been prepared by company staff, who are not independent. If those issuers have to prepare new, independent, technical reports simply because of this threshold shift, where was the cost benefit impact assessment on those issuers?

Professional Association

Proposed Modernization Draft

Rule	Companion Policy
"professional association" means a self-regulatory organization of engineers, geoscientists or both that (a) is (i) authorized or recognized under a statute in a jurisdiction of Canada, or (ii) a foreign association the practices of which are generally accepted as reputable by the international mining industry, (b) admits an individual on basis of academic qualification, experience and ethical fitness, (c) requires or imposes an obligation on its members to satisfy professional standards of competence and ethics established by the organization, (d) requires, imposes obligations concerning or encourages continuing professional development, and (e) has the power or ability and applies the power or uses the ability to discipline, suspend or expel a member regardless of where the member practices or resides;	(c) "professional association" – Paragraph (a) (ii) of the definition of "professional association" in the Instrument includes a test for determining what constitutes an acceptable foreign association. In assessing whether a foreign organization is a professional association, we will consider the reputation of the association and whether it is substantially like a professional association in a jurisdiction of Canada. Appendix A to this Companion Policy provides a list of the foreign associations that we consider to be professional associations as of the effective date of the Instrument. The listing of a professional association on Appendix A is only for purposes of the Instrument and does not supersede or alter local requirements where geoscience or engineering is a regulated profession. An issuer that wishes to rely on a qualified person that is a member of a professional association not included in Appendix A, but which the issuer believes meets the tests in the Instrument, may make submissions to have the association added to Appendix A. Submissions should include appropriate supporting documentation. The issuer should allow sufficient time for its submissions to be considered before naming the qualified person in connection with its disclosure or filing any technical report signed by the qualified person.

Blackline

Rule

"professional association" means a self-regulatory organization of engineers, geoscientists or both ~~engineers and geoscientists~~ that

(a) is

~~given authority~~

(i) authorized or ~~recognition by~~recognized under a statute in a jurisdiction of Canada, or

(ii) a foreign association ~~that is~~, the practices of which are generally accepted ~~within~~as reputable by the international mining ~~community as a reputable professional association;~~industry,

(b) admits ~~individuals~~an individual on the basis of ~~their~~ academic ~~qualifications~~qualification, experience~~,~~ and ethical fitness~~;~~,

(c) requires ~~compliance with the~~or imposes an obligation on its members to satisfy professional standards of competence and ethics established by the organization~~;~~,

(d) requires, imposes obligations concerning or encourages continuing professional development~~;~~, and

(e) has the power or ability and applies ~~disciplinary powers, including~~ the power or uses the ability to discipline, suspend or expel a member regardless of where the member practises or resides;

Companion Policy

~~(5)~~(c) "professional association" – Paragraph (a~~)~~() (ii) of the definition of "professional association" in the Instrument includes a test for determining what constitutes an acceptable foreign association. In assessing whether ~~we think~~ a foreign organization is a professional association ~~meets this test~~, we will consider the reputation of the association and whether it is substantially ~~similar to~~like a professional association in a jurisdiction of Canada.
Appendix A to ~~the~~this Companion Policy provides a list of the foreign associations that we ~~think meet all the tests in the definition~~consider to be professional associations as of the effective date of the Instrument. The listing of a professional association on Appendix A is only for purposes of the Instrument and does not supersede or alter local requirements where geoscience or engineering is a regulated profession.

~~We will publish updates to the list periodically.~~

An issuer that wishes to rely on a qualified person that is a member of a professional association not included in Appendix A, but which the issuer believes meets the tests in the Instrument, may make submissions to have the association added to Appendix A. Submissions should include appropriate supporting documentation. The issuer should allow sufficient time for its submissions to be considered before naming the qualified person in connection with its disclosure or filing any technical report signed by the qualified person.~~The listing of a professional association on Appendix A is only for purposes of the Instrument and does not supersede or alter local requirements where geoscience or engineering is a regulated profession.~~

Comment

The tone in "we will consider the reputation of the association and whether it is substantially like a professional association in a jurisdiction of Canada" is concerning. The original intent was to allow flexibility internationally to allow issuers to use their own staff as Qualified Persons where that was appropriate. How will the issuer know what "substantially like" will be in the mind of a regulator?

The restrictions imposed by the narrow allowance for who can be Qualified Persons continues to require those who do meet the definition to become responsible for information that is outside their purview. Examples in the form include not being able to rely on marketing experts, having to provide opinions on how projects will affect Indigenous Peoples and rightsholders, and performing data verification in the absence of any industry guidelines as to how that verification should be performed and what the verification would entail.

Industry is already struggling to find Qualified Persons. These types of additional raising of the bar of expectations, and placing more burden on the Qualified Persons will add to that difficulty.

Obligates/Obligations

What is not clear in (d) of the definition in the Rule is why the CSA staff consider that "obligates" and "obligations" are better terms than "require", or why certain instructions use both "obligate", "obligation" and "require" as if they are different concepts.

Qualified Person

Proposed Modernization Draft

Rule	Companion Policy
"qualified person" means an individual who is a professional geoscientist, professional engineer or equivalent of either and (a) has at least 5 years of experience as a professional geoscientist, professional engineer or the equivalent of either in mineral exploration, mine development, mine operation or mineral project assessment, or any combination of those, (b) has experience relevant to the subject matter of the mineral project, (c) is in good standing with a professional association, and (d) in the case of an individual who is a member of a foreign professional association, has a membership designation that (i) requires or obligates the individual to have attained a position of responsibility in the individual's profession that requires the exercise of independent judgment; and (ii) requires or obligates (A) a favourable confidential peer evaluation of the individual's character, professional judgment, experience and ethical fitness, or (B) a recommendation for membership of at least 2 peers and demonstrated prominence or expertise in the individual's field of practice;	(d) "qualified person" – The definition of "qualified person" in the Instrument does not include engineering or geoscience technicians, engineers or geoscientists in training, or any designation that restricts an individual's scope of practice or requires the individual to practise under the supervision of a professional engineer, professional geoscientist, or equivalent. The obligation of a qualified person to take responsibility for disclosure in the Instrument should be interpreted as requiring the qualified person to have read the Instrument and Form, and to be able to demonstrate their understanding of standards of disclosure for mineral projects. Paragraph (a) of the definition requires 5 years of professional experience, which must be gained after the individual becomes registered as a professional geoscientist, professional engineer, or equivalent. The 5 years of professional experience can be from Canadian or foreign professional registration or a combination thereof. Paragraph (b) of the definition requires a qualified person to have appropriate experience relevant to the subject matter of the mineral project, which we interpret to mean a level of experience sufficient to be able to identify with substantial confidence valid assumptions, risks and any problems that could affect the reliability of data related to the mineral project. This includes relevant experience acquired before or after the completion of any related professional registration. Relevance to the subject matter of the mineral project is not restricted to commodity type but may include deposit type and style of mineralization, as well as the specific type of activity being undertaken by the individual which often relates to the development stage of the mineral project and the individual's area of practice. An individual acting as a qualified person should be clearly satisfied that they could face their peers and demonstrate competence and relevant experience within their area of practice. Paragraphs (c) and (d) of the definition refer to the Canadian and foreign professional registration requirements that are treated similarly. Paragraph (c) of the definition requires a qualified person to be "in good standing", this includes satisfying any related registration, licensing or other requirements of the professional association. Individual Canadian provincial and territorial legislation may require a qualified person to be registered if practising in that jurisdiction of Canada. It

Rule	Companion Policy
	is the responsibility of the qualified person, in compliance with their professional association's code of ethics, to comply with any laws requiring licensure of geoscientists and engineers. Paragraph (d) of the definition includes a test for what constitutes an acceptable membership designation in a foreign professional association. Appendix A to this Companion Policy provides a list of the membership designations that we think meet this test as of the effective date of the Instrument. In assessing whether we think a membership designation meets the test, we will consider whether it is substantially like a membership designation in a professional association in a jurisdiction of Canada. We interpret the reference to demonstrated prominence or expertise in subparagraph (d) (ii) (B) to mean having the membership designation equivalent to Canadian professional registration requirements. This includes at least 5 years of professional experience and satisfying an additional entrance requirement relating to level of responsibility. Some examples of such a requirement are: (i) at least 3 years in a position of responsibility where the individual was depended on for significant participation and decision-making; (ii) experience of a responsible nature and involving the exercise of independent judgment in at least 3 of those years; or (iii) at least 5 years in a position of major responsibility, or a senior technical position of responsibility.

Blackline

Rule

"qualified person" means an individual who is a professional geoscientist, professional engineer or equivalent of either and

~~(a) is an engineer or geoscientist with a university degree, or equivalent accreditation, in an area of geoscience, or engineering, relating to mineral exploration or mining;~~

~~(b)~~(a) has at least ~~five~~5 years of experience as a professional geoscientist, professional engineer or equivalent of either in mineral exploration, mine development ~~or~~, mine operation or mineral project assessment, or any combination of these, ~~that is relevant to his or her professional degree or area of practice;~~

~~(c)~~(b) has experience relevant to the subject matter of the mineral project ~~and the technical report;~~,

~~(d)~~(c) is in good standing with a professional association~~;~~, and

~~(e)~~(d) in the case of an individual who is a member of a foreign professional association ~~in a foreign jurisdiction~~, has a membership designation that

(i) requires ~~attainment of~~or obligates the individual to have attained a position of responsibility in ~~their~~ the individual's profession that requires the exercise of independent judgment~~;~~, and

(ii) requires or obligates

~~A.~~(A) a favourable confidential peer evaluation of the individual's character, professional ~~judgement~~judgment, experience~~,~~ and ethical fitness~~;~~, or

~~B.~~(B) a recommendation for membership ~~by~~of at least ~~two~~2 peers~~,~~ and demonstrated prominence or expertise in the individual's field of ~~mineral exploration or mining~~practice;

Companion Policy

~~(7)~~(d) "qualified person" – The definition of "qualified person" in the Instrument does not include engineering ~~and~~or geoscience technicians, engineers ~~and~~or geoscientists in training, ~~and equivalent designations~~or any designation that ~~restrict the~~restricts an individual's scope of practice or ~~require~~requires the individual to practise under the supervision of ~~another~~a professional engineer, professional geoscientist, or equivalent.

The obligation of a qualified person to take responsibility for disclosure in the Instrument should be interpreted as requiring the qualified person to have read the Instrument and Form, and to be able to demonstrate their understanding of standards of disclosure for mineral projects.

Paragraph (a) of the definition requires 5 years of professional experience, which must be gained after the individual becomes registered as a professional geoscientist, professional engineer, or equivalent. The 5 years of professional experience can be from Canadian or foreign professional registration or a combination thereof.

Paragraph (b) of the definition requires a qualified person to have appropriate experience relevant to the subject matter of the mineral project, which we interpret to mean a level of experience sufficient to be able to identify with substantial confidence valid assumptions, risks and any problems that could affect the reliability of data related to the mineral project. This includes relevant experience acquired before or after the completion of any related professional registration. Relevance to the subject matter of the mineral project is not restricted to commodity type but may include deposit type and style of mineralization, as well as the specific type of activity being undertaken by the individual which often relates to the development stage of the mineral project and the individual's area of practice. An individual acting as a qualified person should be clearly satisfied that they could face their peers and demonstrate competence and relevant experience within their area of practice.

Paragraphs (c) and (d) of the definition refer to the Canadian and foreign professional registration requirements that are treated similarly.

Paragraph (c) of the definition requires a qualified person to be "in good standing ~~with a professional association". We interpret~~ ", this ~~to include~~includes satisfying any related registration, licensing~~,~~ or ~~similar~~other requirements~~.~~ of the professional association. Individual Canadian provincial and territorial legislation ~~requires~~may require a qualified person to be registered if practising in ~~a~~that jurisdiction of Canada. It is the responsibility of the qualified person, in compliance with their professional association's code of ethics, to comply with any laws requiring licensure of geoscientists and engineers.

Paragraph (~~e~~d) of the definition includes a test for what constitutes an acceptable membership designation in a foreign professional association. Appendix A to ~~the~~this Companion Policy provides a list of the membership designations that we think meet this test as of the effective date of the Instrument. ~~We will update the list periodically. In assessing whether we think a membership designation meets the test, we will consider whether it is substantially similar to a membership designation in a professional association in a jurisdiction of Canada.~~In assessing whether we

~~Subparagraph (e)(ii)(B) includes~~ think a membership designation meets the ~~concept~~test, we will consider whether it is substantially like a membership designation in a professional association in a jurisdiction of ~~"demonstrated expertise in the field of mineral exploration or mining".~~ Canada.

We ~~generally~~ interpret ~~this~~the reference to demonstrated prominence or expertise in subparagraph (d) (ii) (B) to mean

~~having at least five~~ having the membership designation equivalent to Canadian professional registration requirements. This includes at least 5 years of professional experience and satisfying an additional entrance requirement relating to level of responsibility. Some examples of such a requirement are:

~~(a)~~(i) at least ~~three~~3 years in a position of responsibility where the ~~person~~individual was depended on for significant participation and decision-making;

~~(b)~~(ii) experience of a responsible nature and involving the exercise of independent judgment in at least ~~three~~3 of those years; or

~~(c)~~(iii) at least ~~five~~5 years in a position of major responsibility, or a senior technical position of responsibility.

Comment

Qualified Person Restrictions

The Proposed Modernization Draft has extended the definition of a Qualified Person to "professional geoscientist, professional engineer or equivalent of either", but provides no guidance as to what the equivalent of either might include. Does the "equivalent of either" refer to a designation in a foreign jurisdiction that is the equivalent of being a professional geoscientist or professional engineer. Or does the "equivalent of either" refer to specialists in discipline areas that are not geoscience or engineering?

This is a significant source of uncertainty for issuers who may be contemplating naming a professional that is not a professional geoscientist or a professional engineer.

The restriction of who can be a Qualified Person to just geoscientists and engineers is both onerous and contrary to professional practices. It may not facilitate disclosure that is in the public interest. Many of the content requirements in the Proposed Modernization Draft apply to specialist discipline areas that are not within the purview of a geoscientist or engineer: environmental and social matters; commodity price, market analysis, market entry; infrastructure such as power and desalination plants; port facilities; cost estimates outside the mining and metallurgical discipline areas.

Part (b) of the definition of a Qualified Person should have guidance included in the Companion Policy as to the CSA staff's interpretation of what would constitute "experience relevant to the subject matter of the mineral project" in the areas where the CSA staff are requiring Qualified Persons to take responsibility for and provide opinions on information that is outside the Qualified Person's purview.

The Proposed Modernization Draft should not be continuing to require that geoscientists and engineers practice outside their discipline areas. The Proposed Modernization Draft should simply require, as does the SEC's SK1300, that the Qualified Person is a mining industry professional.

Professional Association Membership

The restrictions imposed by the professional associations are such that meeting the five-year professional association membership requirement before the Qualified Person can start to accrue relevant experience is not warranted.

Part (d) of the definition of a Qualified Person, and the guidance provided in the Companion Policy, conflate professional registration with expertise. This is simply not true, and is concerning that paying dues is seen to be an acceptable precursor to actually acquiring experience. The key principle should be the relevant experience of the Qualified Person, not the professional association membership; that should be the subsidiary component.

This is a Canadian-only interpretation and is another self-imposed barrier that has no benefit for the industry as a whole. It already has had the effect of barring better-qualified and better experienced practitioners in favour of the Canadian practitioner, simply because the Canadian practitioner was Canadian-registered and the regulators reviewing determined that the appropriate Qualified Person was not, in fact, appropriate due to lack of sufficient years of dues paying.

Many international professional associations do not have the five-year restriction of requiring professional association membership before relevant experience can start accruing. Nor do they disallow relevant experience accrual simply because the practitioner was not previously registered with a professional association, did not hold the approved level of membership of a recognised overseas professional association, or was a member of a non-recognized association in a foreign jurisdiction. In all these instances, there are already examples of Qualified Persons finding that their experience does not count simply because one of the Canadian criteria for being a Qualified Person is that artificial equating of paying dues for a certain amount of time indicates probity. Or finding that they are considered unacceptable when compared to Canadian peers and given a limited licence to practice. All of these instances are again examples of self-imposed barriers that have no benefit for the industry as a whole, and are counter to the global nature of the mining business.

Canada is currently undergoing a period of introspection that explicitly identifies regulatory barriers as a major concern. Both Federal and Provincial governments have been accused of facilitating increased regulatory costs, barriers to employment, and barriers to obtaining the best fit of workers to the job requirements.

What the Qualified Person definition does, and how it is being interpreted, is imposing an unnecessary barrier to efficient mining activity, and a restriction on having the correct expertise available on information provided to investors.

The critical part of being a Qualified Person is not how long they've been paying their annual dues to a professional association, but actually how much relevant experience the person has with data collection, interpretation, provision of opinions, and supervision of other contributors, including a good understanding of the teamwork required to collect and synthesize information, and a good understanding of where issues typically arise with information interpretation and application of those interpretations.

Being a member of a professional association is not a reflection of a Qualified Person's experience or expertise. Nor does simply being a member of a professional association provide relevant experience in a discipline field.

Practicing in the Jurisdiction

By-laws for professional associations vary by province and territory; they are not similar to a National Instrument that uses almost identical wording in each province and territory. The point of harmonizing in a National Instrument is to have uniform standard across Canada. But by giving significant powers to the individual provincial professional associations is making a patchwork of practices.

The "Practice Advisory on Diamond Drill Core Logging" adopted by EGBC is a classic case. The advisory purports to establish "the expectations of professional practice related to logging geological structures as observed in diamond drill core for mineral exploration, mining projects, and related geotechnical engineering studies". In fact, the only practice area the advisory is applicable to is geotechnical engineering studies. What is required under the practice advisory is not generally-accepted industry practice for geological logging of core; it is a specialized area for one sub-set discipline. The advisory is, however, now binding to follow for all drill core logging if the logging geologist is an EGBC member.

There is no guidance provided as to how a Qualified Person or issuer should interpret the "practising in that jurisdiction" instruction in (c). The professional associations will, and have been, trying to impose "practicing" on any Qualified Person conducting any type of work associated with a mineral project in that province, including data evaluation, study compilation and reviews, and attendance on conference calls, whether or not the Qualified Person was physically present in the province. This type of attitude simply creates more barriers and increases the burden on the issuer. It also narrows the number of Qualified Persons available to the issuer

Mining is a global endeavour, it is not simply a provincial activity. Barriers to business and commerce, overly parochial regulatory groups, non-uniform standards from province to province, and not recognizing when Canada is out of step with industry practices can all cause the Canadian market to become less attractive to investors. There are other jurisdictions and stock exchanges that do value mining investment: these can rapidly become the preferred destination for mining issuers if Canada is perceived to be too prescriptive, including policy decisions made around Qualified Person mobility between jurisdictions.

Appropriate and Relevant Experience

Paragraph (b) of the guidance on the definition of a Qualified Person states:

> *Paragraph (b) of the definition requires a qualified person to have appropriate experience relevant to the subject matter of the mineral project, which we interpret to mean a level of experience sufficient to be able to identify with substantial confidence valid assumptions, risks and* ***any*** *problems that could affect the reliability of data related to the mineral project.* [emphasis added]

"Any" is an unreasonable threshold for the Qualified Person to meet. The Qualified Person can identify material issues that could impact reliability of data, but the Qualified Person cannot identify "any" problem as stated. If quality assurance and quality control data show that there is an analytical bias, that is a type of assessment of data reliability. However, metallurgical testwork performed on samples that were later found to be not representative of the majority of the deposit is not an example of data deficiency.

Why the overly simplistic restriction to, and emphasis only on data reliability? Why is it not also requested of the Qualified Persons to identify any material issues with the interpretation and application of the data. That speaks directly to the Qualified Person's relevant experience: that they can see issues with the interpretation of underlying reliable data. Reliability has different levels of viewing, and restricting it explicitly to data in this guidance is not helpful, outside of the unreasonable requirement for "any".

With the following text:

> *This includes relevant experience acquired before or after the completion of any related professional registration. Relevance to the subject matter of the mineral project is not restricted to commodity type but may include deposit type and style of mineralization, as well as the specific type of activity being undertaken by the individual which often relates to the development stage of the mineral project and the individual's area of practice.*

the specifics provided are exploration geology-focused; the guidance isn't even particularly relevant for resource estimation. Why provide details on one discipline, and no guidance examples for other disciplines: the "as well as" is not useful as guidance, since it is so general.

A mining engineer when preparing a mine plan is focused on delineation of ore and waste, and immediate mill feed high-grade material differentiation from material that can be stockpiled for treatment later in the mine plan.

The cost estimator when preparing the work breakdown structure used to build up the cost estimate is focused on such items as quantities, vendor information, quotations, benchmarks, drawings, diagrams, layouts, plot plans, take-offs, labor rates and burdens, and consumables.

Neither of these discipline specialists is interested in the minutiae of how the deposit type is classified, or of the details of the style of mineralization as stringers or blebs, or whether or not it is hosted in chalcopyrite or bornite. Yet deposit type and style of mineralization are the only examples of what relevant experience could comprise.

It is not clear what is intended by "the specific type of activity being undertaken by the individual". What is the Qualified Person meant to understand from "specific type of activity" as a guide to the issuer's and Qualified Person's self assessment of whether the Qualified Person has relevant experience?

The guidance provided that relates relevant experience to the development stage of the mineral project is simply incorrect, outside the grassroots exploration geology stage of a mineral project. There is a minor divide between geologists focused on exploration stage, grassroots evaluations and geologists performing Mineral Resource estimation, but even then, there can be multiple areas of cross-over where resource estimators are also competent exploration geologists. However, there are no resource estimators, mining, or process engineers who specialize only, for example, in doing Pre-Feasibility Studies, and do not participate in Scoping Studies, Feasibility Studies, or estimation and mine planning for operating mines. Incorrect and discipline-biased guidance is worse than no guidance at all.

Part (b) should provide guidance as to what would constitute "experience relevant to the subject matter of the mineral project" in the areas where Proposed Modernization Draft is requiring Qualified Persons to take responsibility for, and provide opinions, on information that is outside the Qualified Person's purview.

The wording is odd, since Qualified Persons take responsibility for sections and subsections of a technical report; they do not take responsibility for the "subject matter of the mineral project". The guidance is particularly important so that the issuer and Qualified Person can appropriately determine whether the Qualified Person has relevant experience in relation to the subject matter of the mineral project and therefore the issuer can agree to the Qualified Person being named on the disclosure.

Part (c) of the guidance on the Qualified Person requires:

> *An individual acting as a qualified person should be clearly satisfied that they could face their peers and demonstrate competence and relevant experience within their area of practice.*

Numerous areas within the technical report are outside the purview of a Qualified Person, defined as a "professional geoscientist, professional engineer or equivalent of either". Guidance needs to be provided that explains how the Qualified Person with those degrees can be responsible for information such as marketing, price forecasts, environmental considerations, social considerations, discussion around rightsholders and what experience would both allow the Qualified Person to compliantly taken on responsibility outside the Qualified Person's purview and defend themselves to their peers, as well as being considered appropriate Qualified Persons by a regulator.

What Experience Counts?

The definition of a Qualified Person requires:

> *(a) has at least 5 years of experience as a professional geoscientist, professional engineer or the equivalent of either in mineral exploration, mine development, mine operation or mineral project assessment, or any combination of those,*
> *(b) has experience relevant to the subject matter of the mineral project,*

The Companion Policy adds:

> *The definition of "qualified person" in the Instrument does not include engineering or geoscience technicians, engineers or geoscientists in training, or any designation that restricts an individual's scope of practice or requires the individual to practise under the supervision of a professional engineer, professional geoscientist, or equivalent.*
>
> *Paragraph (b) of the definition requires a qualified person to have appropriate experience relevant to the subject matter of the mineral project, which we interpret to mean a level of experience sufficient to be able to identify with substantial confidence valid assumptions, risks and any problems that could affect the reliability of data related to the mineral project. This includes relevant experience acquired before or after the completion of any related professional registration. Relevance to the subject matter of the mineral project is not restricted to commodity type but may include deposit type and style of mineralization, as well as the specific type of activity being undertaken by the individual which often relates to the development stage of the mineral project and the individual's area of practice. An individual acting as a qualified person should be clearly satisfied that they could face their peers and demonstrate competence and relevant experience within their area of practice.*

It is clear that a major aspect of being a Qualified Person in the Proposed Modernization Draft is a demonstrated ability to pay annual professional dues: that is why this is the first part of the Qualified Person definition in (a).

What is not clear is how and when relevant experience is acquired and accrued to meet (b). The Companion Policy guidance says "This includes relevant experience acquired before or after the completion of any related professional registration" but does not extend to experience gained while acting as an engineering or geoscience technician, or an engineer or geoscientist in training.

A number of interpretations are possible, based on this guidance, on anecdotal feedback from regulator comment letters, professional association cease and desist letters, and news releases put out by issuers who have been found to be offside with their named Qualified Persons:

- Accrual of relevant experience is in abeyance until the five years of dues paying has been attained; relevant experience is acquired either before the five-year period or after, it is on hold until the five-year period is completed;
- Accrual of relevant experience can only happen if the geoscientist or engineer holds the appropriate membership category of a recognized overseas professional association and has been so for more than five years, in which case the geoscientist or engineer must have an additional five years of relevant experience, while still paying professional association dues;
- No relevant experience is accrued if the geoscientist or engineer is not, and never has held the appropriate membership category of a recognized overseas professional association;
- No relevant experience is accrued if the geoscientist or engineer has been a member of a professional association that is not a recognized overseas professional association.

All of these have been used by either the regulators or the professional associations to restrict or block individuals acting as Qualified Persons.

With so many uncertainties around such a significant determination, there has to be clear guidance in the Proposed Modernization Draft as to how relevant experience is acquired and when it can be accrued:

- It is critical to the issuer, who is responsible for selecting the Qualified Person
- It is critical to the Qualified Person when determining relevant experience
- It is critical to the issuer and the Qualified Person when determining which Qualified Person can take responsibility for information outside their purview, but also defend taking on that responsibility.

Higher Standard Required for Foreign Professionals

The 1999 Taskforce was clear that mining is global, and mining professionals are mobile:

> *The Task Force believes [such] reciprocal recognition of professional qualifications in securities regulation is imperative in light of the increasingly global nature of the mining industry.*

However, over time, a more restrictive attitude to foreign professionals has been adopted.

The Companion Policy states:

> *We interpret the reference to demonstrated prominence or expertise in subparagraph (d) (ii) (B) to mean having the membership designation equivalent to Canadian professional registration requirements. This includes at least 5 years of professional experience* ***and satisfying an additional entrance***

> ***requirement relating to level of responsibility*** [emphasis added]. *Some examples of such a requirement are:*
>
> > ***(i) at least 3 years in a position of responsibility where the individual was depended on for significant participation and decision-making;***
> >
> > ***(ii) experience of a responsible nature and involving the exercise of independent judgment in at least 3 of those years; or***
> >
> > ***(iii) at least 5 years in a position of major responsibility, or a senior technical position of responsibility.*** [emphasis added].

To quote the 1999 Taskforce again,:

> *No country, and no association, has a monopoly on professional competence.*

Canadian geoscientists and professional engineers do not have to meet these additional entrance requirements.

The commentary in (d) as to the stated number of years is applying "bright-line[1]" tests to what is in actuality a subjective evaluation of what must be met to satisfy "an additional entrance requirement relating to level of responsibility".

CSA staff are using these bright-line tests to discriminate between who is or is not a Qualified Person. The criteria used in the brightline tests for foreign professionals are more restrictive than are applied to "equivalent" Canadian Qualified Persons. Staff are also retroactively applying the determination. Most Qualified Persons and issuers will only find out about this policy, enacted since at least 2019, but not widely communicated by reading the Proposed Modernization Draft which attempts to enshrine the policy into law, as a backdoor method of legitimating the policy. This is one area that should have been a significant point of industry consultation.

There can be real consequences for a Qualified Person's career when subjective assessments are made of a Qualified Person's experience. This is not a small issue in a mining disclosure standard; it can affect a Qualified Person's entire career if the CSA staff determine what is and is not appropriate in what is clearly a subjective assessment.

Mineral Project Assessment

It is unclear what constitutes "mineral project assessment" as set out in part (a) of the definition of a Qualified Person.

While this was also in the 2011 edition, no guidance is provided in either edition as to how the Qualified Person or issuer should interpret mineral project assessment:

- Experience with mining study reviews; Mineral Resource, Mineral Reserve, mining study and operating mine audits; or due diligence evaluations?

[1] Bright line test is a test that uses objective factors to determine outcomes, leaving little room for interpretation or discretion.

- Or with the change to the definition of a mineral project to being mineral tenure, is this meant to allow those who work with mineral rights to accrue relevant experience?
- Is mineral project assessment a way of incorporating the time spent by regulators in reviewing mineral projects a way for those regulators to continue accruing relevant experience?

- Experience with evaluating the robustness of a mining study for go/no go funding, as in corporate finance evaluations?
  - Cost estimation and estimation buildup?
  - Cashflow modelling?

In Good Standing

Part (c) of the definition of Qualified Person requires the Qualified Person to be in "good standing".

Guidance is required to explain how the issuer and Qualified Person should interpret the requirement.

Is "good standing" just a cross-check that the Qualified Person has paid professional association membership dues?

S-K 1300 makes it clear that being in good standing means that the Qualified Person was fully dues-paid-up at the time of filing the technical report summary. Is that interpretation applicable to the Proposed Modernization Draft: that the Qualified Person is in good standing at the filing date but can let the professional association membership lapse after that date?

The guidance on what constitutes good standing is lacking in qualifying what this means for the issuer in terms of continued reliance on disclosure approved by a Qualified Person after the disclosure has been filed, but if the Qualified Person is in dues arrear or has let the membership lapse.

Obligate

Part (d) of the definition has an "obligate or require" clause. In two instances, both related to the definition of a professional association, the term "imposes an obligation" has been inserted in the Proposed Modernization Draft, in addition to stating in those same two instances that "requires" is in addition to the obligation.

This reads like an unhelpful stylistic change for the sake of change. Using "require" would be better understood by industry.

It is not clear why the CSA staff consider that both "requires" and "obligates" are both needed in an instruction.

> *"require": need or depend on; instruct or expect (someone) to do something*
>
> *"obligate": compel (someone) to undertake a legal or moral duty;*
>
> *"obligation": an act or course of action to which a person is morally or legally*

> *bound* [Concise Oxford Dictionary]

The context of “obligate” and “obligation” requiring some level of coercion is unsettling in the context of mining disclosure and the uncertainties around the data that a Qualified Person may have available, and the fact that most of the results of mining studies and mining operations are based on estimates, predictions, and forecasts. There is a reason the CIM and industry generally use the term “concepts”, not “calculations”.

Part (d) of the definition conflates professional registration with expertise. This is simply not true, and is concerning that paying dues is seen to be an acceptable precursor to actually acquiring experience. The key principle should be the criterion relevant experience, not the professional association membership; that is subsidiary.

Quantity

Proposed Modernization Draft

Rule	Companion Policy
"quantity" means tonnage or volume based on the standard applied in the mining industry to the type of mineral;	No guidance provided

Blackline

"quantity" means ~~either~~ tonnage or volume~~, depending~~ based on ~~which term is~~ the standard applied in the mining industry ~~for~~to the type of mineral;

Comment

The changes in the Proposed Modernization Draft are cosmetic. That the issuer and Qualified Person understanding of the term is bettered by the changes made is not obvious.

SAMREC Code

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"SAMREC Code"** means the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves prepared by the South African Mineral Resource Committee (SAMREC) under the Joint Auspices of the Southern African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended;~~

Comment

This definition has been deleted from the Proposed Modernization Draft because if the Proposed Modernization Draft wording is adopted, no foreign code will be accepted for use in disclosure documents. Any issuer in Canada will have to report using the CIM Definition Standards.

SEC Industry Guide 7

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"SEC Industry Guide 7"** means the mining industry guide entitled "Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations" contained in the Securities Act Industry Guides published by the United States Securities and Exchange Commission, as amended;~~

Comment

This definition has been deleted from the Proposed Modernization Draft because if the Proposed Modernization Draft wording is adopted, no foreign code will be accepted for use in disclosure documents. Any issuer in Canada will have to report using the CIM Definition Standards.

In addition, the SEC had replaced Industry Guide 7 with S-K 1300 in 2018, which became mandatory for all US registrants from 2021 onwards.

The Proposed Modernization Draft partially addresses US registrants under the heading "Certain SEC Issuer Filings".

Specified Exchange

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**"specified exchange"** means 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;~~

Comment

The definition of a specified exchange had meaning when it came to assessing Qualified Person independence requirements in the 2011 edition, and to certain exemptions allowed for royalty companies.

It was an allowance only available to foreign listed, producing mining companies that wanted to become Canadian reporting issuers. The allowance indicated that the exchange, as well as requiring mining issuers to disclose under an acceptable foreign code, also, in the view of the CSA staff, provided satisfactory oversight and enforcement of disclosure standards.

This definition has been deleted from the Proposed Modernization Draft because the draft no longer recognizes foreign codes.

Technical Report

Proposed Modernization Draft

Rule	Companion Policy
"technical report" means a report prepared and filed in accordance with this Instrument;	(e) "technical report" – We expect a technical report to include a summary of all relevant information about the mineral project. The qualified person is responsible for preparing the technical report. Therefore, it is the qualified person, not the issuer, who has the responsibility of determining the relevance of the scientific or technical information to be included in the technical report. A report may constitute a "technical report" as defined in the Instrument, even if prepared before the date the technical report is required to be filed, provided the information in the technical report remains accurate and complete as at the required filing date. However, a report that an issuer files that is not required under the Instrument will not be considered a technical report until such time as the Instrument requires the issuer to file it and the issuer has filed all certificates and consents of qualified persons required under the Instrument.

Blackline

Rule

"technical report" means a report prepared and filed in accordance with this Instrument ~~and Form 43-101F1 Technical Report that includes, in summary form, all material scientific and technical information in respect of the subject property as of the effective date of the technical report; and~~;

Companion Policy

(e) "technical report" – We expect a technical report to include a summary of all relevant information about the mineral project. The qualified person is responsible for preparing the technical report. Therefore, it is the qualified person, not the issuer, who has the responsibility of determining the relevance of the scientific or technical information to be included in the technical report.

~~(8)~~ A report may constitute a "technical report" as defined in the Instrument, even if prepared ~~considerably~~ before the date the technical report is required to be filed, provided the information in the technical report remains accurate and complete as at the required filing date. However, a report that an issuer files that is not required under the Instrument will not be considered a technical report until such time as the Instrument requires the issuer to file it and the issuer has filed ~~the required~~all certificates and consents of qualified persons required under the Instrument.

~~The definition requires the technical report to include a summary of all material information about the subject property~~Section 3 ~~. The qualified person is responsible for preparing the technical report. Therefore, it is the qualified person, not the issuer, who has the responsibility of determining the materiality of the scientific or technical information to be included in the technical report.~~

Comment

The concern with the removal of much of the definition of what constitutes a technical report is the significant broadening of scope that a Qualified Person and the issuer must now be aware of.

There is also a lot to unpick on the changes to the definition of a technical report.

Material/Relevant

The new wording in the Proposed Modernization Draft Companion Policy, when referring to the technical report has struck out "material", and replaced it with "relevant".

Whichever word is used, it still leaves the Qualified Person with the responsibility for determining what information needs to be in the technical report.

Is it possible to have relevant information that is not material? Informal polling of legal counsel indicates that yes, material information is a subset of relevant information. This widens what a Qualified Person has to understand of relevancy when determining what needs to be in the technical report. The natural instinct will be to include as much information as possible to ensure compliancy, which will naturally contradict the summary disclosure instruction. All relevant ≠ summarization.

The risk for issuers and Qualified Persons with endeavouring to meet Form instructions and provide compliant disclosure in the technical report, is that there is no definition of relevant, whereas there is a definition for material. Even then, materiality has two levels to consider: corporate (at the issuer level) and project. Is there a similar differentiation for relevant for when information is only relevant at the issuer level versus relevant at the project level? A clear

understanding of the concept of what is “relevant” is needed if the section is not to be flooded with immaterial information because the Qualified Person errs on the side of more is better in the hope of a technical report section not being found to have compliance issues.

In the context of the volume of information that must be collected, assembled, evaluated, interpreted, and subsequently used in estimation and designs for mining studies and mine operations, there will be different levels of relevance. Should the Qualified Person’s determination of relevance in the context of a mining study be tied to an individual component of the study, or to the entire study? In the context of the mining operation, is the ability to continue operations the filter for determining relevance?

Since relevant and material are used in different contexts throughout the Proposed Modernization Draft, in conjunction with numerous instructions to provide “any” and “all” information, it is no longer clear if the relevant information instruction will allow summarization by the Qualified Person. It is critically important to clarify the definition of “relevant”, how it differs from “material”, where “any” and “all” over-ride either or both of “relevant” and “material”, in the Proposed Modernization Draft. Otherwise, investors will be swamped with information that is not material, and information that is both relevant and material information will be lost in the noise.

“May Constitute a Technical Report”

It is not clear with this guidance:

A report may constitute a “technical report” as defined in the Instrument”

whether an interpretation should be that no company can use the term “technical report” or use the Form instructions for a technical report if the document is actually not triggered by a Canadian requirement to prepare and file a technical report. Is this restricting technical report to a type of trademark? Can a company prepare a report and call it a technical report if they are not a Canadian issuer?

Voluntarily-filed reports appear to be being discouraged, which is unfortunate, as such documents are useful for issuers to provide more detailed disclosure to their investors in the absence of a technical report trigger for filing a technical report. Barriers to disclosure should be seen as an issue, not a plus.

Written Disclosure

Proposed Modernization Draft

Rule	Companion Policy
"written disclosure" includes any writing, picture, map or other printed representation, whether produced, stored or disseminated on paper or electronically.	No guidance provided

Blackline

"written disclosure" includes any writing, picture, map, or other printed representation, whether produced, stored or disseminated on paper or electronically ~~including websites~~.

Comment

This change in the Proposed Modernization Draft is cosmetic.

What is required to meet the definition of written disclosure, however, has significantly more content requirements than are provided in the Proposed Modernization Draft Rule, and is set out, as if it were part of the regulations within the Rule, in the Proposed Modernization Draft Companion Policy. These are discussed in this document with the commentary on Part 2, Part 3, and Part 4.

CIM Defined Terms

Proposed Modernization Draft

Rule	Companion Policy
1. (2) In this Instrument, each of the following terms is listed in the order it appears and has the meaning ascribed to it in the CIM Definition Standards for Mineral Resources & Mineral Reserves adopted by CIM, as amended from time to time: (a) exploration target; (b) mineral resource; (c) inferred mineral resource; (d) indicated mineral resource; (e) measured mineral resource; (f) modifying factors; (g) mineral reserve; (h) probable mineral reserve; (i) proven mineral reserve; (j) scoping study; (k) pre-feasibility study; (l) feasibility study; (m) life of mine plan.	No guidance provided

Blackline

CIM defined terms

~~1.2~~2. In this Instrument, each of the ~~terms "mineral resource", "inferred mineral resource", "indicated mineral resource" and "measured mineral resource" have the meanings~~following terms is listed in the order it appears and has the meaning ascribed to ~~those terms by the Canadian Institute of Mining, Metallurgy and Petroleum, as~~it in the CIM Definition Standards ~~on~~for Mineral Resources ~~and~~& Mineral Reserves adopted by CIM ~~Council~~, as amended~~.~~ from time to time:

~~**Mineral Reserve**~~

(a) ~~In this Instrument, the terms "~~exploration target;

(b) mineral resource;

(c) inferred mineral resource;

(d) indicated mineral resource;

(e) measured mineral resource;

(f) modifying factors;

(g) mineral reserve~~", ";~~

(h) probable mineral reserve~~" and ";~~

~~1.3~~(i) proven mineral reserve~~" have the meanings ascribed to those terms by the Canadian Institute of Mining, Metallurgy and Petroleum, as the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council, as amended.;~~

~~**Mining Studies**~~

(j) ~~In this Instrument, the terms "preliminary feasibility~~scoping study~~", ";~~

(k) pre-feasibility study~~" and ";~~

~~1.4~~(l) feasibility study~~" have the meanings ascribed to those terms;~~ ~~by the Canadian Institute of Mining, Metallurgy and Petroleum, as the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council, as amended.~~

(m) life of mine plan.

Comment

Three of the CIM terms are new: Exploration Target, Scoping Study and Life-Of-Mine Plan. The terms were sent out for a public comment period on .

It should be mandatory for the Proposed Modernization Draft to use the CIM-defined terms exactly as they are defined in the CIM Definition Standards, capitalization, and all. CSA staff are deliberately ignoring industry preferences in the dash for style. Style isn't substance when it comes to definitions of terms that have legal implications.

The focus on removing Title Case presentation, as the CSA staff have done here, could have serious consequences for Qualified Persons and issuers. All of the CIM definitions that are incorporated by reference into NI 43-101 are capitalized terms in the CIM Definition Standards. The CIM deliberately took this approach to ensure that common English expressions could still be used in public disclosure:

- "inferred" could still be used to identify a fault trace that is uncertain, or identify that inferring geological continuity under cover was reasonable, but not demonstrated; it was not a term restricted to Inferred Mineral Resources;
- "life of mine plan" could still be used for the mine plan that supports a Scoping Study, Pre-Feasibility Study or Feasibility Study; it would only be a defined term as set out in the new CIM definition Life Of Mine Plan if it met that definition, which is restricted to the use in an operating mine context.

Independence

Proposed Modernization Draft

Rule	Companion Policy
1 (3) In this Instrument, a qualified person is independent concerning a technical report if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment concerning the preparation of the technical report.	When an independent qualified person is required, an issuer and a qualified person should apply the test in section 3 of the Instrument to confirm that the requirement is met. The below is a non-exhaustive list of circumstances when we would consider that a qualified person is not independent for the purposes of the Instrument. There may be other circumstances when an individual would not be considered independent. We consider that a qualified person is not independent if the individual: (a) is or expects to be an employee, insider or director of the issuer; (b) is or expects to be an employee, insider or director of a related party of the issuer; (c) is or expects to be a partner of a person or company in paragraph (a) or (b); (d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer, as defined in securities legislation; (e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the mineral project that is the subject of the technical report or in a neighbouring mineral project; (f) is or expects to be an employee, insider or director of another issuer that has a direct or indirect interest in the mineral project that is the subject of the technical report or in a neighbouring mineral project; or (g) has or expects to have, directly or indirectly, an ownership, royalty or other interest in the mineral project that is the subject of the technical report or a neighbouring mineral project. As well, in some cases, it might be reasonable to consider that independence is not compromised even though the qualified person holds an interest in the issuer's securities, the securities of another issuer with an interest in the subject mineral project, or in a neighbouring mineral project. The issuer needs to determine whether a reasonable person would consider such interest would interfere with the qualified person's judgment regarding the preparation of the technical report.

Blackline

Rule

~~1.5~~3. In this Instrument, a qualified person is independent ~~of an issuer~~concerning a technical report if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment concerning the preparation of the technical report.

~~could interfere with the qualified person's judgment regarding the preparation of the technical report.~~

Companion Policy

~~1.5~~ **Independence**

(1) ~~**Guidance on Independence** – Section 1.5 of the Instrument provides the test an issuer and a qualified person must apply to determine whether a qualified person is independent of the issuer.~~ When an independent qualified person is required, an issuer ~~must always~~and a qualified person should apply the test in section ~~1.5~~3 of the Instrument to confirm that the requirement is met.

~~Applying this test, the following are examples of~~ The below is a non-exhaustive list of circumstances when we would consider that a qualified person is not independent~~. These examples are not a complete list of non-independence situations~~ for the purposes of the Instrument. There may be other circumstances when an individual would not be considered independent.

We consider that a qualified person is not independent ~~when~~if the ~~qualified person~~individual:

(a) is or expects to be an employee, insider~~,~~ or director of the issuer;

(b) is or expects to be an employee, insider~~,~~ or director of a related party of the issuer;

(c) is or expects to be a partner of ~~any~~a person or company in paragraph (a) or (b);

(d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer, as defined in securities legislation;

(e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the ~~property~~mineral project that is the subject of the technical report or in ~~an adjacent property~~a neighbouring mineral project;

(f) is or expects to be an employee, insider~~,~~ or director of another issuer that has a direct or indirect interest in the ~~property~~mineral project that is the subject of the technical report or in ~~an adjacent property;~~a neighbouring mineral project; or

(g) has or expects to have, directly or indirectly, an ownership, royalty~~,~~ or other interest in the ~~property~~mineral project that is the subject of the technical report or ~~an adjacent property; or~~a neighbouring mineral project.

~~(h) has received the majority of their income, either directly or indirectly~~As well, in ~~the three years preceding the date of the technical report from the issuer or a related party of the issuer.~~

~~For the purposes of (d) above, a related party of the issuer means an affiliate, associate, subsidiary, or control person of the issuer as those terms are defined in securities legislation.~~

~~(2)~~ ~~**Independence Not Compromised –**~~ In some cases, it might be reasonable to consider ~~the qualified person's~~that independence is not compromised even though the qualified person holds an interest in the issuer's securities, the securities of another issuer with an interest in the subject ~~property~~mineral project, or in ~~an adjacent property~~a neighbouring mineral project. The issuer needs to determine whether a reasonable person would consider such interest would interfere with the qualified person's ~~judgement~~judgment regarding the preparation of the technical report.

Comment

Independence Concept

Regulatory peers in other jurisdictions have also not agreed with the Canadian requirement: Canada is the only jurisdiction that requires independence when preparing a technical report or its equivalent. No other jurisdiction that MTS is aware of requires independence in the manner that NI 43-101 mandates, or in the manner that the CSA staff choose to interpret the battery limits of independence. Canada is completely out of step with peers in this instance.

Is the independence requirement demonstrably showing that the work by those Qualified Persons is better than that completed by non-independent Qualified Persons, such as an issuer's own employees? Is the independence requirement demonstrably showing that there are fewer refiles of independently-prepared technical reports being requested after regulatory review than for non-independently prepared technical reports? Is the allowance for producing issuers to have non-independent Qualified Persons demonstrably showing that these Qualified Persons produce less rigorous reports with more compliance issues than independent Qualified Persons on independent reports?

CSA staff have in recent times expanded the number of times that they question or second-guess Qualified Persons. Often this is done during a capital raising, and the CSA staff identification of issues with a Qualified Person's practices or interpretations are done in the non-publicly available comment letters. The rise in the number of instances of issues raised with a Qualified Person's practices, interpretations, and judgement calls is causing industry uncertainty, since even an independently-prepared technical report can be the subject of a laundry list of compliance issues, liberally sprinkled with the "potentially misleading" tag, as well as complete uncertainty over who is an independent Qualified Person.

The current approach contradicts one of the key premises in the 1999 Final Report of the TSE/OSC Mining Standards Task Force, Setting New Standards: Proposed Standards for Public Mineral Exploration and Mining Companies (the 1999 Taskforce Report), which stated that:

> *Reliance on a QP mitigates the need for regulators to set specific standards in many technical areas. Instead, responsibilities for these activities are left to a QP. The necessary decisions or judgement calls are left to the professional judgement of a QP which is applied according to the circumstances of the specific case*

The 1999 Taskforce Report did not differentiate here between judgement of an independent or non-independent Qualified Person, or assume that a non-independent Qualified Person was immediately compromised in certain circumstances:

> *Having embraced the concept of placing responsibility in the hands of regulated professionals, we believe that the cost of independent reporting in all situations would greatly exceed the benefits of independence except in [these] limited circumstances.*
>
> *We believe that any reservations about reporting by in-house geoscientists or engineers can best be resolved by requiring the in-house QP to disclose his or her relationship with the mining company in a report. Recipients of the report*

can evaluate the information in light of the QP's disclosure.

Over the years, however, the regulations have significantly drifted from the concept of requiring independence in limited circumstances.

The list of areas whereby the CSA staff will consider a Qualified Person is not independent is actually longer in the Proposed Modernization Draft Companion Policy than in the earlier 2011 edition. A list that still ends with "the list of examples is not exhaustive", is not providing guidance or clarity.

In a June 2025 CIM article authored by two former regulators, the following instances of non-independence are included:

> *"Many factors can compromise independence, not just financial ones; for example, if a report author:*
>
> - *Expected employment, a board seat or a project management contract;*
> - *Had an interest in intellectual property (like a beneficiation process) that was part of the development plan;*
> - *Had a long previous history working on the property, or had made the company's internal resource or reserve estimates;*
> - *Worked for a consulting firm that held an interest in the property or in the transaction where the company acquired it;*
> - *Worked for a consulting firm where one of the principals was an officer or director of the company; or,*
> - *Worked for a consulting firm that took shares in the company as payment". [https://magazine.cim.org/en/ni-43-101-myths/independent-learning-en/]*

Both authors coyly state that they are presenting in their personal capacities; however, the presentation does not reflect a personal interpretation. It reads like the check-list that the CSA staff are covertly using. Certainly at least one, if not more, of the listed items would have generated major feedback from industry if it had actually been part of any type of industry consultation process. And certainly, there are anecdotal examples of where the wording highlighted above was used by CSA staff to disqualify a Qualified Person from being independent. The list provided in that article is subjective; it is not objective.

This list disbars a significant portion of the mining industry who meet the definition of a Qualified Person from acting as such, because they will not be able to meet, in particular, the requirement that they or their consulting firm did not have "a long previous history working on the property, or had made the company's internal resource or reserve estimates". The longer a Qualified Person has worked in the mining industry, particularly for major companies or consultancies, the more likely the company or consultancy will have worked on a particular project, and the more likely the Qualified Person will have some previous history with a particular project, with the corollary that

the more experience, the less likely a Qualified Person will be able to demonstrate independence to CSA staff satisfaction.

This unnecessary adherence to a requirement that the CSA staff themselves have not demonstrated as a benefit to industry is beginning to undermine the credibility not only of the CSA staff, but of NI 43-101. Continuing with such a requirement impacts the industry by holding financings hostage, obstructing financings such that the financing opportunity is lost, introduces Qualified Person and issuer liability for benefit of various legal counsel but no clear investor benefit, and requires an unnecessary cost burden associated with re-doing reports on the basis of a regulator determining that independence has been compromised due to a list of non-public policy exemptions that conveniently fall under the rubric of “the list of examples is not exhaustive”.

Whether an independent technical report is required should be the decision of an issuer’s board of directors; not at the direction of CSA staff. The Board may wish to have an independent report for corporate governance or as part of a capital raising or financial transaction. That, however, should remain as a Board responsibility, not a Rule requirement.

The requirement is an unnecessary duplication of the requirement to have Qualified Persons prepare the information in a technical report; it is an unnecessary cost to the issuer; and no studies have demonstrated that independence is providing a better technical report product.

Furthermore, the requirement compounds barriers for issuers. Canada is currently undergoing a period of introspection that explicitly identifies regulatory barriers as a major concern. Both Federal and Provincial governments have been accused of facilitating increased regulatory costs, barriers to employment, and barriers to obtaining the best fit of workers to the job requirements. What the Independence definition, and its unwritten policy applications of when a Qualified Person is and isn’t independent, imposes an unnecessary barrier to efficient mining activity, and a restriction on having the correct expertise available on information provided to investors. The concept of independence as a requirement for technical reports in certain instances is not in the public interest. Qualified Persons should just be requested to state their relationship to the issuer.

A final point is that the rewording could be viewed as unenforceable. It is a relatively easy concept to understand independence of an issuer. It is another to understand what independence of the work completed and summarized in a technical report entails. How does an issuer or Qualified Person prove independence of a technical report? The 1999 Taskforce Report considered that prior involvement with a property was acceptable, if not a good thing.

It is not the technical report that is at issue; how the report is put together is formulaic and dictated by the Form content requirements. It is whether the interpretations and conclusions of the Qualified Person presented in the technical report would be affected if they were not independent, absent deliberate malfeasance.

In addition, the 1999 Taskforce Report made the following comments on fraud:

> *While regulation can address disclosure problems by refinements to the requirements of the disclosure regime, regulation cannot entirely prevent fraud. Fraud, by its nature, contravenes the regulatory regime and violates criminal law. Although it is intuitively obvious, it is worth noting that fraud is not peculiar to the securities industry and within the securities industry it is not peculiar to mining companies.*

> *The Task Force does not believe that burdening the mining industry with excessive or unnecessary regulation would eliminate the potential for future scandals. The regulatory response to the Windfall scandal drove the junior mining sector and mining investors out of Ontario, but did not stop fraud. If regulatory over-kill were to be pursued in the interests of ensuring that no one could ever again fool the Canadian stock markets, the inevitable result would be to drive mining finance abroad to competitor markets. In addition, the erosion of jurisdictional boundaries in global finance, communications and trade must always be considered while structuring regulation within a jurisdiction. The futility of relying wholly on Canadian regulators and professional associations within a global industry must also be kept in mind. Regulation has to be realistic to be effective and should focus on those areas that represent the most significant exposure to risk and that are least amenable to self-regulation by the marketplace.*

In the instance of a number of mining industry frauds over the past 30 years, the technical report data were reviewed by independent Qualified Persons, who did not notice the fact that data had been manipulated. Independence is not a guarantee to industry that potential issues with a mineral project will be identified, neither is a Qualified Person completing data verification providing cast iron certainty that the data are suitable. Data verification is a small part of assessment of data; often what is more important is how those data are used, interpreted, and extrapolated.

A small portion of the issues are not related to independence or non-independence of the Qualified Person, the issue is simply poor quality work. This can result from trying to complete studies on limited budgets that result in corner-cutting, or fast-tracking of studies to meet unrealistic deadlines. Independence cannot be a cure-all, nor a band-aid, for studies that have been subject to such pressures.

Independence may in fact be creating a false sense of security in the minds of CSA staff that the independence requirement removes or reduces bad behaviour, and their enforcement and continuous, and non-publicly communicated, tweaks to independence interpretations could reflect that interpretation.

Independence of a Technical Report

The introduction to the Rule states:

> ***1** (3) In this Instrument, a qualified person is independent concerning a technical report if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment concerning the preparation of the technical report.*

It is a relatively easy concept to understand independence of an issuer. It is another to understand what independence of the work completed and summarized in a technical report entails. How can an issuer or Qualified Person prove independence of a technical report. The 1999 Taskforce Report considered that prior involvement with a property was acceptable, if not a good thing.

It is not the technical report that is at issue; how the technical report is put together is formulaic and dictated by the Form content requirements. It is whether the interpretations and conclusions of the Qualified Person presented in the technical report would be affected if they were not independent, absent deliberate malfeasance. The onus for proving that independence is critical is on the regulators, and they have not provided a reasonable basis for the continued imposition of an independence requirement.

Objectivity of Author

The guidance in (21) (3) of the Companion Policy is another example of unclear guidance. In some instances in the Proposed Modernized Draft, the "author" terminology has been replaced by Qualified Person, in others, where Qualified Person would be a helpful point of clarity, "author" has been retained.

> *(21) (3) Objectivity of author – We could question the objectivity of the author based on our review of a technical report. To preserve the requirement for independence of the qualified person, we could ask the issuer to provide further information, additional disclosure, or the opinion or involvement of another qualified person to address concerns about possible bias or partiality on the part of the author of a technical report.*

In the context of this guidance, the term should be Qualified Person. Qualified Persons prepare and take responsibility for technical reports; that should be clear, and the lack of clarity as to the intended target be removed by explicitly tying the questioning of objectivity to that of the Qualified Person.

There is no provision of any avenue in the guidance for a Qualified Person or issuer to contest the CSA staff questioning. There is no complaint mechanism that gives a Qualified Person or an issuer a right of appeal over a CSA staff determination. This is going to become a huge burden on the industry as it is almost impossible to be certain of what compliant disclosure will look like. There are too many conflicting instructions such as summarization versus providing "any", "all", "relevant" and "as available" information, instructions that have no corresponding industry practices such as what constitutes appropriate data verification for many disciplines, burdening the Qualified Person with "being able to demonstrate their understanding of standards of disclosure for mineral projects" when the CSA staff are unable to provide the Qualified Person with clear, unambiguous instructions and clarity of guidance.

A final issue with this guidance is that again, it is inserting the CSA staff, again, into the issuer's Boardroom. In fact, this content, where the CSA staff reserve the right to decide who is and is not an appropriate Qualified Person over-rides the earlier, supposedly definitive, pronouncement that it is the "responsibility of the issuer and its directors and officers to retain a qualified person".

Non-Application – Certain SEC Issuer Filings

Proposed Modernization Draft

Rule	Companion Policy
1. (4) This Instrument does not apply to written disclosure of scientific and technical information filed by an issuer if the written disclosure is disclosure material filed only to comply with paragraph 11.1 (1) (b) of National Instrument 51-102 Continuous Disclosure Obligations.	No guidance provided

Blackline

The text is new to the Proposed Modernization Draft

Non-application – certain SEC issuer filings

4. This Instrument does not apply to written disclosure of scientific and technical information filed by an issuer if the written disclosure is disclosure material filed only to comply with paragraph 11.1 (1) (b) of National Instrument 51-102 *Continuous Disclosure Obligations*.

Comment

This citation refers to the text in NI 51-102 that states:

> *11.1 Additional Disclosure Requirements*
>
> *(1) A reporting issuer must file a copy of any disclosure material*
>
> *(b) in the case of an SEC issuer, that it files with or furnishes to the SEC under the 1934 Act, including material filed as exhibits to other documents, if the material contains information that has not been included in disclosure already filed in a jurisdiction by the SEC issuer.*

What the exclusion is allowing, is that information filed with the SEC using the 1934 Exchange Act Forms (e.g. 8-K, 10-Q, 10-K) where that information was prepared under the local rules in a jurisdiction outside Canada, does not have to be presented in accordance with NI 43-101.

It is assumed that this carve-out means that this information does not fall under the definition of “disclosure” as set out in the Proposed Modernization Draft.

Part 2 Disclosure Requirements

All Disclosure

Proposed Modernization Draft

Rule	Companion Policy
2. (5) An issuer that discloses scientific or technical information concerning a mineral project must: (a) base the disclosure on information prepared by or under the supervision of a qualified person, or (b) obtain prior approval of a qualified person to the disclosure.	5. (a) Disclosure is the responsibility of the issuer – Primary responsibility for public disclosure remains with the issuer and its directors and officers. The qualified person is responsible for preparing or supervising the preparation of the technical report and providing scientific and technical advice in accordance with applicable professional standards. The proper use, by or on behalf of the issuer, 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 and, in the case of a filed document, each signatory to the document, to ensure that disclosure in the document is consistent with the related technical report or technical advice or opinion. An issuer should consider having the qualified person review disclosure that summarizes or restates the technical report or the technical advice or opinion to ensure that the disclosure is accurate.
	5 (b) Material information not confirmed by a qualified person – Securities legislation requires an issuer to disclose material facts and to make timely disclosure of material changes. We recognize that there can be circumstances in which an issuer expects that certain information concerning a mineral project may be material notwithstanding the fact that a qualified person has not prepared or supervised the preparation of the information. In this situation, the issuer may file a confidential material change report concerning this information while a qualified person reviews the information. Once a qualified person has confirmed the information, the issuer can issue a news release and the basis of confidentiality will end. During the period of confidentiality, persons in a special relationship to the issuer are prohibited from tipping or trading until the information is disclosed to the public. National Policy 51-201 Disclosure Standards provides further guidance about materiality and timely disclosure obligations.
	5 (c) Making information available to the public – Issuers should consider broadly the various instances when information about mineral projects is made available to the public and whether the requirement in

Rule	Companion Policy
	section 5 of the Instrument has been satisfied. This applies to a broad range of disclosure including, but not limited to, the following: • public speeches, presentations or social media posts made by or shared by representatives of the issuer or on behalf of the issuer; • interviews involving representatives of the issuer or made on behalf of the issuer, where a transcript is not immediately available to the viewer; • information contained in a continuous disclosure filing required under securities legislation; • information contained in any written disclosure that is published by the issuer or a representative of the issuer in a manner which effectively reaches the public, whether or not filed with us; • information contained in written disclosure made in connection with a distribution of securities; • information contained in a presentation slide deck presented by a representative of the issuer or on behalf of the issuer; and • all forms of electronic transmission, including information contained in video or video transcripts, whether or not automatically generated, that are available to the public.

Blackline

Rule

All disclosure

~~2.1~~5. An issuer ~~of~~that discloses scientific or technical information ~~made by an issuer, including disclosure of a mineral resource or mineral reserve,~~ concerning a mineral project ~~on a property material to the issuer~~ must ~~be~~

(a) ~~based upon~~base the disclosure on information prepared by or under the supervision of a qualified person~~;~~, or

~~approved by~~

(b) obtain prior approval of a qualified person to the disclosure.

Companion Policy

PART 2 DISCLOSURE REQUIREMENTS ~~APPLICABLE TO ALL DISCLOSURE~~

~~**2.1 Requirements Applicable to All Disclosure**~~

Section 5 All disclosure

~~(1)~~(a) **Disclosure is the ~~Responsibility~~responsibility of the ~~Issuer~~issuer** – Primary responsibility for public disclosure remains with the issuer and its directors and officers. The qualified person is responsible for preparing or supervising the preparation of the technical report and providing scientific and technical advice in accordance with applicable professional standards. The proper use, by or on behalf of the issuer, 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 and, in the case of a filed document ~~filed with a securities regulatory authority~~, each signatory to the document, to ensure that disclosure in the document is consistent with the related technical report or technical advice or opinion. An issuer should consider having the qualified person review disclosure that summarizes or restates the technical report or the technical advice or opinion to ensure that the disclosure is accurate.

~~(2)~~(b) **Material ~~Information~~information not ~~yet Confirmed~~confirmed by a ~~Qualified Person~~qualified person** – Securities legislation requires an issuer to disclose material facts and to make timely disclosure of material changes. We recognize that there can be circumstances in which an issuer expects that certain information concerning a mineral project may be material notwithstanding the fact that a qualified person has not prepared or supervised the preparation of the information. In this situation, the issuer may file a confidential material change report concerning this information while a qualified person reviews the information. Once a qualified person has confirmed the information, the issuer can issue a news release and the basis of confidentiality will end.

During the period of confidentiality, persons in a special relationship to the issuer are prohibited from tipping or trading until the information is disclosed to the public. National Policy 51-201 *Disclosure Standards* provides further guidance about materiality and timely disclosure obligations.

(c) ~~All~~ **Making information available to the public** – Issuers should consider broadly the various instances when information about mineral projects is made available to the public and whether the requirement in section 5 of the Instrument has been satisfied. This applies to a broad range of disclosure including, but not limited to, the following:

- public speeches, presentations or social media posts made by or shared by representatives of the issuer or on behalf of the issuer;
- interviews involving representatives of the issuer or made on behalf of the issuer, where a transcript is not immediately available to the viewer;
- information contained in a continuous disclosure filing required under securities legislation;
- information contained in any written disclosure that is published by the issuer or a representative of the issuer in a manner which effectively reaches the public, whether or not filed with us;
- information contained in written disclosure made in connection with a distribution of securities;
- information contained in a presentation slide deck presented by a representative of the issuer or on behalf of the issuer; and
- all forms of electronic transmission, including information contained in video or video transcripts, whether or not automatically generated, that are available to the public.

Comment

Although there are only minor edits and changes to the 2011 edition content, none of the problems with the 2011 edition guidance have been addressed. There remain numerous issues to unpick with these instructions.

There is no materiality filter remaining in the instruction; it applies now to all disclosure, as disclosure is now defined in the Proposed Modernization Draft. It also applies to all mineral projects, whether material or non-material.

The requirement equates approval of a Qualified Person with legal approval; this is doing a major disservice to the actual role of a Qualified Person and when the implications are understood, will result in more industry professionals who could act as Qualified Persons declining to do so.

Responsibility of the Issuer

As written, this is not completely true in all instances. The Qualified Person signs a consent for a technical report where that report is being used to support a prospectus. The prospectus requires a prior approval of the Qualified Person; this could also take the form of a formal written consent. The securities act assigns the liability to whoever signed the consent. This means that who is held responsible under the Securities Act for misrepresentation is the Qualified Person, not the issuer.

Prior Approval

There is no guidance in the Proposed Modernization Draft as to what obtaining prior approval would look like. Is verbal approval from the Qualified Person sufficient, or does the prior approval have to be written approval (in effect a type of consent)?

It is still not clear how this prior approval is to be obtained in the context of many of the disclosure types listed in both the definition and restatement of the definition in the Companion Policy:

- Prior approval to statements in an interview?
- Prior approval to a discussion in a trade-show booth?
- How does a transcript that is immediately made available to the viewer incorporate prior approval?

Does management really have to tell the questioner during a Town Hall-type meeting to wait, while they contact the Qualified Person and obtain the Qualified Person's approval to what they wish to say?

This is not an example of, to quote the CSA news release, the Proposed Modernization Draft providing clarification and guidance. The 2022 Consultation Paper does not represent industry consultation on addition of a prior approval requirement, since the concept of prior approval was never raised by the CSA staff in that document and industry was not provided with an opportunity to comment on either the proposal or the cost impacts.

Does not requiring prior approval for speeches and presentations infringe on basic freedom of speech rights?

Filed Document

There is no guidance provided to the Qualified Person as to what would constitute a "filed document". What documents does this refer to, and who are the signatories? Does this mean filed on SEDAR? What gets filed? Does this refer to a consent to meet the requirement for "each signatory to the document"? This instruction requires additional guidance because the Qualified Person has a specific responsibility "to be able to demonstrate their understanding of standards of disclosure for mineral projects".

Making Information Available To The Public

All of this guidance is new, and much of it is not actually guidance. It simply restates the definition of disclosure, so is unnecessary.

What is meant by "considered"?

> *Issuers should consider broadly the various instances when information about mineral projects is made available to the public*

Section 2 (5) is clear that this is a must, not optional.

> ***2.*** *(5) An issuer that discloses scientific or technical information concerning a mineral project must*
>
> *(a) base the disclosure on information prepared by or under the supervision of a qualified person, or*
>
> *(b) obtain prior approval of a qualified person to the disclosure.*

Disclosure Of Mineral Resources Or Mineral Reserves

Proposed Modernization Draft

Rule	Companion Policy
2. (6) An issuer that discloses any information concerning a mineral resource or mineral reserve must (a) use only the applicable mineral resource and mineral reserve categories set out in section 2, (b) report each mineral resource and mineral reserve category separately and state whether mineral reserves are included in total mineral resources, and (c) if the quantity of contained metal or mineral is included in the disclosure, state the grade or quality and the quantity for each category of mineral resources and mineral reserves.	Section 6 of the Instrument requires that an issuer disclosing mineral resources or mineral reserves use only the terms and categories in the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council (CIM Definition Standards) as set out in section 2 of the Instrument. For mineral resources or mineral reserves estimated to another code, template or standard, these estimates of quantity and grade must be reported using the current CIM Definition Standards. Any differences or changes to comply with the CIM Definition Standards should be clearly explained. If an issuer wishes to announce an acquisition or proposed acquisition of a mineral project that contains estimates of quantity and grade that are not in accordance with the CIM Definition Standards, the issuer might be able to disclose the estimate as an historical estimate, in compliance with section 8 of the Instrument. However, it might be more appropriate for the issuer to disclose the estimate as an exploration target in compliance with subsection 7 (2) of the Instrument if the supporting information for the estimate is not well-documented.

Blackline

Rule

~~All~~ **Disclosure of ~~Mineral Resources or Mineral Reserves~~mineral resources or mineral reserves**

~~2.~~2~~6.~~ An issuer ~~must not disclose~~that discloses any information ~~about~~concerning a mineral resource or mineral reserve ~~unless the disclosure~~must

(a) ~~uses~~use only the applicable mineral resource and mineral reserve categories set out in ~~sections 1.2 and 1.3;~~section 2,

~~reports~~

~~(b)~~ report each mineral resource and mineral reserve category ~~of mineral resources and mineral reserves~~ separately~~,~~ and ~~states the extent, if any, to which~~state whether mineral reserves are included in total mineral resources~~;~~

~~(c)~~(b) ~~does not add inferred mineral resources to the other categories of mineral resources;~~, and

~~states~~

~~(d)~~(c) if the quantity of contained metal or mineral is included in the disclosure, state the grade or quality and the quantity for each category of ~~the~~ mineral resources and mineral reserves ~~if the quantity of contained metal or mineral is included in the disclosure~~.

Companion Policy

Section 6 Disclosure of ~~Mineral Resources or Mineral Reserves – Use of GSC Paper 88-21 qualified person estimating~~ mineral resources or mineral reserves ~~for coal may follow the guidelines of Paper 88-21 of the Geological Survey of Canada: A Standardized Coal Resource/Reserve Reporting System for Canada, as amended ("Paper 88-21"). However, for disclosure of~~

~~2.2~~ Section 6 of the Instrument requires that an issuer disclosing mineral resources or mineral reserves ~~for coal, section 2.2 of the Instrument requires an issuer to use the equivalent mineral resource or mineral reserve categories~~ use only the terms and categories in the CIM Definition Standards on Mineral Resources and Mineral Reserves adopted by CIM Council (CIM Definition Standards) as set out in ~~the CIM Definition Standards and not the categories set out in Paper 88-21.~~section 2 of the Instrument. For mineral resources or mineral reserves estimated to another code, template or standard, these estimates of quantity and grade must be reported using the current CIM Definition Standards. Any differences or changes to comply with the CIM Definition Standards should be clearly explained. If an issuer wishes to announce an acquisition or proposed acquisition of a mineral project that contains estimates of quantity and grade that are not in accordance with the CIM Definition Standards, the issuer might be able to disclose the estimate as an historical estimate, in compliance with section 8 of the Instrument. However, it

~~2.3 Restricted Disclosure~~

~~**Economic Analysis** – Subject~~might be more appropriate for the issuer to disclose the estimate as an exploration target in compliance with subsection 7 (~~2.3(3)~~ of the Instrument~~, paragraph 2.3(1)(b) of~~ if the ~~Instrument prohibits~~supporting information for the estimate is not well-documented.

Comment

The requirements for Mineral Resources should be separated from the requirements for Mineral Reserves. This is because CIM is neutral on the question of whether Mineral Resources can be reported inclusive or exclusive of Mineral Reserves. The CIM requires that the basis for the Mineral Resources be provided (inclusive or exclusive); here the Proposed Modernization Draft omits that requirement. It is an important distinction, since not providing that statement can lead to investors or analysts accidentally double-counting the overall tonnage and grade estimates if they add the Mineral Resources to Mineral Reserves, when the Mineral Resources are already inclusive of those Mineral Resources converted to Mineral Reserves. CSA staff should have been aware of the potential for misleading disclosure if the CIM requirements were not explicitly required to be stated when reporting Mineral Resource and Mineral Reserve estimates.

A second reason for separating out the Mineral Resource and Mineral Reserve requirements is that the Mineral Reserve requirements do not apply if there are no Mineral Reserves.

The guidance in the Companion Policy is provided because of the removal of the allowance to use foreign codes, and removal of the allowance for certain information to be not independent if the company making the disclosure was on a specified exchange.

Restricted Disclosure

Proposed Modernization Draft

Rule	Companion Policy
(7) (1) An issuer must not disclose the following: (a) a deposit's quantity, grade or quality, or metal or mineral content unless categorized as an inferred mineral resource, an indicated mineral resource, a measured mineral resource, a probable mineral reserve or a proven mineral reserve; (b) an economic analysis unless it is based on a pre-feasibility study, feasibility study or life of mine plan; (c) the gross value of metal or mineral in a sampled interval, drill intersection or deposit; (d) a metal or mineral equivalent grade for a multiple commodity sampled interval, drill intersection or deposit, unless the issuer discloses the grade, prices, recoveries and any other conversion factors used to estimate the equivalent of each metal or mineral.	7 (a) Use of term "ore" – The use of the word "ore" in the context of mineral resource estimates is potentially misleading because "ore" implies technical feasibility and economic viability that should only be attributed to mineral reserves. 7 (b) Economic analysis – Subject to subsection 7 (3) of the Instrument, paragraph 7 (1) (b) of the Instrument prohibits disclosure of the results of an economic analysis unless the disclosure is based on the results of a pre-feasibility study, feasibility study, or life of mine plan as set out in section 2 of the Instrument and defined by CIM. Results of an economic analysis provide forward-looking information such as projected capital and operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period and mine life. Disclosing results of an economic analysis not based on the results of a pre-feasibility study, feasibility study, or life of mine plan may be potentially misleading as the results of the economic analysis may not have a reasonable basis. For example, CIM considers the level of geologic knowledge and confidence in inferred mineral resources is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure. 7 (c) Gross value of metal or mineral – We interpret gross metal value or gross mineral value to include any representation of the potential monetary value of the metal or mineral in the ground that does not take into consideration the costs, recoveries and other relevant factors associated with the extraction and recovery of the metal or mineral. We consider this type of disclosure to be misleading because it overstates the potential value of the mineral deposit. (7) (d) Metal equivalents – As there is no standard equation for metal or mineral equivalents, an issuer may disclose metal equivalents provided they comply with the conditions of paragraph 7 (1) (d) of the Instrument. The metal chosen for reporting on an equivalent basis should be the metal that contributes most to the metal equivalent grade. An issuer may satisfy the requirement to disclose metallurgical recoveries through the results of metallurgical test work. If metallurgical test work is not available, an issuer may include reasonable assumptions for recoveries from analogue deposits. For mineral projects where metallurgical recoveries cannot be assumed with reasonable confidence, reporting of metal equivalents may be misleading.

Rule	Companion Policy
	We consider disclosure of metal equivalents without considering metallurgical recoveries or other relevant factors misleading because it overstates the amount of metal that may eventually be obtained. Similarly, all elements included in the metal equivalent should have a reasonable potential to be recovered and sold. If an issuer discloses metal equivalents calculated entirely by price-weighting, we consider this type of disclosure to be misleading because it is indistinguishable from a gross metal value, which is restricted under paragraph 7 (1) (c) of the Instrument.
(2) Paragraph (1) (a) does not apply to an issuer that discloses an exploration target if the issuer discloses (a) with the same prominence as and proximate to the disclosure, that the potential range of quantity and range of grade or quality is conceptual in nature, there has been insufficient exploration to define a mineral resource and it is uncertain if further exploration will result in the target being delineated as a mineral resource, and (b) the basis on which the disclosed potential range of quantity and range of grade or quality have been determined.	7 (e) Exploration target – Potential quantities and grades of an exploration target are conceptual in nature. However, disclosure under subsection 7 (2) of the Instrument should be based on analytical results to date. Exploration targets that are based on limited or no real assessment of the mineral project are without foundation, and not suitable for disclosure.
(3) Paragraph (1) (b) does not apply to an issuer that discloses an economic analysis in a scoping study if the disclosure states (a) with the same prominence as and proximate to the disclosure, that the scoping study is based on low-level technical and economic analysis and is insufficient to support estimation of mineral reserves, and that there is no certainty that the results or conclusions of the scoping study will be realized, (b) with the same prominence as and proximate to the disclosure, if the scoping study includes inferred mineral resources, (i) that the scoping study includes inferred mineral resources that have a lower level of confidence and cannot be converted to mineral reserves, (ii) the percentage of inferred mineral resources, and (iii) that the issuer is not using the scoping study to justify proceeding directly to a feasibility study, (c) the basis for and any assumptions in the scoping study, and (d) the impact of the scoping study on any pre-feasibility study or feasibility study.	Despite paragraph 7 (1) (b) of the Instrument, subsection 7 (3) of the Instrument permits an issuer to disclose the results of an economic analysis from a scoping study, as set out in section 2 of the Instrument and defined by CIM. A scoping study may include or be based on inferred mineral resources provided the issuer complies with all the requirements of subsection 7 (3) of the Instrument. The issuer must also include the cautionary statement under paragraph 13 (e) of the Instrument, which applies to disclosure of all economic analyses of mineral resources, to further alert investors to the limitations of the information. The exception under subsection 7 (3) of the Instrument does not allow an issuer to disclose the results of an economic analysis using an exploration target, an historical estimate, or by-product commodities not included in the mineral resource estimate as these do not have a reasonable basis for forward looking information. (7) (f) Impact of scoping study on previous feasibility or pre-feasibility study – An issuer may disclose the results of a scoping study that includes inferred mineral resources, after it has completed a feasibility study or pre-feasibility study that establishes mineral reserves, if the disclosure complies with subsection 7 (3) of the Instrument. Under paragraph 7 (3) (d) of the Instrument, the issuer must discuss the impact of the scoping study on the mineral reserves and feasibility study or pre-feasibility study. This means considering and disclosing

Rule	Companion Policy
	whether the existing mineral reserves and feasibility study or pre-feasibility study are still current and valid considering the key assumptions and parameters used in the scoping study. If a scoping study considers the potential economic viability of a satellite deposit or of an alternate case, such as an expansion in conjunction with the main development of the mineral project, then the existing mineral reserves in the main study or production scenario could still be current. However, if the incorporated scoping study significantly modifies the key variables in the main study, including metal prices, mine plan and costs, the main study and mineral reserves may no longer be current. Mineralization treated as a mineral reserve in the pre-feasibility study or feasibility study cannot be re-used as a mineral resource in the incorporated scoping study. An author may consider disclosing these results separately under Item 24 of the Form.
(4) An issuer must not use “scoping study”, “pre-feasibility study”, “feasibility study” or “life of mine plan” in disclosure unless the study satisfies the criteria set out in the definition of the applicable term referred to in section 2.	
	(7) (g) Cautionary language and explanations – The requirements of subsections 7 (2) and 7 (3), and paragraph 13 (e) of the Instrument mean that the issuer must include the required cautionary statements and explanations each time it makes the disclosure permitted by these exceptions. These provisions also require the cautionary statements to have equal prominence with the rest of the disclosure. We interpret this to mean equal size, type and proximate location. The issuer should consider including the cautionary language and explanations in the same paragraph as, or immediately following, the disclosure permitted by these exceptions.

Blackline

Rule

Restricted ~~Disclosure~~disclosure

~~2.3~~7. **(1)** An issuer must not disclose the following:

(a) ~~the~~a deposit's quantity, grade or quality, or metal or mineral content ~~of a deposit that has not been~~unless categorized as an inferred mineral resource, an indicated mineral resource, a~~the results of~~

~~(a)~~ measured mineral resource, a probable mineral reserve~~,~~ or a proven mineral reserve;

(b) an economic analysis ~~that includes or~~ unless it is based on ~~inferred mineral resources or an estimate permitted under subsection 2.3 (2) or section 2.4~~a pre-feasibility study, feasibility study or life of mine plan;

(c) the gross value of metal or mineral in a ~~deposit or a~~ sampled interval ~~or~~, drill intersection~~:~~ or deposit;

(d) a metal or mineral equivalent grade for a multiple commodity ~~deposit,~~ sampled interval, ~~or~~ drill intersection or deposit, unless ~~it also~~the issuer discloses the grade~~,~~ prices, recoveries and any other conversion factors used to estimate the equivalent of each metal or mineral ~~used to establish the metal or mineral equivalent grade~~.

~~Despite paragraph~~

(2) Paragraph (1) (a~~),~~) does not apply to an issuer that discloses an exploration target if the issuer ~~may disclose in writing~~discloses

~~(2)~~ with the same prominence as and proximate to the disclosure, that the potential range of quantity and ~~grade, expressed as ranges, of a target for further exploration if the disclosure~~

(a) ~~states with equal prominence that the potential quantity and grade~~range of grade or quality is conceptual in nature, ~~that~~ there has been insufficient exploration to define a mineral resource and ~~that~~ it is uncertain if further exploration will result in the target being delineated as a mineral resource~~;~~, and ~~states~~

(b) the basis on which the disclosed potential range of quantity and range of grade ~~has~~ or quality have been determined.

(3) ~~Despite paragraph~~Paragraph (1) (b~~),~~) does not apply to an issuer ~~may disclose the results of a preliminary~~ that discloses an economic ~~assessment that includes or is based on inferred mineral resources~~ analysis in a scoping study if the disclosure states

(a) ~~states~~ with ~~equal~~the same prominence ~~that the preliminary~~ as and proximate to the disclosure, that the scoping study is based on low-level technical and economic ~~assessment is preliminary in nature, that it~~ analysis and is insufficient to support estimation of mineral reserves, and that there is no certainty that the results or conclusions of the scoping study will be realized,

(b) with the same prominence as and proximate to the disclosure, if the scoping study includes inferred mineral resources,

~~(a)~~(i) that the scoping study includes inferred mineral resources that ~~are considered too speculative geologically to have the economic considerations applied to them that would enable them to be categorized as mineral reserves, and there is no certainty that the preliminary economic assessment will be realized;~~have a lower level of confidence and cannot be converted to mineral reserves,

~~states~~

(ii) the percentage of inferred mineral resources, and

(iii) that the issuer is not using the scoping study to justify proceeding directly to a feasibility study,

~~(b)~~(c) the basis for ~~the preliminary economic assessment~~ and any ~~qualifications and~~ assumptions ~~made by~~in the ~~qualified person;~~scoping study, and

(4) An issuer must not use ~~the term preliminary feasibility~~"scoping study~~,~~", "pre-feasibility study ~~or~~ ", "feasibility study ~~when referring to a study~~" or "life of mine plan" in disclosure unless the study satisfies the criteria set out in the definition of the applicable term referred to in section ~~1.4~~2.

Companion Policy

~~(2)~~(a) **Use of ~~Term "Ore"~~** ~~We consider the~~**term "ore"** – The use of the word "ore" in the context of mineral resource estimates ~~to be~~is potentially misleading because "ore" implies technical feasibility and economic viability that should only be attributed to mineral reserves.

(b) **~~Exceptions – The~~Economic analysis** – Subject to subsection 7 (3) of the Instrument, paragraph 7 (1) (b) of the Instrument prohibits disclosure of the results of an economic analysis unless the disclosure is based on the results of a pre-feasibility study, feasibility study, or life of mine plan as set out in section 2 of the Instrument and defined by CIM. Results of an economic analysis provide forward-looking information such as projected capital and operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period and mine life. Disclosing results of an economic analysis not based on the results of a pre-feasibility study, feasibility study, or life of mine plan may be potentially misleading as the results of the economic analysis may not have a reasonable basis. For example, CIM considers the level of geologic knowledge and confidence in inferred mineral resources is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure.

~~(3)~~ Despite paragraph 7 (1) (b) of the Instrument, subsection 7 (3) of the Instrument permits an issuer to disclose the results of an economic analysis ~~that uses~~from a scoping study, as set out in section 2 of the Instrument and defined by CIM. A scoping study may include or be based on inferred mineral resources~~,~~ provided the issuer complies with all the requirements of subsection ~~2.3(3).~~7 (3) of the Instrument. The issuer must also include the cautionary statement under paragraph ~~3.4~~13 (e) of the Instrument, which applies to disclosure of all economic analyses of mineral resources, to further alert investors to the limitations of the information. The exception under subsection ~~2.3(3)~~7 (3) of the Instrument does not allow an issuer to disclose the results of an economic analysis using an exploration target ~~or an historical estimate~~, an historical estimate, or by-product commodities not included in the mineral resource estimate as these do not have a reasonable basis for forward looking information.

(c) **~~Impact of Preliminary Economic Assessment on Previous Feasibility or Pre-Feasibility Studies – An issuer may disclose the results of a preliminary economic assessment~~Gross value of metal or mineral** – We interpret gross metal value or gross mineral value to include any representation of the potential monetary value of the metal or mineral in the ground that does not take into consideration the costs, recoveries and other relevant factors associated with the extraction and recovery of the metal or mineral. We consider this type of disclosure to be misleading because it overstates the potential value of the mineral deposit.

(d) **Metal equivalents** – As there is no standard equation for metal or mineral equivalents, an issuer may disclose metal equivalents provided they comply with the conditions of paragraph 7 (1) (d) of the Instrument. The metal chosen for reporting on an equivalent basis should be the metal that contributes most to the metal equivalent grade. An issuer may satisfy the requirement to disclose metallurgical recoveries through the results of metallurgical test work. If metallurgical test work is not available, an issuer may include reasonable assumptions for recoveries from analogue deposits. For mineral projects where metallurgical recoveries cannot be assumed with reasonable confidence, reporting of metal equivalents may be misleading.

We consider disclosure of metal equivalents without considering metallurgical recoveries or other relevant factors misleading because it overstates the amount of metal that may eventually be obtained. Similarly, all elements included in the metal equivalent should have a reasonable potential to be recovered and sold.

If an issuer discloses metal equivalents calculated entirely by price-weighting, we consider this type of disclosure to be misleading because it is indistinguishable from a gross metal value, which is restricted under paragraph 7 (1) (c) of the Instrument.

~~(4)~~(f) **Impact of scoping study on previous feasibility or pre-feasibility study** – An issuer may disclose the results of a scoping study that includes inferred mineral resources, after it has completed a feasibility study or pre-feasibility study that establishes mineral reserves, if the disclosure complies with subsection ~~2.3~~7 (3) of the Instrument. Under paragraph ~~2.3(3)(c),~~7 (3) (d) of the Instrument, the issuer must discuss the impact of the ~~preliminary economic assessment~~ scoping study on the mineral reserves and feasibility study or pre-feasibility study. This means considering and disclosing whether the existing mineral reserves and feasibility study or pre-feasibility study are still current and valid ~~in light of~~considering the key assumptions and parameters used in the ~~preliminary economic assessment~~scoping study.

~~For example, if the preliminary economic assessment~~If a scoping study considers the potential economic viability of ~~developing~~ a satellite deposit or of an alternate case, such as an expansion in conjunction with the main development of the mineral project, then the existing mineral reserves~~, feasibility~~ in the main study~~, and~~ or production scenario could still be current. However, if the ~~preliminary economic assessment~~ incorporated scoping study significantly modifies the key variables in the ~~feasibility~~main study, including metal prices, mine plan~~,~~ and costs, the ~~feasibility~~main study and mineral reserves ~~might~~may no longer be current.

~~(5) **Gross Value of Metal or Mineral** – We interpret gross metal value or gross mineral value to include any representation of the potential monetary value of the metal or~~ Mineralization treated as a mineral ~~in the ground that does not take into consideration the costs, recoveries, and other relevant factors associated with the extraction and recovery of the metal or~~reserve in the pre-feasibility study or feasibility study cannot be re-used as a mineral. ~~We think this type of disclosure is misleading because it overstates the potential value of the mineral deposit~~ resource in the incorporated scoping study. An author may consider disclosing these results separately under Item 24 of the Form.

Comment

It would be less confusing to the reader if the content in 7 (b) also referred to the Scoping Study, rather than making the Scoping Study an exception and in a different part of the restricted disclosure content.

There is cautionary language required around adjacent property disclosure in the Form and in the Rule. The repetition could be removed in the Form.

The restricted disclosure comments are broken down for ease of reference in the following sub-sections.

Use of the Term Ore

The CSA staff have taken a common industry term and redefined it as only being able to be used in specific contexts.

However, the guidance should have been clear, if this is the case, that where the term is used in the context of infrastructure, not in the context of Mineral Reserves, such as “ore bin” that this will be acceptable.

Use of CIM-Defined Study Terms

There are two concerns with this reword.

One is the lack of capitalization of the CIM-defined terms that are defined with capitalization.

The focus on removing Title Case presentation, as the CSA staff have done here, could have serious consequences. All of the CIM definitions that are incorporated by reference into NI 43-101 are capitalized terms in the CIM Definition Standards. The CIM deliberately took this approach to ensure that common English expressions could still be used in public disclosure.

- “inferred” could still be used to identify a fault trace that is uncertain, or identify that inferring geological continuity under cover was reasonable, but not demonstrated; it was not a term restricted to Inferred Mineral Resources;
- “life of mine plan” could still be used for the mine plan that supports a Scoping Study, Pre-Feasibility Study or Feasibility Study; it would only be a defined term as set out in the new CIM definition Life Of Mine Plan if it met that definition, which is restricted to the use in an operating mine context.

It should be mandatory for the Proposed Modernization Draft to use the CIM-defined terms exactly as they are defined in the CIM Definition Standards, capitalization, and all. CSA staff are deliberately ignoring industry preferences in the dash for style. Style isn’t substance when it comes to definitions of terms that have legal implications.

The second is the reference to “criteria”, which is problematic. The CIM definitions are principles-based; they do not provide study criteria or particular requirements that must be met to qualify as that type of mining study.

The CSA staff are anecdotally using CIM guidance documents that do specify some aspects of what should be covered in a mining study to query disclosure compliance for the entire study. One example is the appendix in the 2022 CIM Practice Guideline for Mineral Processing, where

a table in that appendix does set out the level of information to be considered in the process discipline area when preparing scoping, pre-feasibility, and feasibility studies, and does provide cost estimation accuracy ranges. This guidance is, however, restricted to process discipline estimates; it does not apply to the entire Scoping Study, Pre-Feasibility Study, or Feasibility Study.

It may also be why the CSA staff have anecdotally started invoking compliance issues with issuer disclosure using AACE International paper 47R-11 estimation class categories, whereby the issue raised is that the Qualified Person does not provide sufficient commentary on how the estimation class was selected. In effect, the regulators are already enforcing content proposed in the Proposed Modernization Draft Form as if it were law, and using industry-accepted guidance documents as extensions of the law.

This needs to be reviewed as “criteria” misrepresents the principles basis that was used by the CIM when preparing the study definitions. It also misrepresents the principles basis for many other industry guideline documents.

Gross Metal Values

This guidance needs rewording. It ties the restriction to mineral deposits; it needs to also alert issuers and Qualified Persons that it equally applies to reporting of sample intervals and drill intercepts. As currently worded, the guidance is not consistent with the wording in the Proposed Modernization Draft Rule, which explicitly also lists “sampled interval, drill intersection” in addition to mineral deposit.

The guidance does not address net smelter returns, and whether these are regarded by CSA staff to be a type of gross value estimate. Net smelter returns and revenue factors are a common industry practice when reporting cut-offs for polymetallic deposits. They are less likely to cause bias when the mineralization has variable metal ratios than are metal equivalent values. Net smelter return calculations are typically post the mine gate, and provide the smelter revenue side only. They are based on a block grade, include metallurgical and process recoveries, but do not (commonly) include mining, process, general and administrative and other operating costs. They do include the smelting and refining costs, but vary by estimator on inclusion of such additional costs as freight and royalty costs.

Net smelter returns are generally seen by the industry to be preferable to metal equivalents once a polymetallic project has advanced to the point that a resource estimate is supported.

Metal Equivalents

The statement that “disclosure of metal equivalents without considering metallurgical recoveries or other relevant factors” can be misleading is problematic. Where there is no information on metallurgical recoveries, what would constitute an analogue deposit that would be considered acceptable? What is considered to be a reasonable basis for a Qualified Person to use an the “analogue project” as a comparator? There have been hearings that revolved around inappropriate analogues being used when comparing early-stage exploration properties to producing mines. Does the analogue deposit have to be in the same jurisdiction as the mineral project? Or can global examples provide sufficient basis for assuming metallurgical testwork analogues?

What would constitute “other relevant factors”? What are the CSA staff contemplating as also potentially relevant in additional to metallurgical recoveries?

It would have been helpful in the last paragraph to have been clear that the “metal equivalents calculated entirely by price-weighting” refers only to metal equivalency calculations that omit considerations of recoverability.

Is the lack of clarity in “metal equivalent calculated by price weighting” intended as a method of banning the use of net smelter returns without expressly saying that is the practice to be restricted?

The guidance does not address net smelter returns, and whether these are regarded by CSA staff to be a type of gross value estimate. See earlier comment on net smelter returns.

Net smelter returns are generally seen by the industry to be preferable to metal equivalents once a polymetallic project has advanced to the point that a resource estimate is supported.

However, as the net smelter return is based from the mine gate, is disclosure of a Mineral Resource or Mineral Reserve estimate using an NSR cut-off to be non-compliant?

Exploration Target

Exploration target is a term now defined by the CIM. The CIM provides the industry practice, and the CSA staff provide the cautionary language that they wish to see accompany disclosure using the CIM-defined term.

The guidance contradicts the CIM guidance accompanying the definition. CIM allows for indirect methods; it does not restrict exploration targets to being sampling-based only.

> ***An Exploration Target is a statement or estimate of the exploration potential of a mineral deposit in a defined geological setting where the statement or estimate, quoted as a range of tonnes and a range of grade or quality, relates to mineralization for which there has been insufficient exploration to estimate Mineral Resources.***
>
> *Quantification of the estimate of the tonnage and grade/quality range for an Exploration Target should have a reasonable basis. A reasonable basis can be determined by the deposit model or deposit type being sought, the type, amount, and quality of the available project-specific exploration information, and the method(s) and assumptions used to estimate and quantify the tonnage and grade/quality range.*
>
> *The basis of the tonnage and grade range should be documented, and whether the information is based on direct or indirect exploration methods.*

The guidance is stepping into practice. Exploration Targets do not necessarily require analytical results.

The guidance does not incorporate a basic understanding of what an Exploration Target is. All Exploration Targets are based on limited information, that is how they are defined; if there was more information, a Mineral Resource would have been estimated.

How is a Qualified Person to interpret the “analytical results to date”? What date should be considered? The date of disclosure? The date the Exploration Target was outlined? Does the Exploration Target require constant update as each new piece of information is obtained?

Much of the guidance is questioning the Qualified Person’s judgement: it should be up to the Qualified Person, in consultation with the issuer, to determine when an Exploration Target requires update based on new material information, when it is no longer appropriate to be disclosed, or when there is now sufficient information that a Mineral Resource can be estimated.

Scoping Study

Paragraph (a) in the Rule does not match the CIM’s definition or guidance, which is a major issue. The CSA staff are trying to retain older text from their definition of a preliminary economic assessment and impose that on the very different definition of a Scoping Study that the CIM have proposed. The CSA staff also appear to be inserting their own policies, which are problematic, and enforcing both the CIM definitions, which are part of the Rule, and the CIM guidance documents, which are not.

Early, conceptual level, what-if studies remain an issue with CSA staff: they do not like the study type. In the CSA view, of course, scoping studies always lead to mining operations; they continue in the completely incorrect view that a Scoping Study must reflect the mine that will be built.

A Scoping Study is not necessarily based on “low level technical and economic analysis”. The assumptions in such a study are conceptual, but the information available is not necessarily low-level. The information available to a Scoping Study isn’t somehow different to the information used in a Feasibility Study: there is more available information to the latter study. Just because information gathering was completed for a Scoping Study does not preclude its use in a mining study that supports Mineral Reserve estimation. Drill programs, practices, data collection, and analysis don’t significantly change between campaigns completed for scoping level support and those done for feasibility-level mine designs; there are just more drill data available.

The CIM states that scoping studies can be completed on any combination of Mineral Resource confidence classifications. There are numerous such studies in the public domain completed on Measured and Indicated Mineral Resources. Neither of these confidence classifications are expected within the industry generally to be assigned based on low-level technical information.

Cashflow analyses, in general industry practice, do not differ between levels of mining study. The analysis follows the same evaluation parameters for each study. What varies is the amount of data informing the assumptions in each study. It is fallacious to assume that a cashflow must be based on low level technical information because the study is called a Scoping Study; nor is it correct to assume the cashflow analysis in a Scoping Study will be a “low level economic analysis”.

CSA staff need to be cognizant of the fact that they are trying to break a report type that isn’t broken. The issue is not with the report type; it is with CSA staff biases. Once one regulator decided, and told industry, that they had never seen a Scoping Study that they liked, all of the regulators appear to have adopted the same position. They do not recognize that the largest subset of technical report filings on mining studies are for scoping-level studies. If these document types were not useful to investors, the numbers of disclosures and supporting reports would not be at the levels they are. Scoping studies are integral to an issuer’s project disclosure.

The belief system within the CSA staff that Scoping Study disclosure as inherently poor is more likely to result in unclear boundaries of what is and is not acceptable to CSA staff, a continued widening between industry practices and CSA staff interpretations, which will continue to add to the current industry uncertainty with what compliant disclosure looks like for this study type. The unhappy outcome for industry is that the CSA staff biases will result in more compliance issues, and a heightened cost burden as issuers have to refile technical reports that cater to CSA staff prejudices.

If the CSA staff intent was to request more objectivity from Qualified Persons and issuers when disclosing the basis for, and results of, scoping-level studies, this intention is nowhere in the Proposed Modernization Draft, either in the form of clarification, or as guidance.

The CSA staff have yet again, with this subsection, repeated the CIM term, but distorting it. The CIM definition of a Scoping Study makes it clear that the study can be based on any combination of Mineral Resources. There is no necessity for pulling out Inferred in a Scoping Study as somehow an inherently bad practice, as the wording in (b)(i) implies. The wording in (b)(ii) repeats the CIM guidance to the definition:

> *If the Scoping Study includes Inferred Mineral Resources, the proportion and timing of Inferred Mineral Resources in the mine plan and economic analysis should be documented.*

It is arguable that the repetition is needed, particularly since the CIM guidance provides more clarity around what is required to meet industry practices. The Proposed Modernization Draft waters the CIM guidance down, as all it requires is a statement on the percentage of Inferred.

The wording in (b)(iii) contradicts the Proposed Modernization Draft Companion Policy. A mine-life extension to an existing mine does not require the issuer to complete a Feasibility Study across all discipline areas to decide that continuing operations is feasible. Nor does a bolt-on to an existing plant, such as adding a molybdenum circuit to an existing copper process plant, require a complete Feasibility Study across all discipline areas to support. The CSA staff provide no basis for this requirement. It is also an example of over-reach into the issuer's Boardroom. Decisions such as the two examples provided should be left to a Board to decide to pursue. The CSA staff have no role in such decisions, and should not be trying to pre-empt Board practices with unnecessary and costly study types to be completed prior to making Board-internal decisions; particularly when the study contents for most discipline areas are not relevant to the decision-making at the Board level that pertains to a single aspect of a mining study.

It is unclear how the CSA staff will enforce this (b)(iii); there is no guidance provided as to what is expected, other than the directive for what in most cases is an unnecessary mining study.

Additional concerns with (b)(iii) include the lack of guidance as to when this must be complied with. Is this to be addressed each and every time disclosure on this point is made? Yet again there is no materiality consideration. One of the major concerns with the attempts in the Proposed Modernization Draft to widen the scope of responsibility of a Qualified Person to encompass whatever is meant by "relevant" is the deluge of information investors could receive, as neither the Qualified Persons nor the issuer will want to find a regulator challenging non-inclusion of information on the basis of the CSA staff's determination of "relevant". The wording and lack of

guidance will make it very difficult for issuers and Qualified Persons to determine what must be presented to be compliant with this requirement.

Inherent in (b)(iii) is that issuers will automatically progress from a resource estimate to a Pre-Feasibility Study. Is this really a sensible outcome? Yet again, the CSA staff are showing an unwillingness to understand what it actually is that industry does with scoping studies, and the utility of such studies. The regulator idée fixe with these studies as inherently bad is a serious industry problem. This requirement is another example of regulator fixation, and an unnecessary burden on industry that revolves around very poor regulator policy now trying to be captured as law.

A final concern with (b)(iii) is that the basis for these studies is seen as forward-looking information, and the forward-looking information statements that will now have to be incorporated into any disclosure from such studies will likely reach lengths that no investor is going to read. Investors already tend to skim over the forward-looking information statements as they are long, in tiny font, and typically use boilerplate language.

The wording in (c) is unnecessary since the technical report on a Scoping Study already requires the Qualified Persons to provide all of the disclosure in Items 16 to 22 of the Proposed Modernization Draft Form. This is not an example of streamlining; it is completely unnecessary repetition of instructions that are already part of the Form.

The requirement for (c) is not tied to any mineral project, which is an example of the CSA staff not thinking the proposed changes through. Does this mean that the issuer is then to discuss the impact on any other Feasibility Study, for example? Here is our project in Canada, which is at scoping level, and here is our project in Australia, which is at feasibility. We now have to discuss the impact of a completely unrelated project and commodity in a different country on the project and commodity we have in another country simply because one of those studies is a Feasibility Study?

The redefinition of a mineral project in the Proposed Modernization Draft becomes an issue with (c). Obviously in the context of what a mineral project is now defined as, that wording doesn't work here, hence it was deleted. But now (c) is not tied to any mineral project at all, either using the proposed definition or the definition in the 2011 edition of a mineral project. Now there is no facility within the definition for two levels of study (two mineral projects using the 2011 edition definition) on the one mineral tenure package, where the assumptions in the studies are that infrastructure will be shared. And the CSA staff will not allow multiple concurrent technical reports on the one mineral project. The proposed wording appears to be an attempt to close the door on companies discussing optionality with their investors. Instead of disclose, disclose, disclose, the regulator mantra is changing to restrict, restrict, restrict, by making compliance both burdensome and costly, and making it difficult to understand what compliance will look like under the Proposed Modernization Draft.

The wording in (c) is poorly thought out and requires revision to remove inconsistency, and to provide clarity. It has to be tied to a mineral project.

The proposed text in the Companion Policy around Scoping Studies does not reflect the current CIM position at all. This text is indeed based on the CIM Definitions Standard definition for Inferred Mineral Resources at the time the 2011 edition was promulgated. However, the CIM

updated the definition of Inferred Mineral Resources in 2014, and that was a major definition update.

2010 CIM Definition Standard definition:

An "Inferred Mineral Resource" is that part of a Mineral Resource for which quantity and grade or quality can be estimated on the basis of geological evidence and limited sampling and reasonably assumed, but not verified, geological and grade continuity. The estimate is based on limited information and sampling gathered through appropriate techniques from locations such as outcrops, trenches, pits, workings and drill holes.

Due to the uncertainty that may be attached to Inferred Mineral Resources, it cannot be assumed that all or any part of an Inferred Mineral Resource will be upgraded to an Indicated or Measured Mineral Resource as a result of continued exploration. Confidence in the estimate is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure. Inferred Mineral Resources must be excluded from estimates forming the basis of feasibility or other economic studies.

2014 CIM Definition Standard definition:

An Inferred Mineral Resource is that part of a Mineral Resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. Geological evidence is sufficient to imply but not verify geological and grade or quality continuity.

An Inferred Mineral Resource has a lower level of confidence than that applying to an Indicated Mineral Resource and must not be converted to a Mineral Reserve. It is reasonably expected that the majority of Inferred Mineral Resources could be upgraded to Indicated Mineral Resources with continued exploration.

An Inferred Mineral Resource is based on limited information and sampling gathered through appropriate sampling techniques from locations such as outcrops, trenches, pits, workings, and drill holes. Inferred Mineral Resources must not be included in the economic analysis, production schedules, or estimated mine life in publicly disclosed Pre- Feasibility or Feasibility Studies, or in the Life of Mine plans and cash flow models of developed mines. Inferred Mineral Resources can only be used in economic studies as provided under NI 43-101.

There may be circumstances, where appropriate sampling, testing, and other measurements are sufficient to demonstrate data integrity, geological and grade/quality continuity of a Measured or Indicated Mineral Resource, however, quality assurance and quality control, or other information may not

> *meet all industry norms for the disclosure of an Indicated or Measured Mineral Resource. Under these circumstances, it may be reasonable for the Qualified Person to report an Inferred Mineral Resource if the Qualified Person has taken steps to verify the information meets the requirements of an Inferred Mineral Resource.*

The critical change in the definition is that in 2014, in recognition of an improvement in the quality of what was being classified as Inferred, the definition included:

> ***It is reasonably expected that the majority of Inferred Mineral Resources could be upgraded to Indicated Mineral Resources with continued exploration.***

The CIM no longer places the constraints on Inferred in the manner in which the Proposed Modernization Draft Companion Policy states. CIM in fact, **does not consider**

> *the level of geologic knowledge and confidence in inferred mineral resources* [to be] *insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure.*

The wording as retained by the CSA staff would preclude the use of any Inferred Mineral Resources in scoping studies. The CIM definition of a Scoping Study explicitly allows the use, as do the CSA staff in (7)(3) of the Proposed Modernization Draft Rule.

This must be revised and brought into line with the actual CIM definition of Inferred.

Impact Of Scoping Study On Previous Feasibility Or Pre-Feasibility Study

The guidance is prescriptive and not necessarily reflective of industry practice. It is also trying to backdoor policies that the CSA staff are already implementing as if those were part of the Rule rather than simply "guidance". Hiding clear instructions in the guidance section and pretending those are not part of the Rule, while already implementing those instructions as mandatory is disingenuous at best.

This is an instruction, posing as guidance, expressly linked to how a portion of the Rule must be applied:

> *Under paragraph 7 (3) (d) of the Instrument, the issuer must discuss the impact of the scoping study on the mineral reserves and feasibility study or pre-feasibility study. This means considering and disclosing whether the existing mineral reserves and feasibility study or pre-feasibility study are still current and valid considering the key assumptions and parameters used in the scoping study.*

A Scoping Study is a conceptual assessment of an alternative development option. This assessment is designed to provide flexibility to the issuer: for example, the study may evaluate an add-on to an existing operation, it can be much more significant, such as examining the potential economics of an underground operation underneath an operating open pit, or the

development of a satellite open pit operation feeding a process plant designed to treat underground mineralization.

The instruction that the existing studies and their Mineral Reserves have to remain “current and valid” gives the impression that CSA staff continue to try and restrict, if not close the door on, these studies types being presented in public disclosure. Of course the Scoping Study will have its own set of parameters and assumptions that are not those used in the Pre-feasibility or Feasibility Study. This does not, however, invalidate the Mineral Reserves supported by the Pre-feasibility or Feasibility Study, nor should it be an automatic assumption that those Mineral Reserves and the studies supporting the Mineral Reserves are invalidated by what is, by definition, a conceptual analysis.

The Scoping Study, unless it is done at the same time as the Life-Of-Mine Plan, Pre-feasibility Study or Feasibility Study, will almost always use different assumptions.

Mineral Resource estimates are almost always, as part of general industry practice, estimated using an uplift on commodity prices to those used for Mineral Reserve estimates. The Scoping Study is always performed using Mineral Resources by definition; no Mineral Reserves have been converted from the Mineral Resources.

Scoping studies often require additional capital to support the scenario being evaluated, over and above that contemplated in a Pre-feasibility Study or Feasibility Study, and definitely in addition to the sustaining capital envisaged in a Life-Of-Mine Plan. Capital costs, therefore, will be different to those stated in the Life-Of-Mine Plan, Pre-feasibility Study or Feasibility Study.

Operating costs are predicated on the mining method and process method. If the Scoping Study envisages a different mining method or different process method, then operating cost (mining, processing, general and administrative) assumptions will be different to those stated in the Life-Of-Mine Plan, Pre-feasibility Study or Feasibility Study.

Other changes can include:

- Differences in metallurgical recoveries and process costs if the Life-Of-Mine Plan, Pre-feasibility Study or Feasibility Study are predicated on mining oxide mineralization via open pit methods, but the Scoping Study assumes underground mining methods and fresh rock, or vice versa;
- Differences in the assumptions used in domaining, grade capping, density, compositing, variography, estimation methodology, confidence classification, and assessment of reasonable prospects for eventual economic extraction if the Life-Of-Mine Plan, Pre-feasibility Study or Feasibility Study assume open pit mining methods and the Scoping Study envisages underground mining, or vice versa;
- Differences in capital and operating costs between open pit methods in the Life-Of-Mine Plan, Pre-feasibility Study or Feasibility Study and a Scoping Study that assumes underground mining methods, or vice versa. Changed assumptions could include:
    - Geotechnical considerations;
    - Hydrogeological considerations;

- Dilution and mining recovery assumptions;
- Mineralized material, stockpiling, waste rock and haulage distance assumptions;
- Material formerly sent to WRSF or TSF could be used as backfill;
- Contractor versus Owner operated;
- Equipment requirements;
- Environmental, permitting, and social licence considerations for continued operations;
- Ability to re-process stockpiles, WRSF or TSF to reduce closure costs.

"Cannot" is not guidance. That is an instruction.

> *Mineralization treated as a mineral reserve in the pre-feasibility study or feasibility study cannot be re-used as a mineral resource in the incorporated scoping study. An author may consider disclosing these results separately under Item 24 of the Form.*

No formal industry consultation has been undertaken to support this as a prohibition. Nor is the prohibition reflective of common industry practice. Was the CIM asked to comment on this?

Nowhere as part of industry practice is potential optionality ignored by an issuer's management. The proposed wording appears to be an attempt to close the door on companies discussing optionality with their investors. Instead of disclose, disclose, disclose, the regulator mantra here is changing to restrict, restrict, restrict, by making compliance both burdensome and costly, and making it difficult to understand what compliance will look like under the Proposed Modernization Draft.

A further question is raised with the "cannot" instruction on the re-use of mineral resources. If the mineral resource cannot be re-used in this scenario, then what is the justification to allow issuers to present sensitivity tables for the resource estimate in the Form, or to present prior estimates.

> *Item 14 (7) of the Proposed Modernization Draft Form: If the issuer wishes to disclose a previous mineral resource estimate or previous mineral reserve estimate prepared by the issuer related to the mineral project, these estimates should be referred to as a previous estimate and not a historical estimate which is a defined term in the Instrument.*

These are exactly the same type of presentation and re-use of the mineral resource estimates, and use different parameters to the base case estimate. Why are they exempt from the re-use of Mineral Resources prohibition, but the Scoping Study re-use is specifically singled out as prohibited?

Cautionary Language

There is cautionary language required around adjacent property disclosure in the Form and in the Rule. The repetition could be removed in the Form.

Historical Estimates

Proposed Modernization Draft

Rule	Companion Policy
(8) An issuer that discloses a historical estimate using the terminology of the historical estimate must include the following in the disclosure: (a) the source and date of the historical estimate; (b) the relevance of the historical estimate to the mineral project; (c) the key assumptions, parameters and methods used to prepare the historical estimate; (d) a statement indicating whether the historical estimate uses mineral resource or mineral reserve categories other than those listed in section 2 and, if so, an explanation of any differences; (e) any updated estimates or data available to the issuer; (f) a description of the work required to upgrade or verify the historical estimate as current mineral resources or mineral reserves; (g) with the same prominence as and proximate to the disclosure, statements that (i) a qualified person has not completed sufficient work to classify the historical estimate as current mineral resources or mineral reserves, and (ii) the issuer is not treating the historical estimate as current mineral resources or mineral reserves.	(8) (a) Required disclosure – An issuer may disclose an estimate of resources or reserves made before it entered into an agreement to acquire an interest in the mineral project, provided the issuer complies with the conditions set out in section 8 of the Instrument. The issuer must provide the required disclosure each time it discloses the historical estimate, until the issuer has verified the historical estimate as a current mineral resource or mineral reserve. The required cautionary statements must also have equal prominence, as discussed further in subsection 7 (g) of this Companion Policy. 2. (8) An issuer that discloses a historical estimate using the terminology of the historical estimate must include the following in the disclosure: (a) the source and date of the historical estimate; (b) the relevance of the historical estimate to the mineral project; (c) the key assumptions, parameters and methods used to prepare the historical estimate; (d) a statement indicating whether the historical estimate uses mineral resource or mineral reserve categories other than those listed in section 2 and, if so, an explanation of any differences; (e) any updated estimates or data available to the issuer; (f) a description of the work required to upgrade or verify the historical estimate as current mineral resources or mineral reserves; (g) with the same prominence as and proximate to the disclosure, statements that (i) a qualified person has not completed sufficient work to classify the historical estimate as current mineral resources or mineral reserves, and (ii) the issuer is not treating the historical estimate as current mineral resources or mineral reserves. (8) (b) Source and date – Under paragraph 8 (a) of the Instrument, the issuer must disclose the source and date of the historical estimate. We apply this to mean the original source and date of the estimate, not third-party documents, databases, or other sources, including government databases, which may also report the historical estimate. (8) (d) Technical report trigger – The disclosure of an historical estimate will not trigger the requirement to file a technical report under paragraph 16 (1) (h) of the Instrument if the issuer discloses the historical estimate in accordance with section 8 of the

Rule	Companion Policy
	Instrument, including the cautionary statements required under paragraph (g) of that section. An issuer could trigger the filing of a technical report under paragraph 16 (1) (h) of the Instrument if it discloses the historical estimate in a manner that suggests or treats the historical estimate as a current mineral resource or mineral reserve. We will consider that an issuer is treating the historical estimate as a current mineral resource or mineral reserve in its disclosure if, for example, the issuer: (i) uses the historical estimate in an economic analysis or as the basis for a production decision; (ii) states it will be adding on or building on the historical estimate; or (iii) adds the historical estimate to current mineral resource or mineral reserve estimates.

Blackline

The blackline comparison shows the following changes.

Rule

~~Disclosure of~~ Historical ~~Estimates~~estimates

~~2.~~4~~8.~~ ~~Despite section 2.2, an~~An issuer ~~may disclose an~~that discloses a historical estimate~~,~~ using the ~~original~~ terminology~~, if~~ of the historical estimate must include the following in the disclosure:

(a) ~~identifies~~ the source and date of the historical estimate~~, including any existing technical report~~;

~~comments on~~

(b) the relevance ~~and reliability~~ of the historical estimate to the mineral project;

~~to the extent known, provides~~

(c) the key assumptions, parameters~~,~~ and methods used to prepare the historical estimate;

~~states~~

(d) a statement indicating whether the historical estimate uses mineral resource or mineral reserve categories other than ~~the ones set out in sections 1.2 and 1.3~~those listed in section 2 and, if so, ~~includes~~ an explanation of ~~the~~any differences;

~~includes~~

(e) any ~~more recent~~updated estimates or data available to the issuer;

~~comments on what~~

(f) a description of the work ~~needs to be done~~required to upgrade or verify the historical estimate as current mineral resources or mineral reserves; ~~and~~

~~states~~

(g) with ~~equal~~the same prominence as and proximate to the disclosure, statements that

(i) a qualified person has not ~~done~~completed sufficient work to classify the historical estimate as current mineral resources or mineral reserves~~:~~, and

~~(i)~~

(ii) the issuer is not treating the historical estimate as current mineral resources or mineral reserves.

Companion Policy

~~(1)~~(a) **Required ~~Disclosure~~disclosure** – An issuer may disclose an estimate of resources or reserves made before it entered into an agreement to acquire an interest in the ~~property~~mineral project, provided the issuer complies with the conditions set out in section ~~2.4~~8 of the Instrument. ~~Under this requirement, the~~The issuer must provide the required disclosure each time it discloses the historical estimate, until the issuer has verified the historical estimate as a current mineral resource or mineral reserve. The required cautionary statements must also have equal prominence ~~(see the discussion~~, as discussed further in subsection ~~2.3(6~~7 (g) of ~~the~~this Companion Policy~~).~~.

~~(2)~~(b) **Source and ~~Date~~date** – Under paragraph ~~2.4~~8 (a) of the Instrument, the issuer must disclose the source and date of the historical estimate. ~~This means~~We apply this to mean the original source and date of the estimate, not third-~~-~~party documents, databases or other sources, including government databases, which may also report the historical estimate.

~~(3) **Suitability for Public Disclosure** – Under paragraph 2.4(b) of the Instrument, an issuer that discloses an historical estimate must comment on its relevance and reliability.~~**public disclosure** – In determining whether to disclose an historical estimate under section 8 of the Instrument, an issuer should consider whether the historical estimate is suitable for public disclosure~~.~~

considering the stage

~~(4)~~(c) ~~Historical~~ **~~Estimate Categories~~** – ~~Under paragraph 2.4(d) of the Instrument, an issuer must explain any differences between the categories used in the historical estimate and those set out in sections 1.2 and 1.3~~development of the ~~Instrument. If the historical estimate was prepared using an acceptable foreign code, the issuer may satisfy this requirement by identifying the acceptable foreign code~~mineral project.

Comment

Disclosure

The 2022 Consultation Paper preamble to the questions on historical estimates noted:

> *In spite of extensive guidance in the Companion Policy, CSA staff see significant non-compliant disclosure of historical estimates.*

More than one commentator noted in responses to the 2022 Consultation Paper that it was likely the laundry list of requirements from the CSA staff that was the actual cause of the poor disclosure the CSA staff were observing.

Historical estimates had their place in the first edition of NI 43-101, as it allowed companies that had not yet upgraded their estimates to use the CIM Definition Standards. It was arguable for the 2005 edition to continue the allowance. However, the 2011 edition, and more particularly this Proposed Modernization Draft are 11 years and a quarter century after the CIM Definition Standards have been in place. The reasons for the allowance to disclose historical estimates made in the first edition no longer apply.

The best outcome from the feedback in the 2022 Consultation Paper would have been for CSA staff to remove the allowance for historical estimates, in the same manner as the SEC did in SK1300, restricting disclosure of a historical estimate to only the instance of a takeover or acquisition. This is an approach that would diminish the instances of non-compliance and provide more certainty to Qualified Persons and issuers that they know what compliant disclosure of such an estimate would look like. Given that takeovers and acquisitions typically have legal experts involved in disclosure, such an approach would also likely reduce the instances of non-compliance.

As presented in the Proposed Modernization Draft, the instructions relating to historical estimates need a materiality threshold and more clarity. It should be a CSA staff position that if there is a current Mineral Resource or Mineral Reserve estimate on a mineral project, then no historical estimate can be material (or relevant), and therefore that historical estimate is not suitable for disclosure since it is superceded. If there are updated estimates available to an issuer and Qualified Person, why is the historical estimate appropriate to disclose?

The Proposed Modernization Draft Rule still has the long list of what must be provided to make compliant historical estimate disclosure; the Proposed Modernization Draft Companion Policy provides even more requirements, despite the Companion Policy intent to provide guidance only.

The content requirements in this sub-section are required each and every time disclosure of a historical estimate is made. Due to the length of the conditions that must be met, an undue emphasis is placed on the historical estimate that is generally not warranted if a materiality determination was also part of the assessment criteria. Outside the context of a takeover or acquisition, there is generally limited value in historical estimate disclosure as the investor reader has to understand the details in the disclosure the issuer and Qualified Person are required to make.

Suitability for Disclosure

It should be a CSA staff position that if there is a current Mineral Resource or Mineral Reserve estimate on a mineral project, then no historical estimate can be material (or relevant), and therefore that historical estimate is not suitable for disclosure since it is superceded. If there are updated estimates available to an issuer and Qualified Person, why is the historical estimate appropriate to disclose?

It is unclear why the stage of development of a project would influence a Qualified Person to disclose a historical estimate. If there is a current Mineral Resource or Mineral Reserve estimate on a mineral project, then no historical estimate can be material (or relevant). This appears to be another instance of exploration mindset, where early stage exploration projects do like to talk to historical estimates as being relevant, simply to show that someone, at some time, thought it worthwhile to determine a tonnage and grade.

The only carveout to a direct prohibition on historical estimates should be the single context of a takeover or acquisition.

Prior Estimates

The historical estimate presentation still doesn't address a key issue for the mining industry, that of a prior estimate. What constitutes a prior estimate and how it can be compliantly presented is not part of the Proposed Modernization Draft Rule. However, there is an allowance for a prior estimate in the Proposed Modernization Draft Companion Policy, under Item 14 (7), where it is referred to as a previous estimate

> *7. If the issuer wishes to disclose a previous mineral resource estimate or previous mineral reserve estimate prepared by the issuer related to the mineral project, these estimates should be referred to as a previous estimate and not a historical estimate which is a defined term in the Instrument.*

An allowance with no definition and no guidance is another example of CSA staff not thinking through the impact of an instruction. Do the Qualified Person and the issuer have to address all of the content requirements for historical estimate disclosure when disclosing a prior estimate, such that the two terms are treated synonymously for disclosure purposes, just under different names? Who is responsible for the information: the Qualified Person at the time, or the current Qualified Person?

Most historical estimates are not material. The position should be that this is not permitted disclosure unless in the context of an acquisition or takeover.

The guidance still does not address the question of what a prior estimate can be, and how it should be disclosed. It also does not address the issue of a prior estimate being a re-use of mineral resources, based on different parameters and assumptions, which is prohibited in the case of a Scoping Study completed after Mineral Reserves were estimated. In that instance the Mineral Resources cannot be re-used.

Technical Report Trigger

If historical estimates are prohibited except in the context of a takeover or acquisition, the ability of a historical estimate to trigger a technical report as set out in 7 (d) will be minimized. Typically major takeovers and transactions are already report triggers in and of themselves.

Limitation on Disclaimers

Proposed Modernization Draft

Rule	Companion Policy
2. (9) An issuer must not disclose scientific or technical information that contains a disclaimer of responsibility for, or limits any reliance by a person or company on, all or a part of the disclosure.	(9) An issuer may not include any statement that disclaims responsibility for any information prepared, supervised, or approved by a qualified person. We interpret this to include the modification of cautionary statements required with certain disclosures to apply to other elements of disclosure about a mineral project. For example, the statements required by paragraph 8 (g) of the Instrument may not be adapted to disclaim old or legacy exploration information not collected by the issuer.

Blackline

Rule

Limitation on disclaimers

9. An issuer must not disclose scientific or technical information that contains a disclaimer of responsibility for, or limits any reliance by a person or company on, all or a part of the disclosure.

Companion Policy

Section 9 Limitation on disclaimers

An issuer may not include any statement that disclaims responsibility for any information prepared, supervised, or approved by a qualified person. We interpret this to include the modification of cautionary statements required with certain disclosures to apply to other elements of disclosure about a mineral project. For example, the statements required by paragraph 8 (g) of the Instrument may not be adapted to disclaim old or legacy exploration information not collected by the issuer.

Comment

Disclaiming Responsibility

This new text is likely in response to those Qualified Persons who try and disclaim responsibility for work done by others, particularly work done in the discipline area that the Qualified Person is actually responsible for, and should have the relevant experience and expertise to evaluate.

This point is explicitly brought up as in issue in the Proposed Modernization Draft Companion Policy. The tendency to disclaimers on this information appears to be increasing, potentially as a result of Qualified Person concern over liability, since the pool of those willing to act as Qualified Persons keeps shrinking.

Use of Important Notice

What would have been useful clarity to have provided to issuers and Qualified Persons is whether this restriction now applies to the Important Notice. The Important Notice text was provided to industry as a courtesy by senior legal counsel at the BC Securities Commission at the time NI 43-101 was first promulgated.

> *Important Notice*
>
> *This report was prepared as National Instrument 43-101 Technical Report for insert client name (client abbreviation) by insert name of company preparing report (company abbreviation). The quality of information, conclusions, and estimates contained herein is consistent with the level of effort involved in company abbreviation's services, based on i) information available at the time of preparation, ii) data supplied by outside sources, and iii) the assumptions, conditions, and qualifications set forth in this report. This report is intended for use by client abbreviation subject to terms and conditions of its contract with company abbreviation. Except for the purposes legislated under Canadian provincial and territorial securities law, any other uses of this report by any third party is at that party's sole risk.*

There were serious concerns raised by engineering and consulting firms that individuals or companies could use technical reports for purposes for which they were not intended (e.g. property or company acquisition based on the Qualified Person's interpretation). Technical reports were prepared for, and intended for use by, investors in the issuer. The Canadian Supreme Court stated that if a disclaimer was in a report to say that if a report was used for a purpose for which it was not intended, then the Qualified Persons and engineering firms were not liable for damages.

The concern is that this wording:

> *"limits any reliance by a person or company on, all or a part of the disclosure"*

will be used by CSA staff to stop the use of the Important Notice.

The Supreme Court of Canada allowed for a protection against liability if a disclaimer was included. The BC Securities Commission counsel-drafted Important Notice allowed for a limited disclaimer that recognized the purposes under securities law but also allowed an engineering or consulting firm to disclaim responsibility for other uses by other parties. If the CSA staff disallow the Important Notice, then the Supreme Court of Canada allowance is unavailable to the engineering firms, and the engineering firms will be held responsible for any use of the technical report. The Important Notice remains critical for engineering and consulting firms. CSA staff should not remain silent on whether this instance is restricted, and if it is restricted, how the CSA staff reconcile their policy to the Canadian Supreme Court ruling.

The TMX Group staff have noted that the Important Notice wording as provided by the senior legal counsel at the BC Securities Commission is problematic for their exchanges, since the text restricts use by TMX-administered exchanges. However, rather than requiring issuers to remove the Important Notice allowance, the TMX policy has been to ask the issuer to ensure that the exchange(s) are listed in the Important Notice as allowable users.

Forward-Looking Information

Anecdotally, there has been a recent policy shift by certain of the CSA staff in comment letters to disallow identification of forward-looking information cautionary language on the grounds that forward-looking information is something the issuer is required to identify, not the Qualified Person. Despite NI 51-102 *Continuous Disclosure Obligations* explicitly requiring in Part 4A that an issuer identifies what information is forward-looking in its disclosure, the CSA staff position appears to be that the technical report is somehow not part of an issuers disclosure since it is prepared not by the issuer but by Qualified Persons.

> *Application 4A.1 This Part applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements.*
>
> *Reasonable Basis 4A.2 A reporting issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information.*
>
> *Disclosure 4A.3 A reporting issuer that discloses material forward-looking information must include disclosure that*
>
> *(a) identifies forward-looking information as such;*
>
> *(b) cautions users of forward-looking information that actual results may vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking information;*
>
> *(c) states the material factors or assumptions used to develop forward-looking information; and*
>
> *(d) describes the reporting issuer's policy for updating forward-looking information if it includes procedures in addition to those described in subsection 5.8(2).*

Technical reports by definition are only prepared on material properties. The technical report contains material factors and assumptions that are used to develop the forward-looking information (Mineral Resource and Mineral Reserve estimates; metallurgical recovery forecasts; life of mine plans; capital and operating cost estimates and the cashflow analysis that supports Scoping, Pre-feasibility, and Feasibility studies and Life-Of-Mine Plans) that are the key outcomes in a technical report. There is no reasonable basis in NI 51-102 for the CSA staff interpretation that a technical report, because it is authored by Qualified Persons, is outside an issuer's

disclosure, and therefore it is “potentially misleading” for a Qualified Person or the issuer to identify in the technical report the data that are forward looking.

CSA staff have also taken the stance that Qualified Persons including identification of information that is forward-looking in a technical report are using language that equates to a type of disclaimer. Qualified Persons and issuers need to be able to identify the forward-looking information and know how to provide compliant wording around that information so that it is not seen to be a type of disclaimer.

Prohibiting the identification in a technical report of what information is forward-looking in this type of disclosure document will potentially affect the safe harbour allowance for both the issuer and the Qualified Persons under the securities act.

It would have been better to clearly allow forward-looking information cautionary language in technical reports in particular, by stipulating where such language can be included. Currently some Qualified Persons appear to either be including the statements in different font on a designated page or pages prior to the listing of the Table of Contents.

Part 3 Additional Requirements For Written Disclosure:

Adjacent Property Information

Proposed Modernization Draft

Definition has been struck out.

Blackline

~~**3.3 Requirements Applicable to Written Disclosure of Exploration Information – Adjacent Property Information** – It is an offence under securities legislation to make misleading disclosure. An issuer may disclose in writing scientific and technical information about an adjacent property. However, in order for the disclosure not to be misleading, the issuer should clearly distinguish between the information from the adjacent property and its own property and not state or imply the issuer will obtain similar information from its own property.~~

Comment

The text is deleted as there is no longer an adjacent properties definition, or Form Item heading requiring content. Adjacent properties are discussed as part of Item 7 in the Form. There is cautionary language required around adjacent property disclosure in the Form and in the Rule.

Missed Opportunities

It is a missed opportunity to remove the repetition in the Form and Rule regarding cautionary language requirements on information derived from adjacent properties.

Name Of Qualified Person

Proposed Modernization Draft

Rule	Companion Policy
3. (10) If an issuer makes written disclosure of scientific or technical information concerning a mineral project, the issuer must include in the disclosure the name and the relationship to the issuer of the qualified person who (a) prepared, or supervised the preparation of, the information that forms the basis for the written disclosure, or (b) approved the written disclosure.	No guidance provided.

Blackline

PART 3 ADDITIONAL REQUIREMENTS FOR WRITTEN DISCLOSURE

~~Written Disclosure to Include~~ Name of ~~Qualified Person~~qualified person

10. If an issuer ~~discloses in writing scientific or technical information about a mineral project on a property material to the issuer, the issuer must include in the~~ makes written disclosure of scientific or technical information concerninga mineral project, the issuer must include in the disclosure the name and the relationship to the issuer of the qualified person who

(a) prepared, or supervised the preparation of, the information that forms the basis for the written disclosure~~;~~, or

~~(a)~~

(b) approved the written disclosure.

Comment

The rewording now applies to all scientific and technical information on any property since the materiality threshold has been removed. What was the issue the regulators were seeing that caused the extension of requiring Qualified Persons to also have to take responsibility for scientific and technical information on non-material properties?

The materiality threshold in the 2011 edition is important. If the wording had been tied to the principle that Qualified Persons should be involved with how (material) scientific and technical information is presented in public disclosure, that seems reasonable. As long as the issuer's disclosure sticks to that principle, that also seems reasonable. But this requirement goes too far, inserting the Qualified Person into minutiae of disclosure for clearly stated benefit.

The reworded instruction is implying that Qualified Persons may not use professional ethics unless their relationship to the issuer is explicitly provided. Qualified Persons have liability under the securities act, and have responsibilities under their professional associations. If Qualified Persons are not seen to be ethical or have professional standards, then what is the point of having

a Qualified Person at all, other than there is a convenient name that can be used for assignment of liability?

A major concern is that the Qualified Person is now always to be held responsible for all disclosure. Company management are being sidelined, and do not appear to have the right to provide investors with management's own views on the type of technical and scientific material that is routinely evaluated in their management role.

Industry has continuously pointed out the issue that obtaining approvals for disclosure is a major problem for issuers. This requirement will increase the burden on obtaining such approvals, not mitigate the issue.

There is no guidance provided that one Qualified Person may review the disclosure document and take responsibility for the information. The reason behind burdening issuers with having to name multiple Qualified Persons in each and every disclosure is not provided. Nor is an explanation provided as to why, apparently, having a single Qualified Person named for corporate disclosure would be non-compliant. Many issuers have typically one, sometimes two Qualified Persons in the corporate headquarters who are the cited Qualified Persons for the majority of the issuer's disclosure documents. These Qualified Persons almost always have senior company management roles and oversight on what was formerly considered to be the most material corporate disclosure, that of the Mineral Resource and Mineral Reserve estimates. Issuers took this approach because it was time-consuming and expensive to track down individual Qualified Persons for the scientific and technical disclosure. Having a Qualified Person who could turn document review around quickly, and were close at hand, is of major importance for the issuer's in meeting timely disclosure obligations.

See also discussion in this document on the definition of a Qualified Person.

Data Verification

Proposed Modernization Draft

Rule	Companion Policy
3. (11). If an issuer makes written disclosure of scientific or technical information concerning a mineral project, the issuer must include in the disclosure the following: (a) a statement indicating whether a qualified person verified data disclosed including, for greater certainty, sampling, analytical and other data underlying the information; (b) steps taken by the qualified person to confirm that the data was generated using standards applied in the mining industry, was accurately transcribed from the original source and is suitable for use in and for the purposes of the disclosure; (c) any limitations on the process used by the qualified person to verify the data and an explanation of any failure to verify the data; (d) the qualified person's opinion on the adequacy of the data for the purposes used in the disclosure.	No guidance provided.

Blackline

Data verification

~~3.2~~11. If an issuer ~~discloses in writing~~makes written disclosure of scientific or technical information ~~about~~concerning a mineral project ~~on a property material to the issuer~~, the issuer must include in the disclosure the ~~written disclosure~~following:

(a) a statement indicating whether a qualified person ~~has~~ verified ~~the~~ data disclosed~~,~~ including, for greater certainty, sampling, analytical~~,~~ and ~~test~~other data underlying the information ~~or opinions contained in the written disclosure~~;

~~a description of how~~

(b) steps taken by the qualified person to confirm that the data was ~~verified~~generated using standards applied in the mining industry, was accurately transcribed from the original source and is suitable for use in and for the purposes of the disclosure;

~~(b)~~ any limitations on the ~~verification~~ process~~; and~~

(c) used by the qualified person to verify the data and an explanation of any failure to verify the data~~.~~;

(d) ~~Requirements Applicable to Written Disclosure of~~ the qualified person's opinion on the adequacy of the data for the purposes used in the disclosure.

(2) If an issuer ~~discloses in writing~~makes written disclosure of a sample, analytical or testing ~~results on~~result concerning a ~~property material to the issuer~~mineral project, the issuer must include in the ~~written~~ disclosure~~, with respect to~~ the ~~results being disclosed,~~following:

(a) the location and type of ~~the samples~~each sample;

(b) the location, azimuth~~,~~ and dip of ~~the~~each drill ~~holes~~hole and the depth of ~~the~~each sample ~~intervals~~interval;

(c) a summary of ~~the~~each relevant analytical ~~values, widths,~~value, each width and, to the extent known, the true ~~widths~~width of ~~the~~each mineralized zone;

~~the results~~

(d) each result of any significantly higher-~~-~~grade ~~intervals~~interval within a lower-~~-~~grade intersection;

(e) any sampling, drilling, ~~sampling,~~ recovery~~,~~ or other factors that could materially affect the accuracy or reliability of the ~~data referred to in this subsection; and~~sample, analytical or testing result;

(f) a summary description of the type of analytical or testing procedures ~~utilized~~used, sample size~~,~~ and the name and location of each analytical or testing laboratory used~~,~~ and any relationship of the laboratory to the issuer.

Comment

These changes in the Proposed Modernization Draft are problematic. The changes are indicative of regulatory over-reach; they are likely to have unintended consequences for investors, but very much intended consequences for Qualified Persons and issuers. It would appear from the wording that data verification has to be performed each and every time scientific and technical data are used in disclosure, since 11(b) in the instructions requires that the Qualified Person comments on the suitability of that information "for use in and for the purposes of the disclosure". It is unclear what issue the CSA staff were seeing that required already verified data to be re-verified each time it is used.

The requirement for data verification should have both a materiality filter, and a filter on what it is actually reasonable to ask for a Qualified Person to have verified. Neither are currently part of the Proposed Modernization Draft.

Part 11(a) Discussion

Inserting the filler phrase "for greater certainty" in 11(a) is not an instruction that provides any useful clarity for an issuer or a Qualified Person. This is legal jargon that adds nothing to a rule that is intended for the Qualified Person to understand and comply with. Too often in the Proposed Modernization Draft, the intended audience, which should be an issuer's investors, has been disregarded. The purposes of disclosure and technical reports appear to be being widened to cover all potential and actual stakeholders in a mineral project, not the issuer's investors.

Qualified Persons are asked to apply plain language principles when preparing disclosure regarding mineral projects. It would have been helpful if this principle was applied to the wording in the Proposed Modernization Draft. An example is the phrase “for greater certainty” where it is used in the last instruction in 11(a) which is a general instruction to provide data verification on “other data underlying the information”. How is the greater certainty requirement met by instructing the Qualified Person to provide verification on data types, where the word “other” is obviously meant as a catchall?

Part 11(b) Discussion

Confirm

A key issue with the wording in 11(b) is that the Qualified Person is expected to “confirm” information as part of the data verification. “Confirm” is a very high standard to meet, given that the general understanding of something being confirmed is that it is to show that something is correct. As will be explained on the commentary to 11(b), this is almost always unrealistic for scientific and technical information on a mineral project.

There is no instruction in sub-section 11 (nor is there in the Proposed Modernization Draft Companion Policy) for Qualified Persons to define what is required of them to meet the concept of “confirm”. Is this the purview of the Qualified Person? The issuer? The CSA staff? Or the investor? Nor is there any context-specific explanation and guidance provided as to what might be needed for different mining project development stages, or whether these would require exactly the same methodology and presentation to meet the concept.

Standards Applied in the Mining Industry

The requirement in 11(b) for data verification to be completed “using standards applied in the mining industry” disregards the fact that for many discipline areas, there are no generally-accepted industry practices for verifying data. The serious concern is that CSA staff have, in effect, made themselves the arbiter of what will be, and not be, an industry-accepted practice. Do the staff have the relevant experience and expertise in or understanding of these discipline areas to be taking on the role of creating industry practices? It is concerning that in the Proposed Modernization Draft the CSA staff are not considering the difference between principle-based guidance and imposing restrictive rules that are being labelled as guidance.

The reason that the industry generally, and CIM more particularly, have not, for many disciplines, created practice guidelines to date is that these take significant time to workshop with the industry and obtain practice guideline consensus. Much of the development of a guideline is constant consultation and rewrites before industry agrees that something is correctly reflecting a general industry practice. Consultation means consultation, actively engaging with industry, not posting a general consultation paper on selected topics, and then claiming that was sufficient to ascertain what issues there may be.

Industry does not have any “standard” that is consistently applied as a comparative (the commonly accepted definition of the term standard) in all disciplines, where such disciplines have a measure of consensus on what is industry accepted practices. Practices differ by commodity, by mining method, and by process method; one standard cannot fit all mining projects. Standards and rules-of-thumb differ depending on location, and are affected by the mineral project setting, jurisdictional requirements for the region in which the project is located, and differing public

perception of mining projects. Requiring a Qualified Person to perform a task for which there are no standards in place is not providing clarity.

A last comment on this topic is that in some discipline areas, particularly the adequacy of social consultation, much of what is and can be documented are opinions. The phrase “stakeholder consultation” covers a gamut of interests, viewpoints, cultural and belief systems, and political agendas, all of which are important considerations in project development, operations, and closure. There is no way to do data verification on opinions that have been provided by parties whose interests in a mineral project can be extremely divergent and often, contradictory, and which change over time.

Information Verification

Verification as required by the CSA staff applies to “scientific and technical information concerning a mineral project”. This has no limit to what a Qualified Person will have to verify, or to the liability that the Qualified Person and issuer is subject to if a snippet of scientific and technical information was later found to be incorrect, or that a CSA staff reviewer decided was insufficiently verified. Minutiae of data verification in a technical report, let alone other disclosure documents is unlikely to result in better outcomes for the investor.

Firstly, for most disclosure documents, the data verification details will be relegated to the same presentation type that is used for forward-looking information, and will become another set of verbiage clutter to be skipped over.

Secondly, as will be clear from the commentary provided on the Proposed Modernization Draft Form, Qualified Persons will provide pages of data verification in a technical report in an attempt to stave off CSA staff opinions that inadequate verification was performed.

The requirement in 11(b) appears to require that data verification is performed anew for each disclosure document. The justification for this rework, the impact on timely disclosure, and the benefit for the investor are not provided. At a minimum, this should have been subject to a cost benefit analysis. Industry has always regarded data verification as a team effort, and in fact in many of the reporting codes globally, that team effort is enshrined in guidance when preparing Mineral Resource and Mineral Reserve estimation. Verification builds and rebuilds on work completed by others. If one area of data has been well verified, and that verification well documented, and the Qualified Person has read the work, and agreed that it is what they would have done themselves, then there is no benefit to the issuer or investor to have the work repeated because a regulatory instruction requires Qualified Persons to re-invent the wheel each and every time a new technical report is prepared.

There has to be a materiality filter on what data verification is actually useful to the investor. The main areas of verification should be topic-limited to the same criteria as those that if there are changes will trigger new technical reports. These are, in the Proposed Modernization Draft, Mineral Resource and Mineral Reserve estimates and economic analyses on material properties (although see MTS’ commentary on the patently ludicrous requirement to make a change in an economic analysis a technical report trigger).

Requiring data verification by a Qualified Person on all written disclosure as is specified in 11(b) is over-reach. If the verification has been done once, for example as part of a technical report, it should not need to be redone for other disclosure. The requirement that data verification

statements will be needed to cover both the concept that the data are “suitable for use in” and also be suitable “for the purposes of the disclosure” in 11(b) is pointless. If the Qualified Person considers the data are suitable to be used, then the data are suitable no matter what the disclosure document is. Data don’t suddenly become unsuitable and require re-verification because they have been extracted from a technical report and summarized into an issuer’s AIF, for example.

Part 11 (c) Discussion

The requirements in 11(c) appear more designed as a convenient cross-check on whether the Qualified Person, in the view of the CSA staff, has completed sufficient data verification. If the instruction at the start of sub-section 11 already identifies that data verification has to be done on the scientific and technical information in the disclosure document, and what verification is required or appropriately appears to be up to the Qualified Person to identify, why then ask for this information? Unless it is to be a “gotcha” the CSA staff can use to determine whether or not the Qualified Person did the appropriate data verification in the CSA staff’s view. If the Qualified Person admits to a limitation on the data verification process, will that be sufficient reason for the CSA staff to find the Qualified Person to be not acting reasonably? Does admitting to a limitation on data verification make the Qualified Person and issuer more likely to be subject to class action lawsuits, and increase their exposure to liability? That should have been a serious consideration with the rewording in sub-section 11.

Part 11 (d) Discussion

Part 11(d) is an example of unneeded repetition in the Proposed Modernization Draft. If the Qualified Person addresses 11(b), then the Qualified Person is already stating that the information is suitable for use that is required in 11(d). This is one of many instances in the Proposed Modernization Draft where the wording, rather than being clear and a requirement being stated just once, introduces filler in the form of unneeded repetition and redundancy in requirements. Consideration should be given to deleting Part (d).

The reworded definition of “effective date” in the Proposed Modernization Draft:

> *“effective date” means, with reference to a disclosure, the date of the most recent scientific or technical information included in the disclosure;*

will require Qualified Persons and issuers to review what the effective date is that needs to be cited in a news release if the data verification is completed (in well-run data collection programs this is completed during and after data are collected), since the date of the completion of the data verification may become the most recent piece of scientific or technical disclosure in the document.

Exploration Information

Proposed Modernization Draft

Rule	Companion Policy
3. (12) (1) If an issuer makes written disclosure of exploration information concerning a mineral project, the issuer must include in the disclosure a summary of the following: (a) material results of surveys and investigations; (b) an interpretation of the information; (c) any quality assurance programs and quality control measures applied during the execution of work disclosed in the information. (d) each result of any significantly higher-grade interval within a lower-grade intersection; (e) any sampling, drilling, recovery or other factors that could materially affect the accuracy or reliability of the sample, analytical or testing result; (f) a summary description of the type of analytical or testing procedures used, sample size and the name and location of each analytical or testing laboratory used and any relationship of the laboratory to the issuer.	No guidance provided.
(2) If an issuer makes written disclosure of a sample, analytical or testing result concerning a mineral project, the issuer must include in the disclosure the following: (a) the location and type of each sample; (b) the location, azimuth and dip of each drill hole and the depth of each sample interval; (c) a summary of each relevant analytical value, each width and, to the extent known, the true width of each mineralized zone;	
(3) If an issuer makes written disclosure of information concerning mineralization of a mineral project in which the issuer does not have an interest, the issuer must include in the disclosure with the same prominence as and proximate to that disclosure a statement that the information is not necessarily indicative of the mineralization of the issuer's mineral project.	

Blackline

The blackline comparison shows the following changes.

Exploration ~~Information~~information

~~3.~~312. **(1)** If an issuer ~~discloses in writing~~ makes written disclosure of exploration information ~~about~~concerning a mineral project ~~on a property material to the issuer~~, the issuer must include in the ~~written~~ disclosure a summary of the following:

(a) ~~the~~ material results of surveys and investigations ~~regarding the property~~;

~~the~~

(b) an interpretation of the ~~exploration~~ information; ~~and~~

~~the~~

(c) any quality assurance ~~program~~programs and quality control measures applied during the execution of ~~the~~ work ~~being reported on~~disclosed in the information.

~~(2)~~(3) ~~If an issuer discloses in writing~~If an issuer makes written disclosure of information concerning mineralization of a mineral project in which the issuer does not have an interest, the issuer must include in the disclosure with the same prominence as and proximate to that disclosure a statement that the information is not necessarily indicative of the mineralization of the issuer's mineral project.

Comment

The changes required put significantly more onus on the issuer to provide each and every sample, whether or not the result is considered material by the issuer or the Qualified Person. There were ways of asking industry to ensure balanced disclosure that would not require the provision of a complete data dump.

Significance of Information

A major concern is that under the 2011 edition, the exploration information disclosure was clearly restricted to material properties. And under that edition, if it was a non-material property, then by definition the property could not have material results. The Proposed Modernization Draft Rule has struck out the restriction to material properties, and now makes it apply to all property disclosure, material, and non-material. Why the reasoning was changed such that the disclosure should now apply to every exploration sample on every property is not explained by the CSA staff in the Proposed Modernization Draft; nor was this a change that industry was asked to provide an opinion on in the 2022 Consultation Paper.

Materiality of information should have been a key component of all of the information required under this subsection, not just for 12(1)(a). The CSA staff should also have considered what is reasonable to provide investors. Requiring information down to the individual sample as this sub-section does, is just going to overwhelm companies and investors with noise; it will not help an investor understand the information provided in what will be pages and pages of a news release. It is obvious no cost benefit analysis was performed. Qualified Persons and the issuer should be able to determine what is material, and materiality of the property and of the information being provided should remain the gold standard for this type of disclosure.

The majority of the investors are not interested in the non-material properties, and most definitely not interested in non-material information. The general investor is very unlikely to be interested in the minutiae of detail required in sub-section 12 to address each and every sample. The CSA staff appear to be broadening the target audience to a far wider audience than has previously been the case. For 25 years, the target audience has been an issuer's investors, not the broader public. The general public do not invest funds in the issuer disclosing information on a mining project, but may well have a, generally, focused, and narrow, interest in selected aspects of the issuer's activities. The Qualified Person responsible for scientific and technical disclosure should not be made responsible for any reader understanding the information presented; they should remain, as was the intent of the 1999 Taskforce Report and the initiating edition and two subsequent editions of NI 43-101 prior to this Proposed Modernized Draft, responsible for disclosure of information that is material to the investor.

Effective Date

The reworded definition of "effective date" in the Proposed Modernization Draft:

> *"effective date" means, with reference to a disclosure, the date of the most recent scientific or technical information included in the disclosure;*

will require Qualified Persons and issuers to review what the effective date is that needs to be cited in a news release that is providing exploration information. It may not be the date the exploration information was available, it might be the date the quality assurance and quality control data, or the required Qualified Person data verification steps were reviewed. The Proposed Modernization Draft definition of "effective date" now being required to be provided in all disclosure is not optimal, and again just adds noise for the investor to have to sort through.

Material Results and Surveys

12(1)(a) at least has a materiality filter. Deletion of the clause regarding property is due to the re-definition of a mineral project. In this instance, the definition could have been retained and would have provided clarity; now the instruction is left hanging. Material results and surveys of what?

Interpretation of Information

12(1)(b) in many cases will be a nonsensical requirement. If the news release is providing the results of a single drill hole to investors, that can only constitute presentation of results; it will be very rare that any interpretation can be provided on a single drill hole. It is also setting the Qualified Person up for failure: interpretations constantly change with the amount of information available. At the exploration stage, there are always limited data, and very limited interpretations can be made. It is only when the sampling goes from 2D to 3D with drilling that, for most deposits, more robust interpretations as to significance of information can be made.

It is unclear why the reference to exploration as in exploration information was struck out of 12(1)(b).

Quality Assurance And Quality Control

Quality assurance and quality control, covered in 12(1)(c) is a subset of data verification. Data verification is already a laundry list of requirements in many places in the Proposed Modernization Draft. This instruction is likely to become onerous on the Qualified Person to comply with: "*any quality assurance programs and quality control measures applied during the execution of work disclosed in the information".* Qualified Persons and issuers will err on providing more, rather than less information to try and fend off CSA staff opinions that inadequate verification was performed. This will add further to the size of disclosure documents, and become more text that the investor doesn't read.

A question for the Qualified Persons and issuers and issuers will be where do they stop when providing disclosure to meet 12(1)(c)? Marking up core boxes is a type of QA/QC. So are core reference libraries used to help Qualified Persons with consistency in logging. Making core recovery measures is another QA/QC step. How much detail has to be provided?

Providing QA/QC information is not part of routine industry practice when completing metallurgical testwork programs. Nor are there many publications that deal with the specifics of such in metallurgical testwork; the chemical assay sub-discipline has numerous guidelines on QA/QC, but there are few on discipline areas such as comminution, flotation, thickener tests, and pilot

plant operation. This is an important point, because the CSA staff have incorporated metallurgical testwork into the definition of exploration information.

Metallurgical Testwork

The issues with the content requirements in 12(2) are acute when it comes to metallurgical testwork, which the CSA Staff have defined as a type of exploration information. All of 12(2)(a) to 12(2)(f) will have to be provided for metallurgical testwork programs if these data are reported. The same issue arises if mineralogical, hydrogeological, and geotechnical results are reported. All of 12(2)(a) to 12(2)(f) will have to be provided.

These requirements are not part of industry practices for that type of information.

Adjacent Property

This requirement appears to be being included in the Proposed Modernization Draft, because Item 23 in the Proposed Modernization Draft has been struck out altogether, and a portion of the instructions that used to be under Adjacent Properties in the 2011 edition were moved to Item 7 in the Proposed Modernization Draft (see also discussion on this in the MTS commentary on the in the Proposed Modernization Draft Form).

The CSA staff do not clarify that this instruction only applies to exploration information. Will issuers providing information on a property that they do not have an interest in require clarification for information that is not exploration?

Missed Opportunities

There is a missed opportunity to take the step of simplifying the instruction in 12(2)(f) and just require a statement on whether a laboratory is independent, rather than keeping the long-winded “any relationship of the laboratory to the issuer”. This would keep the disclosure of independence of the laboratory in line with strong recommendations regarding similar changes to just identify whether or not the Qualified Person is independent of the issuer.

Disclosure Of Mineral Resources Or Mineral Reserves

Proposed Modernization Draft

Rule	Companion Policy
3. (13). If an issuer makes written disclosure of mineral resources or mineral reserves, the issuer must include in the disclosure the following: (a) the effective date of each estimate of mineral resources and mineral reserves; (b) the quantity and grade or quality of each category of mineral resources and mineral reserves; (c) the key assumptions, parameters and methods used to estimate the mineral resources and mineral reserves; (d) any known legal, political, environmental or other risks that could materially affect the potential development of the mineral resources or mineral reserves; (e) if the disclosure includes an economic analysis of mineral resources, a statement, with the same prominence as and proximate to the disclosure, that mineral resources that are not mineral reserves do not have demonstrated economic viability.	No guidance provided.

Blackline

The blackline comparison shows the following changes.

Disclosure of mineral resources or mineral reserves ~~on a property material to the issuer, the issuer must include in the~~

~~3.~~4~~13.~~ If an issuer makes written disclosure of mineral resources or mineral reserves, the issuer must include in the disclosure the following:

(a) the effective date of each estimate of mineral resources and mineral reserves;

(b) the quantity and grade or quality of each category of mineral resources and mineral reserves;

(c) the key assumptions, parameters~~,~~ and methods used to estimate the mineral resources and mineral reserves;

~~the identification of~~

(d) any known legal, political, environmental~~,~~ or other risks that could materially affect the potential development of the mineral resources or mineral reserves; ~~and~~

(e) if the disclosure includes ~~the results of~~ an economic analysis of mineral resources, ~~an equally prominent~~a statement, with the same prominence as and proximate to the disclosure, that mineral resources that are not mineral reserves do not have demonstrated economic viability.

Comment

The instruction in the 2011 edition that this information only had to be provided for material properties has been deleted. It now applies to material and non-material property disclosure. It

is unclear why the removal of the materiality filter was considered necessary: if a Mineral Resource or a Mineral Reserve is on a non-material property, then those estimates would generally not be considered by an investor, and certainly not by the issuer, to be material information.

Why the reasoning was changed such that the disclosure should now apply to every Mineral Resource and Mineral Reserve estimate on every property is not explained in the Proposed Modernization Draft; nor was this a change that industry was asked to provide an opinion on in the 2022 Consultation Paper.

Requiring information for all estimates as this sub-section does, is likely to overwhelm companies and investors with information. Investors may not be able to discriminate between important (material) information and immaterial information. Qualified Persons and the issuer should be able to determine what is a material property, and therefore which of the Mineral Resource and Mineral Reserve estimates are material.

Other than the overall date of the technical report, the only time an effective date should be required is for the Mineral Resource and Mineral Reserve estimates.

In the case where there are Mineral Reserves, then the guidance in (e) needs to qualify if the Mineral Resources are reported inclusive or exclusive of Mineral Reserves. Qualifying whether the Mineral Resource estimates are reported inclusive or exclusive is material information, critical to investor understanding, and should be part of this instruction.

Furthermore, this cautionary language should be stated to be not needed when there are no Mineral Reserves. This should help keep the cautionary language used when the Mineral Resources are reported inclusive of Mineral Reserves from becoming a generic warning that investors no longer read and brush past.

Part 3 Additional Requirements For Written Disclosure: Exception For Written Disclosure Already Filed

Proposed Modernization Draft

Rule	Companion Policy
3. (14). Sections 11 and 12 and paragraphs 13 (a), (c) and (d) do not apply to an issuer if the issuer includes in the written disclosure the title and date of a document previously filed by the issuer in accordance with those provisions	(14) The Instrument provides that the disclosure requirements of sections 11 and 12 and paragraphs 13 (a), (c) and (d) of the Instrument may be satisfied by referring to a previously filed document that includes the required disclosure. However, the disclosure must be factual, complete, balanced and not present or omit information in a manner that is misleading.

Blackline

Rule

Exception for ~~Written Disclosure Already Filed~~written disclosure already filed

~~3.5~~14. Sections ~~3.2~~11 and ~~3.3~~12 and paragraphs 13 (a), (c) and (d) ~~of section 3.4~~ do not apply to an issuer if the issuer includes in the written disclosure ~~a reference to~~ the title and date of a document previously filed by the issuer ~~that complies~~in accordance with those ~~requirements~~provisions.

Companion Policy

~~3.5~~ Section 14 **Exception for ~~Written Disclosure Already Filed~~** ~~– Section 3.5 of the~~**written disclosure already filed**

The Instrument provides that the disclosure requirements of sections ~~3.2~~11 and ~~3.3~~12 and paragraphs ~~3.4~~13 (a), (c) and (d) of the Instrument may be satisfied by referring to a previously filed document that includes the required disclosure. However, the disclosure ~~as a whole~~ must be factual, complete, ~~and~~ balanced and not present or omit information in a manner that is misleading.

Comment

Section 11 of the Proposed Modernization Draft Rule is the section referring to data verification, Section 12 is the section referring to exploration information, and Section 13 refers to Mineral Resource and Mineral Reserve estimate disclosure.

This allowance will be of some use to an issuer for its material properties where there are technical reports on file, but it will likely not work for any disclosure on non-material properties since those

do not require technical reports. This means that issuers will have to include all of the information required in Sections 11, 12, and 13(a), (b) and (c) in any disclosure the company makes.

Part 4 Obligation To File Technical Report

On Becoming A Reporting Issuer

Proposed Modernization Draft

Rule	Companion Policy
(15) (1) On becoming a reporting issuer, an issuer must file a technical report for each mineral project that is material to the issuer.	No guidance provided
(2) Subsection (1) does not apply to an issuer if the issuer is a reporting issuer in another jurisdiction of Canada and previously filed a technical report for the mineral project in that jurisdiction.	
(3) Subsection (1) does not apply to an issuer if the following apply: (a) the issuer previously filed a technical report for the mineral project; (b) on the date on which the issuer becomes a reporting issuer, there is no new material scientific or technical information concerning the mineral project that was not included in the previously filed technical report; (c) the previously filed technical report meets the requirements for a report filed under section 23, if applicable.	

Blackline

PART 4 OBLIGATION TO FILE A TECHNICAL REPORT

~~**Obligation to File a Technical Report Upon Becoming a Reporting Issuer**~~

~~(1) Upon~~**On becoming a reporting issuer** ~~in a jurisdiction of Canada~~

~~4.1~~15. **(1)** On becoming a reporting issuer, an issuer must file ~~in that jurisdiction~~ a technical report for each mineral ~~property~~ project that is material to the issuer.

~~(2) Subsection (1) does not apply~~ to an issuer if the issuer is a reporting issuer in ~~a jurisdiction of Canada and subsequently becomes a reporting issuer in~~ another jurisdiction of Canada.

~~(3) Subsection (1) does not apply if~~

~~(a)~~**(2)** ~~the issuer~~ and previously filed a technical report for the ~~property;~~mineral project in that jurisdiction.

(3) Subsection (1) does not apply to an issuer if the following apply:

(a) the issuer previously filed a technical report for the mineral project;

(b) on the date on which the issuer becomes a reporting issuer, there is no new material scientific or technical information concerning the ~~subject property~~mineral project that was not included in the previously filed technical report; ~~and~~

(c) the previously filed technical report meets ~~any independence~~ the requirements for a report filed under section ~~5.3~~23, if applicable.

Comment

15 (1) should clarify that this only applies to reporting issuers in Canada. It is not clear why the CSA staff would be claiming rights over reporting issuers in other jurisdictions outside Canada.

The distinction made here between an issuer and a reporting issuer is not going to be well understood by Qualified Persons. There should be guidance provided in the Companion Policy on this point.

Since 15 (1) does not restrict the content to only those reporting issuers in Canada, 15 (2) reads very oddly. Are not the requirements in 15 (2) and 15 (3) similar? The original wording had more clarity; the rewording is confusing. If there is a difference such that 15 (2) and 15 (3) address different concerns and concepts, then an explanation and guidance should be provided to clarify the differences.

As noted in so many places independence is a concept that should be retired.

In Connection With Mineral Project Disclosure

Proposed Modernization Draft

Rule	Companion Policy
(16) (1) An issuer must file a technical report to support scientific or technical information concerning a mineral project material to the issuer in any of the following documents filed or made available to the public: (a) a preliminary prospectus, other than a preliminary short form prospectus filed in accordance with National Instrument 44-101 Short Form Prospectus Distributions; (b) a preliminary short form prospectus filed in accordance with National Instrument 44-101 Short Form Prospectus Distributions that discloses for the first time either of the following: (i) mineral resources, mineral reserves or an economic analysis that constitutes a material change for the issuer; (ii) a change in mineral resources, mineral reserves or an economic analysis from the issuer's most recently filed technical report if the change constitutes a material change for the issuer; (c) an information or proxy circular concerning a direct or indirect acquisition of the mineral project; (d) an offering memorandum, other than an offering memorandum delivered solely to an accredited investor as defined in section 1.1 of National Instrument 45-106 Prospectus Exemptions; (e) an annual information form; (f) a valuation required to be prepared and filed under securities legislation; (g) a take-over bid circular, or a notice of change or variation of a take-over bid circular, that discloses mineral resources, mineral reserves or an economic analysis of the mineral project if securities of the offeror, as defined in National Instrument 62-104 Take-Over Bids and Issuer Bids, are being offered in exchange under the circular or notice of change or variation; (h) written disclosure made by or on behalf of the issuer, other than in a document referred to in paragraphs (a) to (g), in which the issuer discloses for the first time either of the following: (i) mineral resources, mineral reserves or an economic analysis that constitutes a material change for the issuer;	(16)(1) (a) The requirement for "prospectus-level disclosure" in an information circular does not make this document a "prospectus" such that the prospectus trigger applies. The information circular is a separate trigger that applies only in certain situations specified in the Instrument. (b) Paragraph 16 (1) (c) of the Instrument requires the issuer to file technical reports for mineral projects that will be material to the resulting issuer. Often the resulting issuer is not the issuer filing the information circular. In determining if it must file a technical report on a particular mineral project, the issuer should consider if the mineral project will be material to the resulting issuer after the completion of the proposed transaction. (c) Our view is that the issuer filing the information circular does not need to file a technical report on its SEDAR+ profile if: (i) the other party to the transaction has filed the technical report; (ii) the information circular refers to the other party's SEDAR+ profile; and (iii) on completion of the transaction, technical reports for all material mineral projects are filed on the resulting issuer's SEDAR+ profile or the SEDAR+ profile of a wholly owned subsidiary. (11) Preliminary short form prospectus – Under paragraph 16 (1) (b) of the Instrument, an issuer must file a technical report with a preliminary short form prospectus if the prospectus discloses for the first time mineral resources, mineral reserves, or the results of an economic analysis that constitute a material change in relation to the issuer, or a change in this information, if the change constitutes a material change in relation to the issuer. If this information is not disclosed for the first time in the preliminary short form prospectus itself but is repeated or incorporated by reference into the preliminary short form prospectus, the technical report must still be filed at the same time as the preliminary short form prospectus. Subsections 16 (5) and (6) of the Instrument, in certain limited circumstances, permit the delayed filing of a technical report. For example, an issuer normally has 45 days, or in some cases 180 days, to file a technical report supporting the first-time disclosure of a mineral resource. However, if a preliminary

Rule	Companion Policy
(ii) a change in mineral resources, mineral reserves or an economic analysis from the issuer's most recently filed technical report if the change constitutes a material change for the issuer.	short form prospectus that includes the prescribed disclosure is filed during the period of the delay, subparagraphs 16 (5) (a) (i) and 16 (6) (c) (i) of the Instrument require the technical report to be filed on the date of filing the preliminary short form prospectus. (2) Take-over bid circular trigger in paragraph 16 (1) (g) – For purposes of the take-over bid circular trigger, the issuer referred to in the introductory language of subsection 16 (1) of the Instrument and the offeror referred to in paragraph (g) of that subsection are the same entity. Since the offeror is the issuer that files the circular, the technical report trigger applies to mineral projects that are material to the offeror. (3) First time disclosure trigger in subparagraph 16 (1) (h) (i) – In most cases, first time disclosure of mineral resources, mineral reserves, or the results of an economic analysis on a mineral project material to the issuer will constitute a material change in the affairs of the issuer. The results of an economic analysis may refer to those found in a scoping study, pre- feasibility study, feasibility study or life of mine plan such as projected capital costs, operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period, or mine life. (12) Triggers with thresholds – The technical report triggers in paragraphs 16 (1) (b), (g) and (h) of the Instrument only apply if the relevant disclosure meets certain thresholds and the mineral project is material to the issuer. (7) Shelf life of technical reports – Economic analyses in technical reports are based on commodity prices, costs, sales, revenue and other assumptions and projections that can change significantly over short periods of time. As a result, economic information in a technical report can quickly become outdated. Continued reference to outdated technical reports or economic projections without appropriate context and cautionary language could result in misleading disclosure. Where an issuer has triggered the requirement to file a technical report under subsection 16 (1) of the Instrument it should consider the current validity of economic assumptions in its existing technical report to determine if the technical report is still current. An issuer might be able to extend the life of a technical report by having a qualified

Rule	Companion Policy
	person include appropriate sensitivity analyses of the key economic variables. (8) Technical reports must be current and complete – Any time an issuer is required to file a technical report, that report should be complete and current. There should only be one current technical report on a mineral project at any point in time. When an issuer files a new technical report, it will replace any previously filed technical report as the current technical report on that mineral project. This means the new technical report will include any material information documented in a previously filed technical report, to the extent that this information is still current and relevant. If an issuer gets a new qualified person to update a previously filed technical report prepared by a different qualified person, the new qualified person must take responsibility for the entire technical report, including any information referenced or summarized from a previous technical report.
(16) (2) Subsection (1) does not apply to an issuer that discloses a historical estimate in a document referred to in paragraph (1) (h) if the disclosure is made in accordance with section 8.	(5) Mineral project acquisitions – alternatives for disclosure of previous estimates – If an issuer options or agrees to buy a mineral project material to the issuer, any previous estimates of mineral resources or mineral reserves on the mineral project will be in most cases material information that the issuer must disclose. The issuer has a number of options available for disclosing the previous estimate without triggering a technical report within 45 days. If the previous estimate is not well-documented, the issuer may choose to disclose this information as an exploration target, in compliance with subsection 7 (2) of the Instrument. Alternatively, the issuer may be able to disclose the previous estimate as an historical estimate, in compliance with section 8 of the Instrument. Both these options require the issuer to include certain cautionary language and restrict the issuer from using the previous estimates in an economic analysis. In circumstances where the previous estimate is supported by a technical report prepared for another issuer, the issuer may be able to disclose the previous estimate as a mineral resource, mineral reserve or results of an economic analysis, in compliance with subsection 16 (6) of the Instrument. In this case, the issuer will still be required to file a technical report. However, it has up to 180 days to do so.
(16) (3) If an issuer files a technical report under paragraph (1) (a) or (b), and there is new material scientific or technical information	

Rule	Companion Policy
concerning the mineral project before the filing of the final prospectus or short form prospectus, the issuer must file with the final prospectus or short form prospectus a revised technical report including the new information.	
(16) (4) Subject to subsections (5) and (6), an issuer must file a technical report referred to in subsection (1) not later than the issuer files or makes available to the public the applicable document under subsection (1)	
(16) (5) Despite subsection (4), an issuer must (a) file a technical report supporting disclosure under paragraph (1) (h) not later than, (i) if the disclosure is also in a preliminary short form prospectus referred to in paragraph (1) (b) or a shelf prospectus supplement, the earlier of 45 days after the date of the disclosure and the date of filing of the prospectus or prospectus supplement, (ii) if the disclosure is also in a directors' circular, the earlier of 45 days after the date of the disclosure and 3 business days before the expiry of the initial deposit period, and (iii) if the disclosure is made other than under subparagraphs (i) and (ii), 45 days after the date of the disclosure, and (b) issue a news release at the time the issuer files the technical report disclosing the filing of the technical report and reconciling any material differences in the mineral resources, mineral reserves or economic analysis disclosed in the technical report filed under paragraph (a) and the disclosure under paragraph (1) (h).	(4) Mineral project acquisitions – 45-day filing requirement – Subsection 16 (5) of the Instrument requires an issuer in certain cases to file a technical report within 45 days to support first time disclosure of mineral resources, mineral reserves, or the results of an economic analysis on a mineral project material to the issuer. Mineral project materiality is not contingent on the issuer having acquired an actual interest in the mineral project or having formal agreements in place. In many cases, the mineral project will become material at the letter of intent stage, even if subject to conditions such as the approval of a third party or completion of a due diligence review. In such cases, the 45-day period will begin to run from the time the issuer first discloses the mineral resources, mineral reserves, or results of an economic analysis.
(16) (6) An issuer is not required to file a technical report under subsection (4) or paragraph (5) (a) to support disclosure made under subparagraph (1) (h) (i) if the following apply: (a) the mineral resources, mineral reserves or economic analysis is disclosed in a technical report filed by or on behalf of another issuer that holds or previously held an interest in the mineral project; (b) the disclosure includes (i) information from the technical report referred to in paragraph (a), including, for greater certainty, the name of the other issuer, title and effective date, (ii) the name of each qualified person who reviewed the technical report on behalf of the issuer, and	(13) Triggers with permitted filing delays – Subsections 16 (5) and (6) of the Instrument allow technical reports in certain circumstances to be filed later than the disclosure documents they support. In these cases, once the requirement to file the technical report has been triggered, the issuer remains subject to the requirement irrespective of subsequent developments relating to the mineral project, including, for example, the sale or abandonment of the mineral project.

Rule	Companion Policy
(iii) with the same prominence as and proximate to the disclosure, a statement that, to the best of the issuer's knowledge, information and belief, there is no new material scientific or technical information that would make the disclosure of the mineral resources, mineral reserves or economic analysis inaccurate or misleading; (c) the issuer files a technical report concerning its disclosure of the mineral resources, mineral reserves or economic analysis (i) if the disclosure is also in a preliminary short form prospectus or a shelf prospectus supplement, on the earlier of 180 days after the date of the disclosure and the date of filing of the final short form prospectus or prospectus supplement, and (ii) if the disclosure is made other than under subparagraph (i), before or on the 180th day after the date of the disclosure.	
(16) (7) Subsection (1) does not apply to an issuer if the following apply: (a) the issuer previously filed a technical report for the mineral project; (b) on the date a document referred to in subsection (1) is filed by the issuer, there is no new material scientific or technical information concerning the mineral project that is not included in the issuer's previously filed technical report; (c) the previously filed technical report meets the requirements for a report filed under section 23, if applicable.	(9) Exception from requirement to file technical report if information included in a previously filed technical report – Subsection 16 (7) of the Instrument provides an exemption from the technical report filing requirement if the disclosure document does not contain any new material scientific or technical information about a mineral project that is the subject of a previously filed technical report. In our view, a change to mineral resources or reserves due to mining depletion from a producing mineral project will not constitute new material scientific or technical information as the change should be reasonably predictable based on an issuer's continuous disclosure record.
	(6) Production decision – The Instrument does not require an issuer to file a technical report to support a production decision because the decision to put a mineral project into production is the responsibility of the issuer. The development of a mining operation typically involves large capital expenditures and a high degree of risk and uncertainty. To reduce this risk and uncertainty, the issuer typically makes its production decision based on a pre-feasibility or feasibility study of established mineral reserves. We recognize that there might be situations where the issuer decides to put a mineral project into production without first establishing mineral reserves. Historically, such developments have a much higher risk of economic or technical failure. To avoid making misleading disclosure, the issuer should disclose that it is not basing its production decision on a pre-feasibility or feasibility study

Rule	Companion Policy
	supporting mineral reserves demonstrating economic and technical viability and should provide adequate disclosure of the increased uncertainty and the specific economic and technical risks of failure associated with its production decision. Providing disclosure related to the increased uncertainty and risks related to the production decision does not preclude the requirement to file a technical report if an issuer discloses the results of an economic analysis. Under paragraph 1.4 (e) of Part 2 of Form 51-102F1 Management's Discussion & Analysis, an issuer must also disclose in its MD&A whether a production decision or other significant development is based on a technical report.
	(10) Reports not required by the Instrument – The securities regulatory authorities in most jurisdictions of Canada require a reporting issuer to file, if not already filed with them, any record or disclosure documents that the issuer files with any other securities regulator, including geological reports filed with stock exchanges. In other cases, an issuer might wish to file voluntarily a report in the form of a technical report. The Instrument does not prohibit an issuer from filing such reports in these situations. However, any document purporting to be a technical report must comply with the Instrument and Form. When an issuer files a report in the form of a technical report that is not required to be filed by the Instrument, the issuer is not required to file a consent of qualified person that complies with subsection 25 (1) of the Instrument. The issuer should consider filing a cover letter with the report explaining why the issuer is filing the report and indicating that it is not filing the report as a requirement of the Instrument. Alternatively, the issuer may consider filing a modified consent with the report that provides the same information.

Blackline

Rule

In connection with mineral project disclosure

~~4.2~~16. **(1)** An issuer must file a technical report to support scientific or technical information ~~that relates to~~concerning a mineral project ~~on a property~~ material to the issuer~~, or in the case of paragraph (c), the resulting issuer, if the information is contained~~ in any of the following documents filed or made available to the public ~~in a jurisdiction of Canada~~:

(a) a preliminary prospectus, other than a preliminary short form prospectus filed in accordance with National Instrument 44-101 *Short Form Prospectus Distributions*;

(b) a preliminary short form prospectus filed in accordance with National Instrument 44-101 *Short Form Prospectus Distributions* that discloses for the first time either of the following:

(i) mineral resources, mineral reserves or ~~the results of a preliminary~~ an economic ~~assessment on the property~~analysis that ~~constitute~~constitutes a material change ~~in relation to~~for the issuer; ~~or~~

(ii) a change in mineral resources, mineral reserves or ~~the results of a preliminary~~ an economic ~~assessment~~analysis from the issuer's most recently filed technical report if the change constitutes a material change ~~in relation to~~for the issuer;

(c) an information or proxy circular concerning a direct or indirect acquisition of ~~a~~the mineral ~~property where the issuer or resulting issuer issues securities as consideration~~project;

(d) an offering memorandum, other than an offering memorandum delivered solely to an accredited ~~investors~~investor as defined ~~under securities legislation~~in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

~~(e) for a reporting issuer, a rights offering circular;~~

~~(f)~~(e) an annual information form;

~~(g)~~(f) a valuation required to be prepared and filed under securities legislation;

~~(h) an offering document that complies with and is filed in accordance with Policy 4.6 – *Public Offering by Short Form Offering Document* and Exchange Form 4H – *Short Form Offering Document*, of the TSX Venture Exchange, as amended;~~

~~(i)~~(g) a take-over bid circular, or a notice of change or variation of a take-over bid circular, that discloses mineral resources, mineral reserves or ~~the results of a preliminary~~ an economic ~~assessment on~~analysis of the ~~property~~mineral project if securities of the offeror, as defined in National Instrument 62-104 *Take-Over Bids and Issuer Bids*, are being offered in exchange ~~on the take-over bid; and~~under the circular or notice of change or variation;

~~(j)~~(h) written disclosure made by or on behalf of ~~an~~the issuer, other than in a document ~~described~~referred to in paragraphs (a) to (~~i), that~~g), in which the issuer discloses for the first time either of the following:

(i) mineral resources, mineral reserves or ~~the results of a preliminary~~ an economic ~~assessment on the property~~analysis that ~~constitute~~constitutes a material change ~~in relation to~~for the issuer; ~~or~~

(ii) a change in mineral resources, mineral reserves or ~~the results of a preliminary~~an economic ~~assessment~~analysis from the issuer's most recently filed technical report if the change constitutes a material change ~~in relation to~~for the issuer.

(2) Subsection (1) does not apply ~~for disclosure of an~~to an issuer that discloses a historical estimate in a document referred to in paragraph (1) (~~j~~h) if the disclosure is made in accordance with ~~subsection 2.4~~section 8.

(3) If an issuer files a technical report ~~is filed~~ under paragraph (1) (a) or (b), and there is new material scientific or technical information concerning the ~~subject property becomes available~~mineral project before the filing of the final ~~version of the~~ prospectus or short form prospectus, the issuer must file ~~an updated technical report or an addendum to the technical report~~ with the final ~~version of the~~ prospectus or short form prospectus a revised technical report including the new information.

(5) Despite subsection (4), an issuer must

(a) file a technical report supporting disclosure under paragraph (1) (~~j~~h) not later than,

(i) if the disclosure is also ~~contained~~ in a preliminary short form prospectus referred to in paragraph (1) (b) or a shelf prospectus supplement, the earlier of 45 days after the date of the disclosure and the date of filing of the ~~preliminary short form~~ prospectus~~;~~ or prospectus supplement,

(ii) if the disclosure is also ~~contained~~ in a directors' circular, the earlier of 45 days after the date of the disclosure and 3 business days before the expiry of the ~~take-over bid;~~initial deposit period, and

~~in all~~

(iii) if the disclosure is made other ~~cases,~~than under subparagraphs (i) and (ii), 45 days after the date of the disclosure~~;~~, and

(b) issue a news release at the time ~~it~~the issuer files the technical report~~,~~ disclosing the filing of the technical report and reconciling any material differences in the mineral resources, mineral reserves or ~~results of a preliminary~~ economic ~~assessment, between~~analysis disclosed in the technical report filed under paragraph (a) and the ~~issuer's~~ disclosure under paragraph (1) (~~j~~h).

~~(6) Despite subsection (4), if a property referred to in an annual information form first becomes material to the issuer less than 30 days before the filing deadline for the annual information form, the issuer must file the technical report within 45 days of the date that the property first became material to the issuer.~~

~~(7)~~**(6)** ~~Despite subsection (4) and paragraph (5) (a), an~~An issuer is not required to file a technical report ~~within 45 days~~under subsection (4) or paragraph (5) (a) to support disclosure made under subparagraph (1) (h) (i) if the following apply:

~~(j) (i), if~~

~~(a) the mineral resources, mineral reserves~~or ~~results of a preliminary~~ economic ~~assessment~~

~~(i)~~(a) ~~were prepared by~~ analysis is disclosed in a technical report filed by or on behalf of another issuer ~~who~~that holds or previously held an interest in the ~~property~~mineral project;

~~(ii) were disclosed by the other issuer in a document listed in subsection (1); and~~

~~(6) Despite subsection (4), if a property referred to in an annual information form first becomes material to the issuer less than 30 days before the filing deadline for the annual information form, the issuer must file the technical report within 45 days of the date that the property first became material to the issuer.~~

~~(7)~~**(6)** ~~Despite subsection (4) and paragraph (5) (a), an~~An issuer is not required to file a technical report ~~within 45 days~~under subsection (4) or paragraph (5) (a) to support disclosure made under subparagraph (1) (h) (i) if the following apply:

~~(j) (i), if~~

~~(a)~~ the mineral resources, mineral reservesor ~~results of a preliminary~~ economic ~~assessment~~

~~(i)~~(a) ~~were prepared by~~ analysis is disclosed in a technical report filed by or on behalf of another issuer ~~who~~that holds or previously held an interest in the ~~property~~mineral project;

~~(ii) were disclosed by the other issuer in a document listed in subsection (1); and~~

~~are supported by a~~

(b) the disclosure includes

~~(iii)~~ information from the technical report ~~filed by the other issuer;~~

~~(b) the issuer, in its disclosure under subparagraph (1) (j) (i),~~

(i) ~~identifies the title and effective date of the previous technical report and~~referred to in paragraph (a), including, for greater certainty, the name of the other issuer ~~that filed it;~~, titleand effective date,

~~names~~

(ii) the name of each qualified person who reviewed the technical report on behalf of the issuer~~;~~, and

~~states~~

(iii) with ~~equal~~the same prominence as and proximate to the disclosure, a statement that, to the best of the issuer's knowledge, information~~,~~ and belief, there is no new material scientific or technical information that would make the disclosure of the mineral resources, mineral reserves or ~~results of a preliminary~~ economic ~~assessment~~analysis inaccurate or misleading; ~~and~~

(c) the issuer files a technical report ~~supporting~~concerning its disclosure of the mineral resources, mineral reserves or ~~results of a preliminary~~ economic ~~assessment;~~analysis

(i) if the disclosure is also ~~contained~~ in a preliminary short form prospectus~~, by~~ or a shelf prospectus supplement, on the earlier of 180 days after the date of the disclosure and the date of filing of the final short form prospectus~~;~~ or prospectus supplement, and

~~in all~~

(ii) if the disclosure is made other ~~cases, within 180 days~~than under subparagraph (i), before or on the 180th day after the date of the disclosure.

~~(8)~~(7) Subsection (1) does not apply ~~if~~to an issuer if the following apply:¶

(a) the issuer previously filed a technical report ~~that supports the scientific or technical information in~~ for the mineral project;¶

~~(a)~~ on the date the document;¶

(b) ~~at~~ is filed by the ~~date of filing the document~~issuer, there is no new material scientific or technical information concerning the ~~subject property~~ mineral project that is not included in the issuer's previously filed technical report; ~~and~~¶

(c) the previously filed technical report meets ~~any independence~~ the requirements for a report filed under section ~~5.3~~21, if applicable.¶

Companion Policy

Section 16 In connection with mineral project disclosure

(1) Information ~~Circular Trigger (4.2~~circular trigger in paragraph 16 (1)~~() (c))~~

(a) The requirement for "prospectus-level disclosure" in an information circular does not make this document a "prospectus" such that the prospectus trigger applies. The information circular is a separate trigger that applies only in certain situations specified in the Instrument.

(b) Paragraph ~~4.2~~16 (1)~~()~~ (c) of the Instrument requires the issuer to file technical reports for ~~properties~~mineral projects that will be material to the resulting issuer. Often the resulting issuer is not the issuer filing the information circular. In determining if it must file a technical report on a particular ~~property~~mineral project, the issuer should consider if the ~~property~~mineral project will be material to the resulting issuer after the completion of the proposed transaction.

(c) Our view is that the issuer filing the information circular does not need to file a technical report on its SEDAR+ profile if:

(i) the other party to the transaction has filed the technical report;

(ii) the information circular refers to the other party's SEDAR+ profile; and

(iii) on completion of the transaction, technical reports for all material ~~properties~~mineral projects are filed on the resulting issuer's SEDAR+ profile or the SEDAR+ profile of a wholly-owned subsidiary.

(4) ~~The~~Subject to subsections (5) and (6), an issuer must file ~~the~~a technical report referred to in subsection (1) not later than the ~~time it~~issuer files or makes available to the public the applicable document ~~listed in~~under subsection (1)~~ that the technical report supports.~~).

Comment

General

The tracking of the Companion Policy guidance to the Form content shows how illogical and poorly ordered the Companion Policy presentation is. The topics in the Companion Policy may have separate numbering, but in many instances they pertain to a specific Rule number; the topics and their relationship to the Rule should have been a key consideration.

Overall, there are numerous elements to unpick in these changes.

Economic Analysis

In (4) (16)(1)(c)(ii), an economic analysis has been added as a technical report trigger. However, despite being a trigger now in the Proposed Modernization Draft, it is not a defined term in the Proposed Modernization Draft Rule, nor is it a term defined by CIM. The Qualified Person and issuer have to go to the Companion Policy to find a meaning:

> *"the results of an economic analysis may refer to those found in a scoping study, pre-feasibility study, feasibility study or life of mine plan such as projected capital costs, operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period, or mine life"*

This assigns a broad meaning to what constitutes an economic analysis. While industry uses mine life, production rate, capital cost and operating cost estimates in the economic analysis, they are not typically seen to be results of the analysis. They are seen to be inputs into the analysis.

All-Cash Transactions

The change in (4) (16)(1)(c) is a concern. The wording used to be that the technical report was triggered only if shares were used in an acquisition; it did not apply in an all-cash transaction. The wording change appears to require a technical report even in the case of the all-cash transaction. If this really is the case, then this is a burden on industry and should have been subject to a cost-benefit analysis. It would be useful to have an explanation as to why all-cash deals require technical reports. Or, if they do not, to clarify that point.

Valuations

Part (4) (16)(1)(f) is also a concern. Valuations are typically required by the stock exchanges, they are not triggered under securities laws. It would be helpful if Companion Policy provided some guidance to explain when these would be triggered.

Valuations completed using the CIMVAL criteria cannot be publicly disclosed, as they include content that is not suitable for public disclosure under securities laws:

- Comparative values using analogue property valuations;
- Using historical estimates and exploration targets in the cashflows;
- Using combinations of historical and future costs: assigning value both to money to be spent on a property as well as the money documented (or assumed to have been) as spent.

In the Proposed Modernization Draft Rule, the current cashflow analysis, which is based on forecast costs, would be the only metric allowed in public disclosure. The other metrics would be non-compliant. Disclosure of cashflow analyses using historical estimates and exploration targets is already prohibited (restricted disclosure).

The guidance around the concept of a previous estimate

> *the issuer may be able to disclose the previous estimate as a mineral resource, mineral reserve or results of an economic analysis, in compliance with subsection 16 (6) of the Instrument*

is likely to be problematic when it comes to the economic analysis completed on those Mineral Resources and Mineral Reserves. While the definition of a historical estimate covers Mineral Resources and Mineral Reserves, it does not include the economic analysis that underpins the Mineral Reserves. Nor does the content requirement around disclosing a historical Mineral

Resource or Mineral Reserve include what must be disclosed for a historical economic analysis. The Companion Policy prohibits an economic analysis on a historical estimate

> *The exception under subsection 7 (3) of the Instrument does not allow an issuer to disclose the results of an economic analysis using an exploration target, an historical estimate.*

So the guidance here and the instruction under the Rule are contradictory. There is no allowance for a Qualified Person to disclose a historical economic analysis since that will always be based on a historical estimate.

The disclosure of a previous economic analysis based on a previous estimate is equally problematic. Previous estimates are in a type of grey zone; they are neither current, nor historical. The economic analysis based on a previous estimate is further again into the grey zone.

Companion Policy (16)(1)(c)

Missed Opportunities

There is a missed opportunity to have clarified when Qualified Persons must provide consents. Currently, legal counsel are requesting consents in instances where they are not needed because they are equating the Information Circular with prospectus-level disclosure, despite both the 2011 edition and this Proposed Modernization Draft stating that the Information Circular is not a prospectus. It would have been most helpful to issuers and Qualified Persons if the CSA staff had explicitly written into the Rule and provided guidance in this Companion Policy that a Consent of Expert is not needed for an Information Circular, and that NI 44-102 does not apply to Information Circulars.

Obviously, in those instances where the Information Circular does trigger a technical report, the normal Consent of Qualified Person would be required. The missed opportunity relates only to the requests for Consents of Expert.

Part (4) (16)(1)(g) Discussion

It is unclear why this sub-section does not provide guidance for all-cash offers, or a mix of securities and cash. Does (4) (16)(1)(g) apply if any securities at all are part of the transaction? Secondly, it is not clear why (4) (16)(1)(g) is a CSA staff matter; why is it not within the purview of the stock exchanges, where this oversight would appear to be more logical?

Companion Policy (16)(1)(g)

This is simply not plain English, and it is confusing. How then can the Qualified Person meet the requirement

> *The obligation of a qualified person to take responsibility for disclosure in the Instrument should be interpreted as requiring the qualified person to have read the Instrument and Form, and to be able to demonstrate their understanding of standards of disclosure for mineral projects.*

when the guidance wording is so convoluted. Guidance has to be expressed so the intention is readily understood. The entire paragraph should be reviewed and re-stated.

Is the intent to have the technical reports on material properties triggered at the time the aggressor in a take-over bid makes the offer? Or is the intent to have the technical reports triggered only at the time the take-over is completed and be based on the material properties of the resulting (consolidated) company?

Part (4) (16)(1)(h) Discussion

With (16)(1)(h) (i) and (ii), it is not clear where the materiality assessment occurs in the instance of the technical report as part of the written disclosure requirement. Is it at the level of the issuer that the changes in the estimates and cashflows are assessed, or at the project level? These can have very different outcomes.

There are also concerns with (h)(ii) specifically. The change in the economic analysis, with no change to the Mineral Resource or Mineral Reserve estimates is now a report trigger. This will mean, for issuers, that if they only update costs and financial information in a mining study, without updating the entire study, they will still trigger a technical report. Under the 2011 edition, the technical report trigger was tied to the preliminary economic assessment. Under the Proposed Modernized Draft, however, it will be changes in the Scoping Study, Pre-feasibility or Feasibility Study, and the Life-Of-Mine Plan.

This additional burden will likely result in issuers not wanting to update studies. Any benefit there may be in assessing changes in the financial metrics will be outweighed by the cost burden for issuers in updating both the full study and the technical report derived from that study.

Companion Policy (16)(1)(h)(i)

Much of the guidance is new. “Such as” is a long, but apparently incomplete list.

The concern is if the CSA staff try and apply this to the assumptions used to assess reasonable prospects for eventual economic extraction when estimating Mineral Resources; or if Qualified Persons do not understand that reasonable prospects considerations are outside this list. The conceptual analysis done when considering reasonable prospects should not be considered to be the equivalent of a mining study. If the list of items presented in the such-as list in the second paragraph of guidance are referred to in the reasonable prospects considerations section of a technical report, these should not considered to be partial results of a Scoping Study.

Part (4) (16)(2) Discussion

The changes are cosmetic

Part (4) (16)(3) Discussion

This instruction should have been subject to a cost benefit analysis. It is more burden imposed on the issuer because it is likely to require a revised technical report.

If there is a real issue that has changed the material scientific and technical information on a project, such as water inrush into underground workings, or a geotechnical event, assessment of such, mitigation planning, assessment of the impact on the existing technical report, and preparation of an updated technical report, cannot be done in the time the CSA staff are typically requiring—five to 10 days.

There is an added burden on the issuer if the new information becomes available simply because CSA staff reviews of the preliminary document caused significant delays between the preliminary and final prospectus or short-form prospectus. Staff impact on issuers in terms of the repeated demands for edits and amendments that are not material, are costing the industry. Staff should be held responsible and accountable for the cost burden and impact on issuers. There have been too many news releases in recent months where the issuers have advised their investors that they have refiled the technical report (and in some instances the annual information form) at the request of the CSA staff, but there are no material changes to the document.

> The Amended Technical Report contains no changes to the material disclosures in the previously filed technical report dated June 26, 2024, including no changes to the estimated mineral reserves and resources, the mine plan, cost estimates and economic analysis. The Amended Technical Report is being filed to provide additional disclosure in respect of the Company's exploration activities at the Reliquias Mine and the mine closure plan recently approved by Peru's Ministry of Energy and Mines.

CSA staff requiring re-filing of documents where the issues raised have no materiality basis should be recognized to be the imposition on industry that they truly are.

Companion Policy (16)(3)

Companion Policy (16)(3) defines what a change in the results of an economic analysis could be, which would trigger a technical report:

> *The results of an economic analysis may refer to those found in a scoping study, pre-feasibility study, feasibility study or life of mine plan such as projected capital costs, operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period, or mine life.*

This is a significant change to report triggers, was not discussed with industry, and is likely to result in immaterial information causing a report update.

The stipulation that a 100% change in the economic analysis, or in "any metric relied upon in the results of an economic analysis" is flawed. This is a classic example of CSA staff not being experienced enough in the discipline areas in which they are claiming veto rights as regulators. A 100% change is a ridiculously low threshold to require as a technical report trigger. It is almost as bad as the lack of a current site visit due to "new relevant information" since a site visit as a trigger.

An economic analysis that changes the internal rate of return from 2% to 4% doesn't make a project more attractive to an investor; however that is a 100% change in a metric relied upon in the results of an economic analysis. A change in the net present value from an overall five million dollar outcome to 10 million dollars is likewise not making a project more attractive to an investor; however that is also a 100% change in a metric relied upon in the results of an economic analysis. Both of these examples would trigger an updated technical report if disclosed.

The change in the economic analysis is not a report trigger as the CSA staff are trying to impose with this brightline test.

Part (4) (16)(4) Discussion

The instruction is written for lawyers; it is not technical user friendly.

Part (4) (16)(5) Discussion

The prospectus supplement will trigger the technical report, which will require a Consent of Qualified Person. Guidance should be provided to the Qualified Person that this is an instance where they will be required to provide a Consent of Qualified Person.

For clarity, (b) should remain as “any material differences”, plural, not “any material difference” singular, since it is referring to Mineral Resources, Mineral Reserves, and economic analyses.

Companion Policy (16)(4)

This may make it hard for issuers to make timely, full, true, and plain disclosure. There are only limited circumstances in the case of an acquisition that the Qualified Persons would have sufficient access to information to be able to perform adequate data verification and validation, to allow for that information to be summarized into a technical report.

There have been instances where the intent to enter into negotiations to acquire a company or a project have caused share prices in the parties to the proposed transaction to jump. This causes the issuer to make a difficult choice. They can either be offside with investors and not provide the information that caused the jump, or they can provide the information, but be unable to verify and validate the information and prepare a technical report.

What is needed in these instances is an allowance for the issuer to make the information public, using Qualified Person approval, but require cautionary language so that the investor can understand the context and basis for the disclosure. This would at least explain the issuer’s reasoning as to why the transaction is considered attractive.

There is a concern with the wording here, and that is if the deal falls over, the QP and issuer still have to provide a technical report if the 45-day trigger has started the countdown.

> *Mineral project materiality is not contingent on the issuer having acquired an actual interest in the mineral project or having formal agreements in place. In many cases, the mineral project will become material at the letter of intent stage, even if subject to conditions such as the approval of a third party or completion of a due diligence review. In such cases, the 45-day period will begin to run from the time the issuer first discloses the mineral resources, mineral reserves, or results of an economic analysis.*
>
> *In these cases, once the requirement to file the technical report has been triggered, the issuer remains subject to the requirement irrespective of subsequent developments relating to the mineral project, including, for example, the sale or abandonment of the mineral project.*

How the issuer and the Qualified Persons are to do this if they do not hold any interest in the project due to the deal falling over is not explained in the guidance. This should have been a consideration, since providing a technical report on a project where there is no ownership interest, or planned ownership interest should actually have been one of the rare instances where disclosure actually would be misleading. The CSA staff should have been acutely aware of specifically asking Qualified Persons and issuers to provide what is unequivocally misleading disclosure.

What is unclear is why a 45-day delay is an acceptable timeframe for the market to be uninformed. Why not the 180-day period allowed later for confirmation of previous estimates?

Companion Policy (16)(5)

The guidance starts off on a poor note. "Any previous estimates" is not reasonable guidance; it should surely be restricted to the most recent estimates available. Previous estimates are already used elsewhere in the Form and Companion Policy as being estimates superceded by a current estimate. This wording could open up cherry-picking of estimates, including estimates that have already been depleted by production. Most of the estimates that would fall under the classification of a "previous estimates" will not be material; only the most recent will be.

A reference should be provided here as to where the concept of what constitutes a previous estimate is defined, and a reference as well to the explanation of how a previous estimate differs from a historical estimate. In what instances would a previous estimate not be a historical estimate? What information is required to compliantly report a previous estimate? Does the laundry list of what is needed for a historical estimate to be compliantly disclosed apply to the previous estimate? Does the issuer's Qualified Person take on the responsibility of (and liability for) the previous estimate disclosure?

If the estimate was prepared using a foreign code, allowed under the 2011 edition but not under the Proposed Modernization Draft, is that estimate considered still suitable to report in this context? If a technical report has a cashflow analysis based on the foreign code estimate, can that cashflow be compliantly disclosed? It would as equally be seen to be material information as the mineral resource or mineral reserve estimates reported using the foreign code.

Given there is a prohibition on historical estimates having cashflow analyses; how does a foreign code estimate fit into that restriction?

There is a major concern that this requirement will result in barriers to issuers making full, true, and plain disclosure on a timely basis. There is a risk that the market will be unbalanced if the issuer cannot directly point to the key information components that are driving the acquisition. Or if the issuer provides information that then triggers a technical report in a timeframe that does not allow for acceptable data verification and validation.

The guidance in the third clause

> *the issuer may be able to disclose the previous estimate as a mineral resource, mineral reserve or results of an economic analysis, in compliance with subsection 16 (6) of the Instrument*

is likely to be problematic when it comes to the economic analysis completed on those Mineral Resources and Mineral Reserves. While the definition of a historical estimate covers Mineral Resources and Mineral Reserves, it does not include the economic analysis that underpins the Mineral Reserves. Nor does the content requirement around disclosing a historical Mineral Resource or Mineral Reserve include what must be disclosed for a historical economic analysis. The Companion Policy prohibits an economic analysis on a historical estimate:

> *The exception under subsection 7 (3) of the Instrument does not allow an issuer to disclose the results of an economic analysis using an exploration target, an*

historical estimate

So the guidance here and the instruction under the Rule are contradictory. There is no allowance for a Qualified Person to disclose a historical economic analysis since that will always be based on a historical estimate.

The disclosure of a previous economic analysis based on a previous estimate is equally problematic. Previous estimates are in a type of grey zone; they are neither current, nor historical. The economic analysis based on a previous estimate is further into the grey zone again.

It is not clear who the guidance and prohibitions are designed to protect. Bad actors will always ignore disclosure requirements and make the disclosure they consider best suits their interests. From the investor perspective, full, plain, true, and timely disclosure is still more useful than the issuer sitting on material information until it has a definite property interest, and its Qualified Persons have completed all verification and validation checks and can compile a technical report.

Part (4) (16)(6) Discussion

Under what circumstances would (a) apply? A 100% acquisition? Would it apply to joint ventures? Could an issuer use the exemption if the economic analysis was that for a Feasibility Study, given the Feasibility Study definition that it is the study that would allow a proponent to finance?

The concern with (b) would be the amount of data verification and validation required, since in the majority of cases it would not be the same Qualified Persons being named. The other concern is in (b) (iii), is having the issuer making the statement:

> *with the same prominence as and proximate to the disclosure, a statement that, to the best of the issuer's knowledge, information and belief, there is no new material scientific or technical information that would make the disclosure of the mineral resources, mineral reserves or economic analysis inaccurate or misleading*

when the information has to be approved or prepared by a Qualified Person under Part 2 (5) and Part 3 (11). Those instructions are tied firmly to the Qualified Person, not to the issuer:

> *(5) An issuer that discloses scientific or technical information concerning a mineral project must*
>
> *(a) base the disclosure on information prepared by or under the supervision of a qualified person, or*
>
> *(b) obtain prior approval of a qualified person to the disclosure.*
>
> *(11) If an issuer makes written disclosure of scientific or technical information concerning a mineral project, the issuer must include in the disclosure the following:*
>
> *(a) a statement indicating whether a qualified person verified data disclosed including, for greater certainty, sampling, analytical and other data underlying the information;*

(b) steps taken by the qualified person to confirm that the data was generated using standards applied in the mining industry, was accurately transcribed from the original source and is suitable for use in and for the purposes of the disclosure;

(c) any limitations on the process used by the qualified person to verify the data and an explanation of any failure to verify the data;

(d) the qualified person's opinion on the adequacy of the data for the purposes used in the disclosure.

Part (4) (16)(7) Discussion

As already noted, the independence requirement is not warranted, and is an unnecessary burden on issuers.

Companion Policy (16)(6)

A production decision is a Board matter; the first sentence states that. It is not a regulatory matter; however that is not stopping the CSA staff from inserting themselves into the decision.

"Production" is not defined, nor is what constitutes a "production decision".

Many projects, particularly underground operations such as kimberlitic diamond mines, start with Mineral Resources and slowly scale up to full production as orebody knowledge and operating conditions become clear.

When in these projects is a production decision taken in the CSA staff view? Would a large underground bulk sample or trial mining constitute production? Construction of an exploration decline or exploration shaft? When along that continuum of scale-up of production would the CSA staff rule that the mine is in production?

Where would the Qualified Person and the issuer be making misleading disclosure if they are clearly explaining that the plan is to scale up from exploration to operations? What would constitute misleading disclosure if the Board chooses to commence production without a specified type of mining study being completed and tells the investor that? Where is that misleading? It may not be in line with common industry practices, where deposits are typically examined at increasing levels of detail, but it is not outside industry practice either. Are industry practices now seen to be such an extension of NI 43-101 that they are to be (as they indeed already are) being used as law themselves? The paragraph has no materiality threshold, but to provide misleading disclosure would mean the information has to be material. Claiming not following industry practices could be providing misleading disclosure is worrying language in the current regulatory environment. Providing misleading disclosure is an offence under securities laws.

In the last paragraph, what would constitute "other significant development"? Does this refer to major activities such as decline construction or shaft sinking prior to full deposit access?

Companion Policy (16)(7)

Technical reports are not meant to capture changes over short time periods. That is the role of management's quarterly reporting and MDA sessions and generally also addressed, as necessary,

in news releases. Technical reports are meant to provide a long-term view of what the project will be over what are often long mine life forecasts. CIM guidance makes it clear that mining studies should be using long-term pricing, not short-term, and use fixed costs over the life of mine plan in the mining study.

Often, in the technical report, the mine plan does not change, nor do the Mineral Reserves, with short-term market changes. What does change are the inputs to the financial model. Just because those inputs may change, however, does not necessarily change the study outcome. As industry has found many times, the commodity price goes up, but the costs go up in tandem, and overall it's a wash, and the study outcomes remain essentially the same.

Missed Opportunities

It was a helpful addition to issuers to have the allowance to include sensitivity statements. However, the last sentence still uses problematic wording and was a missed opportunity to update the 2011 edition. There is specified information that must be subject to sensitivity analysis in the required content in Item 22 of the Form; that information is not optional on the Qualified Person to provide.

Companion Policy (16)(8)

The text uses "material" and "relevant" as if they are not the same concept, but requires a materiality consideration:

> *This means the new technical report will include any material information documented in a previously filed technical report, to the extent that this information is still current and relevant.*

Missed Opportunities

There is a major missed opportunity to correct a commonly misunderstood aspect of who must take responsibility for a technical report. Legal counsel are still requiring that only one Qualified Person is responsible for the technical report, referring to, and requesting a "lead Qualified Person". Many Qualified Persons and consulting firms also have this misconception.

It would be helpful to have this wording revised so it is clear that it refers also to multiple Qualified Persons.

Companion Policy (16)(9)

This is another instance where the new definition of a mineral project as a property does not work.

The term "producing mineral project" is not defined. In this context, this is not a mineral project. A property = mineral project cannot be built. The operation is built. It would be better to reword this to an operating mine or a producing mine.

Companion Policy (16)(10)

In the case of issuers also subject to SK1300 reporting requirements, those issuers have to have consents filed with the 20-F filing. Those are not required under Canadian securities rules. Are these examples of the types of information that do not have to be filed, or do have to be filed?

The instruction also needs clarification to explain that if the disclosure is required by securities legislation in another jurisdiction, but not required under Canadian securities laws, it is, or is not, required to be filed in Canada.

Where issuers report in the other jurisdiction using one of the foreign codes that is no longer allowed to be used under the Proposed Modernization Draft, what is the expectation of the issuer?

A "modified consent" is referred to in the Rule and here, but what that is, and what it would state, is not defined. This is one area of consent requirements that should be reviewed, and removed if possible. If the industry is generally not doing this, and it is not critical to investors, this is a policy that could be struck out.

Missed Opportunities

There is a missed opportunity to clarify this instruction

> *require a reporting issuer to file, if not already filed with them, any record or disclosure documents*

What is meant by "any record". How is that different to a disclosure document?

Companion Policy (16)(11)

A material change is already defined in securities law as being in relation to the issuer. The wording seems to imply that there will be instances where material changes will not be in relation to the issuer. This needs clarification, and if there are such instances, an explanation of what these would constitute.

The change in the economic analysis is a very poor criterion for a technical report trigger:

> *a change in mineral resources, mineral reserves or an economic analysis from the issuer's most recently filed technical report if the change constitutes a material change for the issuer;*

As noted earlier under the commentary under the subheading Companion Policy (16) (3), it is easy to have a 100% change in the internal rate of return or the net present value, and not make a project more attractive to an investor.

The bar is set too low and there will be technical reports triggered for no material improvement in the project presented.

Companion Policy (16)(12)

This is simply repeating where the triggers are in the Rule. It does not constitute guidance.

Companion Policy (16)(13)

The requirement in the 2011 edition, and perpetuated in the Proposed Modernization Draft Companion Policy that a technical report is triggered because Mineral Resources and Mineral Reserves are written down, or because a property is sold is difficult to understand. Why would a technical report need to be produced in this instance? The sale makes the property non-material; the removal of the Mineral Resources and Mineral Reserves from the books makes the property

non-material; and the issuer no longer has a project interest. CSA staff need to provide actual guidance as to why this report requirement remains in place because it is not logical.

Asking an issuer to provide a technical report on a property in which it no longer has an ownership interest or where a deal has fallen through such that there cannot be any intended ownership interest, should have been one of the rare instances where the disclosure actually would be misleading, and CSA staff should have recognized that.

Royalty Or Similar Interest

Proposed Modernization Draft

Rule	Companion Policy
(17) Subsections 15 (1) and 16 (1) do not apply to an issuer if the issuer's only interest in a mineral project is a royalty or similar interest.	(1) Royalty or similar interest – We consider a "royalty or similar interest" to include a gross overriding royalty, net smelter return, net profit interest, free carried interest and a product tonnage royalty. We also consider a "royalty or similar interest" to include an interest in a revenue or commodity stream from a proposed or current mining operation, such as the right to purchase certain commodities produced from the operation. (2) Limitation on exemptions – The term "royalty or similar interest" does not include a participating or carried interest. These exemptions do not apply where the issuer also has a participating or carried interest in the mineral project or the mining operation, either direct or indirect.

Blackline

Rule

~~**Required Form of Technical Report**~~

~~4.3 A technical report that is required to be filed under this Part must be prepared~~

~~in English~~**Royalty or** ~~French;~~**similar interest**

~~(a)~~**17.** Subsections 15 (1) and 16 (1) do not apply to an issuer if the issuer's only interest in a mineral project is a royalty or similar interest.

~~(b) in accordance with Form 43-101F1.~~

Companion Policy

Section 17 Royalty or similar interest

(1) **Royalty or similar interest** – We consider a "royalty or similar interest" to include a gross overriding royalty, net smelter return, net profit interest, free carried interest and a product tonnage royalty. We also consider a "royalty or similar interest" to include an interest in a revenue or commodity stream from a proposed or current mining operation, such as the right to purchase certain commodities produced from the operation.

(2) **Limitation on exemptions** – The term "royalty or similar interest" does not include a participating or carried interest. These exemptions do not apply where the issuer also has a participating or carried interest in the mineral project or the mining operation, either direct or indirect.

Comment

Part (15)(1) exempts royalty companies from having to file a technical report:

> *On becoming a reporting issuer, an issuer must file a technical report for each mineral project that is material to the issuer*

Part (16)(1) exempts royalty companies from having to file a technical report when filing the disclosure documents referenced in (16):

> *An issuer must file a technical report to support scientific or technical information concerning a mineral project material to the issuer in any of the following documents filed or made available to the public*

e.g. preliminary prospectus, preliminary short-form prospectus, information, or proxy circular, offering memorandum, annual information form, valuation, take-over bid circular, first time disclosure of Mineral Resources, Mineral Reserves or an economic analysis, material change to the Mineral Resources, Mineral Reserves, or an economic analysis.

However, the exemptions do not extend to other parts of the Rule, where royalty companies will still have to meet disclosure and data verification requirements. No guidance is provided as to how the Qualified Person can complete data verification on royalty properties such that the data verification is considered to be compliant and complete.

Part 5 Preparation Of Technical Report

Required Form

Proposed Modernization Draft

Rule	Companion Policy
(5) (18). An issuer that files a technical report must file a report prepared: (a) by or under the supervision of one or more qualified persons (b) in English or French, and (c) in accordance with Form 43-101F1 Technical Report.	(18) (1) Filing other scientific and technical reports – An issuer may have other reports or documents containing scientific or technical information, prepared by or under the supervision of a qualified person, which are not in the form of a technical report. We consider that filing such information on SEDAR+ as a technical report could be misleading. An issuer wishing to provide public access to these documents should consider posting them on its website, and prior to posting the issuer must ensure that the scientific or technical information complies with the Instrument.
	(18) (2) Prepared by a qualified person (a) Selection of qualified person – It is the responsibility of the issuer and its directors and officers to retain a qualified person who meets the criteria listed under the definition of qualified person in the Instrument, including having the relevant experience and competence for the subject matter of the technical report. (b) Assistance of non-qualified persons – A person who is not a qualified person may work on a mineral project. If a qualified person relies on the work of a non-qualified person to prepare a technical report or to provide information or advice to the issuer, the qualified person must take responsibility for that work, information or advice by taking whatever steps are appropriate, in their professional judgment, to ensure that the work, information, or advice that they rely on is sound. (c) More than one qualified person – Paragraph 18 (a) of the Instrument provides that one or more qualified persons must prepare or supervise the preparation of a technical report. Some technical reports, particularly for more advanced mineral projects, could require the involvement of several qualified persons with different areas of expertise. In that case, each qualified person taking responsibility for particular sections or items of the technical report must sign the technical report and provide a certificate and consent under Part 6 of the Instrument. (d) A qualified person is responsible for all items of technical report – Paragraph 18 (a) of the Instrument requires a technical report to be prepared by or under the supervision of one or more qualified persons. This means that at least one qualified person must take responsibility for each section or item of the technical report, including any information incorporated from a previously filed technical report, and specifically including a mineral resource or mineral reserve estimate prepared by another qualified person. If two or more qualified persons indicate they are jointly responsible for a particular section or item of the technical report, this means that each of the qualified persons indicated are equally responsible for the entire section or item. For example, if qualified person “A” and qualified person “B” indicate they are jointly responsible for section 1, both A and B are equally responsible for the entirety of section 1. Joint responsibility cannot be used as a disclaimer to renounce responsibility for certain portions of a section or item.

	(18) (3) Preparation in English or French – Paragraph 18 (b) of the Instrument requires a technical report to be prepared in English or French. Reports prepared in a different language and translated into English or French are not acceptable due to the highly technical nature of the disclosure and the difficulties of ensuring accurate and reliable translations.

Blackline

Rule

From this sub-section onward, part numbering in the rule changes significantly, as certain parts have been removed, and others added:

PART 5 PREPARATION OF TECHNICAL REPORT
~~4.3~~18. Required ~~Form of Technical Report~~form

~~PART 5 AUTHOR OF TECHNICAL REPORT~~
~~5.1 Prepared by a Qualified Person~~
19. Addressed to issuer
20. All relevant data
21. Current personal inspection
~~5.2~~22. Execution ~~of Technical Report~~
~~5.3~~23. Independent ~~Technical Report~~technical report

PART 6 ~~PREPARATION OF TECHNICAL REPORT~~
~~6.1 The Technical Report~~
~~6.2 Current Personal Inspection~~
~~6.3 Maintenance of Records~~
~~6.4 Limitation on Disclaimers~~

~~PART 7 USE OF FOREIGN CODE~~
~~7.1 Use of Foreign Code~~
~~PART 8~~ CERTIFICATES AND CONSENTS ~~OF QUALIFIED PERSONS FOR TECHNICAL REPORTS~~

The blackline comparison in shows the following changes.

PART 5 ~~AUTHOR~~ PREPARATION OF TECHNICAL REPORT

~~Prepared by~~Required form

An issuer that files a **~~Qualified Person~~**

18. ~~A~~ technical report must ~~be~~file a report prepared~~.~~

~~5.1~~(a) by or under the supervision of one or more qualified persons~~.~~

(b) ~~Execution of~~in English or French, and

(c) in accordance with Form 43-101F1 *Technical Report*.

Companion Policy

5 PREPARATION OF TECHNICAL REPORT

Section 18 Required form

~~(2)~~(1) **Filing ~~Other Scientific~~other scientific and ~~Technical Reports~~technical reports** – An issuer ~~might~~may have other reports or documents containing scientific or technical information, prepared by or under the supervision of a qualified person, which are not in the form of a technical report. We consider that filing such information on SEDAR+ as a technical report could be misleading. An issuer wishing to provide public access to these documents should consider posting them on its website, and prior to posting the issuer must ensure that the scientific or technical information complies with the Instrument.

(2) Prepared by a qualified person

(a) **Selection of qualified person** – It is the responsibility of the issuer and its directors and officers to retain a qualified person who meets the criteria listed under the definition of qualified person in the Instrument, including having the relevant experience and competence for the subject matter of the technical report.

(b) **Assistance of non-qualified persons** – A person who is not a qualified person may work on a mineral project. If a qualified person relies on the work of a non-qualified person to prepare a technical report or to provide information or advice to the issuer, the qualified person must take responsibility for that work, information or advice by taking whatever steps are appropriate, in their professional judgment, to ensure that the work, information, or advice that they rely on is sound.

(c) **More than one qualified person** – Paragraph 18 (a) of the Instrument provides that one or more qualified persons must prepare or supervise the preparation of a technical report. Some technical reports, particularly for more advanced mineral projects, could require the involvement of several qualified persons with different areas of expertise. In that case, each qualified person taking responsibility for particular sections or items of the technical report must sign the technical report and provide a certificate and consent under Part 6 of the Instrument.

(d) **A qualified person is responsible for all items of technical report** – Paragraph 18 (a) of the Instrument requires a technical report to be prepared by or under the supervision of one or more qualified persons. This means that at least one qualified person must take responsibility for each section or item of the technical report, including any information incorporated from a previously filed technical report, and specifically including a mineral resource or mineral reserve estimate prepared by another qualified person.

If two or more qualified persons indicate they are jointly responsible for a particular section or item of the technical report, this means that each of the qualified persons indicated are equally responsible for the entire section or item. For example, if qualified person "A" and qualified person "B" indicate they are

jointly responsible for section 1, both A and B are equally responsible for the entirety of section 1. Joint responsibility cannot be used as a disclaimer to renounce responsibility for certain portions of a section or item.

(3) **Preparation in English or French** – ~~Section 4.3~~Paragraph 18 (b) of the Instrument requires a technical report to be prepared in English or French. Reports prepared in a different language and translated into English or French are not acceptable due to the highly technical nature of the disclosure and the difficulties of ensuring accurate and reliable translations.

Comment

The instructions in (18) are brief and to the point. However, there is significant content in the Companion Policy that has been added.

Companion Policy (18)(1)

The guidance as provided appears to contradict the guidance in (16)(2)(10). That guidance envisages:

> *When an issuer files a report in the form of a technical report that is not required to be filed by the Instrument, the issuer is not required to file a consent of qualified person that complies with subsection 25 (1) of the Instrument. The issuer should consider filing a cover letter with the report explaining why the issuer is filing the report and indicating that it is not filing the report as a requirement of the Instrument.*
>
> *Alternatively, the issuer may consider filing a modified consent with the report that provides the same information.*

The guidance here does not allow this at all. Here it says that it is not allowed, cover letter or not.

It is concerning that a website is seen to be a better location for disclosure than SEDAR+, since this is contrary to previous practice where the website information was considered ephemeral, and to be readily available to investors, the information needed to be publicly filed. Is this finally an admission that SEDAR+ is such a disaster, is so disrespectful of industry needs, since it is so difficult to accurately and consistently locate information that a website is actually safer since the information can be found?

In response to the following statement in this part of the guidance:

> *We consider that filing such information on SEDAR+ as a technical report could be misleading.*

Why would posting any disclosure, such as a voluntary technical report, to a website be considered not misleading, but filing on SEDAR+ trips over into misleading disclosure? Disclosure is a defined term in NI 43-101, and explicitly captures information on websites within that definition. Why is it misleading disclosure if it complies with NI 43-101? What is it about the SEDAR+ filing that would then make the disclosure misleading?

If the concern is that a voluntary report could be misinterpreted to be a report triggered under the Rule, then why not just have a category for voluntary reports in the SEDAR+ filing metadata?

Companion Policy (18)(2)(a)

The instruction is going to be misunderstood by legal counsel and many Qualified Persons. It needs to be clear that this applies to the Qualified Persons, plural. It should not be so specifically worded:

> *It is the responsibility of the issuer and its directors and officers to retain a qualified person*

This guidance wording does not match (18)(a) of the Proposed Modernization Draft Rule, either:

> *An issuer that files a technical report must file a report prepared*
>
> *(a) by or under the supervision of one or more qualified persons*

Nor does it match (18) (2) (c) in the Proposed Modernization Draft Companion Policy

> ***(18) (2) (c) More than one qualified person** – Paragraph 18 (a) of the Instrument provides that one or more qualified persons must prepare or supervise the preparation of a technical report. Some technical reports, particularly for more advanced mineral projects, could require the involvement of several qualified persons with different areas of expertise. In that case, each qualified person taking responsibility for particular sections or items of the technical report must sign the technical report and provide a certificate and consent under Part 6 of the Instrument.*

It is always helpful when the guidance is consistent with the Proposed Modernization Draft Rule instructions, and the guidance is internally consistent. Here, it is not. A rewording would be useful such that clauses (18)(2)(a) and (18)(2)(c) are combined.

Companion Policy (18)(2)(b)

The guidance is unnecessary and should be removed.

It is not clear why the CSA staff appear to be trying to legitimate what is a fundamental cornerstone of the industry. It does not need CSA staff to state in regulations that it is allowable to have drillers, core cutters, samplers, line clearing crews, laboratory analytical personnel, etc. to work on a mineral project. The majority of the data supporting technical reports is collected by non-qualified persons. There is no project where a single Qualified Person has picked up the tenure, defined the regional, local and deposit geology including all lithological units, personally done the geological mapping, taken every sample, logged every drill hole, personally performed the sample preparation and analysis for every sample, personally completed every aspect of the metallurgical testwork, etc.

It is also contrary to the CIM guidance which makes it clear that most data collection and evaluation is a team, not an individual effort.

Companion Policy (18)(2)(c)

As noted under the commentary on Companion Policy (18)(2)(a), a rewording would be useful such that clauses (18)(2)(a) and (18)(2)(c) are combined. Currently, the guidance is internally inconsistent between those clauses.

Companion Policy (18)(2)(d)

This set of guidance is problematic.

The first paragraph has in the past had legal counsel insist on a “lead” Qualified Person, and that only one Qualified Person could be named as the responsible person per Item. Splitting of content provided under sub-headings between multiple Qualified Persons in the Item was not considered compliant.

Consulting firms also interpreted the guidance to be that a “lead” Qualified Person had to be named for a technical report, and in the consulting firms’ case the “lead” Qualified Person was the only Qualified Person to be responsible for Item 1 (summary) and Item 25 (interpretation and conclusions). Some consulting firms also followed the legal interpretation and insisted that there was only the single Qualified Person per Item.

The paragraph needs to be rewritten to make it clear that sections and sub-sections of the technical report can be the responsibility of multiple Qualified Persons.

The second paragraph will force some of the Qualified Persons to take on responsibility and liability for information that is outside their expertise.

A capital cost estimate in Item 21 is a summary of a more detailed document which includes inputs from numerous disciplines to derive the work breakdown structure that is the basis of all detailed cost estimates. That more detailed document normally covers elements such as direct costs associated with mine development and construction; equipment purchase costs; and indirect costs such as contractor's indirects, EPCM, temporary facilities, freight and insurance, pre-commissioning/commissioning, erection and start-up, insurances, duties, Owner's team, electrical power, and local taxes:

- Mining engineers provide the mining cost estimates, which often require benchmarking and are often based on consultant’s in-house database and vendor information;
- Mechanical engineers provide the equipment cost estimates, which are often based on consultant’s in-house database and vendor information specific to mining equipment: e.g. equipment pricing (including utilization rates, replacement hours, equipment lists);
- Process engineers provide the process cost estimates, which are often based on database information and vendor specific to the process area: e.g. as equipment capacities and equipment pricing;
- Cost estimators, who are likely not Qualified Persons, provide estimates based on specialised areas: e.g. process flow diagrams, piping and instrumentation drawings, equipment layouts;
- Specialist firms, consultants, and individuals, who are likely not Qualified Persons, provide estimates based on specialised areas: e.g. building and facilities, building layouts; dewatering, water management; road and logistics designs; power supply;

- Earthworks, sourced from information providers: e.g. general site preparation, roads, cut-and fill, and borrow sources;
- Indirect costs, sourced from information providers who are likely not Qualified Persons: e.g. EPCM, spares and first fills, vendor representatives;
- Owner's costs, sourced from information providers who are likely not Qualified Persons: e.g. corporate costs,; project management costs, commissioning costs, and ramp-up costs.

All of these areas are rolled up from the literally thousands of line items of estimates in the supporting document into the summary presentation provided in Item 21. This summary is further consolidated into Item 1 (summary) and Item 25 (interpretations and conclusions).

While it can be reasonably easy to subsection out information in Item 21 and assign to individual Qualified Persons, once that information is tabulated into the final overall cost estimate table, or given as a precis in Section 1 and Section 25, allocating the information to a Qualified Person is not practicable. It may be possible to break out by discipline area and sub-sub-headings, but that would only occur at the expense of readability. It also does not address the individual responsibilities in an overall summary table.

As a result, the practical solution used by issuers and Qualified Persons is to name the Qualified Persons on the subsection, but make it clear which aspect of the estimate is within the realm of that Qualified Person (e.g. responsible for Section 1.19 (process costs only). Qualified Persons are trying to do the right thing by signing on the portion of the information that is their responsibility in the body of the report to ensure that the summary instruction is complied with. They are not co-signing because they are accepting responsibility and the resulting liability of signing outside their discipline area.

It is not clear what issue the CSA staff think they are addressing by requiring:

> *For example, if qualified person "A" and qualified person "B" indicate they are jointly responsible for section 1, both A and B are equally responsible for the entirety of section 1. Joint responsibility cannot be used as a disclaimer to renounce responsibility for certain portions of a section or item.*

The outcome will be fewer Qualified Persons agreeing to act in that role. This is already an issue because some members of professional associations appear to be taking the position that no Qualified Person can sign on any information if they personally were not involved in collecting it, such that in those instances, a Qualified Person acting within the bounds of the professional association requirements cannot use or sign on information abstracted from a consultant's report because that was not work the Qualified Person did themselves.

Companion Policy (18)(3)

It is reasonable to ask for the reports to be in English or French since those are Canada's official language.

However, it is completely not reasonable to imply that if you don't speak English or French then you cannot be technically competent. Nor can you be truly fluently bilingual unless it is English to French or vice versa. This clause needs to be removed. To be clear, the clause is both racist and xenophobic. Shame for perpetuating it; it was flagged as an issue back in 2011.

Addressed To Issuer

Proposed Modernization Draft

Rule	Companion Policy
5. (19) A qualified person who prepares a technical report must address the report to the issuer.	We consider that the technical report is addressed to an issuer if the issuer's name appears on the title page as the party for which the qualified person prepared the technical report. We also consider that the technical report is addressed to the issuer filing the technical report if it is addressed to an issuer that is or will become a wholly owned subsidiary of the issuer filing the technical report.

Blackline

Rule

~~A~~ **Addressed to issuer**

~~5.2~~19. A qualified person who prepares a technical report must ~~be dated, signed and, if the qualified person has a seal, sealed by~~address the report to the issuer.

Companion Policy

Section 19 Addressed to issuer

We consider that the technical report is addressed to an issuer if the issuer's name appears on the title page as the party for which the qualified person prepared the technical report. We also consider that the technical report is addressed to the issuer filing the technical report if it is addressed to an issuer that is or will become a wholly owned subsidiary of the issuer filing the technical report.

Comment

The instruction clarifies that the technical report must always be addressed to an issuer.

An issuer is a defined term under securities law. However, the Proposed Modernization Draft assumes that technical readers of the draft will understand the difference between an issuer and a reporting issuer under Canadian securities laws, and when those terms only apply to one issuer subset, or apply to all issuers. This assumes that Qualified Persons have the same familiarity with those terms as the CSA staff and securities-focused legal counsel.

As the Qualified Persons are the ones preparing the technical report, instructions should be clearly explained to those readers.

Missed Opportunities

This is a missed opportunity to lessen the regulatory burden on joint venture companies in particular. Technical reports should be able to be issued to more than one issuer.

The site visit requirement can be met by the Qualified Person doing the site visit on behalf of all parties in the joint venture, and similarly the data verification requirement can be met. What would need to be requested is that the Qualified Person's consent and the purposes for which the technical report was prepared are clearly stated.

It is a continued burden to industry to have to have separate site visits and separate technical reports on projects that are co-owned.

All Relevant Data

Proposed Modernization Draft

Rule	Companion Policy
5. (20). A qualified person who prepares a technical report must base the report on all available data relevant to the disclosure that the technical report supports	Section 1 (e) of this Companion Policy provides that a technical report is a report that provides a summary of all relevant scientific and technical information about a mineral project. The Form includes similar language. The target audience for technical reports are members of the investing public, many of whom have limited geological and mining expertise. To avoid misleading disclosure, technical reports must provide sufficient detail for a reasonable person to understand the nature and significance of the results, interpretation, conclusions and recommendations presented in the technical report. However, we do not think that technical reports need to be a repository of all technical data and information about a mineral project or include extensive geostatistical analysis, charts, data tables, assay certificate, drill logs, appendices or other supporting technical information.

Blackline

Rule

All relevant data

(a) A qualified person who ~~is responsible for preparing or supervising the preparation of all or part of the report; or~~

(b) prepares a ~~person or company whose principal business is providing engineering or geoscientific services if each qualified person responsible for preparing or supervising the preparation of all or part of the report is an employee, officer, or director of that person or company.~~

~~**Independent Technical Report**~~

~~5.3~~ ~~(1)~~ ~~A~~ technical report ~~required under any of the following provisions of this Instrument~~ must ~~be prepared by or under the supervision of one or more qualified persons that are, at the effective and filing dates of the technical report, all independent of the issuer:~~

~~(a) section 4.1;~~
~~(b) paragraphs (a) and (g) of subsection 4.2 (1); or~~
~~(c) paragraphs (b), (c), (d), (e), (f), (h), (i) and (j) of subsection 4.2 (1), if the document discloses~~

~~(i) for the first time mineral resources, mineral reserves or the results of a preliminary economic assessment on a property material to the issuer, or~~base the report

~~(ii) a 100 percent or greater change in the total mineral resources or total mineral reserves on a property material to the issuer, since the issuer's most recently filed independent technical report in respect of the property.~~

~~(2) Despite subsection (1), a technical report required to be filed by a producing issuer under paragraph (1) (a) is not required to be prepared by or under the supervision of an independent qualified person if the securities of the issuer trade on a specified exchange.~~

~~(3) Despite subsection (1), a technical report required to be filed by a producing issuer under paragraph (1) (b) or (c) is not required to be prepared by or under the supervision of an independent qualified person.~~

~~(4) Despite subsection (1), a technical report required to be filed by an issuer concerning a property which is or will be the subject of a joint venture with a producing issuer is not required to be prepared by or under the supervision of an independent qualified person, if the qualified person preparing or supervising the preparation of the report relies on scientific and technical information prepared by or under the supervision of a qualified person that is an employee or consultant of the producing issuer.~~

~~**PART 6 PREPARATION OF TECHNICAL REPORT**~~

~~**The Technical Report**~~

~~6.1~~20. ~~A technical report must be based~~ on all available data relevant to the disclosure that ~~it~~the technical report supports.

Companion Policy

Section 20 All relevant data

Section 1 (e) of this Companion Policy provides that a technical report is a report that provides a summary of all relevant scientific and technical information about a mineral project. The Form includes similar language. The target audience for technical reports are members of the investing public, many of whom have limited geological and mining expertise. To avoid misleading disclosure, technical reports must provide sufficient detail for a reasonable person to understand the nature and significance of the results, interpretation, conclusions and recommendations presented in the technical report.

However, we do not think that technical reports need to be a repository of all technical data and information about a mineral project or include extensive geostatistical analysis, charts, data tables, assay certificate, drill logs, appendices or other supporting technical information.

Comment

Materiality

There are serious concerns with the emphasis in the Proposed Modernization Draft on what is relevant information as opposed to what is material information. See discussion in this document under “materiality”.

This would be completely unnecessary guidance if the criteria used to determine what should or should not be in a technical report was tied to the materiality of the information, not the relevance, and allowed the Qualified Person to use their professional judgement. All that would be otherwise

required is an instruction in the Rule that makes it clear to issuers and Qualified Persons that a technical report is not a synonym for, or a replacement for any mining study, it is a summary of the mining study.

All Available Data, Sufficient Detail, and Must Provide

The concern is amplified by the instruction "all available data". Relevancy already broadens the scope of what a Qualified Person is likely to have to provide; all available data goes further and will make it very difficult for Qualified Persons to provide a reasonable basis for omitting non-material information, since the relevancy requirement would overrule that clear, and basic, test of what should be in a technical report.

Requiring "sufficient detail" doesn't serve to limit pagination or detailed presentation in a technical report, if the content requirements in the Form of the technical report already require more detail. Many of the instructions in the Proposed Modernization Draft Form have "any", "all", "relevant" and "as available" instructions that require Qualified Persons to provide significantly more information than if the materiality filter on information in a technical report had been retained. A similar issue arises with the extension of the Qualified Person concept to non-material properties and all disclosure requirements. Asking for data dumps doesn't support provision of scientific and technical concepts in plain language. Nor will tabulating data dumps provide any more clarity or remove ambiguity.

"Must provide" as used in the Companion Policy to (20) is not guidance it is a requirement. This is an example of the Companion Policy being written as if it were part of the Rule, and that is not what guidance is intended as. "Must provide" is now part of the Rule because it is using the threat of making an offence under securities law. This is explicitly saying that not providing sufficient detail is breaking the law. How can a Qualified Person with guidance like this understand what is needed to be provided to meet "sufficient detail" while still obeying the summary document instruction in the Proposed Modernization Draft Form, and also meeting the "any", "all", "relevant" and "as available" instructions in the Form.

These requirements place additional burdens on the Qualified Person, since to be able to meet these contradictory requirements, and present them to the purported target audience, and do so using plain English principles, the Qualified Person has to understand them:

> *The obligation of a qualified person to take responsibility for disclosure in the Instrument should be interpreted as requiring the qualified person to have read the Instrument and Form, and to be able to demonstrate their understanding of standards of disclosure for mineral projects.*

The last highlighted wording contradicts most of the instructions in the Proposed Modernized Draft Form:

> *However, we do not think that technical reports need to be a repository of all technical data and information about a mineral project or include extensive geostatistical analysis, charts, data tables, assay certificate, drill logs, appendices or other supporting technical information.*

How is this reconcilable with the instructions in the Proposed Modernization Draft Form that have "any", "all", "relevant" and "as available" requirements and no materiality filter? Some instructions

have a relevancy filter, but as noted a number of times, CSA staff are not using relevant as a direct synonym for material, nor have they defined what “relevant” means. What is the Qualified Person to understand from this guidance as not including “technical data and information about a mineral project or include extensive geostatistical analysis, charts, data tables, assay certificate, drill logs, appendices or other supporting technical information”, when those instructions “any”, “all”, “relevant” and “as available” do require that information if the Qualified Person is to provide sufficient detail so as to not be providing misleading disclosure?

Qualified Persons are being held responsible and liable for everything in the technical report, for omitting anything out of the technical report, and will be held responsible for not “being able to demonstrate their understanding of standards of disclosure for mineral projects”, when the task before them is not reconcilable between summary content and sufficient detail. All of the responsibility but no authority: who will want to be Qualified Persons?

Investors

A “reasonable person” is not a synonym for a reasonable investor, and the criteria should be specifically to allow a reasonable mining investor to follow the information presented in summary format in the technical report. The claim that the target audience is the investing public perpetuates the fallacy that the general investing public are investors in the mining industry. The target audience, in fact, should be mining investors specifically. Such investors have a reasonable understanding of common mining terms, allowing the Qualified Persons to use those terms without explaining each useage.

Report vs Technical Report

A minor comment is that it would have been helpful to have the “report” clarified in all mentions as “technical report”, not to any report that an issuer may file.

Current Personal Inspection

Proposed Modernization Draft

Rule	Companion Policy
21. Before an issuer files a technical report, at least one qualified person responsible for preparing or supervising the preparation of all or part of the technical report must complete a current inspection, in person, of the mineral project that is the subject of the technical report.	(1) Meaning – The current personal inspection referred to in section 21 of the Instrument is the most recent personal inspection of the mineral project, provided there is no new relevant scientific or technical information about the mineral project since that personal inspection. A personal inspection may constitute a current personal inspection even if the qualified person conducted the personal inspection considerably before the filing date of the technical report, if there is no new relevant scientific or technical information about the mineral project at the filing date. However, since the qualified person is certifying that the technical report contains all relevant information about the mineral project, the qualified person should consider taking the necessary steps to verify independently that there has been no additional work done on the mineral project since their last personal inspection.
	(2) Importance of personal inspection – We consider a current personal inspection under section 21 of the Instrument to be particularly important because it will enable qualified persons to become familiar with conditions on the mineral project. A qualified person can observe the geology and mineralization, verify work done and, on that basis, design or review and recommend to the issuer an appropriate exploration or development program. A current personal inspection is required even for mineral projects with poor exposure. In such cases, it could be relevant for a qualified person to observe the depth and type of the overburden and cultural effects that could interfere with the results of the geophysics. A current personal inspection also allows for a qualified person to observe the access, limitations, environmental setting and the overall nature of the mineral project, which may or may not impact the ability to conduct further work or development. It is the responsibility of the issuer to arrange its affairs so that a qualified person can carry out a current personal inspection. A qualified person, or where required, an independent qualified person, must visit the site and cannot delegate the personal inspection requirement. For example, we consider a current personal inspection to be delegated when a qualified person only takes responsibility for Item 23 of a technical report.
	(3) More than one qualified person – Section 21 of the Instrument requires at least one qualified person who is responsible for preparing or supervising the preparation of the technical report to inspect the mineral project. This is the minimum standard for a current personal inspection. There could be cases on more advanced mineral projects where it is necessary for more than one qualified person to conduct current personal inspections of the mineral project, taking into account the nature of the work on the mineral project and the different expertise required to prepare various elements of the technical report.

Rule	Companion Policy
	Please see additional guidance in Part B. Guidance to the Form: Item 23 – Current Personal Inspection.

Blackline

Rule

Current ~~Personal Inspection~~personal inspection

~~6.2~~ ~~(1)~~ Before an issuer files a technical report, ~~the issuer must have~~ at least one qualified person ~~who is~~ responsible for preparing or supervising the
21. preparation of all or part of the technical report must complete a current inspection ~~on~~, in person, of the ~~property~~mineral project that is the subject of the technical report.

Companion Policy

Section 21 Current personal inspection

(1) **Meaning** – The current personal inspection referred to in section 21 of the Instrument is the most recent personal inspection of the mineral project, provided there is no new relevant scientific or technical information about the mineral project since that personal inspection. A personal inspection may constitute a current personal inspection even if the qualified person conducted the personal inspection considerably before the filing date of the technical report, if there is no new relevant scientific or technical information about the mineral project at the filing date. However, since the qualified person is certifying that the technical report contains all relevant information about the mineral project, the qualified person should consider taking the necessary steps to verify independently that there has been no additional work done on the mineral project since their last personal inspection.

(2) **Importance of personal inspection** – We consider a current personal inspection under section 21 of the Instrument to be particularly important because it will enable qualified persons to become familiar with conditions on the mineral project. A qualified person can observe the geology and mineralization, verify work done and, on that basis, design or review and recommend to the issuer an appropriate exploration or development program. A current personal inspection is required even for mineral projects with poor exposure. In such cases, it could be relevant for a qualified person to observe the depth and type of the overburden and cultural effects that could interfere with the results of the geophysics. A current personal inspection also allows for a qualified person to observe the access, limitations, environmental setting and the overall nature of the mineral project, which may or may not impact the ability to conduct further work or development.

It is the responsibility of the issuer to arrange its affairs so that a qualified person can carry out a current personal inspection. A qualified person, or where required, an independent qualified person, must visit the site and cannot delegate the personal inspection requirement.

For example, we consider a current personal inspection to be delegated when a qualified person only takes responsibility for Item 23 of a technical report.

~~(4) **More than One Qualified Person** – Section 5.1 of the Instrument provides that~~ **one** ~~or more qualified persons must prepare or supervise the preparation of a technical report. Some technical reports, particularly for advanced properties, could require the involvement of several qualified persons with different areas of~~

~~**A Qualified Person Must Be Responsible for All Items of Technical Report** – Section 5.1~~**qualified person** – Section 21 of the Instrument requires ~~a technical report to be prepared by or under the supervision of one or more qualified persons. By implication, this means that~~ at least one qualified person ~~must take~~

~~person for a previously filed~~who is responsible for preparing or supervising the preparation of the technical report to inspect the mineral project. This is the minimum standard for a current personal inspection. ~~, under section 5.2 and Part 8 of the Instrument, one of the qualified persons preparing the new~~ There could be cases on more advanced mineral projects where it is necessary for more than one qualified person to conduct current personal inspections of the mineral project, taking into account the nature of the work on the mineral project and the different expertise required to prepare various elements of the technical report ~~must take responsibility for those estimates. In doing this, that qualified person should make whatever investigations are necessary to reasonably rely on the estimates~~.

Please see additional guidance in Part B. Guidance to the Form: Item 23 – Current Personal Inspection.

Comment

Rule

The strike out of “the issuer must have” doesn’t serve to advance clarity in understanding. This now reads as if it is the Qualified Person who bears all of the responsibility for arranging a site visit, not the issuer. This is slightly contradictory to the guidance provided in the Proposed Modernization Draft Companion Policy where it says:

> *It is the responsibility of the issuer to arrange its affairs so that a qualified person can carry out a current personal inspection.*

The “in person” addition appears to be worded so as to stymie any issuer or Qualified Person using technology as a substitute for a site visit. This may have arisen from the 2022 Consultation Paper where the use of drones was mentioned by commentators as a very helpful aide to personal inspections.

The remaining edit is due to the discontinuance of the concept of a mineral property and its replacement by mineral project, such that mineral project is now not the activity being reported on, but the mineral tenures underlying the area of activity. The substitution, as has been noted elsewhere, does not work in a number of cases and causes more confusion than resolution of uncertainty.

Companion Policy (21) (1)

Something provided as a “meaning” should be part of the definitions in the Proposed Modernization Draft Rule. This is another example of the Companion Policy being used to set instructions, not provide clarity and guidance.

CSA staff have reserved the right with requiring the Qualified Person to assess whether there is “new relevant scientific or technical information” available since the site visit to make their own determinations on currency and what would constitute relevant changes in the information. When the criteria were at the level of materiality for information in the technical report, this was reasonably easy for the Qualified Person to determine. With no definition of “relevant” and the CSA staff willingness to claim misleading disclosure on the part of the Qualified Person, this is a major area of uncertainty introduced into determining a current site visit for both issuers and Qualified Persons.

There is a major effect on the issuer. If the site visit is not considered current, then the technical report is also no longer current. The use of “relevant” as the distinguishing criterion needs guidance:

- If the Qualified Person went to site, just prior to a major wet-season event that washed out the access road, is that sufficient reason to require a new site visit? In the same example, if that flooding event scoured out new creek outcrop, and that exposure was not previously available for inspection, does that require a new site visit?

The last paragraph appears that site visits will be a necessity and only be completed immediately prior to the filing of the technical report:

> *However, since the qualified person is certifying that the technical report*

> *contains all relevant information about the mineral project, the qualified person should consider taking the necessary steps to verify independently that there has been no additional work done on the mineral project since their last personal inspection.*

In this guidance, even if the issuer and other Qualified Persons advise that there is no new relevant information, out of caution the Qualified Person is still expected to go to site to confirm the fact that there is new relevant information. This is another area where it is clear that the costs to the issuer were immaterial. A cost benefit analysis was, in fact, warranted.

When there have been several generations of mining studies and technical reports, site visits can become less important/significant as a project advances, and those projects may not warrant continued visits.

The instructions do not allow for Qualified Persons to make a contextual decision on whether or not a site visit is warranted. It should be up to the Qualified Person to determine if in their area of expertise, more attention should be paid to desktop verification (e.g. metallurgical testwork is supporting geological assumptions).

There are now numerous mentions of different dates within the Proposed Modernization Draft Companion Policy, of which the filing date of the technical report is one. In many cases, the Qualified Person cannot determine when the technical report will be filed, and may have difficulty accessing the project area for a site visit given weather, access, and accommodation issues with many sites, particularly sites that are remote, at high altitude, represent greenfields development, or are at an early exploration stage. There is no guidance given as to how the Qualified Person is to balance a current site inspection, with the assessment of whether or not there is new relevant information available, whether CSA staff would allow a Qualified Person to exercise their judgement here given the no-definition of “relevant”, and access constraints to the project itself. The Qualified Person is again in a no-win situation.

The guidance in the Companion Policy on the meaning of a current inspection contradicts current industry practice, which is to complete the site visit early in the project so that the Qualified Person can factor any observations during the site visit into their interpretations of the information they are taking responsibility for in the technical report. What the Rule and (21) (1) of the Companion Policy are going to require is either:

- The Qualified Person completes two site visits, one earlier in the project, and a second one closer to the filing date of the technical report, to avoid the issue that there could be some new relevant scientific and technical information about the mineral project that has occurred since their earlier site visit.
- The Qualified Person waits to do their site visit until immediately prior to the filing of the technical report, such that anything they learn from the site visit may not be considered in their interpretations of the information.

There is also significant uncertainty over what will be considered by CSA staff as “new relevant scientific and technical information about the mineral project”. Will assays results that come in after the site visit fall into that category? Metallurgical test results? Information on environmental and social aspects? Will the Qualified Persons be forced to explain why any new information on

the property between their site visit and the filing date of the technical report is not considered to be relevant?

Different project settings can make the timing of the site visit problematic:

- Remote greenfields projects with limited windows for access to the project site (weather limitations, camp availability, personnel at site to facilitate the site visit, drilling/sampling/logging activities ongoing that the Qualified Person can observe). The optimum time to take advantage of all these important considerations may be several months before the technical report is to be filed. Yet that could mean there would be new relevant information that becomes available between the site visit and the report filing dates;
- Year-round active projects where lots of new information is continuously being produced (drilling, mine development, community engagement, permitting activities, laboratory test programs). Is the Qualified Person required to visit the site just before the report is to be filed in order to ensure a current site visit?

Seasonal activities on the ground, which is the optimum time for a site visit to be conducted, result in significant new relevant information from testing laboratories and other consultants doing their specialized studies on the material gathered during the seasonal exploration program. The Qualified Person should make every effort to review this new and relevant information that comes in after their site visit, but the existence of this new relevant information should not constantly trigger the need for new site visits prior to the technical report filing.

It is creating a whole new area of prescriptiveness that overrides the Qualified Person's judgment and issuer's ability to facilitate site visits, and of when a current site visit must be conducted to ensure a compliant technical report. The major concern is that the CSA staff making a determination that there has been an occurrence of "new relevant scientific and technical information about the mineral project since that personal inspection", making the technical report non-compliant, and triggering either a re-file of an amended technical report or a completely new technical report.

A further concern is the instruction in the Companion Policy to the issuer:

> *It is the responsibility of the issuer to arrange its affairs so that a qualified person can carry out a current personal inspection.*

This sentence is telling the issuer that it will have to arrange its affairs such that there is no new information generated on the mineral project between the date of the Qualified Person's site visit and the filing of the technical report. The issuer would have to impose a blackout period on data collection. In essence this would mean, as examples, suspending all operations, stopping the drill program, stopping the assay laboratory from preparing and analyzing samples, halting all geological interpretations, and no collection of cost data.

While the text around the issuer arranging its affairs was also in the 2011 edition, how it is now being applied has totally changed the meaning.

Companion Policy (21) (2)

The guidance again shows the CSA staff bias toward early stage exploration projects. None of this is applicable to operating mines or advanced stage projects. The examples of why it is necessary to have a site visit are risible.

The elevation of the site visit to its own heading in the Form is wrong: a site visit should not be being presented to the investor reader as if it were as important to understanding a project as the Mineral Resource or Mineral Reserve estimates and economic analyses. Unless that is the purpose: that the site visit currency is now seen to be a new report trigger, but simply not clearly identified to the Qualified Persons and issuers as such.

The real question is what benefit is this to the investor? Is the cost to the issuer demonstrably balanced by a better investor understanding of the project from a visual inspection? Like independence, this is a concept that has been inflated way beyond the actual usefulness.

When there have been several generations of mining studies and technical reports, site visits can become less important/significant as a project advances, and those projects may not warrant continued visits.

The instructions do not allow for Qualified Persons to make a contextual decision on whether or not a site visit is warranted. It can be that a lot of information can be verified at the desktop (e.g. metallurgical testwork is supporting geological assumptions).

What is the expectation in the case of an operating mine? Mining operations generate a constant flow of new information, most of which could be considered by CSA staff to be relevant. How does the Qualified Person and the issuer determine currency of the site visit for operations? How can they reasonably comply since it could be argued that the visit was only current for a week before more relevant information was generated

Finally, site visits are very likely not going to identify and solve problems in data interpretation or identify deliberate data manipulation. Site visits should not be explained to investors by the CSA staff as a method of early identification of issues in a mining study, or a method whereby study flaws will always be recognized. Neither should the site visit be seen as a method whereby man-made structures can be reliably identified as ready to fail, and the Qualified Person if they'd just gone to site would have immediately spotted the issue with that particular structure.

A problem with the Proposed Modernization Draft overall is that the presentation has been taken over by lawyers. The original edition was written by lawyers, and found to be very difficult for Qualified Persons to follow. The second and third editions, in 2005 and 2011, tried to provide more technically-focused instruction. This draft makes no concessions for Qualified Person understanding: in fact, it is designed to ensure that the Qualified Person is on the hook for everything, but simultaneously be unable to use their professional judgment, or have any authority over their work.

There has to be a clearly demonstrated benefit to investors before the Qualified Person and the issuers are forced to take on responsibility for current site inspections where how the Qualified Person and issuer can comply is so unclear.

Companion Policy (21) (3)

This is too narrow a requirement, and likely of questionable value to an investor.

Delegation is a useful concept, and routinely applied in the mining industry.

Within the mineral resource and mineral reserve estimation sphere, there is already an acceptance of delegation of responsibility for much of the data collection and evaluation. CIM states that these estimates are team efforts.

It should not be intrinsically wrong or bad if there is also some delegation for site visits.

If one Qualified Person can do inspections for another Qualified Person, why is that a bad thing? The efficiencies of one Qualified Person doing observations to share with another Qualified Person should be encouraged. The CSA staff should not be requiring duplication of observation, for the sake of each Qualified Person having visited site.

If the Qualified Person is looking at the drill core, that Qualified Person can comment not just on the geology but the geotechnical and geometallurgical aspects, for example. This is routine in most mineral projects: it is the geological observations that are used to provide the geotechnical interpretations and select samples for metallurgical testwork. It is generally only later in a project development stage that specialists become involved in these areas. Industry does not spend money unnecessarily by involving subject matter experts before there is demonstrably a project that has economic potential, and warrants the detailed evaluations provided by such experts.

Driving along an access road can provide sufficient information for the infrastructure Qualified Person to assess the suitability of the road for future mine logistics, and provide that information to the mining and process Qualified Persons.

When there have been several generations of mining studies and technical reports, site visits can become less important/significant as a project advances, and those projects may not warrant continued visits.

The instructions don’t allow for QPs to make a contextual decision on whether or not a site visit is warranted. It can be that a lot of information can be verified at the desktop (e.g. metallurgical testwork is supporting geological assumptions).

Site visits are very likely not going to identify and solve problems in data interpretation or identify deliberate data manipulation. Nor are they necessarily going to be able to visually identify areas of potential catastrophism such as a TSF dam wall break, or an unstable slope in imminent danger of collapse. Site visits should not be explained to investors by the CSA staff as a useful method of early identification of issues in a mining study, or a method whereby study flaws will always be recognized. Nor as already noted, will they identify where man-made structures are ready to fail.

Execution

Proposed Modernization Draft

Rule	Companion Policy
5. (22). Each qualified person responsible for preparing or supervising the preparation of all or a part of a technical report must date, sign and, if the qualified person has a seal, seal the report.	Section 22 and subsections 24 (1) and 25 (1) of the Instrument require the qualified person to date, sign, and if the qualified person has a seal, seal the technical report, certificate and consent. If a qualified person's name appears in an electronic document with (signed by) or (sealed) next to their name or there is a similar indication in the document, we will consider that the person has signed and sealed the document.

Blackline

Rule

Execution

~~(2) Subsection (1) does not apply to an issuer provided that~~

~~(a)~~ Each qualified person responsible for preparing or supervising the ~~property that is the subject~~preparation of ~~the~~ all or a part of a technical report ~~is an early stage exploration property;~~

~~(b) seasonal weather conditions prevent a~~ must date, sign and, if the qualified person ~~from accessing any part of the property or obtaining beneficial information from it; and~~

~~(c)~~**22.** has a seal, seal the ~~issuer discloses in the technical~~ report~~, and in the disclosure that the technical report supports, that a personal inspection by a qualified person was not conducted, the reasons why, and the intended time frame to complete the personal inspection~~.

Companion Policy

Section 22 Execution ~~of Technical Report~~

~~5.2~~ Section ~~5.2~~22 and ~~subsection 8.1~~subsections 24 (1) and 25 (1) of the Instrument require the qualified person to date, sign, and if the qualified person has a seal, seal the technical report ~~and~~, certificate~~. Section 8.3 of the Instrument requires the qualified person to date and sign the~~ and consent. If a qualified person's name appears in an electronic document with (signed by) or (sealed) next to ~~the person's~~their name or there is a similar indication in the document, ~~the securities regulatory authorities~~we will consider that the person has signed and sealed the document~~. Although not required, the qualified person may sign or seal maps and drawings in the same manner~~.

Comment

Companion Policy

This is another problematic set of guidance, and also appears to be aimed at making it more difficult on the Qualified Persons.

The wording is extremely loose.

> *If a qualified person's name appears in an electronic document with (signed by) or (sealed) next to their name or there is a similar indication in the document, we will consider that the person has signed and sealed the document.*

There is no recourse for the Qualified Person if the electronic document was filed by an issuer without actually having received the Qualified Person's approval. This is saying that the Qualified Person has de facto consented if an issuer, or its legal counsel, has filed the certificate and consent. Most Qualified Persons do provide the issuer and their legal counsel with draft copies of the certificate and consent for review and verification of, in particular in the certificate, the section and sub-section responsibilities and the Qualified Person's relevant experience. These documents, however, are not for filing. The CSA staff, however, have opened the door to abuse by the issuer and their legal counsel, since if they do bypass the Qualified Person's final approval, there is no repercussion. This guidance says clearly that once the electronic versions are filed, the Qualified Persons are deemed to have approved the filed document, and have provided a written certificate and consent.

Missed Opportunities

This was a missed opportunity in the Proposed Modernization Draft to include the allowance to use the Certificate of Qualified Person as a date and signature page as part of the Rule. Qualified Persons still have to go to the Companion Policy to find this allowance. The issue is that the Companion Policy is intended to be read as guidance, not as law. The use of the Certificate of Qualified Person as equivalent to the date and signature page requirement should be part of the Rule.

There is also a missed opportunity to remove the redundancy between requiring a Date and Signature Page and provision of the Certificates of Qualified Person.

Independent Technical Report

Proposed Modernization Draft

Rule	Companion Policy
5. (23) (1) Each qualified person responsible for preparing or supervising the preparation of all or part of a technical report must be independent in accordance with section 3 if the report is required to be filed under any of the following: (a) section 15; (b) paragraph 16 (1) (a); (c) paragraph 16 (1) (b), (c), (d), (e), (g) or (h), if the document discloses either of the following: (i) for the first time, mineral resources, mineral reserves or an economic analysis of a mineral project material to the issuer; (ii) a 100% or greater change in the total mineral resources, the total mineral reserves or the results of an economic analysis of a mineral project material to the issuer since the issuer's most recently filed independently prepared technical report concerning the mineral project.	(1) Independent qualified persons – Subsection 23 (1) of the Instrument requires that one or more independent qualified persons prepare or supervise the preparation of the independent technical report. This subsection does not preclude non-independent qualified persons from assisting in the preparation of the technical report. However, to meet the independence requirement, the independent qualified persons must assume overall responsibility for all items of the technical report. (2) One hundred percent or greater change – Subparagraph 23 (1) (c) (ii) of the Instrument requires the issuer to file an independent technical report to support disclosure of a 100 percent or greater change in total mineral resources or total mineral reserves or the results of an economic analysis. We interpret this to mean a 100 percent or greater change in either the total tonnage or volume, or total contained metal or mineral content, of the mineral resource or mineral reserve. We also interpret the 100 percent or greater change to apply to mineral resources and mineral reserves separately. Therefore, a 100 percent or greater change in mineral resources on a material mineral project will require the issuer to file an independent technical report regardless of any changes to mineral reserves, and vice versa. In addition, this requirement applies when there is a 100 percent or greater change in the net present value, internal rate of return, or any metric relied upon in the results of an economic analysis of a mineral project. (3) Objectivity of author – We could question the objectivity of the author based on our review of a technical report. To preserve the requirement for independence of the qualified person, we could ask the issuer to provide further information, additional disclosure, or the opinion or involvement of another qualified person to address concerns about possible bias or partiality on the part of the author of a technical report.
(2) A qualified person referred to in subsection (1) must be independent on the effective date of the technical report and the date of filing of the technical report.	
(3) Subsection (1) does not apply to a qualified person if the technical report is required to be filed by: (a) a producing issuer, or (b) an issuer in a joint venture with a producing issuer concerning a mineral project, if each qualified person responsible for preparing or supervising the preparation of all or part of a technical report is an employee or consultant of the producing issuer.	

Blackline

Rule

~~as soon as practical, have at least one~~**Independent technical report**

~~(a)~~ **(1)** Each qualified person ~~who is~~ responsible for preparing or supervising the preparation of all or part of ~~the~~a technical report ~~complete a current inspection on the property that is the subject of the technical report; and~~

~~(b) promptly file a technical report and the certificates and consents required under Part 8 of this Instrument.~~

~~**Maintenance of Records**~~

~~6.3~~ ~~An issuer~~ must ~~keep for 7 years copies of assay and other analytical certificates, drill logs, and other information referenced in the technical report or used as a basis for the technical report.~~

~~**Limitation on Disclaimers**~~

~~6.4 (1) An issuer must not file a technical report that contains a disclaimer by any qualified person responsible for preparing or supervising the preparation of all or part of the report that~~

~~(a) disclaims responsibility for, or limits reliance by another party on, any information in the part of the report the qualified person prepared or supervised the preparation of; or~~

~~(b) limits the use or publication of the report in a manner that interferes with the issuer's obligation to reproduce the report by filing it on SEDAR.~~

23. ~~(2) Despite subsection (1), an issuer may file a technical report that includes a disclaimer~~be independent in accordance with ~~Item 3 of Form 43-101F1.~~section 3 if the report is required to be filed under any of the following:

~~**PART 7 USE OF FOREIGN CODE**~~

~~Use of Foreign Code~~

~~(1) Despite~~

(a) section ~~2.2,~~15;

(b) paragraph 16 (1) (a);

(c) paragraph 16 (1) (b), (c), (d), (e), (g) or (h), if the document discloses either of the following:

(i) for the first time, mineral resources, mineral reserves or an economic analysis of a mineral project material to the issuer;

~~71~~(ii) a 100~~issuer may make disclosure and file a~~% or greater change in the total mineral resources, the total mineral reserves or the results of an economic analysis of a mineral project material to the issuer since the issuer's most recently filed independently prepared technical report ~~that uses the mineral resource and mineral reserve categories of an acceptable foreign code, if the issuer~~concerning the mineral project.

~~(a) is incorporated or organized in a foreign jurisdiction; or~~
~~(b) is incorporated or organized under the laws of Canada or a jurisdiction of Canada, for its properties located~~A qualified person referred to in ~~a foreign jurisdiction.~~

(2) ~~(2) If an issuer relies on~~ subsection (1~~), the issuer~~) must ~~include in the~~ be independent on the effective date of the technical report ~~a reconciliation of any material differences between the mineral resource and mineral reserve categories used and the categories set out in sections 1.2 and 1.3~~and the date of filing of the technical report.

(3) Subsection (1) does not apply to a qualified person if the technical report is required to be filed by

(a) a producing issuer, or

(b) an issuer in a joint venture with a producing issuer concerning a mineral project, if each qualified person responsible for preparing or supervising the preparation of all or part of a technical report is an employee or consultant of the producing issuer.

Companion Policy

~~5.2~~ **Section 23 Independent ~~Technical Report~~technical report**

(1) **Independent ~~Qualified Persons~~qualified persons** – Subsection ~~5.3~~23 (1) of the Instrument requires that one or more independent qualified persons prepare or supervise the preparation of the independent technical report. This subsection does not preclude non-independent qualified persons from ~~co-authoring or~~ assisting in the preparation of the technical report. However, to meet the independence requirement, the independent qualified persons must assume overall responsibility for all items of the technical report.

(2) **~~Hundred Percent~~One hundred percent or ~~Greater Change~~greater change** – Subparagraph ~~5.3~~23 (1)~~(~~) (c)~~(~~) (ii) of the Instrument requires the issuer to file an independent technical report to support ~~its~~ disclosure of a 100 percent or greater change in total mineral resources or total mineral reserves~~.~~ or the results of an economic analysis.

~~(2)~~ We interpret this to mean a 100 percent or greater change in either the total tonnage or volume, or total contained metal or mineral content, of the mineral resource or mineral reserve. We also interpret the 100 percent or greater change to apply to mineral resources and mineral reserves separately. Therefore, a 100 percent or greater change in mineral resources on a material ~~property~~mineral project will require the issuer to file an independent technical report regardless of any changes to mineral reserves, and vice versa.

In addition, this requirement applies when there is a 100 percent or greater change in the net present value, internal rate of return, or any metric relied upon in the results of an economic analysis of a mineral project.

(3) **Objectivity of ~~Author~~author** – We could question the objectivity of the author based on our review of a technical report. ~~In order to~~To preserve the requirement for independence of the qualified person, we could ask the issuer to provide further information, additional disclosure, or the opinion or involvement of another qualified person to address concerns about possible bias or partiality on the part of the author of a technical report.

Comment

Rule

Much of the wording in sub-section 5 on independence is new to the Proposed Modernization Draft. Independence should be a requirement that is completely removed from the Proposed Modernization Draft; see discussion in this document under “Independence”.

Sub-section 5 (16)(1)(a) refers to a preliminary prospectus, other than a short-form prospectus. In MTS view, independence should not be mandated. If independence is seen to be a plus, then let that determination be made by the underwriters and the company. Independence in this instance should not mandated by securities law.

The list in Sub-section (5)(16)(b) to 5(16)(g) are not commonly documents that provide first-time disclosure of Mineral Resources or Mineral Reserves. It would be very unusual for any company to be sitting on material information such that the first-time disclosure would be in any of these documents.

Sub-section 5 (16)(3)(b) is extremely odd in its wording. What is meant by the "consultant of the producing issuer"? It is not clear what the CSA staff are intending from this addition. Does this instruction apply to all employees of a producing issuer? Does it apply to a consultant, assuming the consultant is considered to be independent. Using terms that have no definition and no accompanying guidance adds to the uncertainty burden of issuer and Qualified Person understanding what compliant disclosure would look like. It is a major negative to industry and investors to have CSA staff reserve to themselves the right to determine this; one of the biggest issues with the CSA staff is that they are judge and jury both for the interpretation of what is compliant, and they will not willingly provide clarity on requirements or guidance, in plain English, of what is expected when providing compliant disclosure.

Companion Policy (23)(1)

The rewording could be viewed as unenforceable. It is a relatively easy concept to understand independence of an issuer. It is another to understand what independence of the work completed and summarized in a technical report entails. How does an issuer or Qualified Person prove independence of a technical report? The 1999 Taskforce Report considered that prior involvement with a property was acceptable, if not a good thing.

It is not the technical report that is at issue; how the report is put together is formulaic and dictated by the Form content requirements. It is whether the interpretations and conclusions of the Qualified Person presented in the technical report would be affected if they were not independent, absent deliberate malfeasance. The onus for proving that independence is critical to investor confidence, and to compliant disclosure, is on the CSA staff, and they have not provided a reasonable basis for the continued imposition of an independence requirement.

Nor have they provided sufficient basis for their opinion that the staff of an issuer is automatically suspect or unethical because they are employees, and automatically not independent. Qualified Persons working for an issuer are not inherently, or intrinsically, biased.

Companion Policy (23)(2)

The stipulation that a 100% change in the economic analysis, or in "any metric relied upon in the results of an economic analysis" is flawed; see discussion under Companion Policy (16)(3). A 100% change is a ridiculously low threshold to require as a technical report trigger.

The idea of "any metric" triggering a technical report is also flawed:

> "*the results of an economic analysis may refer to those found in a scoping study, pre- feasibility study, feasibility study or life of mine plan such as projected capital costs, operating costs, cash flow forecasts, production rates, net present value, internal rate of return, payback period, or mine life*".

As noted earlier under the commentary under the subheading In Connection Wioth Mineral Project Disclosure, Companion Policy (16) (3), it is easy to have a 100% change in the internal rate of return or the net present value, and not make a project more attractive to an investor.

The change in the economic analysis should not be a report trigger as the CSA staff are trying to impose with this brightline test.

Companion Policy (23)(3)

It is unclear why the CSA staff retained the “author” as the key part of the guidance wording, where in most other instances, the word author has been replaced out with Qualified Person. In the context of this guidance, the term should be Qualified Person. Qualified Persons prepare and take responsibility for technical reports; that should be clear, and the lack of clarity as to the intended target be removed by explicitly tying the questioning of objectivity to that of the Qualified Person.

As noted in this document under “independence”, this should be removed as a requirement.

Part 6 Certificates And Consents

Certificate Of Qualified Person

Proposed Modernization Draft

Rule	Companion Policy
6. (24) (1) An issuer that files a technical report must file with the technical report a certificate of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that is dated, signed and, if the qualified person has a seal, sealed by the qualified person and states all of the following: (a) the name, address and occupation of the qualified person; (b) the title and effective date of the technical report to which the certificate applies; (c) the qualified person's qualifications, the name and designation of each professional association to which the qualified person belongs, a brief summary of the qualified person's experience relevant to the subject matter of the mineral project and that the qualified person is a qualified person in accordance with section 1; (d) whether the qualified person has completed a current inspection, in person, of the mineral project and, if so, the date and duration of the inspection; (e) each item of the technical report for which the qualified person is responsible; (f) whether the qualified person is independent in accordance with section 3; (g) any prior involvement of the qualified person with the mineral project that is the subject of the technical report; (h) that the qualified person has read this Instrument and Form 43-101F1 Technical Report and that the technical report, or each part for which the qualified person is responsible, has been prepared in accordance with this Instrument; (i) that, on the effective date of the technical report, to the best of the qualified person's knowledge, information and belief, the technical report, or each part of the technical report for which the qualified person is responsible, contains all scientific and technical information that is required to be disclosed under this Instrument and Form 43-101F1 Technical Report to make the technical report not misleading.	The Instrument requires certificates and consent of qualified persons, prepared in accordance with sections 24 and 25 of the Instrument to be filed at the same time as the technical report. The Instrument does not specifically require the issuer to file the certificate of qualified person as a separate document. It is generally acceptable for the qualified person to include the certificate in the technical report and to use the certificate as the date and signature page. Section 24 Certificate of qualified person (1) Certificates apply to the entire technical report – Subsection 24 (1) of the Instrument requires certificates that apply to the entire technical report, including any sections that refer to information in a previously filed technical report. At least one qualified person must take responsibility for each item required by the Form. (2) Deficient certificates – Certificates must include all the statements required by subsection 24 (1) of the Instrument. An issuer that files certificates with required statements that are missing or altered to change the intended meaning has not complied with the Instrument. (3) Summary of relevant experience – We consider it insufficient to simply state the number of years working in the industry for paragraph 24 (1) (c) of the Instrument. The certificate must provide a sufficient summary of the qualified person's relevant experience in the specific subject matter of the technical report such that the investing public can understand how the qualified person determined they have the appropriate relevant experience to act as a qualified person for the items in the technical report for which they are responsible. (4) Professional registration – The certificate should also provide the year which the qualified person was registered with their stated professional association and any previous registration with another professional association that contributes to their 5 years of professional experience.

Blackline

Rule

PART ~~8~~ 6 CERTIFICATES AND CONSENTS ~~OF QUALIFIED PERSONS FOR TECHNICAL REPORTS~~

~~**Certificates of Qualified Persons**~~

Certificate of qualified person

~~8.~~124. **(1)** An issuer ~~must, when filing~~that files a technical report~~,~~ must file with the technical report a certificate ~~that is dated, signed, and if the signatory has a seal, sealed,~~ of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report~~.~~ that is dated, signed and, if the qualified person has a seal, sealed by the qualified person and states all of the following:

~~(2) A certificate under subsection (1) must state~~

(a) the name, address~~,~~ and occupation of the qualified person;

(b) the title and effective date of the technical report to which the certificate applies;

(c) the qualified person's qualifications, ~~including a brief summary of relevant experience,~~ the name and designation of ~~all~~each professional ~~associations~~association to which the qualified person belongs, a brief summary of the qualified person's experience relevant to the subject matter of the mineral project and that the qualified person is a "qualified person" ~~for purposes of this Instrument~~ in accordance with section 1;

~~the~~

(d) whether the qualified person has completed a current inspection, in person, of the mineral project and, if so, the date and duration of the ~~qualified person's most recent personal inspection of each property, if applicable~~inspection;

~~the~~

(e) each item ~~or items~~ of the technical report for which the qualified person is responsible;

(f) whether the qualified person is independent ~~of the issuer as described~~ in accordance with section ~~1.~~53;

~~what~~

(g) any prior involvement~~, if any,~~ of the qualified person ~~has had~~ with the ~~property~~mineral project that is the subject of the technical report;

(h) that the qualified person has read this Instrument and ~~the~~ Form 43-101F1 *Technical Report* and that the technical report, or each part ~~that~~for which the qualified person is responsible ~~for~~, has been prepared in ~~compliance~~accordance with this Instrument; ~~and~~

(i) that, ~~at~~on the effective date of the technical report, to the best of the qualified person's knowledge, information~~,~~ and belief, the technical report, or each part ~~that~~of the technical report for which the qualified person is responsible ~~for~~, contains all scientific and technical information that is required to be disclosed under this Instrument and Form 43-101F1 *Technical Report* to make the technical report not misleading.

Companion Policy

PART 6 ~~PREPARATION OF TECHNICAL REPORT~~CERTIFICATES AND CONSENTS

~~qualified person, must visit the site and cannot delegate the personal~~ The Instrument requires certificates and consent of qualified persons, prepared in accordance with sections 24 and 25 of the Instrument to be filed at the same time as the technical report. The Instrument does not specifically require the issuer to file the certificate of qualified person as a separate document. It is generally acceptable for the qualified person to include the certificate in the technical report and to use the certificate as the date and signature page.

Section 24 Certificate of qualified person

Certificates apply to the entire technical report – Subsection 24 (1)~~inspection requirement.~~

(1) ~~**Certificates Apply to the Entire Technical Report** – Section 8.1~~ of the Instrument requires certificates that apply to the entire technical report, including any sections that refer to information in a previously filed technical report. At least one qualified person must take responsibility for each ~~Item~~item required by the Form ~~43-101F1~~.

(2) **Deficient ~~Certificates~~certificates** – Certificates must include all the statements required by subsection 8.24 (1~~(2~~) of the Instrument. An issuer that files certificates with required statements that are missing or altered to change the intended meaning has not complied with the Instrument.

~~**8.2 Addressed to Issuer** – We consider that the technical report is addressed to the issuer if th issuer's name appears on the title page as the party for which the qualified person prepared the technical report. We also consider that the technical report is addressed to the issuer filing the technical report if it is addressed to an issuer that is or will become a wholly-owned subsidiary of the issuer filing the technical report.~~

~~**8.3 Consents of Qualified Persons**~~

(3) **Summary of relevant experience** – We consider it insufficient to simply state the number of years working in the industry for paragraph 24 (1) (c) of the Instrument. The certificate must provide a sufficient summary of the qualified person's relevant experience in the specific subject matter of the technical report such that the investing public can understand how the qualified person determined they have the appropriate relevant experience to act as a qualified person for the items in the technical report for which they are responsible.

(4) **Professional registration** – The certificate should also provide the year which the qualified person was registered with their stated professional association and any previous registration with another professional association that contributes to their 5 years of professional experience.

Comment

Professional Experience

No industry consultation was undertaken to determine if industry agreed that the professional associations can co-opt the term "professional" such that it can only be used in Canada if the Qualified Person is registered with a provincial association. Professional associations in Canada are taking on the aspect of closed shops and guilds. This is completely counterproductive; industry professionals are mobile, frequently work concurrently on multiple deposits, studies, and operations types in multiple jurisdictions.

Canada is currently undergoing a period of introspection that explicitly identifies regulatory barriers as a major concern. Both Federal and Provincial governments have been accused of facilitating increased regulatory costs, barriers to employment, and barriers to obtaining the best fit of workers to the job requirements. The cozy, burgeoning relationship between the CSA staff and the professional associations is another classic example of additional regulatory burden. There is no basis for the term professional to be allowed to be co-opted in the manner it is now being presented in the Proposed Modernized Draft, particularly not codifying it as part of securities law.

The content requirement in 6 (24)(1)(c) is expressly designed to allow CSA staff and professional associations to query non-Canadian registered industry professionals as to whether they can meet the newly-defined proscription of both having sufficient relevant experience and more than five years of membership of a recognized professional association. Given that most of the true mining scandals in the last 25 years have involved Canadian professionals, professionally registered with Canadian professional associations, this has more than a whiff of xenophobia. Don't look at us Canadians, look at them, they're not Canadian, so its more likely they will be bad players or show flashes of bad behaviour. They've obviously got to be held to a higher standard. Look how many times we're having, as a professional association, to limit professional designations by only allowing limited practice of these non-Canadian industry professionals.

Being a member of a professional association is not a reflection of a Qualified Person's experience or expertise. Nor does simply being a member of a professional association provide relevant experience in a discipline field. To quote the 1999 Taskforce Report:

"No country, and no association, has a monopoly on professional competence".

The requirement for a Qualified Person should be just to state that they are a member of a professional association, provide the name of that association, and their membership registration number. If a Qualified Person provides that, then the level of detail that the CSA staff are now requiring as part of their embrace of also regulating professional practice, is redundant. CSA staff should not be facilitating professional association agenda advancement.

The requirements are again an overt means of increasing uncertainty for issuers and Qualified Persons that they can meet all the nuances now of what it means to be a Qualified Person: assessments as to when work experience counts as relevant experience; length of time paying dues to a professional association; which professional association, and which level of membership can count; and when it is clear-cut that the Qualified Person is independent.

The wording in (e) provides no clarity at all, and worsens current uncertainty over Qualified Person responsibility in Form information. Legal counsel are already querying why no single Qualified Person is named on certain Items in the Form; rather multiple Qualified Persons are taking responsibility, or different Qualified Persons are signing on sub-sections within a single Item, which in the view of legal counsel, is non-compliant. This will compound that issue, as it is explicitly requiring a Qualified Person per Item. This has to be reworded to allow subsections within an Item to have different Qualified Persons, and other Items and sub-sections to have multiple Qualified Persons.

The last set of edits now tries to clarify that the Qualified Person has to have read both the Instrument and the Form (but not the Companion Policy, which is problematic in many cases since the Companion Policy, as noted in the MTS Commentary on the Proposed Modernization Draft Companion Policy actually includes mandatory compliance requirements that the Qualified Person must address) when providing statements in the Certificate of Qualified Person.

Companion Policy Preamble

It is not clear when the use of the Certificate of Qualified Person as the date and signature page would not be “generally acceptable”. There is no guidance in the Companion Policy as to when this use of the Certificate of Qualified Person would not be appropriate or allowable.

Missed Opportunities

This is a missed opportunity. The requirement for a date and signature page should have been deleted out of the Form, and the Certificate of Qualified Person should have been required instead. There is no instruction, still, on filing the Certificate. Removing the redundancy of having a date and signature page and the Certificate of Qualified Person would have gone a way toward streamlining presentation. Currently many consulting companies and Qualified Persons are providing both in the technical report. As this guidance points out

> *The Instrument does not specifically require the issuer to file the certificate of qualified person as a separate document. It is generally acceptable for the qualified person to include the certificate in the technical report and to use the certificate as the date and signature page.*

If the instrument does not specifically require the filing of the Certificate of Qualified Person as a separate document, and the Certificate of Qualified Person has all of the information in it to meet the requirements of the date and signature page, then it should have been a simple modernization

step to strike out the date and signature page and just have the Certificate of Qualified Persons instead. This step would have addressed the confusion about when filing the Certificate of Qualified Person as a separate document is needed, when it should be incorporated into the technical report, and also removed the redundancy between the Certificate of Qualified Person and the filing date.

Companion Policy (24)(1)

Missed Opportunities

This is another missed opportunity.

This was confusing guidance in the 2011 edition, and unfortunately remains so. It is a reminder, again, of the overly-obsessive focus on early-stage exploration properties that has never been properly addressed since the first edition of NI 43-101 was promulgated, even in the 2011 edition, which tried to be more inclusive.

The Certificate of Qualified Person does not apply to the entire technical report as is stated in this guidance. A Qualified Person takes responsibility for specific sections and subsections, and where those are combined to meet summarization instructions in the Form (e.g. Item 1, Item 25), take responsibility for a specific element of what has been summarized.

It needs to be clearly understood that seldom, outside early-stage exploration properties and first-time Mineral Resource estimates, is there the sole Qualified Person responsible for a technical report in its entirety. It does happen, is a legitimate occurrence, but it is less common than technical reports with multiple Qualified Persons. Guidance should not be fixated on the less common instances; it needs to accommodate both those exceptions as well as common practice, as much as practicable. This guidance does not meet that balance.

Companion Policy (24)(2)

Changes are cosmetic.

Companion Policy (24)(3)

This is an example of guidance that provides no guidance at all. What will a “sufficient summary” look like to be compliant? What will constitute “relevant experience”? What is needed to be provided to meet the understanding of the investing public? What information is of relevance or concern that must be provided to give a sufficiency of information for that target audience? The requirement is open ended, with not the investing public as the jury, but the CSA staff. This needs to be rewritten to provide actual guidance so that the Qualified Persons know what must be provided to make compliant disclosure of their work experience.

Companion Policy Professional Registration

This confuses professional registration and professional experience. The two concepts are completely different. It is not possible to gain professional experience that would be peer-accepted simply from paying dues to a professional association.

Why are the CSA staff so concerned with Qualified Persons having paid professional association dues, and taking on the role of dues enforcers for the professional associations? If there is to be

a CSA staff concern, then it should be the experience of the Qualified Person in the subject matter for which they are taking responsibility that is the focus, not bill paying.

The requirement is also explicitly designed to treat non-Canadians and newly-resident Canadians as “other”. CSA staff should not be endorsing the Canadian, in particular, professional associations in promulgating closed-shop, labour union-type actions on members, and imposing those restrictions on those coming into Canada from overseas. The approach is implicitly saying that any training, mentorship, or hands-on experience, if obtained prior to, or outside of, professional association membership is irrelevant; it is the payment of dues that is the true mark of the professionalism of a Qualified Person. This should not be imposed on the industry as part of any type of enforcement or be adopted as policy.

Consent of Qualified Person

Proposed Modernization Draft

Rule	Companion Policy
6. (25) (1) An issuer that files a technical report must file with the technical report a consent of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that is dated and signed by the qualified person and contains a statement (a) consenting to the public filing of the technical report, (b) identifying the document that the technical report supports, (c) consenting to the use of extracts from, or a summary of, the technical report in the document, and (d) confirming that the qualified person has read the document and that the document fairly and accurately represents the information in the technical report for which the qualified person is responsible.	(1) Consent of experts – If the technical report supports disclosure in a prospectus, the qualified person will likely have to provide an expert consent under the prospectus rules (section 10.1 of National Instrument 41-101 General Prospectus Requirements and paragraph 4.2 (a) (vii) of National Instrument 44-101 Short Form Prospectus Distributions), in addition to any consent of qualified person required under the Instrument. (2) Deficient consents – Consents must include all the statements required by subsection 25 (1) of the Instrument. An issuer that files consents with required statements that are missing or altered to change the intended meaning has not complied with the Instrument. Appendix B to this Companion Policy provides an example of an acceptable consent of a qualified person. (5) Filing of consent for technical reports not required by the Instrument – Where an issuer files a technical report voluntarily or as a requirement of a Canadian stock exchange, and the filing is not also required under the Instrument, the report is not a "technical report" subject to the consent requirements under subsection 25 (1) of the Instrument. Therefore, when the issuer subsequently files a disclosure document that would normally trigger the filing of a technical report under subsection 16 (1) of the Instrument, the issuer must file the consents of qualified persons in accordance with subsection 25 (1) of the Instrument. If an issuer files a filing statement or other prospectus-level disclosure document with a Canadian stock exchange, and the filing is not also required under the Instrument, the issuer may choose or be required by the stock exchange to file a full consent that includes paragraphs 25 (1) (b), (c) and (d) of the Instrument as they relate to the filing statement or other disclosure document.
(2) Paragraphs (1) (b), (c) and (d) do not apply to an issuer that files a consent with a technical report filed under section 15.	(3) Modified consents under subsection 25 (2) – Subsection 25 (1) of the Instrument requires the qualified person to identify and read the disclosure that the technical report supports and confirm that the disclosure accurately represents the information in the technical report. We recognize that an issuer can become a reporting issuer in a jurisdiction of Canada without the requirement to file a disclosure document listed in subsection 16 (1) of the

	Instrument. In these cases, the issuer has the option of filing a modified consent under subsection 25 (2) of the Instrument that excludes the statements in paragraphs 25 (1) (b), (c) and (d).
(3) If an issuer has filed a consent under subsection (2) and the issuer is not required under subsection 16 (7) to file a new technical report to support disclosure in a document subsequently filed or made public under subsection 16 (1), the issuer must file a new consent of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that contains the statements referred to in paragraphs (b) to (d) of subsection (1).	(4) Filing of full consent required – If an issuer files a modified consent under subsection 25 (2) of the Instrument, it must still file a full consent the next time it files a disclosure document that would normally trigger the filing of a technical report under subsection 16 (1) of the Instrument. This requirement is set out in subsection 25 (3) of the Instrument.

Blackline

Part 6 in the Proposed Modernization Draft equates to the former Part 8 of the 2011 edition. In the Proposed Modernization Draft, Part 7, which used to be Use of Foreign Code, has been struck out.

Rule

~~Consents~~Consent of ~~Qualified Persons~~qualified person

~~8.3~~25. **(1)** An issuer ~~must, when filing~~that files a technical report~~,~~ must file ~~a statement~~with the technical report a consent of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report~~,~~ that is dated~~,~~ and signed by the qualified person and contains a statement

(a) consenting to the public filing of the technical report~~;~~,

(b) identifying the document that the technical report supports~~;~~,

(c) consenting to the use of extracts from, or a summary of, the technical report in the document~~;~~, and

(d) confirming that the qualified person has read the document and that ~~it~~the document fairly and accurately represents the information in the technical report ~~or part that~~for which the qualified person is responsible ~~for~~.

(2) Paragraphs (1) (b), (c) and (d) do not apply to an issuer that files a consent ~~filed~~ with a technical report filed under section ~~4.1~~15.

(3) If an issuer ~~relies on~~has filed a consent under subsection (2~~),~~) and the issuer ~~must~~ is not required under subsection 16 (7) to file ~~an updated consent that includes paragraphs (1) (b), (c) and (d) for the first subsequent use of the~~a new technical report to support disclosure in a document ~~filed under subsection 4.2~~subsequently filed or made public under subsection 16 (1), the issuer must file a new consent of each qualified person responsible for preparing or supervising the preparation of all or part of the technical report that contains the statements referred to in paragraphs (b) to (d) of subsection (1).

Companion Policy

Section 25 Consent of ~~Experts~~qualified person

(1) **Consent of experts** – If the technical report supports disclosure in a prospectus, the qualified person will likely have to provide an expert consent under the prospectus ~~(1)~~ rules (section ~~8~~10.1 of National Instrument 41-101 *General Prospectus Requirements* and ~~section~~paragraph 4.~~1~~2 (a) (vii) of National Instrument 44-101 *Short Form Prospectus Distributions*), in addition to any consent of qualified person required under the Instrument.

(2) **Deficient ~~Consents~~consents** – Consents must include all the statements required by subsection ~~8.3(1)~~ 25 ~~(2)~~(1) of the Instrument. An issuer that files consents with required statements that are missing or altered to change the intended meaning has not complied with the Instrument. Appendix B to ~~the~~this Companion Policy provides an example of an acceptable consent of a qualified person.

(3) **Modified ~~Consents~~consents under ~~Subsection 8.3~~subsection 25 (2)** – Subsection ~~8.3~~25 (1) of the Instrument requires the qualified person to identify and read the disclosure that the technical report supports and ~~certify~~confirm that the disclosure accurately represents the information in the technical report. We recognize that an issuer can become a reporting issuer in a jurisdiction of Canada without the requirement to file a disclosure document listed in subsection ~~4.2~~16 (1) of the Instrument. In these cases, the issuer has the option of filing a modified consent under subsection ~~8.3~~25 (2) of the Instrument that excludes the statements in paragraphs ~~8.3~~25 (1)~~(~~) (b), (c) and (d).

(4) **Filing of ~~Full Consent Required~~full consent required** – If an issuer files a modified consent under subsection ~~8.3~~25 (2) of the Instrument, it must still file a full consent the next time it files a disclosure document that would normally trigger the filing of a technical report under subsection ~~4.2(1) of the Instrument. This requirement is set out in subsection 8.3(3) of the Instrument.~~16
(1) of the Instrument. This requirement is set out in subsection 25 (3) of the Instrument.

(5) **Filing of ~~Consent~~consent for ~~Technical Reports Not Required~~technical reports not required by the Instrument** – Where an issuer files a technical report voluntarily or as a requirement of a Canadian stock exchange, and the filing is not also required under the Instrument, the report is not a "technical report" subject to the consent requirements under subsection ~~8.3~~25 (1) of the Instrument. Therefore, when the issuer subsequently files a disclosure document that would normally trigger the filing of a technical report under subsection ~~4.2~~16 (1) of the Instrument, the issuer must file the consents of qualified persons in accordance with subsection ~~8.3(1).~~25 (1) of the Instrument.

If an issuer files a ~~Filing Statement~~filing statement or other prospectus-level disclosure document with a Canadian stock exchange, and the filing is not also required under the Instrument, the issuer may choose or be required by the stock exchange to file a full consent that includes paragraphs ~~8.3~~25 (1)~~(~~) (b), (c) and (d) of the Instrument as they relate to the ~~Filing Statement~~filing statement or other disclosure document.

Comment

Rule

There are limited changes to Part (25)(1). Part 25(2) and Part 25(3) have become more difficult for a technical reader to understand what is being stated and required. This is aimed at legal counsel, not the issuer and the Qualified Person,

Companion Policy (25)(1)

This guidance appears to be conflating the Consent of Expert for the prospectus filing with the Consent of Qualified Person for the technical report filing. The guidance is not clear, and is not providing clarity on requirements for the Qualified Person. At no point does the guidance address what is required for the Qualified Person's prior approval either, though this is apparently, from the wording in part 2 (5) of the Proposed Modernization Draft Rule, a type of consent from the Qualified Person. Part 6 (25)(3) allows for modified consents but provides no guidance on what wording would be considered compliant. Part 6 (25)(4) refers to a full consent. What is that, and how does it differ from a modified consent?

Companion Policy (25)(2)

The example in Appendix B, and the language used applies only to the consent for filing. It does not apply to a prospectus consent. If the language is changed for a prospectus, does that make the Consent of Qualified person deficient?

If the language is changed for the Qualified Person to provide a modified written consent to address the wording in part 2 (5) of the Proposed Modernization Draft Rule, does that make the consent deficient? Part 6 (25)(3) allows for modified consents but provides no guidance on what wording would be considered compliant. Part 6 (25)(4) refers to a full consent. What is that, and how does it differ from a modified consent?

Companion Policy (25)(3)

No guidance is given as to what a modified consent would look like. How does the instruction here differ from the previous instruction which makes it clear that modifying the language provided in Appendix B will result in a deficient consent?

Part 6 (25)(4) refers to a full consent. What is that, and how does it differ from a modified consent?

What is provided is not guidance. Qualified Persons and issuers need to understand what modified consents can look like to be considered compliant.

Companion Policy (25)(4)

This again, is not guidance. What constitutes a full consent? How does that differ from a modified consent? What must the Qualified Person and issuer do to ensure that what they provide as a modified consent or a full consent will be considered compliant?

Companion Policy (25)(5)

The guidance is not helpful. The intent should be that the voluntarily-filed report can still be readily located by the investor, since the voluntary filing contains information that the issuer considered important enough to formally update the technical report absent the CSA-mandated report triggers. Disclosure should be encouraged, not discouraged.

Missed Opportunities

There is a missed opportunity to widen the definition of a Qualified Person to include consulting firms as well as individuals. This allowance in S-K 1300 was made because the SEC explicitly realized that

- There could be difficulty sourcing sufficient Qualified Persons
- Accounting and legal firms were already allowed to sign as the firm rather than the individuals who did the work.

Numerous comment letters from the CSA staff raise completely non-material issues where a Qualified Person working for a consulting firm uses the firm name, rather than the individual Qualified Person as having completed work. One less specious claim of “potentially misleading disclosure” and non-compliance with NI 43-101 would be removed if the third-party firm allowance was introduced in the Proposed Modernization Draft.

Part 7 Exemptions

Authority To Grant Exemption

Proposed Modernization Draft

Rule	Companion Policy
26 (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.	No guidance provided
(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.	
(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B to National Instrument 14-101 Definitions opposite the name of the local jurisdiction.	

Blackline

Authority to ~~Grant Exemptions~~grant exemption

~~9.~~126. **(1)** The regulator or the securities regulatory authority may~~, on application,~~ grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption~~ in response to an application~~.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B to National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Exemptions for Royalty or Similar Interests

9.2 (1) An issuer whose interest in a mineral project is only a royalty or similar interest is not required to file a technical report to support disclosure in a document under subsection 4.2 (1) if

(a) the operator or owner of the mineral project is

(i) a reporting issuer in a jurisdiction of Canada, or

(ii) a producing issuer whose securities trade on a specified exchange and that discloses mineral resources and mineral reserves under an acceptable foreign code;

(b) the issuer identifies in its document under subsection 4.2 (1) the source of the scientific and technical information; and

(c) the operator or owner of the mineral project has disclosed the scientific and technical information that is material to the issuer.

(2) An issuer whose interest in a mineral project is only a royalty or similar interest and that does not qualify to use the exemption in subsection (1) is not required to

(a) comply with section 6.2; and

(b) complete those items under Form 43-101F1 that require data verification, inspection of documents, or personal inspection of the property to complete those items.

(3) Paragraphs (2) (a) and (b) only apply if the issuer

(a) has requested but has not received access to the necessary data from the operator or owner and is not able to obtain the necessary information from the public domain;

(b) under Item 3 of Form 43-101F1, states the issuer has requested but has not received access to the necessary data from the operator or owner and is not able to obtain the necessary information from the public domain and describes the content referred to under each item of Form 43-101F1 that the issuer did not complete; and

(c) includes in all scientific and technical disclosure a statement that the issuer has an exemption from completing certain items under Form 43-101F1 in the technical report required to be filed and includes a reference to the title and effective date of that technical report.

Exemption for Certain Types of Filings

9.3 This Instrument does not apply if the only reason an issuer files written disclosure of scientific or technical information is to comply with the requirement under securities legislation to file a copy of a record or disclosure material that was filed with a securities commission, exchange, or regulatory authority in another jurisdiction.

Comment

It is an odd rule where necessitating the issuer to apply for an exemption is struck out.

The exemption allowances for royalties companies have been removed from the Proposed Modernization Draft Rule and inserted into the Proposed Modernization Draft Companion Policy in very abbreviated format under sub-section (4)(17).

The exemption for certain types of filings has been moved, and reworded, and is now located under sub-section (1)(4), and is explicitly restricted to non-SEC filings. This appears to tie into the removal of the “specified exchange” definition and allowance.

Part 8 Repeal And Effective Date Of Instrument:

Repeal

Proposed Modernization Draft

Rule	Companion Policy
27. National Instrument 43-101 Standards of Disclosure for Mineral Projects is repealed.	No guidance provided

Blackline

PART ~~10~~8 REPEAL AND EFFECTIVE DATE ~~AND REPEAL~~

~~Effective Date~~

~~10.1 This Instrument comes into force on June 30, 2011.~~

Repeal

27. National Instrument 43-101 *Standards of Disclosure for Mineral Projects*~~, which came~~ is repealed.

Comment

It is assumed that the sub-section will be updated when the date of promulgation of the new (hopefully heavily revised) edition of NI 43-101 comes into force.

At the moment, NI 43-101 in its entirety is repealed.

Effective Date Of Instrument

Proposed Modernization Draft

Rule	Companion Policy
(1) This Instrument comes into force on ●. (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after ●, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.	No guidance provided

Blackline

The blackline comparison shows the following changes.

Effective date of Instrument

28. (1) This Instrument comes into force on ~~December 30, 2005, is repealed.~~●.

~~**10.2**~~ **(2)** In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after ●, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

Comment

It is odd to have one instruction explicitly repeal the entire Rule, and the next state that no, its not repealed, it has a new effective date.

MTS assumes the discrepancies will be fixed in new (hopefully heavily revised) edition of NI 43-101.