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OSC Offers Pre-Filing Review of Technical Disclosure for Mining Issuers Expecting to File a Prospectus

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The Ontario Securities Commission (OSC) recently announced the adoption of a pre-filing review regime for mining issuers (see [Staff Notice 43-706 – Pre-filing Review of Mining Technical Disclosure](#)). The regime is available to mining issuers that plan to launch a public offering under a short form prospectus when the OSC is the issuer's principal regulator.

A public offering under a short form prospectus has timelines that leave little room to deal with technical disclosure issues that may arise from the OSC's review process, particularly in the context of a "bought deal" financing. Any issues that arise can result in costly delays to the offering. The new regime will reduce the execution risk for issuers and dealers engaging in short-form offerings by allowing the review process to occur before the filing of the preliminary prospectus. However, the OSC's review will be limited to the technical disclosure that has already been publicly filed.

The regime provides Ontario mining issuers with a pre-filing review program similar to the one that has been available to mining issuers in British Columbia since 2009.

Scope of the Pre-Filing Review

The OSC's pre-filing review will cover an issuer's technical disclosure that has already been filed on SEDAR or made available on its website, including (i) the issuer's current annual information form; (ii) news releases and material change reports; (iii) current technical reports; and (iv) investor presentations. The review will focus on material issues that could affect the ability of the issuer to obtain a receipt for a short form prospectus on a timely basis.

If the issuer's disclosure record is not current or if material documents (e.g., a new annual information form or technical report) are expected to be filed in connection with the prospectus, the OSC may defer the pre-filing review until all such documents have been filed. As a result, pre-filing reviews will not be available to issuers that file a technical report concurrently with a preliminary prospectus. We hope that if the pre-filing review regime is successful, the OSC will consider expanding the scope of the pre-filing review process to include reviews of technical reports that will be filed in connection with a short form prospectus filing.

Process

Applications for pre-filing reviews must be made at least 10 days prior to the expected filing date of the preliminary prospectus. The application requires the issuer to (i) confirm it is eligible to file a short form prospectus; (ii) provide a list of its material mineral properties and associated current technical reports; and (iii) indicate the expected timing for filing the preliminary prospectus.

Following receipt of an application, the OSC will advise the issuer of the expected timing of its review. The OSC noted that the timing will depend on the issuer's current disclosure and the volume of pre-filing reviews being undertaken by the OSC at the time.

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