

National Instrument 43-101: Fixing Errors in Technical Reports

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A technical report prepared and filed in accordance with National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (NI 43-101) is a critical document to support public disclosure and to ensure transparency, accuracy, and investor protection. These reports are prepared by or under the supervision of a qualified person (QP) and are filed on SEDAR+ in the prescribed circumstances. But what happens when a mistake is discovered after filing, or an issuer is requested by a regulator to make a revision to the technical report as a result of a continuous disclosure or other review?

Mistakes do happen and it is important to ensure any error in a technical report is quickly and adequately addressed. Material errors in technical reports can lead to investor misinformation, regulatory non-compliance, reputational damage, and potential legal consequences. Whether it's a data misstatement, a misclassification of mineral resources, or a compliance oversight, correcting errors in a filed NI 43-101 report must be handled with care, professionalism, and regulatory awareness.

What Should Be Done When an Error is Discovered?

When an error is discovered, the first step for an issuer is to determine whether the error is material. Any errors that could influence an investor's decision, or that affect mineral resource or mineral reserve estimates, or economic assumptions, would typically be considered material. If the error is material, the technical report will need to be corrected to limit, among other things, secondary market liability (see details below).

In addition to the correction of the technical report, for any material error, the issuer should address the nature of the error in a news release, and indicate that the incorrect disclosure should no longer be relied upon. The news release may address the implications of any error or other factors leading to the corrective disclosure, as well as how the issuer is proposing to correct the disclosure. This is expected promptly, even if the issuer requires more time to investigate and quantify all aspects of the error and the amended technical report is not yet ready to be filed. Issuers should consider both the timing of the news release and the prominence of the description of the error to ensure that market participants are appropriately informed. Also, securities regulators expect the news release and any corrective disclosure to be prominently displayed on the issuer's website as if it were in the ordinary course of disclosure for the issuer (i.e., the news release is not buried in an unexpected location).

Furthermore, if the errors and corrections amount to a material change, a material change report would also be required to be filed.

How Can a Technical Report That Has Already Been Filed be Corrected?

Technical reports that have already been filed on SEDAR+ cannot be removed, regardless of the scope and nature of the error. The only way to rectify errors in a previously filed technical report is to re-file the report with an amended report date.

It is recommended that the issuer include a cover note on the amended report referencing the original report, identifying the date of the amendment, explaining the nature of the correction, and stating that the amended report amends and restates the original report. The corrected report will need to be clearly titled as “amended,” “revised,” and/or “restated.” The “effective date” of the technical report can remain the same, but the “report” date must be updated.

When filing an amended technical report, all QP consents and certificates will need to be (i) updated to reflect the updated report date, (ii) re-signed by the QPs, and (iii) re-filed on SEDAR+.

In addition (and in addition to any previous news release noted above), concurrently with the filing of an amended technical report, the issuer must immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change to the technical report.

Secondary Market Liability

Canadian securities laws provide a statutory right of action for investors who acquired or disposed of securities while there was a misrepresentation that is not corrected in a report, statement, or opinion. Investors have a right to bring an action against the issuer, its directors, officers and experts (i.e., QPs).

For secondary market liability, the statutory regime provides that investors do not need to prove reliance on the misrepresentation in order to win their case and obtain a damages award. That said, investors need to obtain leave of the court prior to the action proceeding.

It is important to quickly correct any errors once discovered to limit the possibility of a successful secondary market liability action being brought against the issuer, any of its directors and officers, and the QPs who prepared or supervised the preparation of the technical report.

Under Canadian securities laws, reliance on an expert can serve as a defence to liability for an issuer in both primary and secondary market disclosure contexts. However, once an error is identified in a technical

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report, it is important to note that an issuer can no longer rely on the defence that the liability for the error lies with the expert (i.e., the QP) who prepared the technical report, rather than the issuer. As such, the issuer has an obligation to correct the technical report in order to limit liability.

Refilings and Errors List

Issuers regulated by the Ontario Securities Commission (the OSC) should be alive to the OSC's [Refilings and Errors List](#). The purpose of the Refilings and Errors List is to provide transparency to the market when, during a staff review, an issuer has amended its continuous disclosure record. If an error in a technical report is identified during an OSC staff review, the issuer will be placed on the Refilings and Errors List and will remain there for a period of three years. The OSC will require the issuer to issue a news release and potentially file a material change report, depending on the circumstances. A draft of the news release will need to be pre-cleared with the OSC before it is disseminated. The British Columbia Securities Commission (the BCSC) is the other commission in Canada that deals heavily with mining issuers. At this time, the BCSC does not have a public register to identify issuers who have had to refile technical reports. Regardless, the BCSC requires the same prompt action to correct disclosure concerns.

Conclusion

It is important to leave ample time for legal and technical review of technical reports prior to a filing deadline to improve the likelihood of catching material errors prior to the technical report being filed.

Correcting a filed technical report is a serious but manageable process. A prompt and transparent response from the issuer once a material error is discovered is imperative. By acting swiftly, and with guidance from legal counsel, issuers, and QPs can maintain credibility and uphold the integrity of public disclosures.

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

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