

CSA Staff Notice 43-307

Mining Technical Reports - Preliminary Economic Assessments

August 16, 2012

Introduction

This notice sets out staff's position on several issues regarding the use and disclosure of a "preliminary economic assessment" (**PEA**), as defined in revised National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**), which came into force on June 30, 2011.

The economic analysis by way of a PEA is generally the first signal to the public that a mineral project has potential viability. Given the significance of this milestone in the evolution of any mineral project, the market views PEA results as important information.

NI 43-101 defines a PEA as a study, other than a pre-feasibility study (**PFS**) or feasibility study (**FS**), which includes an economic analysis of the potential viability of mineral resources. The terms PFS and FS have the meanings ascribed by the CIM Definition Standards for Mineral Resources and Mineral Reserves, as amended.

When preparing technical reports under revised Form 43-101F1 *Technical Report*, Items 16 to 22 provide a framework for reporting on a PEA, PFS, or FS. Although these studies generally analyse and assess the same geological, engineering, and economic factors, the level of detail, precision, and confidence in the outcomes is significantly different.

PEA as a Proxy for a PFS

We are seeing situations where issuers represent that their PEA, or components of it, have been or will be done at or close to the level of a PFS. In extreme cases, the issuers are representing that the study is a PFS but for the inclusion of inferred mineral resources. In other cases, issuers appear to be treating the PEA as a substitute or proxy for a PFS.

Staff's position

The definition of PEA has two key elements that distinguish it from other studies. First, by definition, it *cannot* be a PFS or FS. Second, a PEA can only demonstrate the *potential* viability of mineral resources. PFS and FS are more comprehensive studies and, therefore, are sufficient to demonstrate the technical and economic viability of a mineral project.

Section 2.3(1)(b) of NI 43-101 does not allow issuers to include inferred mineral resources in a PFS-level economic analysis, whereas section 2.3(3) of NI 43-101 allows issuers to include inferred mineral resources in a PEA. Issuers that blur the boundary between a PEA and a PFS by

stating that some or all of the components of the PEA are done at the level of a PFS, run the risk that we may challenge whether the study meets the definition of a PEA. We recommend that issuers do not:

- describe a study as a PEA unless it clearly falls into the definition of a PEA, or
- compare their PEA or any components of it to the standards of a PFS if the study includes inferred mineral resources

Under the second element of the definition, a PEA is a conceptual study of the potential viability of mineral resources. In this context, section 3.4(e) of NI 43-101 requires specific cautionary language indicating that the economic viability of the mineral resources has not been demonstrated. This cautionary language is in addition to the cautionary statement for inferred mineral resources required by section 2.3(3)(a). Any disclosure that implies the PEA has demonstrated economic or technical viability would be contrary to NI 43-101 and the definition of PEA.

We may take the position that an issuer is treating the PEA as a PFS if the issuer:

- does not include the section 3.4(e) cautionary statement with equal prominence each time it discloses the economic analysis of the mineral resources
- uses the PEA as a basis to justify going directly to a FS or a production decision
- discloses mining or mineable mineral resources or uses the term “ore”, which is essentially treating mineral resources as mineral reserves, or
- otherwise states or implies that economic viability of the mineral resources has been demonstrated

We caution issuers to ensure that their disclosure of the results of a PEA is not misleading by providing appropriate context, cautionary statements, and discussion of risk sufficient for the public to understand the importance and limitations of the results of the PEA.

PEA Done in Conjunction with a PFS or FS

We are seeing situations where issuers prepare a PEA using inferred mineral resources, concurrently with or as an add-on or update to their PFS or FS. In some cases, the issuer’s explanation for doing this is that the issuer has only completed the technical and economic analysis of the inferred mineral resources to the level of a PEA. We are concerned that this interpretation could lead to issuers indirectly including inferred mineral resources in their PFS or FS, in contravention of the section 2.3(1)(b) restriction on including inferred mineral resources in an economic analysis.

Staff’s position

CSA broadened the definition of PEA in response to industry concerns that issuers needed to be able to take a step back and re-scope advanced stage projects based on new information or alternative production scenarios. In this context, the revised definition is based on the premise that the issuer is contemplating a significant change in the existing or proposed operation that is materially different from the previous mining study. In most cases, this will also involve considerably different economic parameters and capital investments. Examples of a significant

change are a different scale of proposed operation (higher or lower throughput), a different scope of operation (higher or lower grade), the inclusion of other types of mineralization (oxide vs. sulphide), the use of alternative mining methods (open pit vs. underground), or the use of alternative processing technology.

By definition, a PEA is a study other than a PFS or FS. We generally consider that two parallel studies done concurrently or in close time proximity to each other are not in substance separate studies, but components of the same study. Therefore, a study that includes an economic analysis of the potential viability of mineral resources that is done concurrently with or as part of a PFS or FS is not, in our view, a PEA if it:

- has the net effect of incorporating inferred mineral resources into the PFS or FS, even as a sensitivity analysis
- updates, adds to or modifies a PFS or FS to include more optimistic assumptions and parameters not supported by the original study, or
- is a PFS or FS in all respects except name

PEA Disclosure and Technical Report Triggers

In some cases, issuers are disclosing results of potential economic outcomes for their material mineral properties that are not supported by a technical report.

Staff's position

Investors may place significant reliance and make investment decisions based on potential economic outcomes disclosed by the issuer about its material mineral properties. Because this information is significant, it could trigger the filing of a supporting technical report depending upon the materiality of the information to the issuer.

An issuer could trigger the requirement to file a technical report, under section 4.2(1)(j) of NI 43-101, to support disclosure of the results of a PEA if the disclosure is:

- contained in the issuer's corporate presentations, fact sheets, investor relations materials or any statement on the issuer's website, or
- posted or linked from third party documents, reports or articles or otherwise adopted and disseminated by the issuer

Potentially Misleading PEA Results

We are seeing situations where issuers and qualified persons appear to use overly optimistic or highly aggressive assumptions in the PEA, or methodologies that diverge significantly from industry best practice guidelines and standards for exploration and mineral resources. We are concerned that these practices could result in disclosure that is misleading if it is inconsistent with the comparable work of other qualified persons.

Staff's position

Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), sets out the requirements for disclosing forward-looking information. The results of a PEA include, or

are based on, forward-looking information that is subject to the requirements of Part 4A of NI 51-102. Under Part 4A, an issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information. Hence, any assumption under the PEA must have a reasonable basis in the context of the mineral project. Where we have concerns that some assumptions are overly optimistic or aggressive, we may challenge the qualified person to explain or justify the assumptions, or failing that, ask them to revise the PEA to take a more conservative or reasonable approach.

As discussed in Companion Policy 43-101CP, we think qualified persons acting in compliance with the professional standards of competence and ethics of their professional association will generally use procedures and methods that are consistent with industry best practices and standards. In circumstances where significant divergence might be justified, issuers should consider disclosing the nature of and basis for the divergence to ensure that their disclosure is not misleading.

PEA Disclosure that Includes By-products

In some cases, issuers are disclosing the results of a PEA that includes projected cash flows for by-product commodities that are not included in the mineral resource estimate. This situation can arise where there is insufficient data for the grades of the by-products to be reasonably estimated or estimated to the level of confidence of the mineral resource.

Staff's Position

We consider the inclusion of such by-product commodities in the PEA to be misleading and contrary to the definition of PEA because these commodities are not part of the mineral resource. We caution issuers not to include cash flow projections for any commodity or part of a commodity that has not been properly categorised as a measured, indicated or inferred mineral resource.

Qualified Person – Relevant Experience

We are seeing situations where individuals are taking responsibility for technical reports or parts of reports that support the results of a PEA, while not fully complying with the requirement to have experience relevant to the subject matter of the mineral project and the technical report.

Staff's Position

In addition to the relevant experience requirement in paragraph (c) of the qualified person definition under NI 43-101, CIM definitions provide guidance relating to the qualified person's competence and relevant experience in the commodity, type of deposit, and situation under consideration. In addition, professional associations recognized under NI 43-101 have codes of ethics that may restrict the practice of members based on their area of expertise and competence.

Where we have concerns that a qualified person does not have relevant experience, we will challenge the qualified person to explain or justify their relevant experience, or failing that, ask for a revised technical report from additional qualified persons.

Consequences of Material Deficiencies or Errors

When we identify material NI 43-101 disclosure deficiencies in required documents, we will generally request that the issuer correct the deficiency by restating and re-filing the documents. Where the issuer fails to comply with the request, we may place the issuer on our reporting issuer default lists, seek a commission order requiring the issuer to re-file the documents, or issue a cease trade order until the issuer corrects the deficiency. Even if the issuer corrects the deficiency, we may still pursue enforcement or other regulatory action for the original breach, depending on the circumstances.

If an issuer is considering a prospectus offering, the review of the prospectus filing could take more time if issues such as those noted above are present. Where there are material deficiencies, we may recommend against issuing a receipt for the prospectus.

Issuers should bear in mind that, in any circumstances, correcting material deficiencies or hiring additional qualified persons to certify deficient parts of a technical report can be complex, costly and time-consuming for the issuer.

For further guidance on this issue, please see CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program* and CSA Notice 51-322 *Reporting Issuer Defaults*.

Questions

Please refer your questions to any of the following people:

Robert Holland
Chief Mining Advisor, Corporate Finance
British Columbia Securities Commission
604-899-6719 or 1-800-373-6393 (toll free
in Canada)
rholland@bcsc.bc.ca

Craig Waldie
Senior Geologist, Corporate Finance
Ontario Securities Commission
416-593-8308
cwaldie@osc.gov.on.ca

Luc Arsenault
Géologue
Autorité des marchés financiers
514-395-0337, ext. 4373
luc.arsenault@lautorite.qc.ca

James Whyte
Senior Geologist, Corporate Finance
Ontario Securities Commission
416-593-2168
jwhyte@osc.gov.on.ca