ALBERTA SECURITIES COMMISSION
NOTICE

NATIONAL INSTRUMENT 43-101
STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

and

REPEAL OF
NATIONAL POLICY STATEMENT NO. 2-A
GUIDE FOR ENGINEERS, GEOLOGISTS AND PROSPECTORS SUBMITTING REPORTS ON MINING PROPERTIES TO CANADIAN PROVINCIAL SECURITIES ADMINISTRATORS

1. Implementation of Instrument and Repeal of National Policy Statement

The Alberta Securities Commission (the "Commission") and other members of the Canadian Securities Administrators (the "CSA") have implemented National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("NI 43-101"), Form 43-101F1 *Technical Report* (the "Form") and Companion Policy 43-101CP (the "Policy"). In this Notice, NI 43-101, the Form and the Policy are referred to collectively as the "Instrument".

The Instrument will become effective on February 1, 2001 (the "Effective Date"). In Alberta, NI 43-101 and the Form have been implemented as rules and the Policy has been adopted as a Commission policy.

In conjunction with the implementation of the Instrument, National Policy Statement No. 2-A *Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators* ("NP 2A") has been repealed, with effect on the Effective Date.

The CSA are also proposing to form a Mining Technical Advisory and Monitoring Committee to advise the CSA on disclosure and other issues arising in connection with the implementation and application of the Instrument and to serve as a forum for continuing communication between the CSA and the mining industry. More information on this advisory committee is provided in CSA Notice 43-301, published concurrently with this Notice.

2. Purpose and Substance of the Instrument

The Instrument is intended to enhance the quality of public disclosure by securities issuers in the mining sector. It consolidates and expands significantly on the current disclosure and reporting requirements applicable to issuers in that sector.
The Instrument replaces NP 2A, which sets out requirements for the preparation of technical reports concerning mineral projects that are filed with securities regulators. The Instrument is consistent with the recommendations of the Ontario Securities Commission/Toronto Stock Exchange Mining Standards Task Force, as set out in its January 1999 final report.

3. Summary of the Instrument

In keeping with CSA practice, mandatory elements of the Instrument are set out in NI 43-101 and the Form, while the Policy provides explanation and guidance.

The Instrument governs all disclosure concerning mineral projects that is made by or on behalf of an issuer and is reasonably likely to be available to the public. Disclosure of scientific and technical information must be based on the work of experienced professionals and presented with consistent terminology and relevant background information.

More specifically:

- All such public disclosure, whether made orally or in writing, must be based on information prepared by or under the supervision of a "qualified person" -- an engineer, geologist or other geoscientists who has at least 5 years of experience, including disclosure relevant to the mineral project, and belongs to a "professional association" such as The Association of Professional Engineers, Geologist and Geophysicists of Alberta.

- Disclosure of "mineral resources" and "mineral reserves" must use terminology adopted from time to time by the Canadian Institute of Mining, Metallurgy and Petroleum (the "CIM", whose current terminology is reproduced with the Policy).

- Written disclosure of mineral resources and mineral reserves must provide specified background information.

- In specified circumstances, public disclosure must be supported by a publicly-filed technical report which must, in certain cases, have been prepared by a qualified person independent of the issuer.

- Technical reports, when required, are to be prepared in accordance with the Form and certified as prescribed in NI 43-101.

4. Prior Publication and Public Comment

Earlier versions of the Instrument were published for comment on July 3, 1998 (the "1998 Proposal", published in the Commission Summary at (1998) 7 ASCS 2216) and on March 24, 2000 (the "2000 Proposal", published in the Commission Summary at (2000) 9 ASCS 1039). Changes from NP 2A were summarized in the notices accompanying publication of the 1998 and 2000 Proposals. The notice accompanying the 2000 Proposal also summarized public comments on the 1998 Proposal and CSA responses to those comments.

The CSA received comments on the 2000 Proposal from the 47 commenters identified in Appendix A to this Notice. Their comments, and the CSA's responses to those comments, are summarized in Appendix B to this Notice.

5. Changes from the 2000 Proposal

The CSA made changes to the Instrument in response to public comments on the 2000 Proposal and the CSA's own further deliberations. The more significant changes are summarized below; other changes are discussed in Appendix B. Because the changes are not material, the Instrument is not being republished for comment.

(a) Terminology

Proposed NI 43-101, as included in the 2000 Proposal, set out at length proposed definitions and categories of "mineral resources" and "mineral reserves". In light of the CIM's adoption, in August 2000, of substantially similar terminology, and in keeping with the CSA's objective of ensuring consistency in mining sector disclosure, NI 43-101 now prescribes the terminology adopted by the CIM (reproduced with the Policy, for convenience), including revisions that the CIM may make from time to time.

(b) Disclosure of Exploration Targets on Early-Stage Properties

The Instrument generally prohibits disclosure of the quantity or grade of a deposit that has not been categorized as a mineral resource or mineral reserve. However, Part 2 of NI 43-101 now permits written disclosure of a possible mineral deposit that is to be the target of further exploration. The disclosure must express potential quantity or grade as a range, with the basis of determination explained, and be accompanied by prescribed cautionary disclosure concerning the tentative nature of the information.

(c) Disclosure of Preliminary Economic Evaluations

The Instrument generally prohibits disclosure of economic evaluations that are based wholly or partly on "inferred mineral resources", the category of mineral resources with which the lowest level of confidence is associated. Part 2 of NI 43-101, however, now permits written disclosure of such a preliminary evaluation if it amounts to a material fact or a material change, provided that the disclosure sets out the basis for the preliminary assessment, including any qualifications and assumptions, and is accompanied by prescribed cautionary disclosure concerning the tentative nature of the information. Reporting issuers in Ontario are subject to additional conditions.

(d) "Grandfathering" and Transition

The requirements and prohibitions of the Instrument concerning public disclosure will take effect immediately upon the Instrument coming into force on February 1, 2001. The requirements of the Instrument concerning technical reports would apply in connection with the first annual report, annual information form or preliminary prospectus filed after that Effective Date, and in connection with other disclosure, after the Effective Date, of new or materially changed estimates of mineral resources and mineral reserves on a property material to an issuer.

Part 4 of NI 43-101 now provides "grandfathering" of earlier disclosure in certain circumstances. An issuer that has disclosed scientific and technical information concerning a mineral property in a report prepared under NP 2A, an annual information form, a prospectus, annual financial statements or a material change report filed before February 1, 2001, will not be required to file a technical report prepared in compliance with NI 43-101 in support of an annual information form, annual report or short form prospectus filed after the Effective Date unless that post-Effective Date document contains new and material scientific and technical information about the mineral project.

6. Other Instruments Affected

The repeal of NP 2A will take effect on the Effective Date of the Instrument, February 1, 2001. After the Effective Date, all references to NP 2A in Canadian securities legislation and other instruments should be interpreted as references to the Instrument.

7. Further Information

Questions may be referred to any of:

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November 17, 2000.

APPENDIX A
TO
NOTICE

NATIONAL INSTRUMENT 43-101
STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

List of Comments
Received on 2000 Proposal

1. Ashton Mining of Canada Inc. by letter dated April 7, 2000

2. Association of Geoscientists of Ontario by letter dated May 24, 2000

3. Association of Professional Engineers and Geoscientists of B.C. (APEGBC) by letter dated May 31, 2000

4. Aur Resources Inc. by letters dated May 5, 2000 and June 30, 2000

5. Bema Gold Corporation by letter dated May 17, 2000

6. Best Practices Committee by letter dated June 9, 2000

7. Bottrill Geological Services by letter dated May 30, 2000

8. British Columbia and Yukon Chamber of Mines by letter dated May 30, 2000

9. Cameco Corporation by letter dated May 23, 2000

10. Canadian Advocacy Council of the Association for Investment Management and Research by letter dated May 23, 2000

11. Canadian Association of Mineral Valuators by letter dated May 23, 2000

12. Canadian Bar Association – Ontario by letters dated June 2, 2000 and June 7, 2000

13. Canadian Council of Professional Geoscientists by letter dated May 24, 2000

14. Canadian Institute of Mining, Metallurgy and Petroleum (CIM) by letters dated May 24, 2000 and June 7, 2000

15. Canadian Venture Exchange by letter dated May 23, 2000

16. CDNX Listed Company Association by letter dated May 24, 2000

17. Chapman, J.A. Mining Services by letter dated May 17, 2000

18. Corriente Resources Inc. by letter dated May 18, 2000

19. EBL Consultants by letter dated May 16, 2000 for CVMQ

20. Falconbridge Limited by letter dated June 6, 2000

21. Fenton Scott Management Inc. by letter dated May 18, 2000

22. Géoconseil Marcel Vallée Inc by letter dated June 23, 2000

23. Gorzynski, George by letter dated May 21, 2000

24. Halton Association of Geoscientists by letters dated May 31, 2000 and June 2, 2000

25. Impact Minerals International Inc. by letter dated May 17, 2000

26. Inco Limited by letter dated June 22, 2000

27. Kimura, Ed by letter dated May 23, 2000

28. Lawrence, Ross D. by letter dated May 23, 2000

29. Macleod Dixon by letter dated May 3, 2000

30. Matrix Consultants Limited by letter dated August 14, 2000

31. MRDI Canada by letter dated May 23, 2000

32. Namco South Africa (Pty) Ltd. by letter dated May 24, 2000

33. Olson, Philip by letter dated May 17, 2000

34. Ordre des ingénieurs du Québec by letter dated June 5, 2000

35. Osler, Hoskin & Harcourt by letter dated June 9, 2000

36. Pacific Rim Mining Corp. by letter dated June 6, 2000

37. Placer Dome Inc. by letter dated May 24, 2000

38. Prospectors and Developers Association of Canada by letters dated June 8, 2000 and June 13, 2000

39. Redhawk Resources, Inc. by e-mail dated May 9, 2000

40. Rio Algom by letter dated June 1, 2000

41. Shen, Kenneth and Renneberg, Russel by letter dated May 23, 2000

42. Sinclair, A.J. by letter dated May 24, 2000

43. Sketchley, Dale A., by letter dated May 24, 2000

44. Southwestern Gold Corporation by letter dated May 31, 2000

45. Teck Corporation by letter dated May 29, 2000

46. Toronto Stock Exchange (TSE) by letter dated June 8, 2000

47. Watts, Griffis and McOuat Limited by letters dated May 24, 2000 and June 15, 2000

APPENDIX B
TO
NOTICE

NATIONAL INSTRUMENT 43-101
STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

Summary of Public Comments
On the 2000 Proposal
and CSA Responses

The CSA received submissions on the 2000 Proposal from 47 commenters, representing a wide spectrum of industry participants including producing issuers, exploration issuers, consulting professionals, industry associations, councils, committees and exchanges.

The CSA appreciate the attention and care taken by the commenters in their submissions. The CSA gave serious consideration to the submissions received and revised the Instrument to address concerns raised, as the CSA considered appropriate. The CSA thank all of the commenters for providing their comments.

The following is a summary of the comments received, together with the CSA's responses, organized by topic. The summary begins with general comments on the 2000 Proposal as a whole and follows with a review of the comments on the proposed versions of NI 43-101, the Form and the Policy included in the 2000 Proposal, together with the CSA's response to each.

GENERAL COMMENTS

Most of the commenters were supportive of the scope and general content of the Instrument, agreeing that it will significantly enhance the quality and reliability of public disclosure concerning mineral projects, and the confidence of the investing public. In particular, commenters expressed support for:

- clearer, upgraded disclosure;
- mandatory involvement by qualified persons;
- mandatory use of standardized terminology;
- reference to "best practice" guidelines produced by industry associations; and
- the responsibilities assigned respectively to the issuers and their management and to qualified persons.

Many commenters considered the 2000 Proposal to be much improved from the 1998 Proposal and from NP 2A. Some of these commenters expressed serious concerns about certain aspects of the 2000 Proposal but, for the most part, comments were directed at clarifying and improving the proposed Instrument.

However, a minority of commenters urged against adoption of the 2000 Proposal, expressing the following views:

- The proposed Instruments will not prevent fraud, but will hobble the exploration industry and burden it with excessive costs.

- Redirecting funds from drilling to regulatory compliance reduces chances for exploration success.

- The market has learned a lesson from recent incidents and analysts are demanding verification in appropriate circumstances;

- There are renowned explorationists who do not meet the eligibility criteria of a "qualified person";

- The 2000 Proposal would encroach on matters that should be left to the purview of scientific and technical professional organizations that are equipped to recommend “best practice” guidelines as they evolve from time to time, rather than codifying them into required practice;

- The 2000 Proposal was an over-reaction to recent incidents and would hold issuers in the mining industry and their management to higher standards, and subject them to a greater risk of liability, than issuers and management in other industries;

- The 2000 Proposal would do nothing to address problems created by analysts who are not qualified persons, yet are allowed to write speculative reports on mineral projects based on little information; and

- Greater emphasis should be placed on investor education and warnings.

The CSA appreciate the sincerity of these views. However, the CSA remain of the view that the Instrument is an important and necessary step in improving the credibility of disclosure and investor confidence in the capital markets, to the ultimate benefit of both investors and the mining industry as a whole.

One of the commenters stated its view that the 2000 Proposal was a vast improvement over existing guidelines and rules. In the commenter’s view, nothing will prevent outright fraud, but the 2000 Proposal would help avoid scandals where misleading, incomplete and overzealous press releases and

other disclosure leads to losses by innocent investors. The commenter acknowledged that the increased cost of complying with the Instrument may be very significant for some, but supported the higher standard of disclosure and was of the belief that there would be a net benefit to the mining industry as a result of improved investor confidence. The CSA agree with this comment.

The comments concerning the role of analysts raise an important issue that is not restricted to the mining industry and which is, therefore, beyond the scope of the Instrument. This issue is being addressed in a separate initiative of the Securities Industry Committee on Analysts' Standards, a joint committee of The Toronto Stock Exchange, the Canadian Venture Exchange Inc. and the Investment Dealers Association.

The CSA place great importance on investor education. However, they do not share the view expressed by one commenter that "Buyer beware" is an appropriate substitute for securities regulation. Many of the securities regulatory authorities are pursuing investor education initiatives in their own jurisdictions.

A commenter expressed concern that the potential effects of the Instrument may not have been adequately considered by issuers in the mining industry, in view of their focus, through industry associations, on mineral reserve and mineral resource definitions. The commenter recommended that additional time be provided for comment. Other commenters expressed satisfaction with the consultation process, although one commenter expressed displeasure with respect to the consultation process in the commenter's jurisdiction where the proposed Instrument was not published. The CSA regret the commenter's experience but believe that in this instance there was a considerable degree of industry awareness of the proposals across Canada.

The CSA place great importance on public comment, and note that they have sought and considered public comment on the Instrument for over two years. Proposed versions of the Instrument were initially published for comment in July 1998 (the "1998 Proposal") and March 2000 (the "2000 Proposal"). Moreover, the issues addressed by the Instrument were also addressed by the Ontario Securities Commission/Toronto Stock Exchange Mining Standards Task Force (the "MSTF") in its interim report, which it published for comment in June 1998, and in its final report, which it published in January 1999 (the "MSTF Report").

Some commenters recommended the establishment of an external committee to review certain matters arising in connection with the proposed Instrument and the effectiveness of the proposed Instrument. As described in the Notice, the CSA will establish an external advisory committee to monitor the application of the Instrument and to advise the CSA on industry and professional developments, and on modifications that might be appropriate, from time to time, to the terms or application of the Instrument.

NATIONAL INSTRUMENT 43-101

1. PART 1 APPLICATION, DEFINITIONS AND INTERPRETATION

Section 1.1 Application

Some commenters expressed concern that the applicability of the Instrument to valuations would be misunderstood. They requested that this section of NI 43-101 contain clarification that: (i) the Instrument does not mandate the manner in which a valuation report may be prepared or establish standards for valuation reports; and (ii) the Instrument requires that mining information contained in a valuation report be supported by information contained in a technical report.

The CSA do not believe that the Instrument supports the reading feared by the commenters and do not agree that such clarification is necessary in the Instrument.

2. *Section 1.2 Definitions - Definition of "adjacent property"*

A commenter was concerned that the 2-kilometre boundary test in the definition of "adjacent property" may not be appropriate in all instances, but should vary depending on the scale of the property and its stage of development. This comment had also been raised with respect to the 1998 Proposal.

The definition of "adjacent property" was used in the proposed Instrument for two purposes. One of the purposes was to determine whether or not a qualified person would be considered not to be independent of the issuer where that is required by the Instrument. For this purpose, the CSA require a clear geographic guideline. To avoid confusion, the term "adjacent property" is no longer used for this purpose. Instead, more detailed interpretation concerning independence is set out in subsection 1.5(e) of NI 43-101, which now specifically includes as an indicator of non-independence, the ownership of an interest in a property that has a boundary within 2 kilometres of the subject property as a basis on which a qualified person will not be considered to be independent of the issuer.

The second use of the term "adjacent property" was to permit disclosure of information in a technical report on a property that is not the subject property if, in the opinion of the qualified person authoring the technical report, the information is accompanied by certain required disclosure. The term "adjacent property" is now used exclusively for this purpose in the Instrument. The CSA agree that, for this purpose, a 2-kilometre limit may be inappropriate and have substituted reference to reasonable proximity.

3. *(New) definition of "data verification"*

The CSA have added a definition of data verification to NI 43-101 at the suggestion of some commenters to clarify the scope of this obligation. The term "data verification" was chosen as it is a common industry term. (See also the comments relating to section 3.2 of NI 43-101.)

4. ***Definition of "development property"***

A commenter requested that the word "demonstrated" be changed to "indicated" as in the commenter's view, the word demonstrated connotes absolute certainty which would be misleading.

The CSA are of the view that the phrase "economic viability … demonstrated by a feasibility study" reflects common industry usage and do not agree that the use of the word "demonstrated" will lead an investor to expect a guarantee of economic viability.

5. ***Definition of "disclosure"***

A commenter suggested that the definition of "disclosure", being limited to disclosure that is intended or likely to be made public, is inconsistent with section 1.1 of NI 43-101 which states that NI 43-101 applies to all disclosure. The commenter suggested that the definition of "disclosure" be expanded to cover all disclosure that is actually made.

The CSA purposely limited the definition of "disclosure". The CSA do not intend the Instrument to impose responsibility on issuers for unintended and unexpected information "leaks".

6. ***(New) definition of "disclosure document"***

The CSA have added a new definition of "disclosure document" to NI 43-101. It is used in section 4.2 in connection with the requirements for a technical report on a mineral project if disclosure has been made in one of the documents included in the definition of "disclosure document" prior to February 1, 2001, the Effective Date of the Instrument. Reference is made to the discussion of section 4.2 below.

7. ***Definition of "exploration information"***

A commenter pointed out that the proposed definition of "exploration information" was inconsistent with section 1.4 of the proposed Policy. The commenter noted that exploration information could not (i) be used to expand or develop an existing mineral resource, as the definition in proposed NI 43-101 indicated; and (ii) exist before sufficient data is available to justify a mineral resource, as the proposed Policy indicated. The commenter also questioned the propriety of including the reference to metallurgical information because it is a matter generally beyond the expertise of an exploration geologist.

The CSA recognize that exploration information may be material disclosure at any time during the life of a mineral project and, accordingly, the definition of "exploration information" should not be limited to

information prior to the definition of a mineral resource. The CSA have deleted the phrase "or to expand or further develop an existing mineral resource or mineral reserve" from the definition of "exploration information" in NI 43-101 as unnecessary. The CSA have also deleted section 1.4 of the Policy as inconsistent and unnecessary.

NI 43-101 retains the reference to metallurgical testing in the definition of "exploration information". The definition of "exploration information" is intended to encompass all of the types of information that may be generated in relation to the exploration of a mineral property, whether or not a particular person would be considered a qualified person with respect to each and every type of information generated. The CSA have added the word "mineralogical" to the types of information that may be generated during exploration.

8. ***Definition of "feasibility study"***

The CSA received several comments objecting to the reference in the definition of "feasibility study" to the study being sufficient "for a qualified person experienced in mineral production activities, acting reasonably" to make a production decision. These commenters correctly pointed out that a production decision is the responsibility of an issuer's board of directors and not the responsibility of the qualified person that is the author of the technical report.

The CSA acknowledge the confusion and agree that the standard should be "sufficient detail that [the study] could reasonably serve as the basis for a final decision by a financial institution to finance the development of the deposit for mineral production". It is not necessary that a decision be made by a financial institution for a study to meet the definition.

It was suggested that the standard contained in the definition was inadequate for a feasibility study. Some commenters suggested that there be a more extensive definition, or even a form, of feasibility study, as there is no consensus in the industry as to the meaning of this term. Another comment was that the definition of "feasibility study" in the proposed Instrument does not adequately reflect the level of effort required to produce a proper feasibility study. One commenter suggested a new term, "reserve assessment report", be used.

The CSA believe that the development of specific guidelines and standards for feasibility studies is a matter for professional and industry associations and not a matter for the CSA. The CSA are of the view that the standard now set out in the definition, which will interpreted in light of professional and industry practice, is appropriate for the purposes of the Instrument.

9. ***Definition of "geoscientist"***

Several commenters suggested the deletion of the definition of "geoscientist" as unnecessary and inappropriate. These commenters pointed out that self-regulatory associations are the appropriate bodies to determine whether an individual is eligible to be considered a geoscientist and that this is

consistent with the intent of the proposed Instrument. The CSA agree with these comments and have deleted the definition of "geoscientist" from NI 43-101.

Other commenters were concerned that the definition of "geoscientist" would not be sufficiently flexible to encompass emerging disciplines in the geoscience field, and suggested that the definition be expanded. The CSA believe that these commenters' concerns are adequately addressed by the deletion of the definition.

10. ***Definition of "mineral project"***

To conform to the definitions approved by the CIM, the term "substances" has been replaced with "material".

11. ***(New) definition of "preliminary assessment"***

This definition was added in connection with the disclosure, now permitted on the conditions set out in subsection 2.3(3) of NI 43-101, of early stage property assessments, sometimes known in the industry as "scoping studies", that include economic evaluations that use inferred mineral resources.

12. ***Definition of "preliminary feasibility study" and "pre-feasibility study"***

Comments received on the definition of "preliminary feasibility study" were similar to the comments received on the definition of "feasibility study". Commenters pointed out that there is no consensus in the industry as to the meaning of the term "preliminary feasibility study". Comment was also made that the proposed definition of "preliminary feasibility study" would not adequately reflect the level of effort required to produce a proper preliminary feasibility study. A commenter suggested a new term, "reserve assessment report", be used. Another commenter expressed the opinion that the definition of preliminary feasibility study, taken together with the definition of mineral reserve, is circular in that each term is defined by the other.

The CSA believe that the development of specific guidelines and standards for preliminary feasibility studies is a matter for professional and industry associations and not a matter for the CSA. The CIM have approved a definition of "preliminary feasibility study" and the definition in NI 43-101 has been revised to conform to the CIM definition. The CSA are of the view that the definition of "preliminary feasibility study", which will be interpreted in light of professional and industry practice, is appropriate for the purposes of the Instrument. The CSA are satisfied, as the definitions of "preliminary feasibility study" and "mineral reserve" now stand, that the definition of each term provides a sufficient standard, and that each term is related to, but not defined by, the other.

A commenter suggested that the word “ore” be changed to “mineral”. This change is reflected in the new definition.

Some commenters expressed the opinion that a preliminary feasibility study is insufficient to establish mineral reserves, and that a feasibility study should be required for the establishment of mineral reserves. A commenter added that because of the allowance for “reasonable assumptions” in a preliminary feasibility study, there has been no improvement in reserve classification over NP 2A. The CSA recognize that there is a difference of opinion in the mining industry with respect to this matter. The CSA have adopted the view of the CIM in this regard.

A commenter noted that “preliminary feasibility study” and “pre-feasibility study” are synonymous terms that are used in the industry, and suggested that the Instrument should refer to both. The CSA agree. Both terms are now referred to in the Instrument.

13. ***Definition of “producing issuer”***

The definition of “producing issuer” was criticized by commenters who objected to the independent report exemption available, in certain circumstances, to producing issuers and their joint venture partners. The CSA have retained the exemption, and have therefore retained the definition. This matter is fully discussed in item 30 below concerning section 5.3 of NI 43-101.

14. ***Definition of “professional association”***

Several commenters expressed concern that the definition of “professional association” will not enable individuals to be "qualified persons" under the Instrument if they are members of a self-regulatory association that has not been recognized by statute. The CSA are aware that certain foreign jurisdictions and some Canadian provinces and territories do not have legislation providing for the licensure of geoscientists. A commenter suggested that the Instrument should include a list of acceptable professional associations and that an issuer should be permitted to obtain an advance ruling as to whether a particular association is acceptable.

The CSA acknowledge that there will be circumstances in which it will be appropriate for issuers to retain engineers or geoscientists in foreign jurisdictions that may not have associations that fall within the NI 43-101 definition of “professional association”. At this time the CSA are not sufficiently familiar with the circumstances in foreign jurisdictions to expand the definition of “professional association” to include associations that do not meet all the conditions of the definition. Issuers that retain persons who are not members of a “professional association” may apply to the relevant Canadian securities regulatory authorities for an exemption from the Instrument. The CSA anticipate that they will consult with the external advisory committee with respect to such applications and with respect to the treatment of foreign associations that are non-compliant with the definition. Persons resident outside Canada who wish to be considered “qualified persons” also have the option of joining a Canadian-based professional association.

Other commenters remarked that the exemption for geoscientists in Canadian jurisdictions that do not currently have statutorily recognized self-regulatory associations was too broad and should be limited by requiring non-statutorily recognized self-regulatory associations to be members of the Canadian Counsel of Professional Geoscientists. The CSA noted that this would result in associations in some Canadian provinces being excluded from the exemption and decided against doing so.

Commenters stated that in the case of Ontario, one year, and in the case of other Canadian jurisdictions, two years, is a sufficient time for the exemption.

15. ***Definition of "qualified person"***

Comments on the definition of "qualified person" covered the spectrum of views:

- It is inappropriate for regulators to define and require the involvement of a qualified person; this matter should be left entirely to the judgment of the issuer's management and market forces.

- The definition of "professional association" in the proposed Instrument unduly restricts the definition of qualified person, especially with respect to retaining geoscientists from foreign jurisdictions that do not have legislation for the licensure of geoscientists.

- There should be very limited grounds for exemption from the requirements for a qualified person to be both experienced and subject to discipline, as the concept of a qualified person is considerably weakened without both aspects. The interim exemption for geoscientists in Canadian jurisdictions that do not have legislation that provides for the licensure of geoscientists is not appropriate, and it is not necessary because all existing self-regulatory associations allow extra-provincial registration and have the ability to discipline non-resident members.

- Persons who do not meet the qualified person requirements but who have qualifications to carry out qualified person duties because of experience and knowledge should be able to register for a lifetime exemption.

- A qualified person should be required to demonstrate that he or she has maintained an up-to-date understanding of advances in his or her field and is competent in current practices.

- Only engineers should be considered qualified persons.

The CSA remain convinced that the mandatory involvement of a qualified person, and the elements of qualification, are fundamental to achieving the purposes of the Instrument.

The CSA recognize that circumstances are likely to arise in which a person should be considered the equivalent of a qualified person for purposes of the Instrument, even if the person does not satisfy all of the conditions of the definition. In this case the issuer should make an application to the appropriate securities regulatory authorities for an exemption. This is a matter on which the CSA may consult the external advisory committee.

The CSA are of the view that issues of professional competence are properly within the purview of self-regulatory associations. In addition, the issuer must satisfy itself that the qualified person chosen is appropriate for the task at hand.

Several commenters pointed out that the definition of "qualified person" in proposed NI 43-101 could be interpreted in a way that was overly restrictive with respect to required experience. The CSA agree and have reformatted the definition to clarify that the person must have 5 years of experience, which includes experience relevant to the subject matter of the mineral project and the technical report. It is the issuer's responsibility to choose an appropriate qualified person for the task at hand.

A commenter suggested that the "qualified person" should be responsible for the accuracy and validity of all reports, including those presented by officers, directors and other interested parties. The commenter suggested that the term "qualified person" should be changed to "responsible person" in order to better describe the person's function. Persons needed for advice outside the responsible person's area of expertise would be employees or associates of the responsible person, and no disclaimers would be allowed. The CSA do not agree with the shift of responsibility suggested by this commenter. The issuer and its management should retain appropriate responsibility for the issuer's affairs, including scientific and technical disclosure.

16. ***Proposal for (new) definition of "valuation report"***

Some commenters requested that a definition of "valuation report" be added to section 1.2 of proposed NI 43-101. The CSA do not believe it is necessary to define this term for the purposes of the Instrument. See item 1, section 1.1 *Application*.

17. ***Sections 1.3 and 1.4 - Mineral Resource and Mineral Reserve***

The CSA received many comments urging the CSA to adopt the standards for classification of mineral resources and mineral reserves recommended by the CIM. Commenters were of the view that it was appropriate that scientific and technical professional associations establish the standards for estimation and classification of mineral resources and mineral reserves. They considered this matter analogous to the reliance placed on the Canadian Institute of Chartered Accountants ("CICA") for generally accepted accounting principles ("GAAP").

The CSA are generally in agreement with deferring to scientific and technical professional associations in matters regarding professional practice. However, the CSA faced a problem in this instance because

at the time the proposed Instrument was published, there was no identifiable industry standard nor was there a consensus within the mining industry. Commenters themselves expressed differing views on the appropriate terminology. This problem arose from the fact that during the development of the Instrument the CIM was in the process of revising the mineral resource and mineral reserve definitions.

Several commenters were of the view that the CSA should adopt the most recent CIM Standing Committee recommendations, on the basis that the definitions adopted by the CIM Ad Hoc Committee did not reflect current industry practice or international standards. Another commenter was of the view that until those recommendations were approved by the CIM and adopted in final form, it would be inappropriate for CSA to adopt them. Other commenters did not give a clear indication of their preference as to which version of the CIM definitions CSA should adopt, but provided comments on the definitions in proposed NI 43-101, which were modelled closely on the Ad Hoc definitions.

In view of the state of flux another commenter suggested that the JORC Code be used (with some minor adjustments), until new CIM definitions were approved by the CIM. Many commenters expressed concern with CSA's use of the Ad Hoc definitions as a starting point for the definitions used in proposed NI 43-101, although one commenter disagreed.

Another commenter commented that geostatistics is a scientifically flawed variant of applied statistics, and that applied statistics can support the reporting of mineral resources and mineral reserves with quantified confidence limits, notwithstanding the CIM's different views on the matter.

The CSA agree with the majority of commenters that mineral resource and mineral reserve terminology should be developed by mining industry professionals. The CSA kept in close contact with CIM to monitor its progress in the adoption of standard mineral resource and mineral reserve definitions. The CSA have carefully reviewed and provided comments to the CIM on its revised definitions.

On August 20, 2000, the CIM adopted new mineral resource and mineral reserve definitions, the CIM Standards on Mineral Resources and Reserves Definitions and Guidelines. The CSA are satisfied that the definitions adopted are satisfactory for use in the Instrument and have incorporated these definitions, as they may be amended from time to time, by reference into the Instrument.

18. ***Section 1.5 Interpretation***

Section 1.5 of NI 43-101 provides interpretation for the purpose of identifying non-independence of a qualified person. A qualified person is not to be considered independent of an issuer if he or she has a relationship with the issuer or it affiliates.

One commenter questioned the use of a 50% equity threshold for purposes of defining control. This threshold was drawn from existing securities legislation governing parent, subsidiary and other affiliated relationships between two issuers in securities legislation. This concept is relevant to a determination of non-independence of a qualified person.

Clause 4(a) has been reformatted at the suggestion of a commenter that requested clarification.

In response to a comment received, clause (4)(c) has been amended to clarify that either an ownership or a royalty interest in the subject property may render a qualified person non-independent of the issuer in respect of a technical report.

The CSA received conflicting comments on clause (4)(d). The CSA remain of the view that the clause appropriately balances competing concerns. A qualified person who is a sole practitioner or involved in a small or medium sized consulting firm and who is actively managing a work program may receive a substantial portion of his or her income from a particular issuer. This situation may continue if, for example, the issuer chooses to retain the same qualified person to continue work on further stages of the work program in light of the qualified person's experience and knowledge of the mineral property. However, the longer the situation prevails the less independent the relationship between the qualified person and the issuer becomes. If after three years the qualified person has received a majority of his or her income from an issuer, where independence is required, the issuer must retain another qualified person.

In response to a comment received, clause (4)(e) was added to provide that a qualified person is not independent of the issuer in respect of a technical report if he or she owns or expects to obtain, or is a director, officer or other insider of an issuer that owns or expects to obtain, an ownership or royalty interest in an adjacent property.

A commenter advised that it would not consider a qualified person independent if the qualified person was commenting on his or her own work. The CSA disagree with this as a general statement and are concerned that there may be some misunderstanding in this regard. In certain circumstances, the Instrument requires the involvement of a qualified person independent of the issuer. It does not, however, require that a qualified person be independent of his or her own work. Such an approach would lead to an unintended result, obliging an issuer to retain two independent qualified persons at all times, one to do, and one to comment on, the work done.

A commenter suggested that the issuer disclose the amount of fees paid to a qualified person because, if the fees were excessive, the reliability of the qualified person's opinion may be in doubt. In view of a qualified person's professional and ethical obligations, the CSA do not consider such disclosure necessary.

19. PART 2 REQUIREMENTS APPLICABLE TO ALL DISCLOSURE

General Parts 2 and 3

In response to a commenter's question, the CSA wish to clarify that the disclosure in a technical report must comply with all relevant parts of the Instrument, including Parts 2 and 3 of NI 43-101, in addition to Form 43-101F1. If there is an overlap, the technical report must comply with the more stringent standard.

20. *Section 2.2 All Disclosure of Mineral Resources or Mineral Reserves*

Several commenters, referring to subsection 2.2(b) of NI 43-101, expressed the view that the issuer should be required to "net" mineral reserves from mineral resources. The CSA have declined to make this change. It appears to the CSA that there is no consensus in the industry on this point. Accordingly, issuers will have the option to include mineral reserves in mineral resources or to net mineral reserves from mineral resources provided the issuer makes adequate disclosure of the practice it has followed. This is consistent with the recommendations in the MSTF Report.

Another commenter suggested that a statement of the relative risk between each of the categories and perhaps a measure of the absolute risk afforded by each category should be a requirement of each disclosure of mineral resources, mineral reserves and the evaluations that are based on them. The CSA are of the view that the definitions of these terms sufficiently address these matters.

21. *Section 2.3 Prohibited Disclosure*

Several commenters urged the CSA to amend section 2.3 of proposed NI 43-101 to permit disclosure of potential quantity and grade of a possible mineral deposit that is to be the target of further exploration. They commented that:

- Investors want and need this information in order to make informed investment decisions.
- The assessment of the target will still be made by a qualified person.
- Disclosure would be made in a manner and using terms which clearly indicate the conceptual nature of the disclosure.
- If an issuer is not permitted to disclose the potential of the target for exploration,

- it would make it difficult, if not impossible, for issuers to raise exploration funds,
- it would lead to selective disclosure,
- it would drive "predictions" underground, and
- it would put investors who do not have the knowledge to understand the potential on their own at a disadvantage.

- The disclosure could include:
  - the basis for the estimate,
  - a statement that there is insufficient exploration to classify the deposit as a mineral resource, and
  - a statement that a mineral resource may not result from further exploration .

The CSA were persuaded by these comments and section 2.3 has been amended to permit written disclosure by issuers of potential quantity and grade of a possible deposit that is the target of further exploration on this basis.

A commenter was concerned with the prohibition in proposed NI 43-101 of disclosure of early phase assessments of mineral projects that contain economic evaluations based in whole or in part on inferred resources. The commenter noted that preliminary technical assessments or "scoping studies" are an important part of the project development cycle, and that issuers would continue to ensure that the mineral project has an opportunity to be viable but would not, under the 2000 Proposal, be permitted to disclose them.

The CSA were persuaded by this comment and have amended section 2.3 to permit written disclosure of preliminary assessments that contain economic evaluations based in whole or in part on inferred mineral resources, provided that the preliminary assessment is a material change or material fact, the disclosure includes a proximate cautionary statement, the basis for and the assumptions and qualifications of, the preliminary assessment, and a technical report is prepared and filed. Issuers that are reporting issuers in Ontario are also required under Ontario law to deliver the proposed disclosure, together with a copy of the preliminary assessment and technical report, to the Ontario regulator at least 5 days prior to the disclosure, and the regulator shall not have advised the issuer that it objects to the disclosure.

A new subsection (4) has been added to ensure that the terms "preliminary feasibility study", "pre-feasibility study" and "feasibility study" may only be used in disclosure if the study is a study described by the relevant definitions set out in NI 43-101.

22. ***Section 2.4 Disclosure of Historical Estimates (formerly "Exception for Disclosure of Historical Estimates")***

Section 2.4 of NI 43-101 has been revised to make it clear that, once the Instrument comes into effect, all disclosure of mineral resources and mineral reserves must be made in accordance with the approved (CIM) definitions. However, this section goes on to allow disclosure of estimates made prior to the effective date of the Instrument in two cases:

- the prior estimate was not made by or for the issuer; or

- the prior estimate was made by or for the issuer and it is accompanied by an estimate made in accordance with the approved CIM definitions as required by NI 43-101.

At the suggestion of commenters, subsection (b) has been clarified to read: "confirms that the historical estimate is relevant".

23. **PART 3 ADDITIONAL REQUIREMENTS FOR WRITTEN DISCLOSURE**

Section 3.1 Written Disclosure to Include Name of Qualified Person

Several commenters suggested that a news release should be required to contain the name of the qualified person upon whose advice it is based, as doing so would give the disclosure greater credibility. Based on comments received on the 1998 Proposal, the CSA agreed to exempt news releases from the requirement to name the qualified person applicable to other written disclosure. Those commenters were concerned that naming the qualified person in the news release may:

- result in delays in the issuer making timely disclosure in the event the qualified person was unavailable to vet the news release;

- give the false impression that the qualified person, and not the issuer and its management, is primarily responsible for the disclosure; and

- expose the qualified person to a greater risk of liability.

After considering the conflicting comments at some length, the CSA have determined not to impose the suggested additional requirement. However, the CSA note that news releases and other continuous disclosure by issuers in all industries will undergo heightened regulatory review, and regulators will be mindful of concerns expressed on this issue.

24. *Section 3.2 Written Disclosure to Include Data Verification (formerly Written Disclosure to Include Data Corroboration and Other Information)*

Commenters suggested that “data corroboration” be changed back to “data verification” and be used in conjunction with “data validation” as both concepts are needed to describe the process of checking data adequately and that definitions be included. These commenters pointed out that “data corroboration” is not an industry term and could cause confusion. The CSA agree. The Instrument now uses the term “data verification” and includes a definition that incorporates both concepts of data validation and data verification. See item 3, “Definition of ‹data verification"', above.

Subsection (a) has been moved from NI 43-101 to item 15 of the Form.

The CSA received some comments that indicate that there may still be some misunderstanding about the qualified person’s responsibility to carry out data verification or explain the failure to do so. The qualified person is responsible for carrying out procedures that are adequate in his or her professional opinion. The procedures will undoubtedly vary depending on the circumstances including whether the qualified person is obtaining or generating data directly, or is reviewing data obtained or generated by another.

A commenter submitted a practice guideline. The Instrument focuses on the quality and reliability of public disclosure, not on exploration and mining practices as such, which in the view of the CSA are more appropriately within the purview of professional and industry associations. The CSA encourage industry and market participants to refer to "best practice" guidelines published by professional and industry associations.

25. *Section 3.3 Requirements Applicable to Written Disclosure of Exploration Information*

Commenters pointed out that section 3.3 of NI 43-101 implied that all requirements must be met in all disclosure, including sequential news releases, which would be cumbersome. The CSA agree and have made explicit in various clauses that disclosure does not have to be repeated.

In clause (1)(a) “a summary of results” has been changed to “a summary of material results” in response to a comment received.

In accordance with the suggestions of commenters and the usage of the terms in the Mineral Exploration "Best Practices" Guidelines referred to in section 4.1 of the Policy (the "Best Practices Guidelines"), clause (1)(c) has been revised to require a statement as to the quality assurance program and the quality control measures applied during the execution of the work.

In response to comments, the reference in clause (2)(b) to “structural controls” was changed to “geological controls”. At the suggestion of a commenter the requirement to describe the parameters used to establish the sampling interval will no longer be required in all written disclosure of exploration information; however, the parameters will be required to be disclosed in a technical report.

The CSA do not agree with the comment that the wording in clause (2)(c) is appropriate for grid sample collection only.

In response to a comment, in clause (2)(d) “materially impact” has been changed to “materially affect”.

Clause (2)(e) was revised to make it clear that the use of certified laboratories is not required by the Instrument.

In response to comments, clause (2)(f) has been revised to require a listing of the lengths of individual samples or sample composites including analytical values, widths and, to the extent known, the true widths of the mineralized zone.

26. ***Section 3.4 Requirements Applicable to Written Disclosure of Mineral Resources and Mineral Reserves***

A commenter suggested that environmental, permitting and other relevant issues required to be described by clause (d) of section 3.4 of NI 43-101 be limited to the qualified person’s knowledge. The CSA do not believe that this would be appropriate. It is the issuer’s responsibility to make the disclosure, and relevant issues known to the issuer are required to be disclosed.

A commenter was of the view that the statement required by clause (e) that mineral resources which are not mineral reserves do not have demonstrated economic viability was not necessary as this concept is embodied in the definition of mineral resource. The CSA disagree. The CSA believe that the required statement will emphasize a distinction that is important to the public investor.

27. ***Section 3.5 Exception for Written Disclosure Already Filed***

A commenter expressed the view that the conditions to the exception, set out in section 3.5 of NI 43-101, from references to previously filed disclosure as required by sections 3.4 and 3.5, will result in

lengthy paragraphs of cross-references that are of limited utility. The CSA believe that the offsetting disclosure is important and have retained this requirement.

28. PART 4 OBLIGATION TO FILE A TECHNICAL REPORT

Section 4.1 Obligation to File a Technical Report Upon Becoming a Reporting Issuer

A commenter was of the view that a technical report should not be required to be filed by an issuer becoming a reporting issuer in an additional Canadian jurisdiction. The CSA are of the view that this requirement is appropriate and not unduly onerous since the issuer may rely on a previously filed technical report or a report filed prior to February 1, 2001 under NP 2A, amended or supplemented, if necessary to reflect subsequent material changes.

29. *Section 4.2 Obligation to File a Technical Report in Connection with Certain Written Disclosure Concerning Mineral Projects on Material Properties*

Several commenters objected to the requirement under section 4.2 of NI 43-101 that producing issuers file technical reports in instances in which they are not currently required to do so. Their view is that requiring further disclosure by producing issuers is not warranted. They are of the view that the prime beneficiaries of increasing the instances in which producing issuers are required to file technical reports will be consultants and competitors, not shareholders and the public.

Some of these commenters explained that the requirement for producing issuers to produce technical reports is particularly onerous with respect to operating mines with a long production history. They commented that operating mines are also fundamentally different from new developments from a risk point of view. These commenters recommended that producing issuers should not be required to file technical reports for any mineral project that has been in operation for at least two years, unless there is a change in the mineral reserves and mineral resources of the mineral project that constitutes a material change in the affairs of the issuer.

The CSA are of the view that there is a need for industry-wide standards for disclosure of scientific and technical information in the mining industry. Generally speaking, if a property is material to an issuer, then the information required by the Form is material.

However, the CSA agree that it would be unduly onerous to require issuers to prepare and file technical reports to support disclosure that has been in the public market for a period of time. Accordingly, annual information forms ("AIF"), annual reports or short form prospectuses that include

scientific and technical disclosure, that is material to the issuer, must be accompanied by a technical report if the disclosure has not been previously contained in:

- an AIF, prospectus, material change report, or annual financial statement (a "disclosure document") filed with a securities regulatory authority before February 1, 2001;

- a report prepared in accordance with NP 2A filed with a regulatory authority before February 1, 2001; or

- a technical report filed under the National.

A commenter expressed the view that the preparation of a technical report to support each statement of a material fact concerning a material property would entail a great deal of time and expense and may restrict disclosure as issuers would avoid making statements in good faith. The CSA are of the view that the instances in which technical reports are required to be filed pursuant to the Instrument are appropriate and that issuers should show the requisite care in disclosing material facts.

Some commenters requested that clause (1)(7) be deleted because they were concerned that the very mention of a valuation in the Instrument might create a misunderstanding that a valuation report must be in the form of a technical report. The CSA disagree and have declined this request. The CSA believe that it is important that scientific and technical information contained in a valuation required under OSC Rule 61-501 (currently the only valuation to which the Instrument applies) be supported by a technical report prepared in accordance with the Instrument.

The CSA received conflicting comments on clause (4)(a) of section 4.2. A commenter was of the view that technical reports should be filed concurrently with news releases announcing new or significant additional mineral resources or mineral reserves. Another commenter was of the view that 30 days would be insufficient to prepare and file a technical report in support of new or significant additional mineral resources or mineral reserves. The CSA fully considered this matter in connection with the comments received on the 1998 Proposal and continue to be of the view that 30 days is an appropriate period. Reference is made to the notice published with the 2000 Proposal in this regard. The CSA also notes that the 30 day period was viewed as appropriate in the MSTF Report.

30. **PART 5 AUTHOR OF TECHNICAL REPORT**

General Parts 5, 6 and 7 and Form 43-101F1

A commenter was of the view that it was confusing to switch between references to the "author" of a technical report and the qualified person in the titles and text throughout Parts 5, 6 and 7 of proposed NI 43-101 and throughout the Form. The Form refers to the "author" because the CSA expect that the Form will be used by qualified persons in preparing their technical reports.

31. ***Section 5.3 Independent Technical Report***

Several commenters criticized the exception, under section 5.3 of NI 43-101, from certain requirements that a technical report be prepared by a qualified person independent of the issuer. The exception, which applies in certain cases to "producing issuers", would enable them to comply with the Instrument by filing technical reports prepared by in-house qualified persons.

This exception was the subject of significant debate in connection with the comments received on the 1998 Proposal and was thoroughly considered by the CSA at that time, as noted in the notice accompanying the 2000 Proposal. The CSA remain of the view that the exception for producing issuers, and definition of that term, appropriately balance the needs and requirements of issuers and investors and are consistent with the purposes of the Instrument.

32. **PART 6 PREPARATION OF TECHNICAL REPORT (formerly NATURE OF TECHNICAL REPORT)**

Sections 6.1, 6.2 and 6.3

A commenter suggested that sections 6.1, 6.2 and 6.3 of proposed NI 43-101 belong in the proposed Form to the extent not already included. The CSA agree with this comment as regards sections 6.2 and 6.3 and they now appear as items 22 and 5, respectively, of the Form.

33. ***Section 6.2 (formerly section 7.1) Personal Inspection***

The CSA received comments from some commenters that the decision of whether or not a site visit is necessary should be left to the discretion of the qualified person, and if no site visit was made, the disclosure should include an explanation. Several other commenters suggested that there should be an alternative to the issuer having to obtain an exemption from the personal inspection requirement, with its attendant cost and delay, especially in instances, that could be listed, where there would be little benefit from the inspection.

The CSA fully considered this matter in connection with the comments received on the 1998 Proposal. Reference is made to the Notice accompanying the 2000 Proposal. See also item 61 below with respect to Part 5 of the Policy. However, this is a matter that will be monitored by the CSA, and on which the CSA will seek advice from its external advisory committee.

A commenter, referring to a technical report on multiple properties, suggested that site visits should be required only to those properties that will be the focus of the majority of expenditures. The CSA do not believe that the personal inspection requirement needs to be set out in any greater detail. The manner in which a site visit is conducted is left to the discretion of the qualified person who is bound by professional standards and expected to apply professional judgment.

Another commenter expressed the view that check sampling during the personal inspection should be mandatory. The CSA considered but rejected this suggestion in connection with the 1998 Proposal. See the Notice accompanying the 2000 Proposal in this regard.

34. ***(New) section 6.3 Maintenance of Records***

New section 6.3 of NI 43-101 requires issuers to maintain assay certificates, drill logs and other records that are referenced in or support technical reports for 7 years.

35. **PART 7 USE OF FOREIGN CODE (formerly section 6.4)**

Part 7 of NI 43-101 has been revised to make clear that foreign issuers may make disclosure using the definitions of resources and reserves in the foreign codes, as well as file technical reports utilizing such foreign codes, provided the disclosure includes a reconciliation to the mineral resource and mineral reserve definitions in the Instrument.

Some commenters remarked that Canadian issuers may have valid reasons to use foreign codes, and should be permitted to use foreign codes provided they reconcile the disclosure based on the foreign code against the definitions in the Instrument. The CSA agree with this comment with respect to properties of Canadian issuers that are located in a foreign jurisdiction. Subsection 7.1(2) has, therefore, been added to NI 43-101.

Another commenter noted that the reconciliation required by the 2000 Proposal may be difficult and may require two separate calculations from raw data. The CSA believe that, in most cases, a qualified person will be able to reconcile definitions in different codes without having to resort to recalculation.

A commenter expressed the view that the reconciliation requirement is an unnecessary expense and would not provide any meaningful disclosure. This commenter was concerned that differences in

reporting codes and reconciliation requirements could lead to differences of opinion or interpretation with respect to what is reported by Canadian and non-Canadian mining companies.

The CSA disagree. The CSA are of the view that the use of standard definitions of mineral reserves and mineral resources is an important aspect of meaningful public disclosure, and if foreign codes are used, a reconciliation to the standard definitions must be made and disclosed. The CSA are of the view that this provision creates an even playing field between Canadian and non-Canadian issuers that access the Canadian market.

36. **PART 7 (formerly PERSONAL INSPECTION)**

See the discussion under item 33, "Section 6.2 Personal Inspection".

37. **PART 8 CERTIFICATES AND CONSENTS OF QUALIFIED PERSONS FOR TECHNICAL REPORTS**

Section 8.1 Certificates of Qualified Persons

A commenter was concerned about the qualified person being responsible for portions of the technical report that are not prepared by a qualified person. Item 5 of the Form permits the qualified person to include a disclaimer in this regard. Also, the certificate required by section 8.1 of NI 43-101 specifies which portions of the technical report have been prepared by the qualified person.

In accordance with a suggestion received from a commenter, the beginning of section 8.1(2) has been revised to read: "The certificate for each qualified person shall state…"

In accordance with a suggestion received from a commenter, the lengthy provisions of clause 8.1(2)(f) have been replaced by reference to independence and the interpretation contained in section 1.5 of NI 43-101.

Some commenters suggested that the requirement that the qualified person certify that the technical report was prepared in accordance with generally accepted mining industry practice was inappropriate and could create confusion. The CSA agree and have eliminated this requirement.

38. ***Section 8.3 Consents of Qualified Persons***

A commenter objected to clause 8.3 (b) of proposed NI 43-101, which requires a qualified person to confirm that the written disclosure correctly reflects the technical report, because it is the issuer's responsibility to ensure that the disclosure reflects the underlying work. The CSA agree as to the issuer's responsibility, but are of the view that it is appropriate for the issuer to be required to obtain the qualified person's confirmation in this regard.

39. **PART 9 EXEMPTION**

Section 9.1 Exemption

Commenters are concerned as to the costs to issuers of applying for exemptions. The CSA acknowledge these concerns, and urge issuers to make arrangements to minimize the matters for which exemptions may be required.

See also item 2, Section 1.2 "Definition of Qualified Person", and item 33, Section 6.2 "Personal Inspection".

FORM 43-101F1 TECHNICAL REPORT

40. ***General***

Some commenters expressed strong support for the reference by the CSA to the Best Practices Guidelines.

Several commenters expressed the view that content in a technical report should be limited to information that is material to the property and to the issuer. The CSA do not agree. Once the requirement for a technical report is triggered by the disclosure set out in the Instrument, a technical report addressing all relevant items is appropriate.

Several commenters objected to being required to disclose information that they regard as private and confidential information, particularly the financial disclosure with respect to development and production properties described in Form Items 24 (g), (h) and (i). Concern was also raised for producers in non-transparent oligopoly markets where price signalling will have an impact on competitive behaviour. Commenters also raised concerns about disclosing exploration information. In all cases, the concern was that the broad disclosure obligations in the Form would put issuers subject to Canadian securities regulation at a competitive disadvantage. One of these commenters concluded that if disclosure were to be required, it should be limited to material information on material properties, with the right of the issuer to disclose sensitive information to securities regulatory authorities on a confidential basis.

After serious consideration, the CSA concluded that disclosure of material information is fundamental to our securities regulatory system. The CSA do not believe it is appropriate that this requirement apply to some, but not all issuers. However, the CSA recognize that there is information that an issuer may have legitimate reasons to keep confidential for a limited period or, more rarely, indefinitely. In

circumstances in which an issuer intends to make disclosure at a later time, the issuer may file the information with securities regulatory authorities on a confidential basis. Indefinite confidentiality would require an exemption from securities regulatory authorities.

INSTRUCTIONS

41. ***Instruction (3)***

As requested by a commenter, the second sentence of Instruction (3) has been revised to clarify that explanations are required for technical terms that are unique or infrequently used.

42. ***Instruction (5)***

A commenter suggested that Instruction (5) should make clear that the items in the previously filed report do not need to be repeated provided they are still accurate, and only changes to these items need to be filed in the current technical report. This change has been made.

43. ***Proposed Instruction***

A commenter requested that an instruction be added to the effect that the Instrument is not intended to restrict the ability of a mineral valuator to utilize all technical information as a basis for reaching his or her valuation opinion. The CSA do not think such a statement is necessary or appropriate as valuations are not the subject of the Form.

44. ***Item 4 Introduction and Terms of Reference***

A commenter suggested the addition of a clause (d) to Item 4, requiring the disclosure of the extent of field involvement by the qualified person. This change has been made.

45. ***Item 6 (formerly Item 5) Property Description and Location***

In clause (a) of Item 6, "dimensions" has been changed to "area" in accordance with the suggestion of a commenter. Clause (b) has been revised to include references to the Universal Transverse Mercator (UTM) system and to geopolitical subdivisions as suggested by commenters.

In clause (d), the CSA declined to accept a commenter's suggestion to limit disclosure with respect to title "to the extent known" by the qualified person. The issuer is required to disclose the information required to be included in the technical report; and the qualified person may indicate his or her reliance on the information provided by the issuer.

At the suggestion of commenters, clauses (e) and (f) have been revised to separate information that is narrative from information that is to be shown on a map.

A commenter was concerned that the matters to be disclosed in clauses (g), (h) and (i) and in item 8 (formerly item 7) "History" would be beyond the scope of a qualified person's experience and responsibilities, especially with respect to properties in foreign jurisdictions. The CSA recognize that there will be certain information that an issuer is required to provide in a technical report for the sake of completeness that will be outside the area of expertise of the qualified person who is the author of the technical report. The qualified person may disclaim responsibility with respect to areas of the technical report outside his or her area of expertise as provided in Item 5 of the Form.

46. ***Item 8 (formerly item 7) History***

A commenter suggested that required disclosure should be limited to prior ownership and prior work that is material. The CSA are of the view that all relevant information should be included in a technical report to assist the reader in assessing the conclusions of the technical report.

47. ***Item 11 (formerly item 10) Mineralization***

Some technical changes have been made at the suggestion of commenters.

48. ***Item 12 (formerly item 11) Exploration***

A commenter suggested that the title of Item 12 be changed to "Field Surveys". The CSA have declined to make the change as the disclosure required by this item is not restricted to fieldwork.

At the suggestion of a commenter the reference to "and metallurgical or other testing" has been removed in the lead-in phrase, as such information may either be disclosed under clause (a) of this item or item 18 "Mineral Processing and Metallurgical Testing", as appropriate.

49. ***Item 13 (formerly item 12) Drilling***

Some commenters were of the view that Item 13 was not sufficiently detailed and should include certain requirements such as drill logs and the relationship of drilling to surface showings, and referred the CSA to the Best Practices Guidelines. The CSA are of the view that these matters go to the manner of how work should be done which is a matter better determined by the professional and industry associations. The CSA in section 4.1 of the Policy encourage qualified persons to follow the Best Practices Guidelines.

50. ***Item 14 (formerly item 13) Sampling Method and Approach***

Several technical changes suggested by commenters were made.

51. ***Item 15 (formerly item 14) Sample Preparation, Analyses and Security (formerly Sample Preparation and Security***

At the suggestion of a commenter, the title of this item has been revised.

52. ***Item 16 (formerly item 15) Data Verification (formerly Data Corroboration)***

A commenter suggested that the term "quality assurance" be substituted for "quality control". The CSA have declined to make this change, but have changed the reference to "quality control measures" to be consistent with the terminology used in the Best Practices Guidelines.

In accordance with comments, reference to "data corroboration" has been changed to "data verification".

53. ***Item 17 (formerly item 16) Adjacent Properties***

A commenter noted that this item does not address the issue of publicly announced information that was not prepared in compliance with the Instrument. The CSA have added clause (e) to Item 17 to refer to section 2.4 of NI 43-101, which permits disclosure of historical estimates on specified conditions.

Another commenter suggested that this item should not be a separate item. The commenter advised that separating the disclosure called for in this item diverges from current practice, which is to give details of the geology and mineralization on an adjacent property in the relevant sections of the report discussing the property with clear disclosure that it is on an adjacent property. To minimize confusion to readers of a filed technical report, the CSA determined to require that disclosure on adjacent properties be separated and accompanied by the disclosure set out in clauses (b) through (e). Clause (d) has been added to ensure this disclosure to the reader.

54. ***Item 19 (formerly item 18) Mineral Resource and Mineral Reserve Estimates***

Clause (i) of this item was revised to clarify that this restriction on use of inferred mineral resources applies to a preliminary feasibility study and a feasibility study, but not to a preliminary assessment which may be disclosed on conditions set out in section 2.3 of NI 43-101.

Several commenters were of the view that the disclosure of metal equivalents permitted by clause (k) of this item should be discouraged and/or restricted. The CSA are of the view that this is a matter of "best practices" and should be in the discretion of the profession and industry. However, the CSA have heeded the commenters' concerns and have revised the wording of this clause to include disclosure of grade of the individual metals.

55. ***Item 22 (formerly item 21) Recommendations***

A commenter suggested that more detail should be given concerning budgets, as a breakdown of a budget is an essential element of a technical report. The CSA agree with the importance of cost breakdowns but do not believe that more specific instructions are required in this regard.

56. ***Item 24 (formerly item 25) Additional Requirements for Technical Reports on Development Properties and Production Properties***

Some commenters made the general comment that Item 24 should be expanded. The CSA are of the view that the salient items of disclosure are included in this item and no additions have been made.

Several commenters expressed their concerns over the requirements to disclose information that they consider confidential. This point has been addressed above under "General".

Several commenters objected to the forecasting required in clauses (g), (h), (i) and (j), commenting that the disclosure required goes beyond an investor's reasonable needs, will lead to unrealistic investor reliance on forecasts, will increase the risk of legal complaints against the issuer and its management and will impose an excessive burden on Canadian mining issuers compared to foreign mining issuers and issuers in other businesses. These commenters stated their view that this section is inconsistent with FOFI, which is at the issuer's option and limited to a shorter period of time.

The CSA are of the view that the information required by these clauses are material to an investor with respect to a new or materially changed development or production property and should be provided in a technical report. The CSA are satisfied that the disclosure that triggers a requirement to provide a new or updated the technical report, and this information, are appropriate. In the event an issuer disagrees, the issuer may make an application to the CSA for an appropriate exemption. The CSA do not think that the disclosure required is inconsistent with FOFI. Disclosure in technical reports has always been excluded from FOFI.

57. ***Item 26 (formerly item 25) Illustrations***

Some commenters were concerned that a qualified person might not be able to obtain consent from the person that is the source of the information referred to in Item 26. The CSA are of the view that obtaining a person's consent, where required, provides additional credibility to the information that is being utilized and/or relied upon by the qualified person.

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58. ***Section 1.4 Mineral Resources and Mineral Reserves Definitions (formerly Section 1.3 Definitions)***

Commenters suggested that the CIM definitions be incorporated by reference into the Instrument and that section 1.4 of the Policy be revised accordingly. This change has been made.

59. ***Former Section 1.4 Interpretation***

In accordance with a commenter's suggestion, proposed section 1.4 has been removed from the Policy. (Reference is made to Item 7 above with respect to the definition of "exploration information".)

60. ***Section 1.5(a) Non-Metallic Mineral Deposits, Industrial Minerals***

A commenter expressed the view that the recognition of a viable market is insufficient to classify reserves for an industrial mineral, and that a sales contract should be required to be in place. The requirement of a sales contract for classification of industrial minerals as reserves was in version of Policy included in the 1998 Proposal but was removed after review and consideration of comments received. Commenters had expressed the view that requiring a sales contract to be in place in order to classify "reserves" made it very difficult or impossible for a company to secure financing. The CSA revised this section. This view was consistent with the position taken by the CIM Standing Committee on this issue, and the CSA adopted this approach. The CSA continue to be of the view that this is the appropriate approach to take at this time, as it reflects the current approach of the industry.

61. ***Section 2.1 Disclosure is the Responsibility of the Issuer***

A commenter expressed the view that section 2.1 of the Policy was not sufficient, and that instead the Instrument should specifically require the issuer to assume responsibility for the disclosure to not misuse or misquote scientific or technical advice or information received from the qualified person. The CSA are of the view that other provisions of securities legislation concerning responsibilities of an issuer, its directors and officers, and others are appropriate, and that no change to the Instrument is necessary in this regard.

62. ***Section 2.4(5) (formerly 2.3(5)) Materiality***

A commenter suggested that subsection 2.4(5) of the Policy be deleted in view of the questionable relevance of historic cost of mineral properties to the value that investors place on an issuer's securities. The CSA agree that book value and/or exploration expenses may not be an appropriate measure of materiality in many instances. This subsection is not intended to be used as a substitute for the

determination of materiality, but is present only as guidance to assist the issuer in making the determination.

63. ***Section 3.2 Qualified Person***

Some commenters expressed concern that section 3.2 of the Policy may permit foreign practitioners who are subject to a lower standard than Canadian practitioners to be considered qualified persons under the Instrument. One commenter suggested that this section be revised so that exemptions would only be given in very specific instances and to ensure that the exemption process could not be used to circumvent standards required for Canadian licensed professionals. Another commenter suggested that this section could be interpreted as a disregard for existing professional laws regarding the practice of engineering.

The CSA expect that securities regulatory staff will use good judgement in considering applications by issuers to have certain requirements of the qualified person definition waived with respect to certain engineers and geoscientists on whom the issuer wishes to rely for scientific and technical information and advice. The CSA do not think it appropriate to limit the discretion of staff of the securities regulatory authorities in this regard. Issuers should be mindful of local laws governing the practice of engineering and geoscience in jurisdictions in which their properties are located.

64. ***Proposed new section 3.4 Disclosure of Assumptions***

A commenter suggested that a new section be added to the Policy advising qualified persons to lay out the assumptions and weaknesses of the model used as a basis for exploration or evaluation, and the justifications for the assumptions made where this is not implicit. The commenter was of the view that this would protect the qualified person and engender public confidence in the work. The CSA are of the view that the requirements of the Form are sufficient in this regard and trust that qualified persons will include this information where it is relevant and of assistance to the reader.

65. **PART 6 (formerly PART 5) PERSONAL INSPECTION**

A commenter remarked that this Part of the Policy appeared to be written with an exploration property in mind. The commenter suggested that guidance should be given for development and producing properties where it may be appropriate for more than one qualified person to visit the site.

The CSA have added a new section, section 6.3, to the Policy to clarify that the personal inspection requirement in section 6.2 of NI 43-101 sets a minimum standard, and that the issuer should have personal inspections made by qualified persons as appropriate in the circumstances.