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18 October 2011

A submission by AMC Consultants Pty Ltd (AMC) 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

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

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

This submission is lodged with the following representatives of the Canadian securities regulatory authorities (CSA) in accordance with the CSA's request for comment.

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The British Columbia Securities Commission (BCSC) drew AMC's attention to "a proposal the Canadian Securities Administrators are seeking public comment on, which could have a significant impact on qualified persons under NI 43-101 and their mining company clients", in an e-mail dated 20 September 2011.

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The specific matter drawn to AMC's attention was a proposal which is "part of proposed amendments to NI 41-101 General Prospectus Requirements, which CSA published for comment on July 15, 2011. The proposal is to extend the requirement to file a submission to jurisdiction and appointment of agent for service to all foreign experts, including qualified persons under NI 43-101. At present, only the issuer, the directors and officers who sign the prospectus on behalf of the issuer, and certain individuals specified in Part 5 of NI 41-101, are required to file a submission to jurisdiction and appointment of agent, so this proposal would significantly expand the current requirements".

The BCSC e-mail went on to advise that "if adopted, this proposal will have an impact on the mining industry because of the extensive reliance by mining companies on foreign qualified persons. We therefore urge you to discuss the implications of this proposal with your legal counsel and provide written comment letters to CSA by October 15, 2011."

AMC sees it as appropriate to lodge a submission to CSA because of the implications for global minerals reporting, but more specifically because of the potential effects on the quality and efficiency of public reporting for the minerals industry in Canada.

AMC notes that while the proposed changes refer to prospectuses, reporting under NI 43-101 is also potentially likely to be affected as technical reports prepared by the foreign qualified persons are commonly incorporated by reference into prospectuses, so extending the impact of the proposed changes.

The relevant questions are posed on page 13 of the CSA Notice and Request for Comment as follows:

**Questions relating to Non-Issuer's Submission to the Jurisdiction and Appointment of Agent for Service:**

(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? Why or why not?

AMC does not believe that 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** for the following reasons:

As noted by CSA, the qualified person is already liable for the quality of the opinions provided, so there is no increase in protection for investors by the adoption of this measure as applied to foreign (qualified person) experts.

Safeguards already exist to protect Canadian investors, both via the Canadian legal system and the ethical and professional practices provisions of the qualified person's Accepted Foreign Association as listed in the NI 43-101 Companion Policy.

While the likelihood of additional administrative (and hence financial) burden is not considered particularly high by AMC, which already has two Canadian offices in Vancouver and Toronto, the burdens may be high for individual qualified persons. Hence it may make experts less likely to be prepared to act as qualified persons, or may lead them to increase what they charge if they chose to act.

This may be exacerbated if the qualified persons perceive an increase in exposure. As noted, the scope of liability of qualified persons does not change but the proposed requirement will make it easier for complainants to bring an action against a foreign qualified person. It may be more likely that foreign qualified persons will be added to claims made against the issuer and its directors (ie where a complainant sues all involved parties) if the foreign expert has an address in Canada to which service can be made. The impact of the change may be to encourage wider action including the QPs without providing any efficiency or cost benefits.

(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? If so, please explain why. 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?

AMC is of the opinion that foreign qualified persons are already liable so theoretically there is no additional liability attached to this proposal. As noted above, given the increase in ease to include a foreign qualified person when lodging a legal action, whether warranted or not, then the qualified persons' fees structure will need to recognise that there is an increased risk of legal action.

It would seem that as this proposal will increase potential for foreign qualified persons to be included in legal actions (whether warranted or not), it will be more difficult or at least more expensive for foreign qualified persons to obtain professional liability cover for reporting in Canada. This would almost certainly make it more difficult for Canadian issuers to retain the services of foreign qualified persons, but certainly make their services more expensive.

AMC believes there will almost certainly be an increase in costs. More seriously for Canadian issuers and exchanges is the likelihood of foreign experts declining to act as qualified persons for Canadian reports thus potentially affecting the quality and timeliness of information available to the market.

AMC's response would not change if the form requirement for foreign experts only concerned either submission to the jurisdiction or an appointment of an agent for service.

AMC considers that the proposed additional requirements on foreign experts are unnecessary given that satisfactory legal safeguards already exist to protect Canadian investors, both via the Canadian legal system and the ethical and professional practices

provisions of the qualified person's Accepted Foreign Association as listed in the NI 43-101 Companion Policy.

AMC suggests that further consideration should be given to whether the proposed changes may cause serious (perhaps unintended) consequences relating to the availability of properly qualified and experienced professionals to prepare and take responsibility for technical reports and prospectuses in Canada, and whether they may also lead mineral companies to choose to list elsewhere.

It is also unclear whether the requirement to submit to jurisdiction extends to individual employees of international consultancy firms such as AMC with registered entities within Canada. AMC regularly draws on the expertise of its overseas consultants to assist on projects being managed by our Canadian offices. These projects are already governed under contract by the applicable provincial jurisdiction and AMC therefore assumes that no further submission would be required. In the event all non-resident QPs were required to file a submission as individuals despite providing services through a local entity, this would clearly restrict the number of available and experienced consultants AMC could assign to act as qualified person under NI 43-101, and reduce flexibility in meeting client's requirements.

In addition, AMC is aware of opinions which indicate that a qualified person who submitted to jurisdiction and appointment of agent in order to report on a foreign mineral property in one or more of the 13 provincial jurisdictions in Canada, may then become obligated to register under the relevant acts of that jurisdiction. For instance the *Professional Engineers and Geoscientists Act* of British Columbia or similar statutes in other provinces. These acts would impose additional regulatory requirements on foreign QPs who will already be subject to their home organisation/regulatory body.

This would undoubtedly lead to a serious contraction of the numbers of foreign qualified persons willing and available to take responsibility for technical reports and be referenced in prospectuses, which may ultimately result in discouraging international issuers from seeking a Canadian listing.

Yours sincerely,

**SIGNATURE REMOVED**

Peter McCarthy  
Chairman AMC Consultants Pty Ltd