

National Instrument 43-101: Part 2 - What Issuers Need to Know About Terminology

Gregory Hogan

July 10, 2014

Terms and phrases used in mining disclosures are technical, and industry jargon can be used inconsistently. However, when used correctly, specialized terms can encapsulate the complexity and specificity of technical and geological concepts. Applied with lack of care or worse, abused, that same language will obscure meaning and possibly mislead, which could result in undesirable scrutiny from the regulators.

NI 43-101 mandates the use of some terms, restricts the use of other terms and uses terms that will determine the disclosure that is necessary. In addition, regulators have recently focused on some terms that are not explicitly dealt with in NI 43-101, but that in their view are being used incorrectly. Finally, there are some terms used in NI 43-101 that can be the source of confusion, the use of which should be with caution. Certain of these terms are described below.

Issuers continue to use resource categories that are not set out in the CIM Definition Standards, most typically in documents such as investor presentations and fact sheets. To that end, NI 43-101 attempts to provide a framework within which investors are provided with information that is produced or vetted by qualified industry experts, is disclosed in a consistent, comparable manner and with the relevant context and background.

Mineral Reserve and Resource Categories

Under NI 43-101, disclosure of mineral reserve and resource estimates may only be made if the estimates use the categories developed by the Canadian Institute of Mining, Metallurgy and Petroleum and published in the CIM Definition Standards for Mineral Resources and Mineral Reserves. The current version of the CIM Definition Standards was adopted in May 2014 and is available [here](#).

Slight variations on these terms are sometimes made and may be acceptable. However, other variations, even if used widely for the mineral in question, are not acceptable. Examples include disclosing an estimate that uses a category such as “recoverable coal reserves”, “potential reserves,” “potential resource,” “mineable reserve,” and “economically mineable resource.” Issuers must remember that each category of mineral reserve and resource estimate must be reported separately and the category for each estimate must be indicated. While probable and proven reserves and indicated and measured resources may be

added together, inferred mineral resources may not be added to other categories. It is important to remember this when preparing charts or graphs as it is easy to inadvertently add inferred mineral resource to the other categories.

Technical Study Terms

An issuer is prohibited from using the terms “preliminary feasibility study,” “pre-feasibility study” or “feasibility study” when referring to a study unless the study satisfies the criteria set out in NI 43-101.

A **feasibility study** is a comprehensive technical and economic study of the selected development option for a mineral project that includes appropriately detailed assessments of “modifying factors,” together with any other relevant operational factors and detailed financial analysis, that are necessary to demonstrate at the time of reporting that extraction is reasonably justified (economically mineable). The results of the study may reasonably serve as the basis for a final decision by a proponent or financial institution to proceed with, or finance, the development of the project. The confidence level of the study will be higher than that of a pre-feasibility study. Typically the accuracy of a feasibility study is in the range of -5% to +15% with a contingency of 10% to 15%.

Modifying factors are considerations used to convert mineral resources to mineral reserves. These include, but are not restricted to, mining, processing, metallurgical, infrastructure, economic, marketing, legal, environmental, social and governmental factors.

A **preliminary feasibility study** (or “pre-feasibility study”) is a comprehensive study of a range of options for the technical and economic viability of a mineral project that has advanced to a stage where a preferred mining method, in the case of underground mining, or the pit configuration, in the case of an open pit, is established and an effective method of mineral processing is determined. It includes a financial analysis based on reasonable assumptions on the modifying factors and the evaluation of any other relevant factors which are sufficient for a qualified person, acting reasonably, to determine if all or part of the mineral resource may be classified as a mineral reserve. The confidence level of a pre-feasibility study is at a lower confidence level than a feasibility study. Typically the accuracy of a pre-feasibility study is in the range of -15% to +30% with a contingency of 15% to 25%.

Feasibility and pre-feasibility studies should delineate a mineral reserve if the project is not being abandoned. The work that is done should have been to a level to permit the qualified person to make such estimates. If the project is still being progressed, the concern about not disclosing reserves is that the report may be treating resources as reserves or that the report may be a PEA (described below) in disguise. If no reserves are delineated, the report should set out the reasons that a reserve could not be estimated. A valid reason for not delineating a reserve in a feasibility and pre-feasibility study might be an unresolved permitting or tenure issue, negative economics or issues with the geologic modelling. It is not acceptable to

fail to delineate a reserve because further exploration is needed.

A **preliminary economic assessment** (or PEA) means a study, other than a pre-feasibility study or feasibility study, that includes an economic analysis of the potential viability of mineral resources. Typically the accuracy of a PEA is in the range of -30% to +50% with a contingency of 25% to 50%. The confidence level of a PEA is low, below that of either an feasibility or preliminary feasibility study. Unlike the other two types of study, a PEA may contain result of an economic analysis that includes, or is based upon, inferred mineral resources. However, where that occurs, disclosure based on the study must contain prescribed cautionary language.

In addition, it is important to note that a PEA should not act as a proxy for a pre-feasibility study or feasibility study. A PEA cannot demonstrate economic viability. A PEA is not meant to be a way to include a inferred resource in a pre-feasibility study or feasibility study or to alter such studies to include more positive assumptions. Just because a report is labeled a PEA does not mean that regulators will accept it as a PEA if it is done to the levels of a pre-feasibility study or feasibility study.

Property Terms

NI 43-101 defines two different types of properties - **advanced property** and **early stage exploration property**. "Advanced property" means: a property that has (a) mineral reserves or (b) mineral resources the potential economic viability of which is supported by a preliminary economic assessment, a pre-feasibility study or a feasibility study. Advanced properties have additional technical report form items to address that other properties would not need to, including additional illustrations. Advanced properties are permitted to disclose less detail regarding drilling in their technical reports. "Early stage exploration property" means: a property for which the technical report being filed has (a) no current mineral resources or mineral reserves defined; and (b) no drilling or trenching proposed. No site visit is required for a technical report for an early stage exploration property.

Producing Issuer

Under NI 43-101, producing issuers have reduced disclosure obligations. "Producing issuer" means: an issuer with annual audited financial statements that disclose (a) gross revenue, derived from mining operations, of at least \$30 million Canadian for the issuer's most recently completed financial year; and (b) gross revenue, derived from mining operations, of at least \$90 million Canadian in the aggregate for the issuer's three most recently completed financial years. These issuers are exempt from including economic analysis in technical reports on properties currently in production, unless the technical report includes information on a material expansion of current production. This provides relief to producing issuers who often do not want to provide this sensitive information in publically available technical reports. In addition,

Cassels

producing issuers are generally exempt from the requirement that their technical reports be produced by an independent qualified person.

Ore

Regulators consider the use of the word "ore" to be potentially misleading if used because it implies technical feasibility and economic viability. In this view, the implied feasibility and viability of ore is that of mineral reserves and so the term (and related usages such as "ore body") should only be used when talking about mineral reserves.

Regulators have also indicated that modifiers such as "minable," "geologic," "drill indicated" and "possible" should also be avoided in the context of the discussion of mineral resources and reserves.

Scientific and Technical Information

"Scientific or technical information" includes project economics, and financial valuations and models. Regulators have indicated that they find issuers and qualified persons will sometimes take the view that this information is not scientific or technical. This view should not be taken.

Material

Many of the requirements of NI 43-101 apply to mineral projects on properties that are "material." These include the requirement for review of disclosure by a qualified person, disclosure of parameters and assumption for estimates, disclosure of data verification procedures, disclosure of QA/QC procedures for exploration information, and triggers for technical reports. Material is not defined in NI 43-101. Issuers will generally need to assess it in the same way they assess materiality in their disclosure generally.

Compliant

Regulators have advise against the use of the term "compliant" when an issuer is referring to its technical report. They consider the use of the word "compliant" to be potentially misleading as they have not reviewed the report and deemed it to be complaint under NI 43-101. Regulators will not review reports and provide issuers with this determination. Regulators do not feel that an issuer is in a position to determine that the report in NI 43-101 compliant so the use of this term should be avoided.

Further, issuers should not call their estimates "NI 43-101 compliant" or something similar. These

Cassels

statements may be misleading as NI 43-101 establishes rules on how issuers disclose mineral resources and reserves and other such technical information, but it does not directly provide the rules for the collection and use of exploration information or the estimation of mineral resources or reserves, which are instead established by industry organizations such as CIM. Issuers should instead characterize their report as being “prepared in accordance with NI 43-101.”

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