

# Requirements of TSX and TSX V Regarding NI 51-101 and NI 43-101 Reports filed by Listed Issuers

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## Introduction

The Toronto Stock Exchange (“TSX”) and the TSX Venture Exchange (“TSX V”) are part of TMX Group Inc., a public company listed on the TSX. The TSX and TSX V (together, the “Exchanges”) host 365 oil and gas issuers and 1428 mining and mineral exploration issuers, which raised approximately \$8.1 billion and \$21.8 billion, respectively, during 2009 by way of prospectus offerings and/or private placements. There are more resource (oil and gas, mining and mineral exploration) companies listed on the Exchanges than on any other stock exchange.

The Exchanges rely on the Canadian Securities Administrators (the “CSA”) National Instrument 51-101 *Standards of Disclosure For Oil and Gas Activities* (“NI 51-101”) and National Instrument 43-101 *Standards Of Disclosure For Mineral Properties* (“NI 43-101”), and Society of Petroleum Evaluation Engineers (“SPEE”) Canadian Oil And Gas Evaluation Handbook (“COGEH”) as standards for disclosure for scientific and technical information.

NI 43-101 came into effect on February 1, 2001 and NI 51-101 came into effect on September 30, 2003, while the SPEE COGEH Volume 1 was first published in June 2002. They apply to all oral and written disclosure of scientific and technical information, including disclosure of resource or reserve estimates made by or on behalf of an issuer in respect of oil and gas activities or mineral projects of the issuer.

Prior to NI 51-101 and NI 43-101 (collectively, the “National Instruments”), the Exchanges required technical reports to comply with National Policy 2-A (“NP 2-A”) and National Policy 2-B (“NP 2-B”). A total makeover of these national policies began in the 1990s and was accelerated by certain events in the industry and market place i.e. Bre-X. NP 2-A and NP 2-B were repealed when the National Instruments came into effect.

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## The Exchanges Requirements

All technical reports filed with the Exchanges must be compliant with the National Instruments (NI 43-101 and NI 51-101) including all exploration information disclosed by or on behalf of an issuer.

Applicants for listing on TSX or TSX V must file a compliant NI 51-101 report for oil and gas interests or a compliant NI 43-101 report for mining or mineral properties as part of the listing application. The NI 51-101 report or NI 43-101 report (collectively “Technical Reports”) provides information to the Exchanges to determine if the applicant meets original listing requirements. Once listed, a listed issuer may be required to file additional Technical Reports to support transactions.

Technical Reports must be prepared by a qualified person (“QP”) or qualified evaluator (“QE”) who takes responsibility for the technical content of the disclosure and resource and reserve estimates. Directors and officers of reporting issuers are responsible for the Technical Report and the information provided by the QP or QE.

It is the listed issuer’s responsibility for continued listing requirements, and on TSX V, for tier maintenance requirements (“TMR”), to ensure any technical information disclosed either in news releases, websites or investor relations information is in compliance with NI 51-101 or NI 43-101 as applicable.

There are specific situations which trigger the requirement for an issuer to prepare and file a Technical Report under the National Instruments. The applicable Securities Commission has direct responsibility to ensure that these reports are filed within the allowed period of time and are compliant with the National Instruments.

There are also specific situations which trigger the requirement for an issuer to prepare and file a compliant report with the Exchanges. For example, TSX V requires a Technical Report when a listed issuer is raising funds from the public or issuing shares as a result of an acquisition. Situations may include a reverse takeover (“RTO”), qualifying transaction (“QT”) for a capital pool company (“CPC”), change of business (“COB”), listing application (“LA”), related party or non arms length property acquisition / disposition, graduation from Tier 2 to Tier 1, and reactivation of inactive company on NEX.

For each of TSX and TSX V, certain circumstances may require the applicant issuer or listed issuer to meet minimum or original listing requirements, under which certain thresholds have to be met regarding the oil and gas properties or mining and mineral exploration properties to be eligible for listing or to maintain a listing.

### TSX Original Listing Requirements (“OLR”)

The main thresholds for listing oil and gas issuers, regarding the property, are:

**(a)** Non-exempt companies<sup>1</sup> must have (i) proved developed reserves of \$3,000,000<sup>2</sup>; (ii) a clear defined program, satisfactory to TSX, which can reasonably be expected to increase reserves; and (iii) adequate funds to execute the program and cover all other capital expenditures;

**(b)** Exempt companies must have (i) proved developed reserves of \$7,500,000<sup>2</sup>; (ii) pre-tax profitability from ongoing operations in the fiscal year preceding the filing of the listing application; and (iii) pre-tax cash flow of \$700,000 in the fiscal year preceding the filing

of the listing application and an average annual pre-tax cash flow of \$500,000 for the two fiscal years preceding the filing of the listing application.

The main thresholds for listing mining/mineral exploration issuers, regarding the property, are:

**(a)** Non-exempt producing mining companies<sup>1</sup> must have (i) proven and probable reserves to provide a mine life of at least three years, as calculated by an independent QP, together with evidence satisfactory to TSX indicating a reasonable likelihood of future profitability supported by a feasibility study or documented historical production and financial performance; and (ii) be in production or have made a production decision on the qualifying project or mine;

**(b)** Non-exempt mineral exploration and development-stage companies<sup>1</sup> must have (i) an Advanced Property (as defined in the TSX Company Manual), detailed in a report prepared by an independent QP. TSX will generally consider a property to be sufficiently advanced if continuity of mineralization is demonstrated in three dimensions at economically interesting grades; (ii) a planned work program of exploration and/or development, of at least \$750,000 will sufficiently advance the property recommended by an independent QP; and (iii) sufficient funds to complete the planned program of exploration and/or development;

**(c)** Exempt mining / mineral exploration development companies must have (i) net tangible assets of \$7,500,000; (ii) pre-tax profitability from ongoing operations in the fiscal year immediately preceding the filing of the listing application; (iii) pre-tax cash flow of \$700,000 in the fiscal year immediately preceding the filing of the listing application and an average pre-tax cash flow of \$500,000 for the two fiscal years immediately preceding the filing of the listing application; (iv) proven and probable reserves to provide a mine life of at least 3 years, calculated by an independent QP.

#### **TSX V Minimum Listing Requirements (“MLR”)**

The main thresholds for listing oil and gas issuers, regarding the property, are:

**(a)** Tier 1 - proved developed reserves with NPV of \$2 million based on constant pricing discounted 15% before income tax.

**(b)** (i) Tier 2 Category 1 - proved developed producing reserves with NPV of \$500,000 based on constant pricing discounted 15% before income tax with recommendations further development or production. (ii) Tier 2 Category 2 - proved plus probable reserves with an NPV of \$750,000 based on constant pricing discounted 15% before income tax. Recommended work program of a minimum \$300,000. (iii) Tier 2 Category 3 - satisfactory diversified exploration program where at least 3 independent drill holes are located with a minimum capital expenditure of \$1.5 million.

The main thresholds for listing mining / mineral exploration issuers, regarding the property, are:

**(a)** Tier 1 – Technical Report recommending an exploration program that includes a \$500,000 drill program or other detailed sampling such as trenching and / or underground sampling, a positive independent feasibility study, or production levels indicating reasonable likelihood of generating positive cash flow from ongoing operations.

**(b)** Tier 2 – Technical Report recommending a minimum \$200,000 exploration program, a minimum of \$100,000 in exploration expenditures incurred in the last 3 years by the applicant issuer.

## Technical Reports Filed With the Exchanges

Qualified staff at the Exchanges review the Technical Reports for compliance with listing requirements before they are filed for public viewing. The TSX V at that time will forward any report deficiencies to the applicant issuer for comment and possible revisions to the report if required. The TSX will usually provide comments regarding OLR.

Qualified staff at the Exchanges may also review all Technical Reports related to transactions (such as RTO / QT / COB, Property Acquisition) and may not grant final acceptance of the transaction until all (if any) deficiencies identified have been addressed satisfactorily. This differs from the Securities Regulations where an applicant issuer or reporting issuer files the Technical Report on SEDAR for public viewing, and then the applicable Securities Commission may review after it has been filed.

## Conclusion

NI 51-101 and NI 43-101 are the disclosure standards for reporting resource/reserve estimates and reporting scientific and technical information for all reporting and listed issuers in Canada. Internationally these standards are considered as leading standards for disclosure by resource companies.

TSX and TSX V together host 1793 resource (oil and gas, mining, and mineral exploration) companies which collectively raised close to \$30 billion in 2009. Currently no other stock exchange lists this many resource companies.

TSX and TSX V listing and disclosure rules require oil and gas issuers and mining and mineral exploration issuers to comply with NI 51-101 and NI 43-101 (as applicable), and the SPEE's COGEH standards and guidelines, which are recognized globally as one of the leading standards for reporting resource and reserve estimates and for reporting exploration results.

## References

TSX Company Manual – [www.tsx.com](http://www.tsx.com)

TSX V Corporate Finance Manual – [www.tsx.com](http://www.tsx.com)

<sup>1</sup> Section 501 requires non-exempt listed companies to obtain prior TSX acceptance for filing of all proposed material changes, including changes which do not entail an issuance of securities, as detailed in TSX Company Manual.

<sup>2</sup> The Company must submit a technical report prepared by an independent technical consultant that conforms to National Instrument 51-101 and be acceptable to the Exchange. The value of reserves should be calculated as the net present value of future cash flows before income taxes, prepared on a forecast basis, and discounted at a rate of 20%. The Exchange may, at its discretion, also require the provision of a price sensitivity analysis.