

Legal update

Pre-filing review of mining technical disclosure now available with the OSC

June 2019

Corporate, M&A and securities

In an effort to reduce the regulatory burden on mining issuers and streamline the prospectus review process, the Ontario Securities Commission (OSC) will now perform pre-filing reviews of technical disclosure in connection with a short form prospectus offering. This is effective immediately and was announced on June 6, with the details set out in OSC Staff Notice 43-706 - *Pre-filing Review of Mining Technical Disclosure*. This new program is intended to prevent costly or disruptive delays in the prospectus review process arising from material non-compliances with National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (NI 43-101).

How to benefit from the review

To benefit from this review, short-form mining issuers are required to file an application through the OSC's electronic filing portal at least 10 days prior to the anticipated preliminary prospectus filing date. The OSC will then advise of the time it expects to require to complete the review, which in turn will depend on the issuer's current disclosure record and the volume of prospectus and pre-filing reviews it is already managing at the time of the application.

The OSC will review the issuer's continuous disclosure record and website, including its annual information form, news releases, material change reports, current technical reports and investor presentations and identify any material issues that would slow down the ability to obtain a receipt for the short form prospectus on a timely basis.

Technical disclosure requirements

NI 43-101 is wide-ranging and captures companies who explore for, develop or produce minerals (including industrial minerals and mineral brines), as well as companies with a royalty interest or an interest in the revenue or commodity stream from a proposed or current mining operation. Scientific and technical information included in public disclosure documents and on company websites – including disclosure of resources or reserves – must be presented in a manner that is compliant with NI 43-101, not be overly promotional or suggest outcomes that are not justified by the stage of the project, and be prepared under the supervision of a “qualified person” (QP, as defined therein) or approved by a QP.

Before undertaking a prospectus offering it is important to also be aware of technical report triggers, as certain written disclosure of scientific or technical information included in a preliminary short form prospectus relating to a mineral project on a material property of an issuer can trigger the requirement to file a new technical report concurrently with the preliminary short form prospectus. This may require significant time and resources to prepare since the required form of report is quite detailed. As a result, it is important to plan accordingly.

For further information, please contact one of the following lawyers:

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