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CSA Provides Guidance to Mining Issuers on Investor Presentations Posted to Websites

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On April 9, 2015, the Canadian Securities Administrators released Staff Notice 43-309 (the Notice), setting out Staff's views regarding investor presentations posted to the websites of mining issuers. The Notice provides practical information to assist mining issuers (mostly at the pre-production stage) in designing investor presentations that satisfy the disclosure requirements under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) and under Part 4A of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) relating to forward looking information (FLI). The guidance in the Notice is based on an assessment of 130 investor presentations by staff of the Ontario Securities Commission, the British Columbia Securities Commission and the Autorité des marchés financiers.

Information on issuer websites, such as investor presentations, fact sheets, media articles and links to third-party content, is captured by the definition of "written disclosure" in NI 43-101 and is therefore subject to the disclosure requirements prescribed by that instrument. In the Notice, Staff raises a number of concerns about the disclosure on mining issuers' websites and highlights the need for improved disclosure to comply with the requirements of NI 43-101 and NI 51-102. The principal issues raised in the Notice relate to the following:

- **Naming the qualified person:** All documents containing scientific or technical information, including websites and investor relations materials, should include the name of the qualified person who prepared or approved such information and that person's relationship to the issuer, as well as a statement that the qualified person has verified the data underlying the disclosure.
- **Preliminary economic assessments (PEAs):** Disclosure of financial results from a PEA that include inferred mineral resources must contain the required cautionary statements to ensure a proper understanding of the limitations of the PEA's financial results.
- **Mineral resources and mineral reserves:** When issuers report both mineral resources and mineral reserves, a clear statement about whether mineral resources include or exclude mineral reserves is required. Staff notes that the CIM Estimation Best Practice Committee recommends that mineral resources be reported separately and exclusive of mineral reserves. In addition, when the disclosure includes the results of an economic analysis of mineral resources, it must also include the cautionary statement that "mineral resources that are not mineral reserves do not have demonstrated economic viability".
- **Exploration targets:** If a mining issuer chooses to disclose an exploration target, it must provide a reasonable basis for the target and also make the public aware of the target's limitations. Both the potential quantity and grade of the exploration target must be expressed as ranges and be accompanied by an equally prominent statement that "the potential quantity and grade are conceptual in nature, there has been insufficient exploration to define a mineral resource" and that "it is uncertain if further exploration will result in the target being delineated as a mineral resource".
- **Historical estimates:** Information about the source, date, reliability, key assumptions and other factors must be provided each time historical estimates are disclosed, together with an equally prominent statement 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”.

- **Technical report triggers:** The first written disclosure of mineral resources, mineral reserves, results of a PEA or a change to any of these that constitutes a material change for the issuer triggers the requirement to file a technical report. The Notice reminds issuers that disclosing economic projections in investor presentations, fact sheets, posted or linked third-party reports or any statements on the issuer’s website may trigger the filing of a technical report to support the disclosure.
- **FLI:** Staff expects that FLI disclosure will provide information concerning the material factors and assumptions used to develop the FLI. For mining issuers, this includes metal price assumptions used in mineral resource and mineral reserve estimates as well as other assumptions used in economic analysis and financial projections based on engineering studies.
- **Overly promotional terms:** The Notice also warns against the use of terms and statements that could be interpreted as overly promotional or misleading, potentially resulting in a misrepresentation. Terms such as “world-class”, “spectacular and exceptional results”, “production ready”, or “ore” in relation to mineral resources and “management estimates” may be used inappropriately in certain circumstances, particularly by exploration stage and mineral resource stage issuers, by portraying a project as being at a more advanced stage of development.

Staff indicates that it expects mining issuers to use the Notice as a self-assessment tool to strengthen their compliance with securities legislation, in particular NI 43-101 and FLI disclosure requirements, and to improve their disclosure to investors. If material disclosure deficiencies are identified, the issuer will generally be asked to correct the deficiency by amending or removing the website disclosure and filing a clarifying or retracting news release. Failure to comply could lead to the issuer being placed on the reporting issuer default list and could lead to a cease trade order until the deficiency is corrected. If an issuer is considering a prospectus offering, the review of the prospectus filing will likely be deferred if problems such as those noted above are present.

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