

**IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)**

and

Ian James Foreman, P.Geo.

DETERMINATION OF THE DISCIPLINE COMMITTEE

Discipline Committee Panel:

Neil Cumming, P.Eng. (Chair)

Ronald Yaworsky, P.Eng.

Oliver Bonham, P.Geo.

Counsel for the Panel:

Eric Wredenhagen

Counsel for Association:

Andrew Gay, Allan Doolittle

Member:

Ian J. Foreman, P.Geo.

Mr. Foreman was not represented by counsel.

INTRODUCTION

- [1] A Discipline Committee Panel (the “Panel”) of the Association of Professional Engineers and Geoscientists of British Columbia (the “Association”), acting under the authority of the *Engineers and Geoscientists Act*, RSBC 1996 c. 116 as amended (the “Act”), held an Inquiry on June 9-12, 2015 to examine alleged unprofessional conduct, incompetence or negligence, and alleged contraventions of the Association’s Code of Ethics by Ian James Foreman, P.Ge.
- [2] The Inquiry took place in the offices of Charest Reporting, 1650-885 West Georgia Street, Vancouver, BC. The charges against Mr. Foreman are set out in the Notice of Inquiry (the “NOI”) dated January 23, 2015, and entered as Exhibit 1, as follows:

AND TAKE NOTICE that the allegations against you are as follows:

1. That you have demonstrated unprofessional conduct, incompetence or negligence by:
 - (a) permitting, participating in, or acquiescing in disclosure of information to the public by Golden Sun Mining Corp. (formerly Silver Sun Resource Corp.) (the “Company”), at a time when you were the Qualified Person (“QP”) for the Company and a Director of the Company, in circumstances where you knew or ought to have known that the information was misleading, inaccurate, or insufficiently qualified. Particulars of the said disclosure of information are as follows:
 - (i) a News Release dated October 27, 2011, which states that the Cherry Hill Gold Mine (the “Mine”) has commenced commercial production in circumstances where the Mine had not commenced commercial production;
 - (ii) a fact sheet posted on the Company’s website on or about January 3, 2012 which states or leaves the impression that the Mine is in commercial production, in circumstances where the Mine was not in commercial production; and which leaves the impression that the Mine property had a mineral resource when the Mine property had no known mineral resource; and which disclosed publicly the Company’s “internal” estimates of the quantity of gold in the deposit when these were not substantiated and should have remained internal;
 - (iii) a series of News Releases published by the Company between December of 2011 and March of 2013 which state or leave the impression that the Mine is in commercial production, in circumstances where the Mine was not in commercial production; and which state or leave the impression that the rate of mining will increase and which then fail to make timely disclosure that mining and stockpiling of material in fact had ceased;

- (iv) a Corporate Presentation posted on the Company's website in or about March, 2013, which states or leaves the impression that the Mine is in commercial production in circumstances where the Mine was not in commercial production; and which states or leaves the impression that the Mine property had a mineral resource when the Mine property had no known mineral resource; and which disclosed publicly the Company's "internal" estimates of the quantity of gold in the deposit when these were not substantiated and should have remained internal; and which presents the results of an economic analysis which was not supportable on the information known to you and to the Company;
- (b) permitting, participating in, or acquiescing in disclosure of information to the public by Golden Sun Mining Corp. (formerly Silver Sun Resource Corp.) (the "Company"), at a time when you were the Qualified Person ("QP") for the Company and a Director of the Company, in circumstances where you knew or ought to have known that the disclosure of the information by the Company was contrary to National Instrument 43-101 (Standards of Disclosure for Mineral Projects) ("NI 43-101"). Particulars of the disclosure contrary to NI 43-101 are:
- (i) disclosure of the estimated quantity of gold in the deposit, and the metal or mineral content of the deposit, as set out in a fact sheet posted on the Company's website on or about January 3, 2012, in circumstances where the deposit had not been categorized as a mineral resource or mineral reserve, contrary to section 2.3(1)(a) of NI 43-101;
 - (ii) disclosure of the estimated quantity of gold in the deposit, the average grade of the deposit, and the metal or mineral content of the deposit, as set out in a Corporate Presentation posted on the Company's website in or about March, 2013, in circumstances where the deposit had not been categorized as a mineral resource or mineral reserve, contrary to section 2.3(1)(a) of NI 43-101;
 - (iii) disclosure of the results of an economic analysis as set out in a Corporate Presentation posted on the Company's website in or about March, 2013, contrary to section 2.3(1)(b) of NI 43-101;
 - (iv) disclosure of scientific or technical information about a mineral project in a series of News Releases where you were identified as the QP yet where your relationship to the Company was not fully disclosed, contrary to section 3.1 of NI 43-101, including that there was no disclosure of the fact that you were a director or shareholder or option-holder of the Company;

- (v) disclosure of scientific or technical information about a mineral project in a Corporate Presentation posted on the Company's website in or about March, 2013 in circumstances where the Corporate Presentation did not disclose that you were the QP nor your relationship to the Company, contrary to section 3.1 of NI 43-101; and
 - (vi) disclosure of a series of News Releases between October, 2011 and September, 2012 in which you, as QP, are said to have reviewed and verified the technical information contained in the News Releases, but which do not contain a description of how you verified the data and any limitations on the verification process, or alternatively an explanation for failing to verify the data, contrary to section 3.2(b) of NI 43-101;
- (c) engaging in the conduct set out above in paragraph 1(a) and (b) at a time when you were also part of the Company's management;
2. That you have demonstrated unprofessional conduct, incompetence or negligence by:
- (a) not knowing that the Mine's level of production did not meet any recognized definition of commercial production; and
 - (b) relying upon a definition of commercial production published by Natural Resources Canada in circumstances where you did not understand the definition and mis-applied it; and
3. That you have contravened the Code of Ethics of the Association by engaging in the conduct set out above at paragraphs 1 and 2, which constitutes:
- (a) failing to act with fidelity to the public needs;
 - (b) failing to uphold the values of truth, honesty and trustworthiness;
 - (c) accepting responsibility for a professional assignment when you were not sufficiently qualified by training or experience; and
 - (d) failing to conduct yourself with fairness to others, i.e. those members of the public relying upon the information disclosed by the Company as set out above in paragraph 1(a).

[3] Opening submissions and evidence were heard during an oral hearing conducted on June 9-12, 2015. Closing submissions from the Association and Mr. Foreman, and the Association's reply to Mr. Foreman's closing submission, were provided to the Panel in written form following the close of the oral hearing, on a timeline agreed to by the parties on June 12, 2015.

[4] At the outset of the hearing the Chairman asked both parties if there were any concerns or objections to the membership of the Panel. There were none.

SYNOPSIS

- [5] Silver Sun Resources is a publicly traded company on the TSX Venture Exchange. On February 1, 2013 Silver Sun changed its name to Golden Sun Mining Corporation. This company is referred to herein as the “Company”.
- [6] In early 2011 the Company acquired a mining property in northern California known as the Cherry Hill Mine, which had been worked intermittently since the late 1800s. At the time of acquisition the mine was dormant, and it was the Company’s intent to put the mine into commercial production.
- [7] The President of the Company was Mr. Mark McLeary; Mr. Foreman was and remains a director of the Company at all material times. Both Mr. McLeary and Mr. Foreman were shareholders of the Company at all material times.
- [8] During the period from mid-2011 until March 2013 the Company undertook various activities directed towards putting the mine into an operational state. These included securing 100% ownership of the property, arranging to obtain the necessary permits, engaging an independent Qualified Person to prepare an independent technical report, obtaining samples of mineralized material from the mine, engaging laboratories to assay the samples, extracting material from the mine, engaging independent milling facilities to process the mined material into a concentrate form, and further sampling and laboratory assaying of the concentrate.
- [9] Throughout the same period the Company published information in various forms that disclosed information about the Company and the Cherry Hill Mine. This included a series of news releases dated June 16, 2011 to October 29, 2013 (the “News Releases”); a series of Management Discussion and Analysis reports dated March 28, 2012 to October 17, 2013 (the “MD&As”); a fact sheet posted on the Company’s web site dated January 3, 2012 (the “Fact Sheet”), and a corporate presentation posted on the Company’s web site dated March 2013 (the “Corporate Presentation”).
- [10] Many of these publications identified Mr. Foreman as the Company’s Qualified Person responsible for the scientific and technical information disclosed by the Company, and also as a Director of the Company. Some of them also identified Mr. Foreman as a member of the management team at the Company.
- [11] On October 30, 2013 the Association received a complaint regarding Mr. Foreman’s professional conduct from Mr. Robert Holland, P.Ge., then Chief Mining Advisor at the BC Securities Commission (the “BCSC”). After investigating the complaint the Association issued a Notice of Inquiry to Mr. Foreman on January 23, 2015.
- [12] The Association’s allegations against Mr. Foreman pertain to information released to the public regarding the Company, for which Mr. Foreman was a director and acted as the Qualified Person as defined in National Instrument 43-101 (“NI43-101”). NI43-101 is discussed in more detail below at paragraphs 30 and following.

BURDEN AND STANDARD OF PROOF

[13] The task of the Panel is to determine, on the basis of the evidence presented and the allegations in the NOI whether any or all of Mr. Foreman's conduct (a) demonstrates unprofessional conduct, incompetence, or negligence, and/or (b) constitutes a breach the Association's *Code of Ethics*. In coming to its determination the Panel has been guided by the Act, by the *Code of Ethics* and *Code of Ethics Guidelines*, and by *Salway v. Assn. of Professional Engineers and Geoscientists of British Columbia*, 2010 BCCA 94, which states that it is the disciplinary body of the professional organization that sets the professional standards for that organization.

[14] The standard of proof is on a balance of probabilities, meaning that the Panel must find that the allegations in the NOI are more likely to be true than not. In applying this standard the Panel is guided by *Kaminski v. Assn. of Professional Engineers and Geoscientists of British Columbia*, 2010 BCSC 468.

EVIDENCE

[15] The Panel heard oral testimony from five witnesses during the four day hearing.

[16] The Association called two witnesses:

- a) Mr. Robert Holland, P.Geo., who was at the material time, Chief Mining Advisor, BC Securities Commission, and who is the complainant in this matter;
- b) Ms. Deborah McCombe, P.Geo. (ON, SK), who is an expert witness tendered by the Association. Ms. McCombe was accepted by the Panel as an expert witness in the matters of exploration geology, mineral resource estimation, and Canadian mining resource disclosure standards, in particular disclosure under NI43-101. Mr. Foreman did not object to Ms. McCombe's qualifications as an expert in these matters.

[17] Mr. Foreman called two witnesses:

- a) Mr. Lindsay Bottomer, P.Geo.;
- b) Mr. Derek Strickland, P.Geo., who prepared a NI43-101 technical report for the Company.

[18] Mr. Foreman also testified on his own behalf.

[19] In addition, a considerable volume of documentary evidence was put before the Panel, which included:

- a) The original complaint letter of October 30, 2013, authored by Robert Holland on behalf of the BC Securities Commission;

- b) Mr. Foreman’s response to the complaint, in the form of a letter to the Association dated November 21, 2013;
- c) A fact sheet (the Fact Sheet) and corporate presentation (the Corporate Presentation) posted on the Company’s web site;
- d) A series of news releases published by the Company between June 16, 2011 and October 29, 2013;
- e) A series of Management Discussion and Analysis reports published by the Company between March 28, 2012 and October 17, 2013;
- f) An expert opinion report prepared by Ms. McCombe, dated May 8, 2015;
- g) A copy of Mr. Strickland’s report dated May 22, 2012;
- h) Copies of National Instrument 43-101 and the Companion Policy to NI43-101;
- i) Miscellaneous other documents.

[20] The Association’s documents were entered as Exhibit 2 in the form of a large three-ring binder with 50 tabs.

[21] Mr. Foreman’s documents were tendered in the form of two large three-ring binders with 37 tabs, parts of which were entered as Exhibits 6 through 10. Certain documents included in these binders were objected to by the Association, namely those in Tabs 8, 9, 10 and 34. The Association also objected to documents contained in Tabs 11, 15, 24 and 26 once it heard the purpose for which they were intended by Mr. Foreman.

- a) Tab 8 consisted of a Canadian Securities Administrators Staff Notice 43-309 and some 97 news releases issued by other companies unrelated to the Company. The Association objected to the admission of the news releases on the grounds that they were not relevant to the allegations in the NOI. After hearing argument, the Panel accepted the Association’s position and the 97 news releases were excluded as evidence. Staff Notice 43-309 was admitted and remained in Tab 8.
- b) Tabs 9 and 10 included news releases and similar public information from other additional companies unrelated to the Company. The Association objected to the admission of these documents on the same grounds of relevance. After hearing argument, the Panel accepted the Association’s position and all documents in Tabs 9 and 10 were excluded as evidence.
- c) Tab 11 consisted of fire assay results conducted by the Company and related emails. They were ultimately admitted as a separate exhibit, Exhibit 8.
- d) Tab 15 consisted of a document entitled “Cherry Hill Mine Permitting Summary” and related correspondence. These documents were objected to by the Association on the basis of relevance and were excluded by agreement.

- e) Tab 24 consisted of a number of documents related to the credentials of Mr. Bartlett Hanford. They were ultimately admitted as a separate exhibit, Exhibit 7.
- f) Tab 26 included ten pages of emails between Bartlett Hanford and Mark McLeary which had been given to Mr. Foreman by Mr. McLeary. These ten pages were ultimately admitted as a separate exhibit, Exhibit 9.
- g) Tab 34 consisted of a magazine article on a different mine owned by a different company, and was objected to by the Association on the basis of relevance. It was excluded by agreement.

Credibility of Mr. Foreman

[22] In considering the evidence and conducting its analysis in this Determination, the Panel felt it necessary to take into account its concerns about the credibility of Mr. Foreman, as demonstrated at an early point in Mr. Foreman's testimony.

[23] Upon receiving the complaint from Mr. Holland, the Association provided his letter of October 30, 2013 to Mr. Foreman with a request for a written response. Mr. Foreman's response was received by the Association in the form of a letter dated November 21, 2013.

[24] Mr. Foreman's oral testimony and cross examination revealed several inconsistencies, inaccuracies and false statements in his letter to the Association.

- a) Mr. Foreman stated in his letter that with reference to a news release of October 27, 2011 he relied on a definition of commercial production published by National Resources Canada (*sic*) and relied on the advice of the Company's corporate lawyer, and on that basis approved his name being included in the news release.
- b) At the Inquiry, Mr. Foreman testified as follows:
 - i. *I am aware of various definitions of commercial production and, in response to the original complaint, I had an opportunity to write a letter. That letter is included in tab 2 of the Association's evidence. I am going to lead you through the corrective disclosure correction process. It was a long, arduous, painful process. The very next day I received a complaint against me. There are aspects that I wrote into this original letter that it did not occur to me at the time to gather the evidence that I have shown you now as to being the truth as to me being out of town and not having any association with the use of the term and not agreeing to my name being attached to that news release. It did not occur to me at the time of writing this dated November 21st, 2013 to go through my records and do an exhaustive search of when, where, why. I chose at the time to draw the party line and I regret making those comments in this letter as, in fact, I've proven them now not to be true.*

c) During Mr. Foreman's cross-examination, the following exchanges occurred:

i. *Q If I understand that answer, what you are now saying is that when you stated that you had relied on this definition, that in fact was untrue; is that right?*

A Correct.

ii. *Q I understand. All right, I'd like to go on to the next sentence of that paragraph, and you say that it was your opinion at the time that: "Relying on our corporate lawyer, National Research Canada definition, and IIROC approval was sufficient confirmation and approved that my name was included in the news release". And that is what you admitted in your testimony in chief was false; in other words, you did not, according to your current testimony, approve that your name be included in the news release, correct?*

A And nor did I rely on the lawyer. This is a false statement.

iii. *Q All right. Well, if we go to tab 2 of Exhibit 2 in the black binder, this again is your letter in which you provide responses to Mr. Holland's complaint, and I'm now on page 2 of that letter. And I'm looking at the bottom paragraph starting with the word "Additionally". It says: "Additionally, at my urging the company's lawyer provided the following statement that was inserted in the body of the news release." And I'm going to suggest that it wasn't quite accurate for you to say that that was at your urging, was it?*

A It doesn't appear so, but I -- it doesn't appear so.

[25] With reference to the Fact Sheet posted on the Company's web site:

a) The following exchange occurred during Mr. Foreman's cross-examination:

Q ... Now, you've indicated previously that you were aware that this fact sheet at tab 4 of Exhibit 2 was on the company's website. I meant to ask you additionally whether you had the opportunity to see this fact sheet before it was first published on the company's website; do you remember?

A I have had the opportunity to edit this document. I cannot specifically state as to when.

b) A short time later:

Q All right. Well, owing to the fact that Mr. Holland said that he obtained a copy of this document off the website in August of 2013, can you say whether at least by August of 2013 you were aware that the national instrument contains a provision relating to the disclosure of historical estimates?

A What I can say is that I didn't edit this document.

Q That's not what I asked you.

A I can't say what I knew at what time. If I knew it, I didn't edit the document. So, again, I just don't know to quantify my level of knowledge at a specific time.

[26] With reference to a Corporate Presentation posted on the Company's web site:

a) The following exchange occurred during Mr. Foreman's cross examination:

Q Well, what I'm really asking is: Are you the person responsible for saying that the average grade of deposit is 0.25 to 0.3 ounces per ton?

A I don't believe so.

Q Who do you believe is responsible for that?

A I believe that would be something Mr. McLeary put in.

b) A short time later:

Q If it's correct that Mr. McLeary is the person responsible for putting this average grade into this document, would I be correct in assuming that you don't know where he came up with that figure?

A I can't say that Mr. McLeary is responsible for putting this information in here. I can state that I knew it was being put into this.

[27] The Panel also noted the fact that among the significant volumes of documents entered at the hearing, there are very few that were prepared contemporaneously by Mr. Foreman. In particular there are none pertaining to Mr. Foreman's review and approval of technical information that was released to the public. The documents prepared by Mr. Foreman are limited to his contract with the Company dated April 1, 2011; four invoices for services provided in 2011; a single email from October 2011 pertaining to a news release of October 27, 2011 in which the terms "commercial production" and "production" are used, and several emails from September and October 2013 pertaining to the content of corrective news releases requested by the BCSC.

[28] The Panel concluded from the above that where determination of a disputed factual issue turned on the assessment of witness credibility, Mr. Foreman's oral evidence was generally seen as less credible than that of the Association's witnesses, in particular that of Ms. McCombe.

ANALYSIS

[29] For clarity, the analysis presented below is set out under a series of headings each related to a different topic of consideration or a different related practice matter, pertaining to the allegations against Mr. Foreman.

National Instrument 43-101

[30] National Instrument 43-101 is a document entitled *Standards of Disclosure for Mineral Projects*. The current version was made a regulation under the BC *Securities Act* effective June 30, 2011, replacing the previous 2005 version, which had also been a regulation. The document governs the requirements for disclosure of information pertaining to mineral projects, and requirements for preparation and filing of technical reports pertaining to mineral projects.

[31] Ms. McCombe took a lead technical role in developing and implementing NI43-101 and has extensive experience in its promulgation.

[32] As part of her being qualified to serve as an expert witness it was also made evident to the Panel that Ms. McCombe, in her current capacity as a senior consultant to the mining industry, is very familiar with and is used to operating under the requirements of NI43-101.

[33] NI43-101 relies heavily on the appointment of a Qualified Person (“QP”) by the issuer, and defines the role and qualifications of a Qualified Person. Ms. McCombe states that:

- a) *“All oral and written disclosure of scientific and technical information made by a company on a material property must be based on information prepared by or under the supervision of a qualified person; or approved by a QP. The QP has the responsibility and accountability for the acquisition and reporting of scientific and technical information at all stages of the mining cycle from mineral exploration, development and mining operations and mine closure. The role and responsibilities of the QP are summarized as follows: -*
- b) *The QP must comply with his or her professional association’s code of ethics and perform work only in his/her area of competency and disclose the technical information in an honest, fair and objective manner.*
- c) *The QP should follow CIM Definition Standards for the disclosure of mineral resources and mineral reserves and CIM Best Practices Guidelines as set out in NI43-101 Companion Policy and have up to date knowledge and comply with NI43-101.*
- d) *The QP must perform a reasonable level of due diligence and validation of technical data which involves a visit to the property.*
- e) *The QP must clearly report on the material risks associated with each stage of development of the property in a manner understandable to investors.*

- f) *The QP must review the company’s disclosure prior to dissemination to the public to ensure that the scientific and technical information is disclosed in the appropriate context.”*

[34] With respect to protection of the public, Ms. McCombe opined that:

- a) *“The QP plays a very important role in the protection of the public including investors. The purpose of involving a QP in scientific and technical disclosure of mineral projects is to improve the quality and confidence of the information being reported and disclosed to the public.*
- b) *As a QP has the academic qualifications and relevant experience for the type of deposit, takes responsibility for this information, and ensures that the public knows the risks associated with the stage of development of the project, the public can make informed investment decisions.*
- c) *As a member of a professional organization, a QP commits to “hold paramount the safety, health and welfare of the public...” In the code of ethics, welfare of the public also includes financial as well as physical safety. The investing public can rely on the disclosure prepared by a QP as he or she is knowledgeable, ethical, reliable, and competent and discloses information in a balanced, complete, honest, and objective manner.”*

[35] Guidance in the use of NI43-101 is given in Companion Policy 34-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, which states, *“This companion policy sets out the views of the Canadian Securities Administrators (the “CSA”) as to the manner in which the CSA interprets and applies certain provisions of National Instrument 43-101 ...”*.

[36] The Companion Policy states at Paragraph 1.8, **“Objective Standard of Reasonableness – Issuers should apply an objective standard of reasonableness in making a determination about the definitions or application of a requirement in the Instrument. Where a determination turns on reasonableness, the test is what a person acting reasonably would conclude. It is not sufficient for an officer of an issuer or a qualified person to determine that he or she personally believes the matter under consideration. The person must form an opinion as to what a reasonable person would believe in the circumstances.”**

[37] Referring to Paragraph [33] a) above, the Panel notes that the context of NI43-101 places the onus for reporting and disclosure on “the issuer”, which in the case of these proceedings is the Company. However, it is explicitly clear in the Instrument that technical and scientific information disclosed to the public must be based on information prepared by or under the supervision of a QP or approved by a QP. It therefore follows that in order for a member of the Association who is qualified to act as a QP to fulfill his or her obligations arising under both NI43-101 and the Association’s Code of Ethics, it is necessary for the member, at a minimum, to have a working knowledge of the requirements of NI43-101, to have some degree of influence or control over the release of technical and scientific information by the issuer, and to be prepared to exercise that control. The Panel finds that a member cannot fulfill his or her obligations without such control, and in circumstances

where such control is not achievable, ought not to accept an engagement as a QP, or if already engaged as a QP, should withdraw from serving as the QP.

Allegations in the Notice of Inquiry

[38] Allegation 1 of the Notice of Inquiry alleges that Mr. Foreman is guilty of unprofessional conduct, negligence or incompetence in relation to:

- a) The release of information to the public in circumstances where he knew or ought to have known that the information is misleading, inaccurate or insufficiently qualified;
- b) The release of information to the public in circumstances where he knew or ought to have known that it was contrary to the requirements of NI43-101;
- c) Engaging in this conduct while he was part of the Company management.

[39] Allegation 2 of the NOI further alleges that Mr. Foreman has demonstrated unprofessional conduct, negligence or incompetence in relation to his knowledge of whether the mine was in commercial production, and his understanding and application of the definition of commercial production published by Natural Resources Canada.

[40] Allegation 3 of the NOI alleges that Mr. Foreman's conduct in relation to Allegations 1 and 2 contravenes the Association's Code of Ethics.

[41] In considering these allegations the Panel has considered firstly whether the particulars of the alleged conduct of Mr. Foreman have been proven to the requisite standard, and then whether the conduct of Mr. Foreman demonstrates unprofessional conduct, negligence or incompetence, and/or has contravened the *Code of Ethics*.

Was the Mine in Commercial Production?

[42] The documents before the Panel included a number of news releases, MD&As, the Fact Sheet and the Corporate Presentation, which contain statements to the effect that the mine was in production. The headline of the October 27, 2011 news release states, "*Silver Sun Commences Commercial Production at Cherry Hill Gold Mine*". All other occurrences of the term "production" do not include the word "commercial".

[43] The evidence indicates the following:

- a) News release of October 21, 2011: completion of bulk sampling program; approximately 100 tons of material was processed at the Discovery Day Mine's gravity circuit mill; development work is nearing completion; the Company is currently stockpiling all material extracted from the Q4 level in anticipation of shipping to the Merlin gravity/flotation mill in Grants Pass, Oregon. In this news release, Ian Foreman is named as the QP who has reviewed its content and is responsible for the technical information reported.

- b) News release of October 25, 2011: Approximately 50 pound sample was taken from the Q4 i-drift, where initial production is planned; the Company is currently stockpiling 45 tons per day of mineralized material for delivery to the 400 ton per day Merlin gravity/flotation mill located in Grants Pass. In this news release, Ian Foreman is named as the QP who has reviewed its content and is responsible for the technical information reported. It also states he is responsible for the supervision and quality control of the Company's exploration programs.
- c) News release of October 27, 2011: Silver Sun Announces Commercial Production at Cherry Hill Gold Mine; announces that production has started; production may increase over time; Company is currently stockpiling material and expects to begin trucking to Merlin Mill by mid-November. In this news release, Ian Foreman is named as the QP who has reviewed its content and is responsible for the technical information reported. It also states he is responsible for the supervision and quality control of the Company's exploration programs.
- d) Fact Sheet on the web site is dated January 3, 2012: mine commenced production in November 2011. On this Fact Sheet, Mr. Foreman is identified under the heading Management as Director, Qualified Person.
- e) News release of January 5, 2012: Company confirms that production at the Cherry Hill Mine is continuing; Company is currently trucking and stockpiling approximately 45 tons per day in anticipation of the first milling to begin at Merlin Mill towards the end of January. In this news release, Ian Foreman is named as the QP who has reviewed its content and is responsible for the technical information reported. It also states he is responsible for the supervision and quality control of the Company's exploration programs.
- f) News release of January 19, 2012: Company announces that milling of stockpiled material will begin tomorrow; approximately 200 tons of the initial 2,000 tons of material will be processed to determine the best methods for optimal recovery of gold and silver.
- g) News release of March 1, 2012: in January the Company processed about 210 tons of mineralized material to determine the best methods for optimal recovery of precious metals; Company intends to run an additional 200 tons of its mineralized material to further refine the extraction process in anticipation of ramping production up to 1,000 tons per month.
- h) News release of May 3, 2012: the Company has extracted approximately 2,000 tons of mineralized rock; intends to run 400 tons of material through the Grants Pass mill in May to determine the best methods for optimal recovery; goal of increasing the mining rate to 1,000 to 3,000 tons per month; Company anticipates commencing production of minimum 1,000 tons per month in June. In this news release, Ian Foreman is named as the QP who has reviewed its content and is responsible for the technical information reported. It also states he is responsible for the supervision and quality control of the Company's sampling programs.

- i) News release of October 3, 2012: Company has begun to truck 1,000 tons of mineralized material to Grants Pass for immediate processing at the Merlin Mill; concentrates to be delivered to a refiner for final sale; more efficient system may allow the Company to expand its production capabilities beyond 1,000 tons per month if desired.
- j) October 13, 2012: A cease and desist order was issued to the mine by the US Forest Service (“USFS”). The order was not provided to the Panel, so its scope is unknown. Some mining activity continued in a manner apparently intended to conceal it from the USFS.
- k) October 30, 2012: milling agreement was executed between the Company’s US subsidiary and Sexton and Wilcox; scope *“Includes each and every step and stage needed to bring the bulk test product ore to a final saleable state called Concentrate to determine the feasibility of this milling project”*.
- l) News release January 24, 2013: trucking of the stockpile to the mill in Grants Pass is complete and milling is continuing; delivery was delayed due to logistics, inclement weather and required rehabilitation of the mill.
- m) January-February 2013: milling began but was interrupted due to breakdown of the mill; the Company discovered irregularities with the milling process.
- n) February 2013: extraction of ore ceased, personnel were laid off, mine was shut down.
- o) March 2013 Corporate Presentation: mine is in production. In this Corporate Presentation, Mr. Foreman is identified under the heading Board of Directors, as a Director.
- p) August 22, 2013: BC Securities Commission sent a letter to the Company advising of its concern regarding a number of disclosure and filing issues, and directing the Company to issue a clarifying news release.
- q) August 28, 2013: Company issues MD&A for the year ended April 30, 2013, in which it first discloses that mining at Cherry Hill has yet to re-start. Ian Foreman is identified as a director of the Company and the Company’s QP, pursuant to NI43-101.
- r) September 4, 2013: BCSC issued a cease trading order against the Company.
- s) News release issued October 29, 2013 as a result of a review by the BCSC clarifying the October 27, 2011 news release: Company extracted over 2,000 tonne (sic) during a four month period; consistent production levels were not maintained; Company did not reach its projected production goals; mining has yet to re-start; the Company is currently not in commercial production.

- t) Second news release issued October 29, 2013 as a result of a review by the BCSC: Company retracts the previous disclosure in the Fact Sheet and Corporate Presentation regarding an estimated resource; the Company does not have a current resource; the Company failed to properly report the previously disclosed estimate to be a historical estimate; the historical estimate was not suitable for public disclosure; critical information was omitted. Company retracts previous disclosure regarding anticipated productions costs, average grade, production rates, gross quarterly sales. Ian Foreman is named as a director of the company and QP, and approved the information in the news release.

[44] Ms. McCombe provided her opinion on when a mine is considered to have “commenced commercial production” or be “in production”, and quoted from *International Financial Reporting Standards* and *International Accounting Standard 16*. Among the factors to be considered are:

- a) Whether it is probable that future economic benefits associated with the mine and associated facilities will flow to the entity;
- b) Whether the cost can be measured reliably;
- c) Whether the mine is capable of being operated in the manner intended by management;
- d) Whether it is available for use;
- e) Whether the company can start repaying debt;
- f) Whether the mine is capable of providing the design plant feed on a sustainable basis.

[45] Ms. McCombe also described a test used by Natural Resources Canada to determine the date of commencement of commercial production, which is the first day of a period of 90 consecutive days during which the mill that serves the mine should have produced at 60% or above its designed capacity. She opined that “*it is normal and customary practice in the industry to declare commercial production at the start of the testing period on a retroactive basis.*”

[46] She further opined that the Cherry Hill Gold Mine was not in commercial production at any time during the period October 27, 2011 and October 29, 2013. Her opinion was based on a number of news releases between October 27, 2011 and October 29, 2013, which are described above.

[47] Mr. Foreman testified that the mine was in fact “in production”. He further testified that the terms “commercial production” and “production” have very different definitions. He argued that it is common knowledge in the industry that the terms are distinctly different. He argued that the Association has not proven that the mine was not in production. He

argued that the term “commercial production” was used only once, and that in his role as QP he prevented the further use of the term “commercial production”, and caused the Company to use the term “production”.

[48] In her testimony Ms. McCombe opined that, *“based on my experience, the terms are very similar, if not identical.”*

[49] Mr. Foreman testified that the purpose of the 1000 ton sample was that it was intended to be the first of a series of ongoing 1,000 ton samples going to the mill and that the purpose or the intent of those 1,000 ton samples was to create a saleable product and to sell the material because the 210 ton sample had shown that a saleable product was producible and so it was a question, then, of producing a sufficient quantity of that material to sell.

[50] During Mr. Foreman’s cross-examination the following exchange occurred, referring to the Fact Sheet:

Q Well, what you can do is you can tell us what your view at the time was of what was being intended to be conveyed here. And what I’m suggesting to you was that at the time this was issued with your knowledge, you understood then that this conveyed something more than simply the mine was taking mineralized material out of the ground. A I believe that the use of the term "production" and "producer" was that it would be creating a saleable product.

Q Now, I appreciate at the time this fact sheet was issued it was the intention of the company to create a saleable product, but as of January 3rd, 2012 it had not achieved that yet; correct?

A Correct.

Q And, indeed, as we’ve seen from the press releases we looked at a few moments ago, milling at Grants Pass had not commenced as of January 3rd, 2012; correct?

A Correct.

Q And as of the date of this fact sheet, the company did not know how much gold was in the deposit; correct?

A Correct.

Q And it did not know as of the date of this fact sheet whether or not it would be able to extract gold profitably?

A Correct.

[51] Mr. Foreman stated in his letter to the Association of November 21, 2013 that he was shown a definition of commercial production as defined by National (*sic*) Resources Canada (correctly Natural Resources Canada, “NRCan”) and that the key point was that it was to be determined on the first day (or commencement) of production. He states in his letter that he relied on this definition, advice from the Company’s corporate lawyer, and a statement of no objections from the Investment Industry Regulatory Organization of Canada and was thus of the opinion that that was sufficient confirmation to allow his name to appear in the news release. At the hearing Mr. Foreman testified that that statement in the letter was untrue and that he regretted making that statement.

[52] In assessing whether the mine was in production or commercial production as those terms are used in the news releases, the Fact Sheet and the Corporate Presentation, the Panel was guided by the objective standard of reasonableness as defined by the Companion Policy to NI43-101, Paragraph 1.8:

“Objective Standard of Reasonableness – Issuers should apply an objective standard of reasonableness in making a determination about the definitions or application of a requirement in the Instrument. Where a determination turns on reasonableness, the test is what a person acting reasonably would conclude. It is not sufficient for an officer of an issuer or a qualified person to determine that he or she personally believes the matter under consideration. The person must form an opinion as to what a reasonable person would believe in the circumstances.”

[53] The Panel concludes that a reasonable person reading the news releases and Fact Sheet would not distinguish between the terms “production” and “commercial production” in any significant way. The Panel also concludes that a reasonable person reading the news releases would be led to believe that the mine is in state of producing a saleable product on a reasonably sustained basis with the expectation of generating a revenue stream.

[54] The Panel concludes that a reasonable person, and in particular a person who has accepted the role of a Qualified Person, applying the NRCan definition of “commercial production” would realize that some level of sustained production approaching 90 days would be necessary before he or she could support a declaration that the mine was in production.

[55] The Panel finds that the mine was not in a state of “production” or of “commercial production” at any time during the period of October 27, 2011 and October 29, 2013. The Panel accepts the opinion of Ms. McCombe in this regard. The Panel finds, on a balance of probabilities, that the Company was in fact extracting mineralized material from the mine primarily for the purpose of conducting a test milling process to optimize and refine the extraction process, to assess the feasibility of future milling parameters, and to assess the quantity of gold that could be extracted from mined material. This finding is consistent with the characterization used in the news releases of January 19, March 1 and May 3, 2012 and the contract between the Company and Sexton and Wilcox. The Panel concludes that prior to October 29, 2013 the Company was not in a position to know whether it would be able to produce a saleable product on a sustained and profitable basis, and therefore finds, contrary to Mr. Foreman’s testimony, that the mine was not “in production” for the purpose of producing a saleable product.

[56] The Panel notes that on October 13, 2012 work at the mine was curtailed as a result of the USFS cease and desist order, and that in February 2013 the operations were terminated and the employees laid off. The first public disclosure of these events by the Company was the MD&A issued on August 28, 2013, and a news release of October 29, 2013 which was issued at the direction of the BC Securities Commission.

Did the Mine have a Mineral Resource?

[57] In her expert report Ms. McCombe stated that the terms Mineral Resource and Mineral Reserve are key concepts in mining, and that a *“Mineral Resource is a concentration of solid material of economic interest in or on the earth’s crust in such form, quality, and quantity that there are reasonable prospects for eventual economic extraction. The location, quantity, grade or quality, continuity and other geological characteristics of a Mineral Resource are known, estimated, or interpreted from specific geological evidence and knowledge including sampling.”*

[58] The Company has not stated in any of its disclosure that it had a Mineral Resource. The Association argues that the presence of a Mineral Resource is implied by the contents of the Fact Sheet and the Corporate Presentation. Specifically the following statements are made in those documents:

- a) *“California’s Newest Gold Producer”;*
- b) *“High grade underground quartz lode mine”;*
- c) *“130,000 oz. gold “internally” estimated (non 43-101)”*
- d) *“Low cost producer – anticipated at less than \$200/ton”.*

[59] The Strickland Report of May 22, 2012 concludes that, *“The structures that determine the mineral distribution in the area are not completely understood and requires further analysis via a focused drill/mapping program. ... The focused drill program objectives will be to establish vein continuity, to understand the role of structural offsets, to identify mineralization, and to explore the potential of parallel mineral hosted shear zones.”*

[60] During Mr. Foreman’s cross-examination the following exchange took place:

Q All right. You would agree that at the time of first publication of this fact sheet, which as you say was about three and a half years ago, the Cherry Hill Mine had not been categorized as a mineral resource or a mineral reserve; correct?

A It would not have been categorized as a current mineral resource or mineral reserve, correct.

Q Well, you just added the word "current" to your answer, which was not part of my question. So why did you do that?

A Because this refers to a pre-existing resource that should have been termed as a historic resource.

[61] In its news releases of October 25 and 27, 2011, the Company stated that *“There are no known reserves at Cherry Hill and Silver Sun has not yet reported any mineral resources in compliance with National Instrument 43-101 ... There can be no assurance that any mineral*

resource will be delineated at Cherry Hill.” In these news releases, Ian Foreman is named as the QP who has reviewed the content and is responsible for the technical information reported. They also state he is responsible for the supervision and quality control of the Company’s exploration programs.

[62] In its news release of October 29, 2013, the Company retracted the disclosures made in the Fact Sheet and the Corporate Presentation and stated that the Company does not have a current mineral resource of any type for the Cherry Hill property. Ian Foreman is named as a director of the company and QP, and approved the information in the news release.

[63] The Panel finds that there was no known Mineral Resource at the Cherry Hill property between October 25, 2011 and October 29, 2013. The Panel also finds that, applying the objective standard of reasonableness called for in the Companion Policy to NI43-101, a reasonable person reading the Fact Sheet and the Corporate Presentation would conclude that there was a Mineral Resource on the property.

Were the Company’s Internal Estimates of the Quantity of Gold Substantiated?

[64] The Fact Sheet and the Corporate Presentation disclose the following:

- a) *“130,000 oz. gold “internally” estimated (non 43-101)”*
- b) *“Metallurgy tests indicate recoveries of 95% for gold and 87% for silver”;*
- c) *“Average grade 0.25 – 0.30 oz/ton Au with highlight samples greater than 2 oz/ton”;*

[65] Mr. Foreman testified that during the Company’s attempts to respond to concerns raised by the BC Securities Commission in August and September 2013 it came to his attention that the “internal” resource estimate did not fit with the requirements of NI43-101, and that NI43-101 required the information contained in the Fact Sheet and Corporate Presentation to be termed an historic resource estimate.

[66] Mr. Foreman testified that that the information contained in a September 27, 2006 letter from Robert L. Hill to Richard F. Lyon fulfilled the definition of an historic resource, and that this was the historic resource in question and the source of the information that was improperly labelled as an internal resource in the Fact Sheet and the Corporate Presentation.

[67] The September 27, 2006 letter authored by Bob Hill states,

“Using the above tonnage figures, and assuming continuity of the Queen Vein between the WQ#3 and CH#1 workings, there is potential for 135,000 tons ore from the Queen Vein between these levels (assumes ¼ of the vein material remaining between the EQ#2 and WQ#3 levels). An average of 1 OPT Au gives an estimate of 135,000 ounces Au for this portion of the Queen Vein. In my view, this estimate is conservative.”

[68] Included with this letter in the documents provided to the Panel by Mr. Foreman is a report entitled “*CHERRY HILL MINE, Greenhorn Mining District, Siskiyou County, California (Draft, R.L. Hill, CA Reg. Geologist #3386, Jan 5, 2009)*”. The report contains the following statements:

“The Queen Vein, the most prominent gold-bearing quartz vein in the Cherry Hill Mine area, is currently being explored/developed by the Cherry Hill Mining Company (principal owner, Richard Lyon of Helena, Montana; Plate 1). The vein carries free gold (and silver) reportedly averaging 1 ounce Au/ton (from local newspaper articles and reported personal communications with mine owners/operators) during periods of mining (1892-1905; 1909-1912; 1925(?); 1931(?); 1941(?); 1944). ... I have not reviewed these data, but have requested that Richard obtain the data (assays, sample descriptions, locations, methods, assay Laboratory, check samples) if possible.”

“VOLUME AND TONNAGE ESTIMATES

Evaluating narrow vein systems is difficult, and although current data are insufficient for estimating reserves associated with this deposit, an estimate of the resource potential is possible given certain assumptions.”

“It is my opinion that targeting this portion of the Queen Vein with commitment of a relatively modest amount of work (mining and milling) would make it possible to determine if additional exploration/development is warranted or if it is no longer feasible to continue at a desirable level of operations at the Cherry Hill Mine.”

“Establishment of reserves associated with narrow vein systems is difficult, and, if initial exploration of the Queen Vein proves favorable, reserve estimates can be made and improved upon with subsequent drifting and raising (in ore) on the vein from the WQ#4 level.”

The report also contains a list of references (newspaper articles, publications and Cherry Hill Mining Company reports) dated from 1892 through 2003.

[69] The Panel notes that the information provided by Robert Hill is highly qualified, and concludes that the estimates he has presented are not substantiated on the basis of sound evidence and analysis. In order for his estimates to be interpreted in the proper context, the qualifiers stated by Mr. Hill must be considered.

Had an Economic Analysis Been Conducted and Were the Disclosed Operational Projections Supportable?

[70] The Corporate Presentation discloses the following information:

Project Overview:

- a) *“Average grade 0.25 – 0.30 oz/ton Au with highlight samples greater than 2 oz/ton”;*
- b) *“130,000 oz. gold (internal non-43-101 estimated potential)”*

c) *“Current mine plan on Q4 level outlines more than 2 years of production”*;

Operational Overview:

d) *“Low cost producer”*;

e) *“Metallurgy testing indicates recoveries of up to 95% for gold and 87% for silver”*;

12 Month Project Objectives:

f) *“Increase production rate to 1,000-3,000 tons per month”*;

g) *“Produce 500 oz gold per month”*;

h) *“+ \$2.0 million per Quarter gross sales”*;

[71] Ms. McCombe opined that Section 2.3(1) (b) of NI43-101 prohibits the disclosure of the results of an economic analysis that includes or is based on inferred mineral resources, a historical estimate, or an exploration target. She further opined that the results of the economic analysis disclosed in the Fact Sheet includes projection of mine life, production rates, gold production, gross sales, and cost. On reading the relevant sections of NI43-101 the Panel concurs that the release of such information based on inferred resources or historical estimates is prohibited.

[72] Mr. Foreman wrote in his November 21, 2013 letter to the Association that he was unaware of restrictions placed by NI43-101 on the publication of projected mine life, production rates, gold production, gross sales, and costs without an economic analysis. He stated that the statistics in question were not based on the historic resource but rather on previous mining activity.

[73] Mr. Foreman did not contest the suggestion that the disclosed data would imply that an economic analysis had been done. He testified during his cross-examination that publication of the Project Objectives stating increased production rates, 500 oz. gold per month, and +\$2.0 million per quarter gross sales made him uncomfortable, and that little or no action was taken by him or the Company to verify these economic projections.

[74] The Panel considered whether this information would constitute an economic analysis. It was again guided by the objective standard of reasonableness defined in the Companion Policy to NI43-101 and the opinion of Ms. McCombe. The Panel finds that projections of mine life, costs of production, and monthly production objectives would require some form of economic analysis to have been done. On this basis the Panel concludes that a reasonable person reading the Corporate Presentation would be led to believe that the disclosed information was based on an economic analysis.

[75] The Panel also finds on a balance of probabilities that the Company had no economic analysis available to support the disclosed information in the Corporate Presentation, some of which also appears in the Fact Sheet.

Was Information Disclosed Contrary to National Instrument 43-101?

- [76] Mr. Foreman has admitted in his letter to the Association of November 21, 2013 and in his testimony that some of the information disclosed by the Company was contrary to the requirements of NI43-101. He does, however, challenge whether such non-compliant disclosure constitutes unprofessional conduct, incompetence or negligence on his part.
- [77] The Company in its news release of October 29, 2013 admitted that certain information previously disclosed was not in compliance with NI43-101. The same news release names Ian Foreman as the QP who approved the technical information in the news release.
- [78] Ms. McCombe has opined that there are a number of instances of non-compliance with NI43-101 regarding information disclosed in many of the news releases, the Fact Sheet and the Corporate Presentation.
- [79] In reviewing all of the relevant evidence, the Panel finds that the disclosures referred to in Paragraphs 1 (b) (i) through (vi) of the Notice of Inquiry were made contrary to the requirements of NI43-101.

Was Mr. Foreman Part of Management?

- [80] The Association has alleged at Paragraph 1(c) of the NOI that Mr. Foreman is guilty of unprofessional conduct, negligence or incompetence by engaging in the activities set out in Paragraphs 1(a) and 1(b) of the NOI at a time when he was also part of the Company's management.
- [81] There are a number of references in the news releases and the Corporate Presentation naming Mr. Foreman as a director of the Company. He was also a member of the Company's Audit Committee. Furthermore, Mr. Foreman is identified in the Fact Sheet and several of the MD&As as part of the Company's management team.
- [82] Again being guided by the objective standard of reasonableness, the Panel finds that readers of these documents would reasonably conclude that Mr. Foreman was part of the Company's management.
- [83] Mr. Foreman has argued that as a director he had no management role, nor did he have any control or influence over operational decisions that would be made by management.
- [84] In considering the Association's allegations and Mr. Foreman's testimony, the Panel concludes that if the allegations in Paragraphs 1(a) and 1(b) of the NOI are proven, the fact that Mr. Foreman was or was not part of the Company's management would not be material to the findings.

Was the Information Released by the Company Misleading, Inaccurate or Insufficiently Qualified?

[85] The Panel has found that the mine was not in production or commercial production at any time during the period October 27, 2011 until October 29, 2013. Furthermore, extraction of mineralized material from the mine ceased as of February 2013, a fact which was not disclosed to the public until August 28 and October 29, 2013. The Panel finds that references to the mine being in production and/or commercial production, and that production is expected to increase, as stated in the news releases, Fact Sheet, Corporate Presentation and the MD&As were misleading. The Panel also finds that the failure to disclose the curtailment of activity at the mine until some six to eight months later was also misleading.

[86] The Panel finds that information disclosed regarding the quantity of gold in the deposit, the cost of production, the expected length of production and the average grade of the deposit is misleading and insufficiently supported.

Mr. Foreman's Evidence and Defenses

[87] Mr. Foreman raised several defenses to his conduct.

[88] Regarding the violations of NI43-101, Mr. Foreman admitted that violations occurred, but argued that they do not constitute unprofessional conduct on his part. He submitted that violations are common in the industry, and presented evidence to support this submission. Indeed, Ms. McCombe agreed that violations are "prevalent". Mr. Foreman submitted that because such conduct is commonplace, his own comparable conduct is not unprofessional.

[89] The Panel rejects this submission. The standard of conduct expected of members of the Association is defined by the *Code of Ethics* and the Bylaws of the Association. If the conduct of members does not accord with the required standards, it cannot be considered acceptable regardless of the alleged conduct of others.

[90] Mr. Foreman submitted that he conducted himself appropriately in that:

- a) He made efforts to prevent the use of the term "commercial production" after the first instance, and caused the company to use the term "production" thereafter, which he submits is a distinct term with a different meaning. Mr. Foreman presented no evidence to support this submission.
- b) He took active steps to correct all of the infractions when they were brought to his attention, and that all of the disclosures were corrected in the public record (referring to the news releases of October 29, 2013) before the complaint was made against him.

The improper disclosures occurred a number of times over a period of two years. The Panel finds, supported by the opinion of Ms. McCombe, that the very purpose of NI43-101 and the appointment of a QP is to prevent such improper disclosures. The QP has a professional responsibility to not only take reasonable steps to prevent such improper

disclosures, but also to take appropriate action in circumstances when improper disclosures do occur. Through the application of NI43-101, the public relies on the QP to ensure the veracity of technical information released by an issuer. Mr. Foreman's defense is not accepted by the Panel. It is not sufficient to wait until a third party brings an improper disclosure to the QP's attention before taking corrective action.

[91] Mr. Foreman states that he remains unaware as to how he, as the QP, could have made management put out a news release when there was unwillingness to do so. He states that he could have resigned from the Company but he thought it would be imprudent to do so because the Company still required technical support and he could provide more input from within. However, he presented no documentary evidence that he in fact took any active steps to prevent or correct improper disclosure by the Company.

[92] The Panel finds that the appropriate action in these circumstances is embodied in the Association's *Code of Ethics Guidelines*, of which Mr. Foreman should have been aware. It states:

"A member has continuing obligations although his or her recommendations may be overruled by others. When members find themselves in a situation where their recommendation is being questioned by a non-member, an additional element of difficulty is introduced. The non-member may lack the technical sophistication to appreciate both the rationale of the recommendation and the potential consequences of failure to accept the recommendation. In such instances the member should make all reasonable efforts to ensure that an appropriate decision is made. The member remains the last line of defence for the public welfare.

When a client or employer makes a decision that adversely affects the public interest and is contrary to the recommendation of the member, the client or employer should be informed of the consequences of the decision. If the client or employer is unavailable or unresponsive, the member should notify the appropriate regulatory authorities who have the ability to evaluate the concerns and the power to suspend activities until the technical issue is resolved."

Unprofessional Conduct

[93] The Association's *Code of Ethics Guidelines* addresses the standard of professional conduct as follows:

"The APEGBC Code of Ethics serves several purposes. It designates the standard of conduct expected of engineers and geoscientists in easily understandable terms. It distinguishes appropriate professional conduct from that which fails to meet a required standard. The Code also provides a basis on which allegations of unprofessional conduct are adjudicated by the Discipline Committee or other groups charged with responsibilities related to the conduct of members."

[94] Hence, unprofessional conduct is that which does not meet the standard expected through application of the *Code of Ethics*. The Panel accepts the submission of the Association, based on *Law Society of British Columbia v. Martin, 2005 LSBC 16*, that professional

misconduct is established when there is a marked departure from the standard to be expected of a competent professional, and that minor or inadvertent failure to comply with professional standards does not constitute unprofessional conduct.

Incompetence

[95] In considering whether a member's conduct is incompetent, the Panel was referred to *Reddy v. Association of Professional Engineers and Geoscientists of British Columbia, 2000 BCSC 88*, in which the following definition of incompetence was accepted:

"We believe it is fair to say a person who habitually fails to perform his work with the degree of skill or accuracy usually displayed by other persons regularly employed in such work is incompetent. And the same is true of one who usually performs substantially less than others regularly so employed. ... The true significance of the term "incompetency" should not be overlooked. It embraces habitual carelessness."

[96] The Panel accepts this definition of incompetence, and notes that it is consistent with previous decisions of the British Columbia courts and previous disciplinary panels of the Association.

Negligence

[97] For the purpose of considering whether a member's conduct is negligent within the meaning of s. 33(1)(c) of the Act, the Panel was referred to *Davidson v. British Columbia, [1995] B.C.J. No. 1806*, in which the following definition of negligence has been relied upon:

"... the standard of skill and care which a professional man is required to exercise may be defined as follows: that degree of skill and care which is ordinarily exercised by reasonably competent members of the profession, who have the same rank and profess the same specialization (if any) as the defendant. If the standard is formulated in this way, it is fair to both parties. The professional man will not be held liable in the absence of personal fault on his part. The client is adequately protected, because it is normally actionable negligence if a professional man undertakes work beyond his competence."

Expected Conduct of a Qualified Person

[98] National Instrument 43-101 defines the essential qualifications of a Qualified Person, and stipulates requirements and responsibilities of the QP to be fulfilled in relation to information disclosed to the public by an issuer.

[99] Mr. Foreman testified that he was not aware that NI43-101 has been made a regulation under the *Securities Act*.

[100] Referring to Paragraph [33] a) above, the Panel notes that the context of NI43-101 places the onus for reporting and disclosure on "the issuer", which in the case of these proceedings is the Company. However, it is explicitly clear in the instrument that technical and scientific information disclosed to the public must be based on information prepared by

or under the supervision of a QP or approved by a QP. Indeed, Mr. Holland and Ms. McCombe have characterized the role of the QP as a “gatekeeper” for information released to the public.

[101] On this point Mr. Foreman testified:

“But in my role, I see my role primarily as the person to vet news releases. That's how I've always seen my role in Golden Sun. I am a gatekeeper of information that goes out to the public via news releases, and that's the first and foremost role I have.”

[102] Mr. Foreman testified that he took steps to verify the information that was released to the public, but he has provided no documentary evidence to support that assertion other than copies of various laboratory reports. The Panel expects that it would be reasonable for a competent professional to prepare and retain records of his work and his correspondence to support his review and his assessment of the veracity of information disclosed under NI43-101 requirements and in the role as a QP.

[103] Mr. Foreman also testified that as the Company's QP he had no control over the content and timing of information released to the public, even though he stated that at times he was “uncomfortable” with the information or the manner in which it was presented. He stated that on a number of occasions he had conversations with the Company management, primarily Mr. McLeary, regarding his discomfort with the information being released, and the use of his (Mr. Foreman's) name as the QP who had reviewed and verified the technical information being released. He testified that after the cessation of operations at the mine in February 2013 he recommended to Mr. McLeary that the Company issue a news release to that effect, but that those efforts were unsuccessful. Mr. Foreman also testified that other than conversations with Mr. McLeary, he took no significant action with respect to the release of information with which he was not comfortable. Furthermore, Mr. Foreman presented no documentary evidence to support his assertions or actions in this regard.

[104] The Panel heard evidence from Ms. McCombe and Mr. Strickland regarding the appropriate action to be taken in cases where the issuer issues information that has not been properly reviewed and approved by the QP. Ms. McCombe opined that in the first instance the QP should raise the issue with the issuer, and that if appropriate action is not taken, the QP has a professional duty to advise the regulators, the securities commission and the stock exchange. Mr. Strickland testified that he encountered one circumstance in which he became uncomfortable with information being released ostensibly under his review, and that once he formally took it up with the issuer's management the improper releases stopped. As stated above at Paragraph [92], the Association's *Code of Ethics Guidelines* addresses this type of situation directly and provides guidance on the appropriate action to be taken by a member.

[105] The Panel was also referred to a previous decision of a Disciplinary Committee Panel: *Dr. P.W. Richardson, P.Eng., 1989*. That panel stated in its decision:

“When the [redacted] group was making technical decisions with little or no input from Richardson, he ceased to fulfill the role as Senior Technical person of the [redacted] Mines

organization. However, by continuing in the position, he lent his name and reputation to subsequent events which included the news releases.

There was no evidence in front of the Panel that Richardson had ever publicly disassociated himself from the disseminated information on the mine.

...

Even though, as in the current case, the individual was not employed on a full-time basis, it is incumbent on the individual to declare fully the facts, or at least to publicly disassociate himself from disseminated information.

...

If statements are not verifiable, the engineer must take steps to publicly correct the information at source. A promoter may present facts in their “best light”, but an Engineer must be sure the facts are verifiable and true. Anything less is not acceptable to the profession or to the public.”

[106] The Panel was also referred to a decision of the Association’s Council acting as a Disciplinary Panel: *C.M. Ulrich, P.Eng., 1985*. The Council made the following comments in its decision:

“Members should note that it is not necessary for injury, either physical or financial, to be incurred by either the public or an Engineer’s client in order for an Engineer’s conduct to be considered unethical. At all times, but particularly when publicly traded companies are involved, it is important that an Engineer recognizes his duty to the public as well as to his client.

...

When an Engineer makes a presentation to the public, or is part of such a presentation, he is presenting professional opinions. When his presentation is part of a shareholders’ meeting of the public company, it is even more critical that the Engineer’s statements and any qualifications must be completely clear. If public statements made by others are in error, and the Engineer is unable to correct these statements, he must be prepared to publicly disassociate himself from the forum as his continued presence infers support for the incorrect statements.”

[107] Referring to Paragraph [37] above, the Panel concludes that a member cannot fulfill his or her obligations without a reasonable degree of control or influence over the release of technical or scientific information, and without such control ought not to accept an engagement as a QP. If, after accepting an engagement as a QP, the member subsequently finds that he or she has insufficient control or influence over the release of technical or scientific information to ensure compliance with NI43-101, the member should not continue in the role of the QP.

[108] The Panel finds that in circumstances where incorrect, inaccurate or misleading information is disseminated to the public by an issuer, a member who is the designated QP must take reasonable steps to correct the public record. If this cannot be done the member must publicly disassociate him/herself from the information, and where necessary report the circumstances to an appropriate regulatory agency.

[109] The Panel finds that Mr. Foreman failed to exercise a reasonable degree of control or influence over the release of technical information by the Company. When he found the Company to be unresponsive to his concerns about the disclosed information, Mr. Foreman failed to take reasonable steps to correct the public record, disassociate himself from the information, or to report the improper disclosures to the regulatory authorities.

DECISION OF THE PANEL

[110] After a review of the evidence, expert opinion and the arguments made by the Association and by Mr. Foreman, the Panel has concluded that the Association has proven on a balance of probabilities that Mr. Foreman demonstrated unprofessional conduct in his professional capacity as a QP in relation to his activities alleged in the Notice of Inquiry, as follows:

[111] Mr. Foreman took on the role of the Company's Qualified Person at a time when he was not sufficiently familiar with the requirements of NI43-101 and the role of a QP. In his letter to the Association of November 21, 2013 Mr. Foreman admitted that he was unaware of certain restrictions imposed by NI43-101. There are several references in his testimony to the effect that at the time of the disclosures in question, he was either not aware of, or did not give consideration to the restrictions imposed by NI43-101. Moreover, it was not until the BC Securities Commission raised concerns in August 2013, and in response to the complaint to the Association in October 2013, that Mr. Foreman took steps to adequately inform himself as to the requirements of NI43-101. In the same letter Mr. Foreman stated,

"I submit that as a result of the technical review of the Company by the BCSC that I am now intimately familiar with NI 43-101 and will be able to perform my duties as a QP to a much higher standard."

[112] With respect to the disclosed information, Mr. Foreman knew, or ought to have known that much of it was misleading, inaccurate, or insufficiently qualified, and furthermore that much of it was disclosed contrary to the requirements of NI43-101. These disclosures occurred repeatedly in news releases, the Fact Sheet, the Corporate Presentation and in several MD&S between October 2011 and March 2013. The Panel concluded from the evidence that Mr. Foreman acquiesced to the disclosure of misleading, inaccurate or insufficiently qualified information with which he was not comfortable, and took no appropriate action outside of the Company to correct the information, to disassociate himself from it, or to report the occurrences to the appropriate regulatory authorities. The Panel also finds that on a balance of probabilities that Mr. Foreman in his role as a director of the Company permitted and/or participated in the improper disclosures.

[113] The Panel finds that Mr. Foreman improperly relied on a definition of “commercial production” published by Natural Resources Canada when he did not properly understand it, and/or applied it improperly.

[114] The Panel finds that Mr. Foreman’s conduct constitutes a marked departure from the expected standard of conduct of a member, and therefore determines that he has demonstrated unprofessional conduct within the meaning of s. 33(1)(c) of the Act in respect of allegations 1(a), 1(b), and 2 of the Notice of Inquiry.

[115] The Panel finds that throughout the period from mid-2011 through October 29, 2013 Mr. Foreman consistently failed to fulfill his duties as a QP in a manner commensurate with that expected of a competent professional who takes on the role of a QP. Despite having numerous opportunities to take appropriate action in the face of improper disclosures, Mr. Foreman failed to act in the public interest. In this regard Mr. Foreman did not act with the degree of care and skill expected of reasonably competent members of the profession. He did, in fact, fail to act with due regard to the public welfare. On this basis the Panel concludes that Mr. Foreman’s conduct demonstrated incompetence and negligence within the meaning of s. 33(1)(c) of the Act in respect of allegations 1(a), 1(b) and 2 of the Notice of Inquiry.

[116] The Panel finds that Mr. Foreman has contravened the Association’s *Code of Ethics*, as alleged in Paragraph 3 of the NOI. During the period from mid-2011 until October 29, 2013 Mr. Foreman did not act with fidelity to the public needs, did not uphold the values of truth, honesty and trustworthiness, and did not conduct himself with fairness to others, i.e. those members of the public relying on information disclosed by the Company. He accepted responsibility for a professional assignment when he was not sufficiently familiar with the requirements of NI34-101 and did not take timely action to adequately inform himself of its requirements. He acquiesced, permitted and/or participated in the release of misleading, inaccurate or insufficiently qualified information and did not take appropriate or timely action to correct it.

DETERMINATION OF PENALTY AND COSTS

[117] The Panel, having made findings of unprofessional conduct, incompetence, negligence, and breach of the *Code of Ethics* against Mr. Foreman, it is now required to determine what disciplinary action should flow from that finding, and what (if any) order should be made as to costs. The Panel therefore directs that the Association provide it, and Mr. Foreman, with a written submission as to: (1) the appropriate disciplinary action to be taken pursuant to s. 33(2) of the Act; and (2) the appropriate costs payable pursuant to s. 35 of the Act. The submission should be provided within 21 days of the date of this decision. Mr. Foreman should respond to the Association's submission on disciplinary action and costs with a written submission of his own within 21 days of receiving the Association's submission. If, after delivery of the written submissions, either party requests a hearing before the Panel on disciplinary action and costs, they may make that request in writing to the Panel and the Panel will schedule a hearing.

Dated this 25th day of August, 2015.

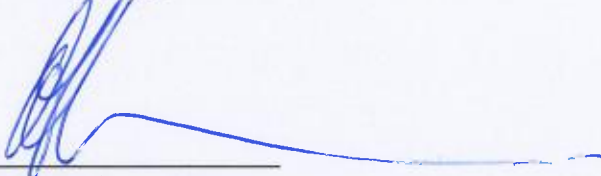
Discipline Committee Panel:



Neil A. Cumming, P. Eng.
Chair



Ronald Yaworsky, P.Eng.



Oliver Bonham, P. Geo.