

National Instrument 43-101: Part 3 - What Issuers Need to Know About Historical Estimates

Gregory Hogan

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How Historical Estimates Can Be Disclosed

NI 43-101 restricts the use of estimates that do not use the applicable NI 43-101 categories and that do not otherwise meet the requirements of the instrument. However, many properties exist, or are acquired, with reports that predate NI 43-101 or that were prepared under another set of estimation criteria. Certain of these historical estimates are permissible provided that the issuer discloses the estimates in accordance with NI 43-101's requirements for historical estimates.

The misuse of historical estimates appears to be one of the key areas where issuers run into trouble with the regulators. Recent actions by regulators include placing issuers on the default issuer list. The acquisition of a new property will often bring with it data regarding the potential mineral resource on that property. Whether to provide justification for the purchase of the property, or as a result of a conclusion that the information is material and must be disclosed, an issuer will make the non NI 43-101 resource estimate public.

The type of historical estimate that is permitted is an estimate of the quantity, grade or metal or mineral content of a deposit that an issuer has not verified as a current mineral resource or mineral reserve, and which was prepared **before** the issuer acquired, or entered into an agreement to acquire, an interest in the property that contains the deposit. Historical estimates are not previous estimates by a current property holder or new estimates using historical data.

An issuer may disclose an historical estimate, using the original terminology, if the disclosure includes:

- source and date of the historical estimate, including any existing technical report,
- relevance and reliability of the estimate,
- key assumptions, parameters, and methods used to prepare the estimate,
- whether the estimate uses categories other than NI 43-101 categories and, if so, an explanation of the differences,
- more recent estimates or data available to the issuer,
- work needed to upgrade or verify the estimate as current, and
- a statement **with equal prominence that**: "a qualified person has not done sufficient work to

classify the historical estimate as current mineral resources or mineral reserves and the issuer is not treating the historical estimate as current mineral resources or mineral reserves.”

Simply stating that the historical estimate is not compliant with NI 43-101 is not sufficient. Issuers must remember that the required disclosure must be included every time a historical estimate is included.

Other Tips for Using Historical Estimates

Furthermore, an issuer will be considered to be treating the historical estimate as a current estimate if it:

- incorporates the historical estimate into a disclosed economic evaluation or uses it for a production decision, or
- states that it will be adding to the historic estimate as this would imply that it is a current estimate.

These actions could trigger a technical report requirement. In no situation should a historic estimate be added to a current mineral reserve or resource estimate.

The public release of historical numbers is not itself prohibited (if it was prepared prior to acquisition). While the requirements of the instrument may make the disclosure longer and require some additional work, complying with the requirements for making public disclosure of historical estimates should not pose marketing issues and does not require the issuer to produce any independent information or rely on any new consultant. Compliance is simply a matter of recognizing that an historical estimate is being disclosed and complying with the requirements above. Of note, and possibly the more important reason to comply, if an issuer treats the historical estimates as historical and complies with NI 43-101, no technical report will be triggered.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.