



FÉDÉRATION EUROPÉENNE DES GÉOLOGUES  
EUROPEAN FEDERATION OF GEOLOGISTS  
FEDERACIÓN EUROPEA DE GEÓLOGOS

15 October 2011

For the attention of:

- 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

c/o: Ms. Alex Poole  
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Calgary, Alberta T2P 0R4

**By email only: alex.poole@asc.ca**

Ladies and Gentlemen

***Proposed Amendments to National Instrument 41-101 General Prospectus Requirements and Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements, and other proposed amendments, dated July 15, 2011.***

I write on behalf of the European Federation of Geologists (EFG) to respond to the invitation to comment on the above. I have answered the specific questions on page 13 of the consultation document at the end of this letter. However, to put our answers in context, I first set out the background to our interest in this matter and then some detailed comments setting out our concerns.

***BACKGROUND***

The EFG ([www.eurogeologists.eu](http://www.eurogeologists.eu)) is a federation of some 21 geological societies and associations from across Europe. It is a professional organisation which exists to raise and maintain standards of professional practice in geology and to increase the visibility of geology generally (to decision makers in the European Commission and members states, and the public). In particular, it sets standards for professional geologists, and awards a validated and internationally recognised professional qualification to geologists who can demonstrate that they reach and maintain those standards (EurGeol). The reason for raising and maintaining standards of professional practice is to ensure that professional geologists (whether working in applied or pure research, or in commercial activities involving the earth or earth resources) are well educated, properly qualified, competent, and behave at all times ethically for the good of the environment and society.

Awarding the professional title of European Geologist to a professional geologist not only rewards that person for their achievements but, more important, it imposes on him/her obligations relating to the way he/she should practise his/her profession; these are backed up by binding and enforceable disciplinary and ethical codes. The EFG has an associate member in Canada, namely *Geoscientists Canada* and we collaborate closely with them and other professional bodies all over the World to harmonise the standards and requirements for professional standards and ethical and disciplinary codes in the geosciences.

The title EurGeol is especially valued by European professional geologists who are responsible for public reporting of exploration results, mineral resources and mineral reserves. EFG is one of the four parent organisations of the Pan European Reserves & Resources Reporting Committee (PERC) and has published and maintains the PERC Code. PERC is a member organisation of CRIRSCO, the Committee for Mineral Reserves International Reporting Standards.

The role of PERC and other CRIRSCO members (including also the Canadian Institute of Mining, Metallurgy and Petroleum (CIM)) is to define standards and promote best practice in public reporting of exploration results, mineral resources and mineral reserves through the codes and rules that they publish and maintain. In Canada, the standards defined by CIM are incorporated into the NI 43-101 rules; in Europe equivalent standards are incorporated in the PERC Code. Suitably qualified and experienced professional members of PERC's European parent organisations are listed in the PERC code and, through mutual recognition agreements (ROPO agreements), are recognised in other CRIRSCO codes.

### ***SUMMARY OF EFG CONCERNS***

I refer to paragraph (g) on page 7 and the related request for comments on page 13 of the CSA consultation document, where it is proposed that there should be additional requirements on Qualified Persons (QPs) signing reports.

We are concerned that the proposed amendments to NI 41-101 conflict with the established international system of mutual recognition of professionals acting as "Qualified Persons" (in Canada) or "Competent Persons" (in many other jurisdictions), and in particular are also inconsistent with both previous and new provisions of NI 43-101. EurGeols with suitable experience act as QPs in Canada and are therefore directly affected by these changes.

We also consider that the proposed additional requirements on QPs are unnecessary given that satisfactory legal safeguards already exist to protect Canadian investors. We fear that the changes, if implemented, will give rise to serious unintended consequences relating to the availability of properly qualified and experienced professionals to prepare and sign off these vital reports, and may also lead mineral companies to choose to list elsewhere.

### ***DETAILED COMMENTS***

1. The proposed amendments would effectively put serious hurdles in the way of any consultant from outside Canada, and in particular from those consultants (including EurGeols) who are in small firms or are independent and who do not have existing offices or agents in Canada for whom the requirement to register or set up an agent there, perhaps for a single consulting assignment, is simply an unacceptable financial burden.
2. Furthermore the concept of direct legal liability of QP consultants runs counter to the well established principle that it is the Issuer who is liable. The risk that a foreign QP could be sued in a Canadian court could additionally impose severe financial burdens whether he or she wins or loses the case.

We consider that the proposed requirement for QPs to sign a paper accepting Canadian jurisdiction, and appointing an agent in Canada, is unnecessary and provides no greater protection or access to justice for a Canadian investor. For a civil case, if the QP is resident overseas it could still be very difficult for a Canadian plaintiff or prosecutor to ensure that the QP actually turns up to answer charges. For a criminal case (e.g. fraud) there are extradition treaties that can already be invoked. However, most cases would be civil, and we therefore do not see how the proposed amendments would do anything beyond imposing additional costs on the QP and providing a false sense of security for the Canadian investor.

A very carefully conceived system is in place through the CRIRSCO reporting codes to ensure that the QP/CP is personally responsible to the issuer/company for the reliability of

his/her reporting (i.e. liable to be sued in the civil courts for misconduct or negligence) and subject to disciplinary sanctions from their professional body (including the EFG) if they transgress. The legal responsibility for a report should be with the issuer/company that commissioned it. Clearly, if a CP/QP were to commit fraud, they would already be liable to criminal prosecution in any event without the proposed new arrangements - and the issuer/company too.

3. The reviewers of NI 43-101 went to great lengths to ensure that all the professional bodies and grades of membership listed there as suitable for QP/CP reporting under NI 43-101 encapsulated the important principle that CPs/QPs could be disciplined by their home organisation wherever in the world they were operating - indeed, we understand that some US state registration/licensing authorities were de-listed this time on the basis that they were not able to discipline members/registrants/licence holders outside their home state. EFG was audited and the qualification EurGeol was confirmed as being a suitable grade for a QP reporting under NI 43-101 subject to that person being suitably experienced. On that point alone, the proposals for 41-101 look inconsistent with 43-101 and they undermine the CRIRSCO values and safeguards, which are designed to achieve (and in practice do achieve) a proper chain of accountability - which the proposed change would not only fail to achieve but might entirely undermine.
4. One consequence of the proposed amendments, for the Canadian mining industry, would be a shortage of Qualified Persons to sign off the geological parts of prospectuses – and this could therefore become a serious brake on development of minerals projects in Canada. Foreign mining engineers and geoscientists will be reluctant to take on a role which carries onerous additional registration requirements (for foreign resident QPs).
5. In terms of the global mining industry, such new and additional restrictions by the Canadian authorities are likely to result in similar retaliatory regulations elsewhere, with a resulting breakdown of the system which has been carefully achieved, of international mutual recognition of professional qualifications. This would lead inevitably to restrictions in international opportunities for Canadian geological consultants.
6. One direct result of the proposed amendments is that Canada would be less attractive as a jurisdiction under which mining companies wish to be listed. Many minerals companies which might otherwise have listed in Canada would now choose to list elsewhere, such as in London. In London, regulatory requirements are perceived to be less onerous, but we assure you that safeguards for investors in relation to QPs are no less effective. The additional regulation is likely to be a disincentive to European QPs / CPs to sign off reports in Canada.

## **CONCLUSIONS**

Should these amendments be enacted without substantial modification, there is a serious probability that it will be the end of the international Qualified Person/Competent Person system as we know it.

The proposed amendments would introduce an unnecessary new financial burden for foreign QPs, including those holding the EurGeol title, and as a result there is a risk that many foreign QPs will not prepare technical reports for Canadian companies, reducing the pool of expertise available to these companies.

## **ANSWERS TO QUESTIONS POSED (ON PAGE 13)**

- (a) *Do you believe that it is appropriate to extend the requirement to file a non-issuer's submission to the 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 given that these persons are liable under our statutory liability*

*regime for misrepresentations in the prospectus that are derived from that report, opinion or statement?*

**Answer: No, we do not believe it is appropriate. Our reasoning is explained in detail above.**

*(b) If foreign experts are required to file a non-issuers' submission to the jurisdiction and appointment of an agent for service form, do you anticipate that this obligation will impose any significant practical or financial burden on these experts or issuers?*

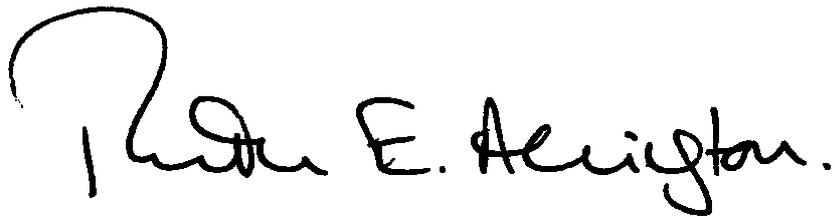
**Answer: We believe the requirement would impose significant practical and financial burden on both the experts and the issuers employing the experts. Our reasoning for this is explained in detail above.**

*(c) Would your response change if the form requirement for foreign experts only concerned either submission to the jurisdiction or an appointment of an agent for service?*

**Answer: No, it would not.**

We hope that you will find this response of assistance and would be pleased to provide any further information that you may find useful.

Yours faithfully

A handwritten signature in black ink that reads "Ruth E. Allington." The signature is written in a cursive style with a large, looping initial 'R'.

EurGeol Ruth Allington

FIMMM, CEng, FGS, CGeol, MIQ

President, European Federation of Geologists