

National Instrument 43-101: Technical Reports - Materiality, Filing Triggers, Addendums and Other Key Considerations

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A technical report is one of the most important public documents produced by mining issuers in Canada. National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (NI 43-101) requires a mining issuer to publicly file (on SEDAR+) a technical report for each of its material mineral properties. Determining whether a property is material and if a technical report is required for such property are critical elements for mining issuers to understand. In addition, mining issuers should be aware of, among other things, when certain written disclosure about a material mineral property may trigger the obligation to file a technical report, certain requirements when voluntarily filing a technical report and the limited instance where NI 43-101 permits the filing of an addendum to a previously filed technical report.

Determining Materiality of a Mineral Property

Regulators have indicated that a mining issuer, in most circumstances, will have at least one material mineral property. NI 43-101 does not provide a simple, bright-line test for determining whether or not a particular mineral property is “material,” which means that it is ultimately an issuer’s determination to make. Current guidance from regulators indicates that when determining whether a mineral property is material, mining issuers will need to consider how important or significant such property is to the issuer’s overall business, relative to its other properties and assess the impact of such property on the market value of the issuer’s outstanding securities (which impact may be assessed against the expected impact of the issuer’s other mineral properties on the market value of the issuer’s securities). Mining issuers must be mindful that regulators will assess any determination of materiality based on an issuer’s disclosure record, its deployment of resources and other relevant indicators. Accordingly, mining issuers should consider a range of factors and indicators (no single one of which will be determinative) when determining materiality of a mineral property, including, but not limited to, the following:

- **Disclosure Record:** The extent to which the issuer’s disclosure record is focused on the subject property and/or indicates that results from said property are significant or important.
- **Deployment of Resources:**

The extent to which the cumulative and projected acquisition costs or proposed exploration

expenditures for the subject property are significant (compared to the issuer's other material properties).

Whether or not the issuer is raising (or has raised) significant money or is devoting (or has devoted) significant resources to the exploration and development of the subject property.

- **Financial Metrics:** Book and net asset values attributed to the subject property, cash flow from the property (both historical and forecasted) and/or capital resources dedicated to the property.
- **Mineral Reserves and Mineral Resources:** Current mineral reserve and mineral resource estimates in respect of the subject property (and any anticipated changes thereto).
- **Stage of Development:** The stage of development of the subject property and/or the percentage of the issuer's overall production attributable to the property.
- **Analyst Commentary:** Whether the subject property is covered by market commentators and/or analysts following the issuer. Analyst community coverage can be a useful indicator of materiality, as such coverage generally reflects the views of the investing public as to what is material.

Although it is not easy to determine whether or not a particular mineral property is "material," Canadian regulators have offered some limited guidance, which indicates that, for example:

- (i) more advanced stage mineral properties may often be more material than earlier stage properties;
- (ii) in circumstances where a mining issuer is focusing its resources on new mineral properties, historical expenditures and/or book value might not be a good indicator of materiality for an inactive mineral property;
- (iii) depending on the circumstances, a small interest in a sizeable mineral property may not be material to the issuer, whereas a royalty or similar interest in an advanced stage mineral property could be material to the issuer (in comparison to its active projects); and
- (iv) several non-material mineral properties in an area or region, when taken as a whole, could be material to an issuer.

Written Disclosure and Technical Report Triggers

A mining issuer that has a material mineral property for which the issuer has not previously filed a technical report, will be required to file (within the prescribed timeframes) a technical report to support scientific or

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technical information relating to such property contained in any of the following documents filed or made available to the public in Canada, subject to very few exceptions:

- (a) a preliminary prospectus (other than a preliminary short form prospectus);
- (b) a preliminary short form prospectus that contains first-time disclosure of, or of a change in, mineral resources, mineral reserves or the results of a preliminary economic assessment that constitute a material change in relation to the issuer (see qualifier below);
- (c) an information or proxy circular concerning a direct or indirect acquisition of a mineral property where the issuer or resulting issuer issues securities as consideration;
- (d) an offering memorandum, other than an offering memorandum delivered solely to accredited investors (as defined under securities legislation);
- (e) a rights offering circular;
- (f) an annual information form;
- (g) a valuation required to be prepared and filed under securities legislation (e.g., in connection with an insider bid);
- (h) a short form TSX Venture Exchange offering document;
- (i) a take-over bid circular that discloses mineral resources, mineral reserves or the results of a preliminary economic assessment on the mineral property if securities of the offeror are being offered in exchange in the take-over bid; or
- (j) any other written disclosure made by or on behalf of an issuer (e.g., press releases, MD&A, etc.), other than in a document described in (a) to (i), that contains first-time disclosure of, or of a change in, mineral resources, mineral reserves or the results of a preliminary economic assessment that constitute a material change in relation to the issuer (see qualifier below).

Qualifier – No Material Change. With respect to triggers (b) and (j) noted above, a mining issuer will be required to file a technical report only if both of the following conditions are satisfied: (i) such issuer makes first-time disclosure of, or of a change in, mineral resources, mineral reserves or the results of a preliminary economic assessment and (ii) such first-time disclosure constitutes a “material change” in relation to such issuer. Canadian securities laws (and stock exchange rules) generally define a “material change” with reference to a market impact test that focuses on whether the applicable change is a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect

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on the market price or value of any securities of the issuer. While there is no simple, bright-line test to determine whether or not a change constitutes a material change, in assessing materiality, mining issuers should carefully consider a number of factors and the overall context and circumstance, including the nature of the information itself, the volatility of the issuer's securities and prevailing market conditions.

Timing of Filing. A mining issuer that has triggered the requirement to file a new technical report must generally file the technical report not later than the time it files or releases to the public the document triggering the filing requirement. However, there are two broad exceptions to this rule. First, where the filing requirement arises due to trigger (j) noted above, a mining issuer will have additional time, of up to 45 days after the date of the disclosure, to file the technical report. However, if the applicable disclosure is also contained in a preliminary short form prospectus or a directors' circular for a take-over bid, the filing deadline will instead be the earlier of (i) 45 days after the date of the disclosure and (ii) the date of filing the preliminary short form prospectus (in the case of disclosure also in a preliminary short form prospectus) or three business days before the expiry of the initial deposit period (in the case of disclosure also in a director's circular). Second, if a property referred to in a mining issuer's annual information form first becomes material to the issuer less than 30 days before the filing deadline for the annual information form, the issuer will have a period of 45 days from the date the property first became material to the issuer to file the technical report.

Currency of Technical Reports

A technical report must be "current and complete" when filed, and mining issuers should be aware that a technical report may no longer be current and complete as a result of a number of factors beyond the issuer's control. A technical report may, for example, not be current or complete due to, among other things (i) changes to metal prices, (ii) out of date economic analyses (including mine life, net present value and internal rate of return), (iii) reinterpretations of the subject deposit, (iv) mineral reserve and mineral resource estimate updates, (v) changes to mineral titles, permits or obligations, (vi) changes in mining method, (vii) changes in tax or royalty regime, (viii) new drill results, (ix) new assay results or metallurgic test work, or (x) changes in development timeframes. These same factors can render a technical report that has been previously filed to no longer be current and complete.

Voluntary Filing of Technical Reports

There may be circumstances where a mining issuer might wish to file a report in the form of a technical report absent a prescribed trigger – this is referred to as a "voluntary" filing of a technical report. For instance, a mining issuer may wish to voluntarily file a technical report, for marketing a non-material mineral property in connection with a proposed transaction or financing. While NI 43-101 does not prohibit an issuer from voluntarily filing such a report, any document that purports to be a technical report must comply with

the requirements of NI 43-101, which require such document to, among other things, be in the form of technical report prescribed by NI 43-101.

A mining issuer that voluntarily files a technical report is not required to file the consents of the qualified person author(s) as would be done in the case of a mandatory technical report filing. However, the mining issuer should consider filing a cover letter with such report, to explain why the issuer is filing the report and indicate that it is not filing the report as a requirement of NI 43-101. This cover letter would be public on SEDAR+. Alternatively, the issuer may wish to voluntarily file modified consents of qualified persons with such report, in order to ensure that the responsible qualified persons certify the scientific and technical information disclosed in the technical report for which they are responsible. These consents can also specify why the issuer is filing the report despite not being required to do so under NI 43-101.

Subsequent to the voluntary filing of a technical report, a mining issuer could trigger a requirement to file a mandatory technical report (even if there is no new material information with respect to the subject mineral property since the date of the voluntary filing) if, at the time of triggering the filing requirement, such property is material to the issuer. In such instances, rather than filing a new technical report (or re-filing the previously filed voluntary technical report), the issuer may file updated consents of the qualified person(s) referring to the document triggering the filing, and the previously filed voluntary technical report.

Addendums to Technical Reports

As a general rule, a mining issuer should only have one current technical report on a mineral property. A mining issuer that is required to file a technical report must generally file a single, complete and current technical report that contains all material scientific and technical information about the applicable mineral property. With respect to a mining issuer that has previously filed a technical report, if the issuer later determines that it is required to file another technical report (e.g., because it triggered one of the requirements discussed above), the issuer may not simply file an addendum to update the outdated sections of the previously filed technical report. Instead, the issuer must update the outdated sections of the previously filed technical report and file a new, consolidated, complete and current technical report.

The only exception to the general rule that there should only be one current technical report for a mineral property arises in the context of prospectus offerings. A mining issuer that files a technical report with a preliminary short or long form prospectus may file an addendum to such technical report if (i) new material scientific or technical information becomes available during the course of the prospectus offering and before the issuance of the final receipt for such prospectus and (ii) the addendum is filed in respect of such previously filed technical report. Although available, this exception is rarely used as it is often more efficient to simply revise and update the original technical report, particularly if the qualified persons that authored the initial technical report also undertook the work relating to the new material or scientific information that becomes available during the prospectus offering.

Conclusion

It is crucial for mining issuers to be aware of the above considerations when making public disclosure of scientific or technical information. A careful and thorough assessment of materiality may be integrated into annual planning and should be documented in an issuer's records for further reference. On an ongoing basis, mining issuers should consider their written disclosures and the potential for triggering the requirement to file a technical report. The preparation of a technical report can be a significant undertaking and a strong understanding of the requirements can help ensure business needs are not disrupted.

For more on NI 43-101, find our previous articles in this series [here](#).

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