Changes

Reading through the Proposed Modernization Draft, it is clear that there are a number of missed opportunities in the Rule, the Form, and the Companion Policy.

Rule

Definition of Qualified Person

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.

Cautionary Language Adjacent Properties

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

Exploration Information

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

Certificate of Qualified Person

There 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.

Form

Effective Date

There is a missed opportunity to rationalize the number of times the effective date is required: this is already content expected on the title page. It does not need to be repeated as an instruction for the date and signature page.

Illustrations

There is a missed opportunity for simplifying the instruction around requirements for "a scale in bar or grid form and an arrow indicating north". If a grid can work as an alternative to a scale bar, then it can certainly work as an indicator for showing geographic north.

Removing a Consent Trigger

As a segue, one of the most persistent issues with NI 51-102 disclosure, and a missed opportunity to redress, is the requirement within NI 51-102F2 that requires both the most recently filed technical report on a material property and the qualified persons to be named as technical report authors. The unintended consequence of this is that when the AIF is filed as a 40-F with the SEC, each named qualified person must provide a written consent. This is required for *each year* that the particular technical report is cited in the AIF/40-F. A simple fix for what is such a burden on the industry would be to just remove the naming of the qualified persons, and require only citation of the name of the technical report and their effective dates. Legal counsel constantly push back on a firm being able to be cited as the report author instead of a Qualified Person, so this fix would solve many problems that industry currently has with obtaining the required consents for a 40-F filing.

There was a missed opportunity to explicitly address streaming agreements in Item 4(f). A streaming agreement is not a royalty, it is a contract, so the royalty requirement in (f) does not extend to discussion of streaming agreements. Streaming agreements need to be disclosed; a step the SEC took with S-K1300. The SEC have rejected the argument that a streaming agreement is a financial tool, since if a project is sold, the streaming agreement does not stay with the vendor, it goes with the project to the buyer. Being silent or ignoring streaming agreements is not in the investor's best interest since these agreements are modifying factors: they should be included in the cut-off criteria in estimation, since at the project level, the operation will not receive the full metal price for every block. At the project level, the operation will have some blocks with the full metal price, and depending on which elements are covered in the metal streaming agreement, only partial value for other blocks.

Removal Of Content Repetition

There was a missed opportunity to remove the repetition in content requirements in Item 4 where those are also required in Item 20.

There was a missed opportunity to remove repetition of information requirements between Item 5 (a) and (e) and Item 18 (a). Item 18 requires:

> *(a) roads, rail, port facilities, power and pipelines;*

All of the content in 18 (a) should be Item 5 content since all of this would be as relevant to an early stage project as an operating mine. Item 5 already requires access and roads, as well as power.

There is a missed opportunity to remove the repetition of the requirement to discuss surface rights between Item 4 and Item 5. It is more logical to require the content as to whether the surface rights are sufficient to support infrastructure locations as part of the property rights discussions required in Item 4(d). It is also more logical to have this in Item 4, given the pseudo-guidance but actually an instruction in the Companion Policy to discuss who holds the surface rights associated with the mineral project.

Item 6

It is a missed opportunity to clarify that the history section is also applicable to issuers who have a long history with a project but where there is no prior ownership. There are numerous projects that have essentially the same issuer (changes in name, but not ownership interest) involved since discovery. Those issuers should be able to talk to historical information in the same manner as an issuer that recently acquired a project can disclose historical information. The same concept should apply: both the issuer with the long project history and the issuer with prior ownership history information should describe the historical information in this section, and provide detailed information on the data that are still material to ongoing activities in Items 9 and 10 of the report.

Item 7

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

Item 8

This was a missed opportunity to rewrite the content requirement to explain that the purpose of the Item requirement is to have the Qualified Person provide the genetic model type. One of the biggest issues with not changing the Item heading or the Item instructions is that so many Qualified Persons interpret “deposit type” and “geological model” to be another requirement to describe the mineralization of the deposit, making the disclosure they provide under this Item non-compliant.

Item 16

This is a missed opportunity to fill a major gap in the 2011 edition. In that edition, a production schedule was only required when providing a cashflow analysis. Producing issuers, exempt from that requirement, also were exempt from providing a production schedule. However, a Qualified Person cannot meet (b), (c), or (d) without a production schedule, and it should have been clear that there was no reasonable basis for the information provided to meet (b), (c), or (d) without that.

A production schedule should be part of the content requirements in Item 16. Production schedules should not be viewed as only applicable to cashflow analyses.

Part (c) "requirements for stripping, underground development and backfilling" is commonly an area of confusion during legal reviews. Qualified Persons understand what is being asked, but legal counsel performing compliance reviews do not. As only the first requirement, stripping, is applicable to open pit mines, legal review constantly comes back with a non-compliance comment when neither the underground development nor backfill requirements are discussed in a technical report that assumes open pit operations. Clarification for legal would have been helpful and is a missed opportunity.

Item 20

There was a missed opportunity to remove the heading wording "impact", which had been introduced in the 2011 edition, which implies, even before the Qualified Person starts writing, that the mining industry is a force for the bad:

> *"impact" a powerful effect that something, especially something new, has on a situation or person*

A substitution of "impact" with a term such as "considerations" or even the term "factors" as used in the introduction sentence would have been more helpful.

It should not be assumed that any interaction with regional or local groups, including Indigenous Peoples is automatically negative, with only risks and uncertainties as potential outcomes. This level of pessimism is not reflective of current industry best practice approaches to discussions with regional or local groups, including Indigenous Peoples. There have been, and continue to be, examples of successful partnerships between industry and all of these groups.

There was a missed opportunity to remove the repetition in content requirements in Item 20 where those are also required in Item 4.

Requiring the source of information in both the instruction and in part 20 (a) is unnecessary repetition since this content should only be required in Item 27, not in both places. This was a missed opportunity for consolidating the same content in different Item instructions such that it was only required once, under one Item.

Item 22

The instructions in 22 (a) require the Qualified Person to repeat all of the assumptions and interpretations that have been presented in Items 4 to 21. All of that information in those report sections already forms the "statement of, and justification for the principal assumptions". Part (a) should have been deleted.

Item 26

This is a missed opportunity. There is no valid reason to restrict work programs to just the two phases. While the TMX Group required the two work phases, this does not have to be reflected in the technical report requirements.

Item 27

This is another missed opportunity. The instruction should just request a list of references. It shouldn't be limiting the references to only those cited in the text.

There is a missed opportunity to have streamlined Item 2 in regard to references. Part 2 (c) is exactly the same requirement as Item 27, only Item 27 requires the references to be provided if cited, and Item 2(c) says only to do so if applicable. There is no need to require references to be provided in multiple places in the report. Part 2 (c) should be removed, such that Item 27 is where the Qualified Person provides the list of references used to compile the technical report, not simply cited within the report.

There is a missed opportunity to have streamlined Item 20 in regard to references.

Companion Policy

Definition of Qualified Person

There remains a missed opportunity to expand the discipline areas where those disciplines are also regulated by professional associations and foreign associations but members are not "engineers, geoscientists or both". There are numerous foreign associations that can meet the definition.

As noted in the Rule commentary, there is a missed opportunity in the Proposed Modernization Draft to have widened the definition of a Qualified Person to include consulting firms as well as individuals.

Consent of Expert

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.

Shelf Life of Technical Reports

It was a helpful addition to issuers to have the allowance to include sensitivity statements to extend the shelf life of a technical report.

"An issuer might be able to extend the life of a technical report by having a qualified person include appropriate sensitivity analyses of the key economic variables."

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.

Current Technical Report

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 advising issuers 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.

Any Record Clarification

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?

Addressed to Issuer

Technical reports should be able to be issued to more than one issuer. This is a missed opportunity to lessen the regulatory burden on joint venture companies in particular.

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.

Certificate of Qualified Person/Date and Signature Page

This is a missed opportunity. The requirement for a date and signature page should have been deleted out of the Form, and 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 and when it should be incorporated into the technical report. It also removed the redundancy between the Certificate of Qualified Person and the filing date.

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.

This is another missed opportunity:

> ***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.*

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 of the technical report, 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 a 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.

Item 6: History

It is a missed opportunity to clarify that the history section is also applicable to issuers who have a long history with a project but where there is no prior ownership. There are numerous projects that have essentially the same issuer (changes in name, but not ownership interest) involved since discovery. Those issuers should be able to talk to historical information in the same manner as an issuer that recently acquired a project can disclose historical information. The same concept should apply: both the issuer with the long project history and the issuer with prior ownership history information should describe the historical information in this section, and provide detailed information on the data that are still material to ongoing activities in Items 9 and 10 of the report.

Where the project has had numerous operators, but much of the information generated by those operators is part of active exploration planning or mineral resource estimation, it is more difficult for the investor to have to read the content required in Items 9 and 10 in Item 6, because that content was not part of the issuer's work on the project, and then read the issuer information in Items 9 and 10, and put all of that work in context. Hence both Items 6 and 9 should allow presentation of issuer and previous operator information as long as it is clear who did the work. This allowance is already provided for Item 10.

There is a missed opportunity to remove the requirement to discuss "general results of exploration and development work undertaken by on behalf of any previous owners or operators". There is an obligation on the Qualified Person under the proposed data verification component to verify what is being presented and there may be significant work that has to be discussed. Rewording to just require the type, amount, and quantity of work is recommended. If the results of the previous operator are relevant, there should be, as already stated, allowance for this information to be discussed as part of the Item 9 requirements. The Qualified Person should not have to go here in the Proposed Modernization Draft Companion Policy to find that, indeed, the Qualified Person can discuss historical work.

Item 7: Geology and Mineralization

There was a missed opportunity to provide guidance to the Qualified Person as to what is considered to be a reasonable basis for an "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?

Item 8: Deposit Type

This was a missed opportunity to rewrite the content requirement and provide clarity using guidance to explain that the purpose of the Item requirement is to have the Qualified Person provide the genetic model type. One of the biggest issues with not changing the Item heading or the Item instructions is that so many Qualified Persons interpret "deposit type" and "geological model" to be another requirement to describe the mineralization of the deposit, making the disclosure they provide under this Item non-compliant.