# PRI RESPONSE

## CANADIAN SECURITIES ADMINISTRATORS (CSA): CONSULTATION ON PROPOSED REPEAL AND REPLACEMENT OF NATIONAL INSTRUMENT 43-101—STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

October 2025



To inform this paper, the following groups have been consulted: Global Policy Reference Group (GPRG), Human Rights and Social Issues Reference Group (HRG).

While the policy recommendations herein have been developed to be globally applicable, the PRI recognises that the way in which policy reforms are implemented may vary by jurisdiction and according to local circumstances. Similarly, the PRI recognises that there may be circumstances where there are merits to allowing market-led initiatives to precede regulatory requirements.



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# ABOUT THE PRI

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

The PRI develops policy analysis and recommendations based on signatory views and evidence-based policy research. The PRI welcomes the opportunity to respond to the CSA call for feedback on the Proposed Repeal and Replacement of National Instrument 43-101 Standards of Disclosure for Mineral Projects.

# ABOUT THIS CONSULTATION

The Canadian Securities Administrators (CSA) is consulting on the proposed repeal and replacement of **National Instrument 43-101—Standards of Disclosure for Mineral Projects (NI 43-101)**. NI 43-101 sets the disclosure standards for scientific and technical information about mineral projects, applying to all issuers that disclose such information in Canada.

The consultation seeks to improve mineral project disclosure by clarifying requirements, updating technical standards, revising rules on qualified persons (QPs) and reporting, and reducing duplication while improving clarity on risks and assumptions. The CSA is consulting stakeholders on whether the proposed changes will improve market efficiency, investor understanding, and confidence in Canada's mineral project disclosure standards.

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# KEY RECOMMENDATIONS

The PRI welcomes the Canadian Securities Administrators' (CSA) initiative to repeal and replace National Instrument 43-101 (NI 43-101). In particular, the PRI welcomes enhanced disclosure relating to permits, agreements, and negotiations with Indigenous Peoples, rightsholders, and local communities to help investors understand the risks and uncertainties tied to those negotiations, which can materially influence project viability and financial performance.

The PRI's key recommendations are:

- **Retain the inclusion of Indigenous Peoples, rightsholders, and communities in NI 43-101 (Items 4e and 20c).** Given the clear materiality of community engagement to project viability and long-term value creation, we believe their retention remains essential.[1]
- **Expand Item 20(c) to require proportionate disclosure on the nature and scope of agreements with Indigenous Peoples, rightsholders, and communities. Providing high-level visibility into agreement types and coverage, while respecting principles of confidentiality, strengthens investor insight into due diligence robustness and risk management**. This approach aligns with UN Guiding Principles on Business and Human Rights and OECD expectations.
- **Strengthen Item 4(e) to require disclosure not only on permits and agreements required "under laws" with Indigenous Peoples, rightsholders, and communities, but also on whether unresolved Indigenous- or community-related issues within those permits or agreements are reasonably likely to affect approvals, timelines, or operations, ensuring investors receive decision-useful information**. Such issues may include disputes over land or water use, tenure security, cultural heritage protections, benefit-sharing obligations, or unresolved grievance mechanisms.

[1] Osler. (2024). Consult before exploring: mineral tenure and Indigenous rights. http://www.osler.com/en/insights/reports/2024-legal-outlook/consult-before-exploring-mineral-tenure-and-indigenous-rights/

# DETAILED RESPONSE

Canada is home to approximately 40% of the world's publicly listed mining companies, accounts for nearly half of global mining financings, and holds one-third of mining equity capital raised over the past six years[2]. Canada's disclosure standards shape domestic markets and exert systemic influence on global mining finance. As such, reducing disclosure requirements of decision-useful information risks eroding investor confidence and setting a precedent that others may follow; strengthening them, by contrast, reinforces Canada's global leadership and establishes a higher benchmark for disclosure.

The federal government's Critical Minerals Strategy, with significant funding allocated until 2030, explicitly links mining development to climate goals, supply chain security, and Indigenous partnerships[3]. Ensuring robust and transparent disclosure under NI 43-101 is therefore not only a matter of market integrity but also a prerequisite for advancing Canada's critical minerals ambitions, safeguarding companies' social license to operate and maintaining investor trust in a growing sector central to Canada's economy and the energy transition.

Projects that lack early, continuous, and well-documented engagement with Indigenous Peoples face heightened risks across permitting, litigation, and financing processes. Evidence finds that where engagement was inadequate, projects encountered weekly costs of up to USD 20 million from stalled production[4]. In the analysis of 19 junior gold mining firms, two-thirds ("≈ 67 %") of the firms' market capitalization value was found to be a function of stakeholder engagement behaviour, with only one-third tied to the "in-the-ground" mineral value. For investors, social and relational risks can directly erode net present value, extend payback periods, and undermine creditworthiness. By contrast, projects with meaningful engagement can help secure social license to operate, experience fewer legal challenges, and be better positioned to attract financing on competitive terms. Taken together, these dynamics demonstrate that social performance and community engagement have tangible financial value recognized by capital markets.

**The PRI has consistently supported global investors in setting expectations for the mining sector, ensuring that disclosure and governance practices evolve in line with international standards and investor priorities.** Through its *Advance* initiative, the PRI facilitates direct investor engagement with mining companies on human rights due diligence and community relations, setting consistent expectations and driving accountability.[5] Human rights due diligence has emerged as the most frequently selected priority objective across mining engagements, underscoring investors' emphasis on proactive risk management in line with the UN Guiding Principles on Business and Human Rights.[6] In Canada, the First Nations Major Projects Coalition (FNMPC) reports that investors often withhold financing from resource and infrastructure projects where Indigenous engagement is weak or uncertain[7]. Companies that

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[2] TMX Group. (n.d.). "~40% OF THE WORLD'S PUBLIC MINING COMPANIES ARE LISTED ON TSX AND TSXV." https://www.tsx.com/en/listings/listing-with-us/sector-and-product-profiles/mining
[3] Government of Canada. (2023). The Canadian Critical Minerals Strategy. https://www.canada.ca/en/campaign/critical-minerals-in-canada/canadian-critical-minerals-strategy.html
[4] Franks et al. (2014). "Conflict translates environmental and social risk into business costs." https://www.pnas.org/doi/10.1073/pnas.1405135111
[5] PRI. (2025). Advance. https://www.unpri.org/investment-tools/stewardship/advance
[6] PRI. (2025). Advance Progress Report. https://www.unpri.org/download?ac=23490
[7] FNMPC. (2022). National Roundtable on Indigenous Access to Capital in Canada: Roundtable Primer. https://fnmpc.ca/wp-content/uploads/FNMPC_BCBC_ACCESS_TO_CAPITAL_07192022.pdf

demonstrate credible consultation and disclosure practices are viewed as lower risk, improving their access to capital. Transparent engagement signals strong governance and accountability, reinforcing investor confidence in long-term project viability and alignment with reconciliation objectives.[8]

**Canada's position as a global leader in mining finance relies on maintaining a disclosure framework that investors can rely on.** In a context where global capital is highly mobile, jurisdictions with robust and decision-useful disclosure standards are best placed to attract sustainable, long-term investment. Modernizing NI 43-101 to reflect current investor expectations would reinforce market integrity, enhance investor protection, and preserve the competitive position of Canada's capital markets.

## RETAIN DISCLOSURE OF PERMITS AND AGREEMENTS WITH INDIGENOUS PEOPLES, RIGHTSHOLDERS, AND COMMUNITIES

The original NI 43-101 Technical Report (Form 43-101F1) establishes disclosure requirements for permits and agreements required to conduct work under Item 4(e) and environmental studies, permitting, and community impacts under Item 20(c). The proposed 2025 revisions build on this foundation by referencing permits or agreements with Indigenous Peoples, rightsholders, and communities in Item 4(e), and requiring disclosure of the status and timing of negotiations or agreements in Item 20(c). **The PRI supports these clarifications, as they increase the credibility of Canada's disclosure framework and reinforce the CSA's role in maintaining transparent and trustworthy capital markets.**

Under Canada's continuous disclosure rules (e.g., NI 51-102), public companies are expected to report on material risks, uncertainties, and trends. While this framework can encompass issues related to Indigenous rights, consultation processes, community opposition, and associated legal challenges, disclosure remains contingent on a company's own assessment of materiality. This results in inconsistent recognition of Indigenous-related risks and negotiations—many of which arise early in project development but carry long-term implications. In the absence of clear reporting requirements, voluntary disclosures through ESG or MD&A reports remain uneven in scope and quality, leaving investors with fragmented and non-comparable information.

For the mining sector, growing evidence shows that companies with stronger due diligence face lower financial risks, secure better financing and trade credit, and are more resilient to costly disruptions.[9] Research by NYU and the University of Toronto found that capital markets responded positively to 148 community benefit agreements (CBAs) between mining firms and Indigenous communities in Canada—particularly where communities held strong, legally recognized land rights and organizational capacity.[10] These findings indicate that investors value disclosure of agreements with local communities as a means to mitigate project delays and social conflict, thereby protecting firms' access to key resources and long-term profitability. Credible community consent processes therefore serve as a clear signal of reduced financial risk and stronger governance.

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[8] FNMPC. (2022). National Roundtable on Indigenous Access to Capital in Canada: Roundtable Primer. https://fnmpc.ca/wp-content/uploads/FNMPC_BCBC_ACCESS_TO_CAPITAL_07192022.pdf

[9] OECD. (2024). https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/01/costs-and-value-of-due-diligence-in-mineral-supply-chains_f26cea37/4d432567-en.pdf

[10] Dorobantu, S., & Odziemkowska, K. (2017). Valuing Stakeholder Governance: Property Rights, Community Mobilization, and Firm Value. Strategic Management Journal, 38(13), 2682–2703. https://sms.onlinelibrary.wiley.com/doi/abs/10.1002/smj.2675

In November 2023, nationwide protests and a constitutional court ruling that halted First Quantum's Cobre Panamá mine triggered a sharp decline in investor confidence. The company's market value fell by approximately 43% within weeks, illustrating how social unrest and legal disputes can disrupt production and undermine financial stability.[11] Similarly, Barrick Gold's Pascua-Lama project experienced litigation and regulatory challenges that translated into multi-billion-dollar impairments.[12] These examples underscore how social and legal risks can crystallize into financial outcomes.

By mandating disclosure on permits and engagement with Indigenous Peoples and rightsholders, Items 4 and 20 enhance investor visibility into material project risks. Creating consistent, comparable disclosures on these material items enables more informed capital allocation decisions, facilitates evaluation of social license to operate, and contributes to greater market resilience.

## EXPAND ITEM 20(C) TO INCLUDE DISCLOSURE ON THE NATURE AND SCOPE OF AGREEMENTS WITH INDIGENOUS PEOPLES

The PRI welcomes the CSA's proposal to expand Item 20(c) to include the status and dates of any negotiations or agreements entered with Indigenous Peoples, rightsholders, or communities. Recognizing these arrangements as material to project feasibility aligns with international standards on responsible business conduct, which set expectations that companies conduct human rights due diligence and communicate how salient impacts are addressed. However, while Item 20(c) covers the existence and timing of such agreements, it does not allow investors to evaluate the severity, likelihood, or mitigation of associated risks. The PRI has identified limited visibility into the **quality and robustness of company due diligence** as a persistent gap in decision-useful disclosure for investors.[13]

**The PRI recommends that the CSA seek to clarify in the Form Instructions that Item 20(c) disclosures should, on a practicable and proportionate basis, enable investors to understand at a high level the nature and scope of those agreements, consistent with internationally recognized due diligence standards such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises.**[14] Both principles call for companies to disclose the "nature and extent of due diligence measures" taken in relation to human rights risks. In practice, this could mean indicating the **high-level type of agreement** (e.g., impact benefit agreement, participation agreement, etc.) and the **breadth of its coverage** (e.g., environmental monitoring, royalty payments, shared decision-making, employment opportunities, or cultural heritage protections). This is consistent with existing federal and provincial publications on Indigenous agreements related to resource projects.[15][16]

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[11] Reuters. (2023). "Protests force First Quantum to reduce copper ore processing at Panama mine." https://www.reuters.com/markets/commodities/first-quantum-cuts-ore-processing-amid-port-blockades-2023-11-13/
[12] Mining.com. (2020). "TIMELINE: The rise and fall of Pascua-Lama." https://www.mining.com/featured-article/the-rise-and-fall-of-pascua-lama/
[13] PRI. (2022). What data do investors need to manage human rights risks?. https://www.unpri.org/human-rights/what-data-do-investors-need-to-manage-human-rights-risks/10856.article
[14] OECD (2023). OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Paris: OECD Publishing. https://www.oecd.org/en/publications/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990.html
[15] Natural Resource Canada. (n.d.). Lands and Minerals Sector - Indigenous Mining Agreements https://atlas.gc.ca/imaema/en/
[16] Government of British Columbia. (2013). https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/great-bear-rainforest/hw03b_benefit_sharing_final_report.pdf

While the recommendation does not impose new due diligence obligations, it reinforces the intent of the UNGPs—particularly Principles 17, 18, 20, and 21—by encouraging transparency around how companies identify and manage risks related to Indigenous rights. Disclosing the nature and scope of agreements would help investors assess whether companies have credible processes in place to identify, address, and monitor material risks in their operations and value chains. This proportional approach reflects the UNGPs' emphasis on context-specific, risk-based disclosure and aligns Canadian reporting expectations with internationally recognized standards of responsible business conduct, while remaining respectful of commercial confidentiality and cultural sensitivities by focusing on high-level, non-proprietary information.[17]

A 2023 NI 43-101 Technical Report for Hudbay Minerals' Copper Mountain Mine demonstrates proportionate disclosure under Item 20(c).[18] The report identifies Participation Agreements with the Upper and Lower Similkameen Indian Bands, supported by a Joint Implementation Committee of representatives from all parties overseeing mine development and environmental management. This collaborative governance structure not only reflects regulatory compliance but also reinforces investor confidence in the company's ability to manage social risks and deliver long-term value.

Increasingly, investors are rewarding this kind of proactive engagement: PRI's 2024 reporting shows that 32% of signatories already use international human rights frameworks to inform their investment processes.[19] Disclosure expectations for Indigenous engagement should therefore be anchored in the UNGPs and OECD Guidelines to align Canadian requirements with international standards and ensure consistent, comparable, and decision-useful reporting on social and human rights risks.

## STRENGTHEN ITEM 4(E) TO INCLUDE DISCLOSURE ON UNRESOLVED INDIGENOUS AND COMMUNITY ISSUES AFFECTING PERMITS AND AGREEMENTS

The PRI welcomes the CSA's proposal in Item 4(e) to include disclosure on permits and agreements with Indigenous Peoples, rightsholders, and communities. The existence of such agreements is often determinative of whether mining projects can proceed on time, on budget, and with the level of certainty investors require to properly assess project viability.

However, as currently drafted, Item 4(e) risks resulting in a binary disclosure of whether agreements have or have not been obtained. While limiting disclosure to what is required "under laws" offers legal certainty, it overlooks that the existence of permits or agreements does not eliminate risk. Canadian courts have overturned project approvals despite valid permits (e.g., *Clyde River v. Petroleum Geo-Services Inc.*, 2017 SCC 40; *Tsleil-Waututh Nation v. Canada*, 2018 FCA 153), demonstrating that inadequate consultation

[17] UNGP. (2011.) Guiding Principles on Business and Human Rights https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
[18] Hudbay Minerals. (2023). https://s23.q4cdn.com/405985100/files/doc_downloads/tech_reports/canada/cmm-ni-43-101-technical-report-dec-5-2023.pdf
[19] PRI. (2025). "GLOBAL RESPONSIBLE INVESTMENT TRENDS: INSIDE PRI REPORTING DATA." https://www.unpri.org/download?ac=23004#page=28

can still undermine a project's legal and social legitimacy.[20] [21] Investors need the ability to assess whether permits or agreements are substantive, credible, and uncontested.

Unresolved Indigenous and community issues are financially material. The Canadian Climate Institute, writing in the context of critical minerals, finds that unless project reviews are accelerated while upholding Indigenous rights and environmental protections, Canada risks missing out on as much as $12 billion per year in production by 2040.[22] While their analysis is framed around critical minerals, the underlying dynamic applies across the mining sector: if permits and agreements are unclear or contested, projects face heightened risks of delay, cost overruns, and even stranded value.

International standards such as the International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples (ILO 169) establish that Indigenous Peoples have rights to consultation and participation in decisions affecting their lands, resources, and cultural heritage, and that such processes must be undertaken in good faith with the objective of achieving consent.[23] International lenders and institutional investors operating under the IFC Performance Standards and Equator Principles similarly expect issuers to demonstrate credible engagement related to land disputes, resettlement risks, and impacts on cultural heritage beyond the legal minimum as a condition for capital access.[24] [25]

Building on these global principles and precedents, **PRI recommends that Item 4(e) be expanded to require disclosure not only of whether permits and agreements with Indigenous Peoples, rightsholders, and communities have been obtained, but also to provide a factual snapshot of whether Indigenous- or community-related issues within those permits or agreements remain unresolved and are reasonably likely to affect approvals, project schedules, or operations.** Such issues may include disputes over land use, water quality, cultural heritage protections, benefit-sharing obligations, or unresolved grievance mechanisms. This targeted clarification would ensure investors receive decision-useful information about whether the legal instruments disclosed under Item 4(e) are reliable foundations for mining project development, without expanding the requirement into broader narrative disclosure that properly belongs under Item 20(c).

*The PRI has experience in contributing to public policy on sustainable finance and responsible investment across multiple markets and stands ready to support the work of Canadian Securities Administrators further to improve corporate accountability in Canada.*

*Please send any questions or comments to policy@unpri.org.*

*More information on www.unpri.org*

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[20] Clyde River (Hamlet of) v. Petroleum Geo-Services Inc., 2017 SCC 40, [2017] 1 S.C.R. 1069. https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/16743/index.do

[21] Tsleil-Waututh Nation v. Canada (Attorney General), 2018 FCA 153. https://regulatorylawchambers.ca/2018-10-31-tsleil-waututh-nation-v-canada-attorney-general-2018-fca-153/

[22] Canadian Climate Institute. (2025). "Canada risks missing out on billions in critical mineral investment without swift policy changes: report." https://climateinstitute.ca/news/canada-risks-missing-out-on-billions-in-critical-mineral-investment/

[23] International Labor Organization. "Indigenous peoples: Consultation and participation." https://www.ilo.org/media/279381/download

[24] International Finance Corporation. (2022). PS7 Overview. https://www.ifc.org/content/dam/ifc/doc/2022/Final-Version-XPS7-Training-WL-design-02.pdf

[25] Equator Principles. (2020). https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf