

CSA Notice and Request for Comment
Proposed Amendments to
National Instrument 51-101 *Standards of Disclosure for Oil and Gas*
Activities
-and-
Proposed Changes to Companion Policy 51-101CP *Standards of*
Disclosure for Oil and Gas Activities

October 17, 2013

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a 90 day comment period proposed amendments (the Proposed Amendments) to:

- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101), and
- Companion Policy 51-101CP *Standards of Disclosure for Oil and Gas Activities* (51-101CP).

The text of the Proposed Amendments is contained in Annexes A and B of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The Proposed Amendments constitute an important evolutionary shift in NI 51-101 that will promote better disclosure of resources other than reserves and associated metrics while at the same time providing for increased flexibility for oil and gas reporting issuers that report in a variety of different locations worldwide, recover different oil and gas product types and operate under different regulatory regimes.

The Proposed Amendments are also intended to bring NI 51-101 into harmony with proposed changes to the Canadian Oil and Gas Evaluation Handbook (the COGE Handbook). In particular, the changes to subsection 5.9(2) of NI 51-101 are intended to track the additional guidance provided in the amendments to the COGE Handbook on the evaluation and

classification of resources other than reserves. To the extent that there are changes to the COGE Handbook prior to implementation of the Proposed Amendments that are not in keeping with the proposed subsection 5.9(2) of NI 51-101, the CSA's intent is to follow the evaluation and classification framework to be adopted in the COGE Handbook and changes will be made to NI 51-101 accordingly prior to implementation.

Background

NI 51-101 is a disclosure standard for reporting issuers engaged in oil and gas activities. Under NI 51-101 reporting issuers are required to provide annual disclosure, appoint an independent qualified reserves evaluator, facilitate communication between the board of directors and the independent qualified reserves evaluator and prepare all public disclosures of reserves and resources other than reserves in accordance with the requirements of Part 5, which include the requirement that the reserves and resources other than reserves be prepared in accordance with the COGE Handbook and be evaluated or audited by a qualified reserves evaluator. Since its implementation in 2003, NI 51-101 has been amended two times, in 2007 and 2010.

The CSA has, since 2010, been evaluating potential amendments to NI 51-101 in response to its ongoing engagement with oil and gas reporting issuers, independent qualified reserves evaluators and industry. The most recent publication related to NI 51-101 was an update to CSA Staff Notice 51-327 *Guidance on Oil and Gas Disclosure* (CSA Notice 51-327) on December 29, 2011. As is stated in CSA Notice 51-327, its purpose was to provide new guidance on:

- issuer and expert responsibilities;
- the disclosure of after-tax net present value of future net revenue;
- the use of BOEs;
- disclosure of well-flow test results; and

expanded guidance on the evaluation and classification of unconventional hydrocarbons and classification to most specific category of resource.

We are proposing the following important changes in response to our observations of reporting issuer disclosure and industry feedback, which are more fully described in the Summary of the Proposed Amendments section of this Notice:

- in certain circumstances and subject to disclosure requirements, permitting disclosure prepared under an alternative resources evaluation standard;
- inclusion and refinement of product type definitions in NI 51-101;
- additional requirements regarding the disclosure of contingent and prospective resources;

- introduction of a principle-based approach to the disclosure of oil and gas metrics;
- clarification of the point at which sales of oil and gas, and resources should be disclosed;
- definition of and requirements related to the disclosure of abandonment and reclamation costs;
- deletion of the requirement to match the presentation of reserves not directly held by the reporting issuer in the statement prepared in accordance with Form 51-101F1 to the presentation of the assets in the financial statements;
- removal of the requirement to obtain independent qualified reserves evaluator consent before disclosing results from the annual evaluation outside of the required annual filings;
- revision of the date at which the independent qualified reserves evaluator takes responsibility for information related to the reserves evaluation;
- clarification of required disclosure when an issuer has no reserves.

Summary of the Proposed Amendments

1. Alternative Resources Evaluation Standard

Numerous issuers reporting in Canada also access the U.S. capital markets and are subject to the SEC's reserves disclosure regime. For example, SEC issuers who prepare financial statements in accordance with U.S. GAAP, as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, have a requirement under Statement 19 of the Financial Standards Accounting Board to include reserves disclosure prepared in accordance with the U.S. regime within their financial statements. Certain issuers have sought and obtained a limited form of exemptive relief that allows them to disclose reserves prepared in accordance with U.S. requirements in addition to their reserves prepared under NI 51-101. The relief is required owing to an interpretation of sections 5.1, 5.2 and 5.3 of NI 51-101 that does not allow for any public disclosure of reserves other than estimates prepared in accordance with the COGE Handbook.

Proposed section 5.18 of NI 51-101 allows for disclosure from alternative regimes. The disclosure under the alternative regime must be accompanied by the disclosure required by NI 51-101, be made in respect of a regime which is comparable to the COGE Handbook, have a scientific basis and be based on reasonable assumptions. Those estimates must be prepared by a qualified reserves evaluator.

2. Product Types and Production Group

CSA staff has seen an increase of disclosure of reserves and resources other than reserves which have traditionally been called "unconventional" but with the passage of time and increased usage are not considered to be unconventional any more. Unconventional resources can have different costs associated with their recovery, despite technically being the same product. For example,

shale gas and natural gas from a conventional reservoir are both technically natural gas, however, each has different production profiles, risks and costs associated with recovery. In addition, shifting government policies and new recovery methods have given rise to uncertainty with the current definitions of product types, for instance the definition of heavy crude oil, and the lack of a definition for shale gas.

The Proposed Amendments import the product type definitions from the COGE Handbook and refine those definitions for securities disclosure purposes. The concept of production group is removed. The inclusion of the definitions and removal of the production group concept give greater emphasis to both the source and process for recovery of the oil and gas, and move away from grouping unconventional resources.

3. Contingent and Prospective Resources

Increasingly, companies are relying on disclosure of resources other than reserves to convey value and development potential to investors. There has been an increase of contingent and prospective resource disclosure generally and, in particular, within reporting issuers' annual statement of reserves data prepared in accordance with Form 51-101F1. There is currently no obligation to provide discounted future net revenue projections along with the estimates of volume or to have those estimates prepared and evaluated or audited by an independent qualified reserves evaluator when contingent resources or prospective resources are included in the statement prepared in accordance with Form 51-101F1.

The Proposed Amendments provide clearer boundaries for the disclosure of contingent and prospective resources in the annual filings, including requiring the disclosure of future net revenue projections comparable to those provided for reserves data and requiring that those resources other than reserves estimates be prepared by an independent qualified reserves evaluator.

4. Oil and Gas Metrics

CSA staff has observed the ongoing use of measures of volume, performance and equivalency that without further explanation or additional context have the potential to be misleading, and even with explanation, tend to give a false sense of comparability. The current requirements in NI 51-101 relating to specific metrics, such as finding and development costs, have not resulted in either comparability or clearer understanding of those metrics.

Proposed section 5.14 of NI 51-101 imposes principle-based requirements to describe the standard, methodology and meaning of a publicly disclosed oil and gas metric. If there is no standard, a reporting issuer must also describe the parameters used in calculating the oil and gas metric and provide a cautionary statement.

5. Marketability of Production and Reserves

Reporting issuers are obligated by NI 51-101 to disclose production and reserves based on the price that was or would be used at the point at which the product type could be sold. However, in

certain scenarios it may not be appropriate, or even possible, to allocate a price at a point of sale. In respect of resources or sales of oil, gas or associated byproducts, the volume may be measured at the point of sale to a third party (first point of sale), or of transfer to another division of the issuer (alternate reference point) for treatment prior to sale to a third party. For gas, this may occur either before or after the removal of natural gas liquids. For bitumen, this may be before the addition of diluent.

The Proposed Amendments clarify the concept of marketability in the reporting of oil and gas volumes. Proposed section 5.4 of NI 51-101 requires a reporting issuer to report volumes and values at the first point of sale of the particular product type, unless that point is not relevant, in which case, the reporting issuer can select a point of measurement prior to the first point of sale.

6. Abandonment and Reclamation Costs

CSA staff has observed, and has received commentary from industry about, the inconsistency in the determination of what constitutes an abandonment and reclamation cost for the purpose of the annual oil and gas disclosure.

The Proposed Amendments clarify what constitutes abandonment and reclamation costs and require the disclosure of both abandonment costs and reclamation costs in the future net revenue disclosure and in the significant factors and uncertainties disclosure in the statement prepared in accordance with Form 51-101F1.

7. Reserves Presentation

The introduction of IFRS 11 highlights the need for changes to the requirements in respect of the presentation of reserves data in the statement prepared in accordance with Form 51-101F1.

The Proposed Amendments point to the COGE Handbook for the purpose of determining ownership and allow for flexibility in the manner of presenting resources for which a reporting issuer does not have control.

8. Other Amendments

The Proposed Amendments also clarify areas that have given rise to confusion, such as

- the requirement to obtain consent of the independent qualified reserves evaluator as it relates to the report prepared in accordance with Item 2 of section 2.1,
- the date on which the independent qualified reserves evaluator is responsible for changes in the reporting issuer's reserves data, and
- the disclosure required when an issuer has no reserves.

Impact on Investors

We anticipate that the Proposed Amendments will encourage better disclosure of reserves and

resources other than reserves. In particular, investors should benefit from:

- the more complete disclosure of contingent and prospective resources, including future net revenue;
- the requirement to engage an independent qualified reserves evaluator when contingent or prospective resources are disclosed as a part of the annual statement of reserves data; and
- the disclosure obligations in proposed section 5.14 of NI 51-101 for oil and gas metrics.

We do not anticipate that allowing for the supplementary disclosure of reserves under an alternative disclosure regime will prejudice investors, as an estimate prepared in accordance with the COGE Handbook must be provided along with explanatory information.

The removal of the requirement to provide additional disclosure on abandonment and reclamation costs in the annual statement of reserves data is offset by the inclusion of a definition, a specific requirement to provide an estimate and a specific instruction to discuss the impact of both abandonment costs and reclamation costs.

Anticipated Costs and Benefits of the Proposed Amendments

The Proposed Amendments, including incorporation of the COGE Handbook definitions, will enhance the quality and consistency of reporting issuers' disclosure of oil and gas activities and will provide greater transparency of the methods used to value and measure oil and gas assets. As we discuss below, these changes could result in increased compliance costs.

The Proposed Amendments require an independent evaluation and additional disclosure when a reporting issuer discloses contingent or prospective resources in its annual oil and gas filings. Although this will impose additional expert costs on a reporting issuer choosing to make this disclosure, the independent evaluation and additional disclosure requirements will increase the reliability and completeness of the reporting issuer's disclosure.

The Proposed Amendments address issues with the comparability of oil and gas metrics. We have seen that methods used in measures such as finding and development costs, despite the requirements in NI 51-101, are subject to significant variability among oil and gas reporting issuers. This has led to incomparability. The additional obligations under the Proposed Amendments to disclose the standard, methodology, and meaning of a publicly disclosed oil and gas metric may result in additional disclosure preparation time and cost for reporting issuers but will benefit investors because the reporting issuer will disclose additional information related to the comparability of the oil and gas metric.

We anticipate that the proposed requirements related to the first and alternate point of sale will promote market efficiency by removing the uncertainty some reporting issuers experienced around the pricing of their resources. We do not anticipate that this will impose additional burden on reporting issuers.

The Proposed Amendments permit supplementary disclosure of reserves prepared in accordance with alternative reserves disclosure regimes. We anticipate that this will promote market efficiency by expressly permitting the disclosure of resources prepared under an alternative standard. We have minimized the impact of this change on Canadian investors by requiring that this disclosure may only be made supplementary to the publicly disclosed resources prepared in accordance with NI 51-101 and the COGE Handbook.

Request for Comments

We welcome your comments on proposed NI 51-101 and 51-101CP. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. The Proposed Amendments would permit an issuer to disclose reserves prepared in accordance with, for example, the SEC regime supplementary to reserves disclosed under NI 51-101. Do you support the proposal to permit the supplementary disclosure of reserves prepared under a regime comparable to the COGE Handbook, as is set out in proposed section 5.18 of NI 51-101? Please explain your views.
2. The Proposed Amendments eliminate the requirement to disclose a reporting issuer's reserves data by production group. Do you support the removal of the requirement to disclose reserves data by production group? Please explain your views.
3. A reporting issuer that includes contingent resources and prospective resources is not currently required to have those estimates prepared by an independent qualified reserves evaluator. Do you support the requirement in proposed item 2 of section 2.1 of NI 51-101 for an independent qualified reserves evaluator to evaluate or audit any contingent resources or prospective resources included in the annual statement of reserves data? Please explain your views.
4. Do you support the requirement in proposed paragraph 4 of item item 2.1 of Form 51-101F1 to provide low, best and high estimates of volume and net present value of future net revenue in respect of any contingent resources or prospective resources included in the annual statement of reserves data? Please explain your views.
5. When a reporting issuer discloses an oil and gas metric, the Proposed Amendments would require the reporting issuer to disclose the standard, methodology and meaning of the disclosed metric, and if there was no identifiable standard, the parameters used in calculating the oil and gas metric and a cautionary statement. Do you support the proposed amendment to section 5.14 of NI 51-101 to impose the above described disclosure-based approach to oil and gas metrics such as BOEs, finding and development costs, netbacks, etc.? Please explain your views.

Please submit your comments in writing on or before January 17, 2014. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Contents of Annexes

Annex A sets out the proposed amendments to NI 51-101
Annex B sets out the proposed changes to 51-101CP

Questions

Please refer your questions to any of the following:

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