



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

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Re: Multilateral CSA Notice 45-312 - *Proposed Prospectus Exemption for Distributions to Existing Security Holders* (“Proposed Existing Shareholder Exemption”)

Dear Sirs/Mesdames:

This letter is submitted on behalf of the Prospectors & Developers Association of Canada (“PDAC”) in response to the invitation to comment on the Proposed Existing Shareholder Exemption.

The Prospectors & Developers Association of Canada (PDAC) is the national voice of the Canadian mineral exploration and development community. With a membership of over 9,000 individual and 1,250 corporate members, the PDAC’s mission is to promote a responsible, vibrant and sustainable Canadian mineral exploration and development sector. The PDAC encourages leading practices in technical, environmental, safety and social performance in Canada and internationally. The PDAC is also known worldwide for its annual convention, regarded as the premier event for mineral industry professionals. The PDAC Convention has attracted over 30,000 people from 125 countries in recent years and will next be held March 2-5, 2014, at the Metro Toronto Convention Centre in downtown Toronto.



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The PDAC has long been an advocate for regulatory reforms that facilitate capital-raising. These reforms are even more necessary now, as mineral exploration companies experience a profound capital-raising crisis. Data from the TMX (pro-rated based on September 30 data) highlights how the volume and value of financings are at their lowest level in years: just over 1200 financings are projected to have been completed by companies listed on the TSX-V; one of the lowest levels since 1999. The total value of TSX-V financings is projected to be ~6.3 billion, one of the lowest since 2005.

The percentage of smaller financings has also increased. In the first three quarters of 2013, 11% of financings were for \$100,000 or less (vs. 5% in 2012 and only 0.5% in 2010). Approximately 50% of all financings in 2013 were for raises at or below \$500,000 (32% in 2012, 13% in 2010). Financings priced at or below \$0.10 per share have accounted for 50% of the total so far in 2013 (in 2012, this value was 22% and in 2010 it was 13%). This is desperation financing we're seeing, to keep the lights on.

Most worryingly - as of November 2013, according to newsletter writer John Kaiser, 46% of TSX-V listed companies had working capital of less than \$200,000, up from 35% one year previously.

As such, PDAC strongly supports this proposal which would, subject to certain conditions, allow issuers listed on the TSX Venture Exchange (TSXV) to raise money by distributing securities to their existing security holders. A detailed response to each of your questions can be found in Annex A.

PDAC appreciates any initiatives designed to simplify the process of raising capital in Canada and to increase the opportunities for all investors to be able to participate in capital markets on an equitable basis. PDAC agrees with the CSA's statements with respect to the investment opportunities and disadvantages that retail investors face, including that retail investors:

- must pay market price instead of the discounted price typically available in private placements to accredited investors;
- must pay brokerage commissions; and
- are unable to acquire the warrant "sweeteners" typically issued with shares in private placements to accredited investors.

Moreover, PDAC would like to highlight the fact that retail investors are often also denied the opportunity to participate in the numerous "flow-through" financings that are one of the fundamental capital raising structures used in the mining industry. While accredited investors can take advantage of these investment opportunities and the ensuing tax benefits that go with them, the retail investor is often excluded from receiving these benefits. PDAC supports any initiatives put forth by the CSA to rectify this inequality.

This initiative, if implemented effectively, would help to address this issue and allow mineral exploration companies to access capital from a wider pool of investors without compromising the integrity of Canada's capital markets.



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PDAC appreciates this opportunity to provide our comments. If you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Gallinger". The signature is fluid and cursive, with a small mark above the "g".

Ross Gallinger, P.Ag.
Executive Director
Prospectors & Developers Association of Canada

C.c. Jim Borland, Co-chair, PDAC Securities Committee
Brian Prill, Member, PDAC Securities Committee
Nadim Kara, Senior Program Director, PDAC



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ANNEX A

1. If you are a TSXV issuer, will you use the proposed exemption?

PDAC members, no matter what exchange they are listed on, would make use of the proposed exemption.

2. Should the proposed exemption be available to issuers listed on other Canadian markets?

Our members are listed on the TSX Exchange, TSX Venture Exchange (the “TSXV”) and the Canadian Securities Exchange (“CNSX”). PDAC recommends that this exemption be available to any issuer listed on any Canadian exchange. Alternatively, if the CSA decides to restrict this exemption to venture issuers, PDAC notes that “venture issuer” with respect to stock exchanges is already a defined term in National Instrument 51-102 and is applicable to a much broader range of exchanges than just the TSXV.

3. Investors will only be able to invest \$15,000 in a 12-month period unless they obtain advice from a registered investment dealer. Is \$15,000 the right investment limit?

PDAC supports a limit on the amount a retail investor can invest under the Proposed Existing Shareholder Exemption without receiving the appropriate suitability advice from a securities registrant. However, this limit should be the greater of \$15,000 or the current market value of the securities the shareholder already holds of the particular issuer as of the record date. For example, if a shareholder has already purchased securities with a market value of \$30,000 based on information the shareholder had at the time of the purchase, then the shareholder should not be disadvantaged by any restriction that would force him/her to purchase a lesser amount.

We note that, besides issuing securities directly to existing shareholders under the proposed exemption, our members may decide to engage other agents or dealers to assist them in accessing the capital markets under this exemption. PDAC does not support any restrictions on the category of registrant they may decide to engage in an existing shareholder financing, so long as those agents or dealers are listed in the appropriate registration category set out in National Instrument 31-103 (“NI 31-103”). Given the know-your-client, know-your-product and suitability obligations of registrants under NI 31-103 and the fact that the potential purchaser is already a shareholder of the issuer, there should not be any restrictions on the category of registrant that an issuer may use to access its shareholder base under this exemption.



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4. In what circumstances would it be suitable for an investor that is a retail security holder to invest more than \$15,000 in a TSXV issuer?

PDAC believes that the limit that is set should be the greater of (i) \$15,000 or (ii) the current market value of the securities the shareholder already holds of the particular issuer. If a retail investor has received suitability advice, however, from a firm or individual registered to market securities pursuant to NI 31-103, they should be able to invest more than the limit.

5. Do you agree that there should be no investment limit if an investor receives suitability advice from a registered investment dealer?

Yes, so long as the suitability advice is received from a registrant and is not limited to investment dealers.

6. Do you agree that being a current security holder of an issuer enables an investor to make a more informed investment decision in that issuer?

Yes. The investor has already made the decision to purchase the securities of the issuer based on information the investor had received at a prior date. Subsequent to that date, the issuer has a number of continuous disclosure obligations to comply with under National Instrument 51-102 ("NI 51-102"), as well as any material change reports or press releases set out under provincial securities laws or set out under the disclosure policies of the applicable exchange. Therefore, all material information with respect to an issuer should be available on SEDAR.

7. What is the appropriate record date for the exemption? Should it be one day before the announcement of the offering or should it be a more extended period? If you think it should be a more extended period, what would be the appropriate period of time?

PDAC supports a record date in excess of one day prior to the announcement of the offering but not more than 21 days prior to date of the announcement.

However, the establishment of a record date should not cause the issuer to incur additional offering costs to identify shareholders of record that hold their securities in the name of a financial intermediary. The onus should be on the shareholder to establish that they are a shareholder of the issuer as of the record date and the issuer should be able to rely on a certificate of the shareholder to that effect.

8. We are currently proposing that the exemption be subject to the same resale restrictions as most other capital raising exemptions (i.e., a four month restricted period). However, there



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are some similarities between the proposed exemption and the rights offering exemption, which is only subject to a seasoning period.

a. Do you agree that a four month hold period is appropriate for this exemption?

The four month hold period is consistent with the four month hold period for a number of other prospectus exemptions and would be appropriate for this exemption.

b. Should we require issuers to provide additional continuous disclosure, such as an annual information form?

No. The continuous disclosure requirements are already set out in NI 51-102, where we note that annual information forms (an "AIF") are not a mandatory continuous disclosure requirement for venture issuers under existing securities laws. Therefore, an AIF should not become a mandatory continuous disclosure requirement for venture issuers merely because they decide to utilize the Proposed Existing Shareholder Exemption. We note that TSX listed issuers are already subject to the AIF requirement and, as stated above, PDAC believes that this exemption should be available to all issuers, no matter what exchange they are listed on.

c. If we were to consider a seasoning period for this exemption, should we consider some of the restrictions that apply under a prospectus-exempt rights offering, such as "claw-backs" limiting insider participation?

PDAC does not support a seasoning period.

d. If securities offered under the exemption were only subject to a seasoning period, would there be a greater need to ensure investors are made aware of and have an opportunity to participate in the offering?

PDAC does not support a seasoning period.

9. We have not proposed any conditions regarding the structure of the financing, i.e., minimum or maximum price, maximum dilution, or period in which an offering must be completed. We contemplate that the proposed financing would be conducted under the standard private placement rules of the TSXV which, among other things, allow pricing at a discount to market price. Is this appropriate or are there structural requirements that we should make a condition of the exemption?

PDAC recommends that the private placement rules of the applicable exchange should be the rules that govern a financing using the Proposed Existing Shareholder Exemption. The Proposed Existing Shareholder Exemption should be an exemption that enables existing shareholders to take advantage of the price structures and offering structures that accredited investors currently have access to with respect to the exchange the issuer is listed on. The Proposed Existing Shareholder Exemption should not become an exemption that is seldom used by issuers because of additional regulatory burden or offering costs.



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Harmonization

PDAC notes that under the current proposal, issuers and investors in Ontario will be denied access to the Proposed Existing Shareholder Exemption. PDAC encourages the Ontario Securities Commission (the "OSC") to work with the other CSA jurisdictions to provide a consistent investment climate for all investors and issuers in Canada.

PDAC encourages the CSA to continue in its efforts to develop prospectus exemptions that remove the inequities that currently exist in the current prospectus exemption regime. Along with providing greater access to exempt market securities for retail investors, PDAC encourages the CSA to work together to harmonize the prospectus exemption regime across Canada.

The lack of harmonization of prospectus exemptions has been an ongoing issue with respect to issuers and investors resident in Ontario. Historically, Ontario capital market participants are regularly denied the opportunities that their fellow Canadians have with respect to participating in certain investment opportunities because the applicable prospectus exemption is not recognized in Ontario. PDAC would be very disappointed to see that this exemption would be one more example of a prospectus exemption and investment opportunity that is denied to issuers and investors resident in Ontario.