

National Instrument 43-101: Part 7 - World Class Promotional Language

Gregory Hogan, Alexander Pizale

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In April 2015, the Canadian Securities Administrators published *CSA Staff Notice 43-309*, which revealed that of the 130 investor presentations analyzed, only 18% were in substantial compliance with NI 43-101, contained appropriate forward-looking information disclaimers and were balanced/not overly promotional. Letters were sent to 49 mining companies requiring them to amend their investor presentations and correct the non-compliant disclosure. Various actions were imposed by the regulators, ranging from companies being required to confirm future compliance with the requirements, to issuing corrective news releases, to filing or re-filing technical reports.

Regulators do not generally look favourably on overly promotional language in a company's disclosure. *National Policy 51-201* sets out the regulatory views and expectations regarding such disclosure, which is to "Avoid including unnecessary details, exaggerated reports or promotional commentary." Overly promotional language is a red flag to regulators and companies who use it are often the first ones chosen for continuous disclosure reviews.

The restrictions on the use of promotional language applies to all disclosure by a company, regardless whether it is posted on SEDAR. Regulators often find that a company's voluntary disclosures (i.e., websites, investor relations materials, email promotions, social media sites, and corporate presentations) are more often not in compliance than a company's mandatory disclosure (i.e., news releases, technical reports, annual information forms, and management discussion and analysis filings).

Mining companies are notorious for using overly promotional language in their disclosure, such as:

- Incredible results
- World class discovery/deposit/asset
- Bonanza grades
- Abundant visible gold
- Exceptionally high grade results
- Spectacular and extraordinary
- Potential to be very profitable (*implies potential economic viability and assumes that the company has done at least a PEA*)
- Unparalleled, outstanding, unique

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- Huge upside potential
- Best in class

The use of such overly promotional language is often included in a tag line or a quote in the disclosure. Regulators know this and watch out for these offenses. The use of such overly promotional words are immediately flagged by IIROC and the stock exchanges when disclosure is reviewed. If such language is not vetted and removed from the disclosure, it could result in a company being required to retract and/or clarify the offending disclosure.

Securities laws require that a company's public disclosure be factual, complete and balanced and not present or omit information in a manner that is misleading. Unfavourable news must be disclosed just as promptly and completely as favourable news. Sufficient detail must be included in the disclosure to enable investors to understand the "substance and importance" of the disclosure. Thus if promotional language is used, the company needs to very clearly substantiate why it is appropriate. For instance, "world class" is an example of overly promotional language that regulators do not approve but is nevertheless used by many mining companies. If a project truly is "world class," the explanation on why it is "world class" needs to be included in the disclosure. Arguably, this would only be accomplished by some form of comparison to truly world class projects which is a difficult endeavour because there are many factors that could apply and the term itself is subjective.

Disclosure regarding drilling results is often a good example of when a mining company fails to present or omits information that could be misleading. Mining companies are very quick to point out the good results but not report the unfavourable results. It is important to remember that the disclosure needs to be balanced. A mining company does not necessarily need to report all the drill holes but whatever holes are reported should be representative of the complete results. Below is an example of inappropriate and of appropriate disclosure of drill results.

- **Inappropriate Disclosure:** "Incredible results from drilling. Hole #1 contained 40 g/t Au over 8m. We are on the road to developing a world class gold project. The project could have the potential to contain an in-situ value of over \$500 million."
- **Appropriate Disclosure:** "We had only one significant intersection where hole #1 returned 40 g/t Au over 8m from our recently completed seven hole drill program. The table below provides a summary of the results for the drilling. We intend to follow-up hole #1 with further exploration in the next few months."

Overall, it is very important that mining companies avoid overly promotional language and ensure that their disclosure is factual, complete and balanced and does not present or omit information in a manner that is misleading. Disclosure should be based on facts and give enough detail to allow the reader to understand the significance and essence of the disclosure.

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