

CANADIAN SECURITIES ADMINISTRATORS COMMENT ON DISCLOSURE RELATED TO MINERAL PROJECTS AND TECHNICAL REPORTS

Posted on January 24, 2023

Categories: [Insights](#), [Publications](#)

On November 3, 2022 the Canadian Securities Administrators (“**CSA**”) released CSA Staff Notice 51-364 *Continuous Disclosure Review Program Activities for fiscal years ended March 31, 2022, and March 31, 2021*, its biennial report on reporting issuers’ compliance with continuous disclosure obligations (the “**Staff Notice**”)[1]. The Staff Notice provides guidance to issuers with the goal of improving the completeness, quality and timeliness of reporting issuers’ continuous disclosure. The CSA identified key areas for improvement relating to technical disclosure pursuant to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (“**NI 43-101**”)[2] and Form 43-101F1 *Technical Report* (“**43-101F1**”)[3]. These key areas focused on (i) personal inspections as part of a Technical Report (as defined below), (ii) equivalent grade disclosure, and (iii) the qualifications of a “qualified person” as that term is defined in NI 43-101 (“**QP**”).

1. Personal Inspection

The CSA observed that, due to travel restrictions in connection with the COVID-19 pandemic for the 2020-2021 period, many issuers filing technical reports in accordance with 43-101F1 (a “**Technical Report**”) had difficulty bringing QPs to mineral projects to complete the current personal inspection required by section 6.2(1) of NI 43-101[4]. The CSA noted that some issuers had enquired about an exemption from the requirement to have a QP on site for a personal inspection due to COVID-19 travel restrictions, while others proposed the use of remote technology including video-capable drones to complete a personal inspection. The CSA took issue with Technical Reports filed where authors chose to “self-exempt” from the personal inspection requirement or to modify it with video or other remote technology. Unless an issuer applies for exemptive relief, there is no mechanism to override or modify the personal inspection requirement found in NI 43-101. The CSA reiterated that there was no blanket relief during the 2020-2021 period related to the COVID-19 pandemic as it applied to personal inspections. The CSA’s commentary does not effect issuers with “early-stage exploration properties”, as defined in NI 43-101 who may defer the personal inspection due to seasonal weather conditions at their project in certain circumstances[5].

2. Equivalent Grade Disclosure

The CSA noted that certain issuers have engaged in the practice of disclosing equivalent grades calculated entirely by price-weighting. The CSA's view is that price-weighting, without taking the differential recovery of each component element into account, is potentially misleading to investors. Issuers should avoid potentially misleading grade equivalent disclosure by calculating equivalent grades based on the results of metallurgical tests or, where such results are not available, by including reasonable assumptions for recovery of the constituent metals^[6]. The CSA noted that foreign disclosure codes such as JORC, SAMREC, and SME have requirements for disclosure of grade equivalents that require, among other things, the issuer to disclose individual grades for all metals included in the metal equivalent calculation as well as the recovery, and in some instances, treatment, smelting and other costs^[7]. The CSA advised that the applicable clauses of those codes may be used as guidance for disclosure of equivalent grades under NI 43-101^[8].

3. Qualified Persons

The CSA observed that individuals without relevant experience in the subject matter being reported are approving some disclosure about mineral projects. The concern appears to be that some QPs who have limited experience with certain exploration techniques or extraction processes rely on consultants' reports without interpreting the results for investors. The CSA reminded issuers that a QP must meet the criteria in NI 43-101^[9], which includes, among other prerequisites, that the QP has experience relevant to the subject matter of the mineral project and the technical report.

Issuers are encouraged to consider the mineral project disclosure observations noted in the Staff Notice against their own disclosure practices, and use the CSA's guidance to strengthen their compliance with their continuous disclosure obligations.

[1][ps2id id='1' target=''] Staff Notice, [CSA Staff Notice 51-364](#) (3 November 2022), (2022) 45 OSCB 9349.

[2][ps2id id='2' target=''] [NI 43-101](#) (9 May 2016), online (pdf): *British Columbia Securities Commission*.

[3][ps2id id='3' target=''] [Form 43-101F1](#) (30 June 2011), online (pdf): *British Columbia Securities Commission*.

[4][ps2id id='4' target=''] *Supra* note 1, at p. 17.

[5][ps2id id='5' target=''] *Ibid; Supra*, note 2, ss. 6.2(2) and (3).

[6][ps2id id='6' target=''] *Supra*, note 1 at p. 16.

[7][ps2id id='7' target=''] *Supra*, note 1 at p. 16-17.

[8][ps2id id='8' target=''] *Supra*, note 1 at p. 16-17.

[9][ps2id id='9' target=''] *Supra*, note 1 at p. 17.

by [Cory Kent](#), [Andrew Spencer](#), [Sasa Jarvis](#) and [Adam Jones](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2023