



A submission by

The Australasian Institute of Mining and Metallurgy

on the proposal by

Canadian Securities Authorities (CSA)

to extend the requirement for

**submission to jurisdiction and
appointment of an agent for service**

to include **foreign experts**

14 October 2011

AusIMM Contact:

Michael Catchpole

Chief Executive

The Australasian Institute of Mining and Metallurgy (The AusIMM)

+61 3 9658 6100

mcatchpole@ausimm.com.au

This submission is addressed to Canadian securities regulatory authorities, as below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The AusIMM submission has been lodged with the following representatives of the Canadian securities regulatory authorities (CSA) in accordance with the CSA's request for comment.

Alex Poole

Senior Legal Counsel, Corporate Finance

Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta T2P 0R4
Fax: (403) 297-4482
Email: alex.poole@asc.ca

Anne-Marie Beaudoin

Corporate Secretary

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

Purpose of Submission

The purpose of The AusIMM's submission is to comment on the proposal by Canadian Securities Authorities (CSA) to extend the requirement to file a non-issuer's submission to jurisdiction and appointment of an agent for service form to foreign experts who have consented to the disclosure in a prospectus of information from a report, opinion or statement made by them (and specifically where "foreign experts" is intended by CSA to include Qualified Persons as defined in Canadian National Instrument 43-101).

CSA Proposed Amendments

It is understood that in order to extend the requirement to file a non-issuer's submission to jurisdiction and appointment of an agent for service form to foreign experts, the CSA would propose to amend subparagraph 9.2(a)(vii) of NI 41-101 *General Prospectus Requirements* to include "each person required to file a consent under section 10.1" and section 1.12 of Form 41-101F1 would be amended to encompass "a person who is required to file a consent under section 10.1 of the Instrument". Corresponding changes are also proposed for NI 44-101 and Form 44-101F1.

AusIMM Summary Submission

The AusIMM submits that the proposal to require foreign experts (including Qualified Persons) to file a non-issuer's submission to jurisdiction and appointment of an agent for service form is an unnecessary regulatory impost on the Qualified Person. The proposed regulatory requirements will discourage appropriate Qualified Persons from continuing to provide professional services to listed entities wishing to issue a prospectus or other report in a Canadian jurisdiction. This will significantly reduce the number of suitably-qualified professionals available to Canadian-listed entities and therefore will have the (presumably unintended) consequence of either (a) reducing the quality and reliability of reports, or (b) increasing the costs and time required for the preparation of reports. The further consequence of such outcomes would be a reduction in the number of international companies prepared to list in Canadian jurisdictions and to issue prospectuses and other reports in those jurisdictions.

1. Unnecessary Regulatory Impost

It is noted that a Qualified Person who signs a consent form within a prospectus is stating that the disclosures in the prospectus are the same as those in their technical report, and in doing so the Qualified Person acknowledges liability for the disclosures. Under existing international codes, the Qualified or Competent Person is responsible to the issuer or client company for the information provided in the technical report. Errors or omissions in those reports may be the subject of a civil action for negligence and/or disciplinary actions by the recognised professional body of which the Qualified or Competent Person is a member.

It is appropriate that the issuer, directors and officers who sign the prospectus must file a submission to jurisdiction. The legal responsibility for submission to jurisdiction lies with the listed entity. It is an unnecessary extension of this responsibility to also require the Qualified Person to submit to jurisdiction. It follows that it is therefore unnecessary to require the Qualified Person to appoint an agent for service.

2. Consequences of Proposed Amendments

It is The AusIMM's position that the consequences of the proposed amendments to require foreign experts (including Qualified Persons) to file a non-issuer's submission to the jurisdiction and appointment of an agent for service form will be significant and may include a combination of the consequences below. It is acknowledged that some or many of these consequences may be entirely unintended by the CSA, but they must be considered in any assessment of the likely impacts of the proposed amendments.

Summary of consequences:

- At the least, the proposed amendments will increase the costs for foreign experts operating in Canada through increased professional practice and litigation insurance premiums
- The additional costs of practice and the further complexity of regulation will reduce the number of Qualified Persons willing to prepare reports and therefore the pool of expertise available to Canadian-listed entities
- All of which will make the securing of expert reports more expensive for reporting issuers in Canada. More generally, any increase in regulation will make a Canadian listing less attractive for international issuers

It is of greatest concern that, if implemented, these amendments have the potential to remove the flexibility that Canadian listed mining companies currently have to appoint experts in a particular field or commodity unless those experts meet the requirements for registration in Canada. The List of Accepted Foreign Associations in the NI 43-101 Companion Policy and the objective tests to determine the acceptability of Foreign Associations, such as the Australian and South African Recognised Overseas Professional Organisation (ROPO) systems were developed at the behest of companies that work in multiple jurisdictions to enable companies to appoint experts with the best and most relevant expertise in the field or commodity that is the subject of the report. These proposed changes will restrict the ability of Canadian listed companies to use experts who are not registered in Canada and may result in companies seeking alternative (non-Canadian) listing options.

The proposed amendments would restrict the number of Qualified Persons with experience in relevant types of mineralisation and/or mining operation (particularly on foreign, that is, non-Canadian properties) who were willing to prepare and sign-off on reports for inclusion in prospectuses or other statements subject to Canadian jurisdiction. This would further restrict the quality and relevance of professional advice available to the Canadian investment market.

It has been suggested in some legal advice provided to members that, where a Qualified Person is an employee of an international consulting company, appointment of an agent and submission to jurisdiction could require that company to register in one or more Canadian jurisdictions, thereby requiring the company to submit to all corporate reporting requirements in that jurisdiction – an onerous obligation that would further discourage companies and consultants from operating in or providing their expertise to the Canadian market.

It is not clear on the information provided whether the Qualified Person would have to appoint an agent and submit to jurisdiction in one Canadian jurisdiction, or in each of the potentially 13 jurisdictions that the QP's reports might be distributed via prospectus or other company statement.

Legal advice provided to members suggests that it is possible that if the Qualified Person submits to jurisdiction, they may be required to register under the statutory Acts of one or more Canadian jurisdictions pertaining to registration of professional engineers or geoscientists. Since at least some of the provincial professional engineers and geoscientists organisations have Canadian residential requirements, this would further restrict the pool of Qualified Persons.

Other consequences:

The CSA may wish to consider other consequences of the proposed amendments that could impact on the competitiveness and effectiveness of the Canadian market and the information and services provided to investors. The amendments could:

- Restrict the quality and timeliness of information available to the market
- Reduce the commercial viability and market relevance of the TSX and TSX Venture Exchange by discouraging companies from listing
- Provide home-market advantage to Canadian-registered professionals and Canadian provincial professional bodies in what has till now been an internationalised market
- Further distance the Canadian regulations and Canadian professionals from the spirit and intent of the international ROPO systems and potentially isolate Canadian professionals from participation in the international minerals and investment marketplace

The AusIMM appreciates the opportunity to comment on the proposed amendments on behalf of its members.

Michael Catchpole

14 October 2011