

## SECURITIES UPDATE

JULY 2013

**OSC Finds Mining Disclosure Misses the Mark***By Wayne Egan, Steven Rukavina, Ian Mitchell, Kim Lawton and Michael Gunsolus\****Review of Technical Reports Finds “Unacceptable Level of Compliance”**

On June 27, 2013, the Ontario Securities Commission (the “**OSC**”) published *OSC Staff Notice 43-705 – Report on Staff’s Review of Technical Reports by Ontario Mining Issuers* (the “**Notice**”), which sets out the results of a recent compliance review of 50 sample technical reports (Form 43-101F1 under National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* “NI 43-101”) filed by Ontario mining issuers. The Notice summarizes the results of the review and provides useful guidance to mining issuers.

The OSC found “an unacceptable level of compliance” and warned that “issuers and qualified persons need to further improve their disclosure.” For example, the Notice stated that 80% of the 50 sample technical reports had some form of non-compliance and 40% had at least one major non-compliance concern.

As a result of these findings, issuers may find themselves faced with OSC Staff requests for re-filings and additional disclosure, as well as potential delays when requesting a prospectus receipt. To avoid these difficulties, issuers may be well-advised to consider the findings of the Notice when preparing their next technical report. Below, we provide a brief summary of five key compliance issues raised in the report.

**Top 5 Compliance Lessons***1. Mining resource estimates*

25% of the technical reports analyzed did not provide the necessary assumptions regarding “reasonable prospects for economic extraction.” In order to comply, an issuer must include a sufficient discussion of the key assumptions, parameters, and methods used to estimate the mineral resources in order for a reasonably informed reader to understand the basis for the estimate and how it was generated. The Canadian Institute of Mining, Metallurgy and Petroleum’s Best Practice Guidelines for Estimation of Mineral Resource and Mineral Reserves provides guidance on the constraints that should be considered in resource estimation and disclosed as part of a statement of mineral resources.

*2. Environmental studies, permitting and social or community impact*

32% of the technical reports on advanced properties<sup>1</sup> did not adequately disclose information related to environmental permits or the social or community impacts of developing the mineral project. In order to comply, an issuer must disclose reasonably available information

<sup>1</sup>Defined in NI 43-101 as “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.”

WeirFoulds LLP

66 Wellington Street West  
Suite 4100, PO Box 35Toronto-Dominion Centre  
Toronto, Ontario, Canada  
M5K 1B7

Office 416.365.1110

Facsimile 416.365.1876

www.weirfoulds.com

on environmental permits and social or community factors related to the mineral project, including any exploration agreements in place or under negotiation with local First Nation communities.

### 3. Capital and operating costs

26% of the technical reports for advanced properties did not adequately disclose a summary of capital and operating cost estimates. The Notice reminds issuers that they must explain and justify the basis for cost estimates, with the major components set out in tabular form, as opposed to simply providing a single bottom-line number.

### 4. Economic analysis

37% of the technical reports for advanced properties did not sufficiently disclose the economic analysis required. The economic analysis must include a clear statement of and justification for the principal assumptions and cash flow forecasts on an annual basis using mineral reserves as well as a discussion of net present value, internal rate of return, and payback period of capital with imputed or actual interest. For example, it is potentially misleading to disclose only pre-tax cash flows and economic outcomes, positive metal price changes or up-side sensitivity analysis.

### 5. Interpretation and conclusions

36% of technical reports reviewed did not include a clear overview of the main risks, uncertainties and their potential impacts on the mineral project and its potential future development. For example, uncertainties such as the availability of water rights, use of a novel mineral processing technology or the potential impact of a civil war in a region should be included. It may be helpful to include a concise summary table that clearly provides this information.

*Do you have questions? The lawyers at WeirFoulds LLP would be happy to help explain these important developments and are experts in securities and mining law.*

*\*Michael Gunsolus is a summer student with WeirFoulds, currently attending the University of Ottawa.*

## CONTRIBUTORS



**Steve** has a diverse practice with extensive experience in corporate finance, securities, mining, real estate and development law.

**Steve Rukavina** | 416.947.5097 | srukavina@weirfoulds.com



**Wayne** is the Chair of the firm's securities practice. He practises securities and corporate law, and advises clients involved in raising money, considering and implementing going public transactions and meeting obligations existing in the public markets.

**Wayne Egan** | 416.947.5086 | wegan@weirfoulds.com



**Ian's** practice is focused on corporate finance and securities, with an emphasis on public and large private company transactions and advice.

**Ian Mitchell** | 416.947.50 | imitchell@weirfoulds.com



**Kim's** corporate and securities practice includes mergers and acquisitions, corporate governance, corporate re-organizations, banking & finance, conventional equity offerings - both public and private, regulatory compliance, mutual fund offerings, and mining finance.

**Kim Lawton** | 416.947.5096 | klawton@weirfoulds.com

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