PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

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To the Following:
Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan

Re: Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions Relating to the Offering Memorandum Exemption and in Alberta, New Brunswick and Saskatchewan, Reports of Exempt Distribution

Dear 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 changes to NI 45-106.

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 1,200 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 that is 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 be held March 1-4, 2015, at the Metro Toronto Convention Centre in downtown Toronto.

After consultations with PDAC members[1], PDAC prioritized five risks to maintaining Canada's status as the world's #1 jurisdiction for raising mining equity capital:

[1] http://www.pdac.ca/public-affairs/securities/public-affairs/2013/04/23/member-consultation-on-securities-regulatory-reform

- Exempt market rules that limit access to a broad base of investors
- The ever-increasing costs of regulatory compliance for publicly listed companies due to duplication and complexity of regulations
- A regulatory structure that is heavy-handed on regulatory requirements but light on enforcement and criminal prosecutions of fraud
- Concerns about the adverse effects of market fragmentation and technology
- A regulatory system that is slow to react to market changes

Related to these identified risks, PDAC is advocating for regulatory reforms that accomplish the following key policy goals:

- Facilitate capital-raising from a broader base of investors
- Reduce regulatory burden and compliance costs
- Improve enforcement and criminal prosecution of fraud
- Harmonize regulatory regimes across Canada

PDAC is pleased to see that a number of jurisdictions have come out with proposals to reform the exempt market, and facilitate access to capital for pre-revenue companies like those in the mineral exploration industry. The PDAC has long been an advocate for regulatory reforms that facilitate capital-raising while protecting investors.

PDAC is also calling for a simplified, proportional regime (with specific, less onerous rules) for junior exploration companies, start-ups and other pre-revenue generating industries dependent on risk-tolerant capital. This regime could rely on integrated disclosure (or simplified disclosure requirements) by removing requirements that add costs without enhancing investor protection.

These reforms are even more necessary now, as mineral exploration companies experience a profound capital-raising crisis. Globally, expenditures were down more than 20% year-over-year in 2013 (SNL-MEG). In 2013, according to Gamah International, the total value of junior financings in Canada was $6.3 billion – continuing the decreasing trend since 2010. The number of financings was down 17%, and the value of financings was down more than 50%.

Many of these financings were for very small amounts – 12% of financings on the TSX Venture Exchange (TSXV) were for $100K or less (0.5% in 2010). 52% of all financings in 2013 were for less than $500K (13% in 2010). More than half of the financings in 2013 have been priced at $0.10 per share or less (13% in 2010). This type of financing can be considered as desperation financing, enough to keep the lights on.

As at May 5, 2014, almost 60% of TSXV companies tracked by independent industry analyst John Kaiser had working capital balances under $200,000. Low working capital balances are strongly correlated with share price; for companies trading below 10 cents/share, net working capital balances were negative $1.3 billion.

General Comments

PDAC strongly supports initiatives that facilitate capital raising from a broader base of investors and harmonization of securities regulations across Canada. In that regard, we are pleased that Alberta, New Brunswick and Saskatchewan have an OM exemption.

That being said, many of the changes to the OM exemption outlined in this proposal will have a negative impact on those of our members who use the exemption to raise capital. By limiting the amount that can be raised and increasing the filing requirements, junior mining companies will face additional cost that are already excessive, particularly at a time when the industry is facing financing difficulties. For small exploration companies without any revenues, every dollar spent on unnecessary compliance costs is a dollar that could be spent looking for the minerals and metals that make modern life possible. We provide more detailed comments below.

Specific Comments on Proposed Amendments

In support of our position to facilitate capital raising by expanding the investor base, we are providing detailed responses to your questions:

1. Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the $10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the $10,000 limit if they do not qualify as an eligible investor? Please explain.

Response: No, the risk tolerance of an individual is different than that of a non-individual investor such as companies. The ability for a company to absorb investment losses could be very different than an individual investor. For instance,

2. Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than $30,000 per year under the OM Exemption? If so, please describe them.

Response: Yes. The data in Annex B "Background – Local Experience with OM Exemption" indicates that in Alberta, "The average size of an investment by an individual investor (assumed to be an "eligible investor" because of an investment of more than $10,000) in 2011 and 2012 was approximately $45,700 and $47,900 respectively, while the median was approximately $26,200 and $27,500 respectively.

3. Given the costs associated with doing so, how likely is it that an individual would create a corporation or other entity to circumvent the $30,000 cap?

Response: It is unlikely that an individual would circumvent the $30,000 cap by creating a corporation given the associated costs. Data from Alberta in Annex B indicates that only 5.9% of investors were corporations and the median investment for individuals was $27,500 in 2012 for eligible investors. That being said, if the proposed cap is imposed and there is a lucrative investment opportunity through the OM exemption, then a person may be attracted to pursue the option of creating a corporation. However, we can also assume the investor in this case is sophisticated enough to understand the risk of the $30,000 or more investment better than someone who will not pursue creating a corporation for the sake of circumventing the $30,000 cap.

4. Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?

Response: Investors seeking advice from registered investment dealers either have large amounts of capital to invest or are not comfortable with their knowledge when it comes to making certain investment decisions or both. Since registrants can also provide similar advice, investor qualification should be expanded to receiving advice from a "registrant".

Complications can arise if the advisor does not disclose the incentive structures (in addition to commissions) for selling the investment product.

We would encourage regulators to invest in robust enforcement rather than putting in place regulations that restrict access to capital by limiting the ability of investors to qualify as eligible investors through seeking advice.

5. The eligible investor definition includes persons that have a net income of $75,000 and persons that have net assets of $400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.

(a) Should the $75,000 income threshold only apply to individuals? If so, please explain.

Response: Yes. See response to Q1

(b) Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the $400,000 net asset threshold be lowered as a result?

Response: No, the net asset amount should not exclude the value of the principal residence. Net asset by definition includes all assets a person owns and a principal residence should qualify. If the principal residence is excluded, then the $400,000 net asset threshold should be lowered to a level that will not decrease the total number of eligible investors.

(c) Should pensions be included in the net asset test under the OM Exemption? Please provide the basis for your answer.

Response: Yes. Pension plans are part of an individual's net asset and therefore be included in the net asset test. Investment decisions and risk tolerance are based on a person's overall portfolio of investments, which includes retirement portfolio.

6. The FCAA would appreciate feedback on whether lawyers and public accountants should continue to be considered "eligibility advisers" in Saskatchewan for purposes of the OM Exemption? Please provide the basis for your opinion.

Response: Yes. Lawyers and accountants are better positioned to understand the risks associated with investing through an OM Exemption. We would like the "eligibility advisers" to be expanded to other professionals such as economists, financial analysts and other finance related professions. PDAC has advocated for a broader definition of "eligible investors" and expanding the term "eligibility advisers" to include other finance related professions is a logical step to increase investor participation in the exempt markets.

7. How common is it for an issuer that relies on the OM Exemption to make annual financial statements available to security holders?

(a) How is this done? Are they delivered?

Response: We do not have such data. However, we agree that there should be sharing of such information with investors investing under the OM Exemption.

(b) Are those financial statements typically audited?

Response: We do not have such data. We do not support having annual statements audited given the additional cost to small issuers.

(c) If the financial statements are not typically audited, is there an auditor involved and, if so, what standard of engagement is typically applied?

Response: We do not have this data.

(d) Do issuers that prepared financial statements in accordance with IFRS for inclusion in their OMs typically continue to prepare financial statements in accordance with IFRS or do they transition to generally accepted accounting principles for private enterprises (ASPE)?

Response: We do not have such data.

(e) Is it common for security holders to request annual financial statements? Do they request audited financial statements?

Response: We do not have such data.

(f) What do you estimate as the annual cost of preparing the proposed audited annual financial statements?

Response: A mid-sized CA firm would charge a smaller junior issuer between $20,000 to $30,000 for the annual audit and related meetings with the audit committee and board. For a mineral exploration company with $2 to $5 million market capitalization that undertakes a few financings during the year (including the grant of options and the issue of warrants) total costs for a mid-sized CA firm might amount to between $40,000 and $60,000 for the annual audit and related meetings with the audit committee and board. If the junior has exploration programs in other countries like Brazil, or Africa, the fees are much higher as the audit firm may have to visit that local office in Brazil and conduct their audit work from there.

(g) Do you anticipate that issuers will mail annual financial statements to security holders or place them on a website?

Response: Corporate finance activities are increasingly taking place online; smaller issuers in particular might prefer to send a PDF document via email. All electronic options should be made available to the issuers.

(h) What do you estimate as the cost of making annual financial statements available to security holders?

Response: Distribution cost through an intermediary is not preferable. Issuers should be able to distribute any financial statements directly to the investor.

8. Under the Proposed Amendments, issuers relying on the OM Exemption would be required to deliver annual financial statements until the issuer either becomes a reporting issuer or ceases to carry on business. Are there other situations when it would be appropriate to no longer require ongoing annual financial statements for such issuers? If so, please describe them.

Response: For pre-revenue generating companies, it may not be feasible to issue financial statements when business operations are suspended. There is a fixed cost component to issuing financial statements that can be excessive for junior issuers. There should be exceptions made during a downturn where a non-audited statement is sufficient.

9. How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?

Response: Issuing communication through email distribution or websites should be sufficient. Note that not all start-ups and SMEs have websites.

10. Should issuers be permitted to cease providing annual financial statements to their security holders after proceeds of a distribution are fully spent? If so, is there a period of time after which it is reasonable to assume that the proceeds of a distribution under the OM Exemption will have been fully spent?

Response: Yes, once the proceeds have been spent, there is no need to continue to provide annual financial statements to their security holders. One year is a reasonable period of time to fully spend the proceeds.

11. Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.

Response: No. All investment has inherent risk associated with it. Non-individual investors are better aware of the risk than individuals. Hence, there is no investor protection provided through risk acknowledgement form. Such forms only increase regulatory costs without providing corresponding benefits.

12. Should "permitted clients", as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Obligations be required to sign a risk acknowledgement form? Please explain.

Response: No. "Permitted clients" have the necessary investing expertise and knowledge and do not need to sign risk acknowledgement forms. It is an unnecessary requirement.

13. Should non-redeemable investment funds continue to be permitted to use the OM Exemption?

Response: Yes.

14. Are there certain types of issuers that should be excluded from using the OM Exemption?

Response: All issuers should have access to the OM Exemption.

15. Should issuers that are related to registrants that are involved in the sale of the issuer's securities under the OM Exemption be permitted to continue using the OM Exemption?

Response: Yes. As long as the issuer is following the disclosure obligations under the OM Exemption, then related issuers should be allowed to use the OM Exemption.

16. Currently, most CSA jurisdictions that have an OM Exemption have adopted local blanket orders that permit an issuer to raise up to $500,000 under the OM Exemption without having to include audited financial statements in the OM. Further, the blanket orders permit the financial statements to be prepared in accordance with ASPE rather than IFRS.

    (a) Should these blanket orders be continued or revoked? Please provide the basis for your answer.

    Response: The first blanket order should continue (allowing an issuer to raise up to $500,000 without inclusion of audited financial statements). However, if financial statements are required then the use of IFRS should be imposed. Canadian publicly

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accountable enterprises area already mandated to use IFRS and private companies should also move in this direction. It provides a better tool for investors to use as a comparison tool between private and public companies.

(b) If you believe the blanket orders should be continued, should the same threshold amount be used in determining which issuers are subject to an ongoing annual financial statement requirement or an audit requirement? Please provide the basis for your answer.

Response: Yes. The use of the same threshold would make the rule consistent.

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

Sincerely,

Rodney N. Thomas
President
Prospectors & Developers Association of Canada

Cc:

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This submission was originally authored by Samad Uddin (Director, Capital Markets, PDAC) with the support of Jim Borland (Co-Chair, PDAC Securities Committee); Jim Glover (Co-Chair, PDAC Finance and Taxation Committee) and Nadim Kara (Senior Program Director, PDAC)