PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

September 17, 2021

The Secretary
Ontario Securities Commission

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers Place de la Cité, tour Cominar

Sent via email to - comment@osc.gov.on.ca , consultation-en-cours@lautorite.qc.ca

Re: Proposed Amendments to National Instrument 51-102, Annual and Interim Filings, and a Proposed Framework for Semi-Annual Reporting

As the voice of Canada's mineral exploration and development community, representing more than 4,400 corporate and individual members, the Prospectors and Developers Association of Canada (PDAC) takes an active interest in regulatory and policy initiatives that shape the mineral industry landscape. The mineral industry represents the largest cohort of public issuers in Canada, accounting for nearly 60% of the companies listed on the TSXV exchange.

PDAC recognizes the importance of streamlining continuous disclosure obligations and welcomes the opportunity to provide input on the NI 51-102 consultation. Many of the proposals address issues previously identified by PDAC, and could improve capital access for venture issuers through elimination of duplicative disclosures and unnecessary processes. We are encouraged by the Canadian Securities Administrators (CSA) in its continued efforts taken to reduce burdens and improve market efficiencies.

The accompanying *Appendix* A provides a number of recommendations and supporting rationale that have been developed after careful consideration by PDAC committees. We recommend that companies must retain the ability to rank and group risks as they deem appropriate for public disclosure, and that non-author QPs can provide consent for technical reports in short form prospectus offerings. We also support the elimination of repetitive continuous disclosure obligations, and a voluntary semi-annual reporting regime for companies with no significant revenue, irrespective of listing exchange.

We welcome continued engagement with CSA as this consultation progresses and please contact Jeff Killeen, PDAC's Director, Policy & Programs (jkilleen@pdac.ca) if there are any questions or clarifications sought from the content provided in this letter.

Sincerely,

Lisa McDonald

[redacted]

Executive Director

Prospectors & Developers Association of Canada

APPENDIX A – CONSULTATION RESPONSES

A) Question relating to additional disclosure for venture issuers without significant revenue (Q1)

We have kept the current disclosure requirement in section 5.3 of NI 51-102 (as proposed section 8 of Form 51-102F1 Annual Disclosure Statement) to apply only to venture issuers that have not had significant revenue from operations in either of their last two financial years.

However, for non-venture issuers that have significant projects not yet generating revenue, an itemized breakdown of material components of the following may help investors understand how the reporting issuer performed during the period covered by the MD&A:

- *exploration and evaluation assets or expenditures;*
- *general and administrative expenses; and*
- *other material costs.*

1. **Do you think this requirement should apply more broadly or more narrowly? For example, should we extend this disclosure requirement to non-venture issuers that have significant projects not yet generating revenue as well? Why or why not?**

PDAC response: We think that the determinant for this specific disclosure scheme should be based on a revenue threshold rather than the listing exchange. This would provide greater parity in disclosure requirements between venture and non-venture issuers.

B) Questions relating to risk factors (Q2-3)

We have retained instruction (i) to section 5.2 of the Current AIF Form (as proposed section 16 of Form 51-102F1 Annual Disclosure Statement) which requires a reporting issuer to disclose risks in order of seriousness from the most serious to least serious. Proposed instruction (3) to the same section suggests that "seriousness" refers to impact/probability assessment.

2. **Would it be beneficial for reporting issuers if we provided further clarity on what "seriousness" means and how to determine the "seriousness" of a risk?**

PDAC response: Further clarity on what seriousness means in relation to risks would be beneficial to issuers, provided clarifications are suggestive and not prescriptive, as companies have very different circumstances, and therefore the risk factors will be unique to most issuers. As such, companies must retain the ability to rank risks as they deem appropriate.

SEC's Modernization of Regulation S-K Items 101, 103, and 105 adopts amendments which require the following:

- *grouping similar risks together;*
- *disclosing generic risks under the heading "general risks"; and*

- *requiring a summary of risk factor disclosure if the risk factor disclosure exceeds 15 pages.*

3. If we adopted similar requirements to the SEC's amendments, what would be the benefits and costs for investors and reporting issuers?

PDAC response: Following the rational noted in our response to Question 2, adopting similar requirements to the SEC amendments would be problematic for issuers in Canada, particularly those in the mineral industry. Grouping of what are deemed similar risks may vary significantly from one issuer to another based on factors such as geography, proximity to infrastructure and jurisdiction.

Considering CSA's adoption of similar amendments to those of the SEC, we anticipate there are significant and material differences in the way Canadian issuers' group risks, particularly companies operating in the mineral industry, and this approach would not result in improved disclosure or investor protection.

Regarding a summary of the risk – we do acknowledge that risk disclosure may be very lengthy due to legal reasons, and a summary that presents the most material and relevant risks would be beneficial for investors, as it should not result in a notable increase in burdens for issuers.

C) Questions relating to the requirement to name authors of technical reports (Q4-6)

4. What challenges, if any, do reporting issuers face in obtaining technical report author consents for short form prospectus offerings?

PDAC response: When companies raise capital via short form prospectus offerings, it is often done to take advantage of relatively short periods of market activity and investor demand to ensure a financing is successful. For mineral issuers, it may take an author QP a significant amount of time to review incremental work and information that has been collected subsequent to a technical report being completed on a project, as exploration work on a deposit progresses continuously in most cases. Without performing this review, an author QP may not have be able to provide consent at a given point in time. Moreover, an author QP may not be available when an issuer seeks consent or an issuer may not be able to directly contact a QP depending on the amount of time that has lapsed since furnishing a technical report. By the time the consent is obtained in such instances, if at all, the market window available for an issuer to complete a short form prospectus financing may have passed.

Requiring author QP consent also calls into question the ethics and capabilities of both internal and external non-author QPs. If it is satisfactory for non-author QP consent to be relied upon for incremental disclosures and filing of public documents such as Material Change reports subsequent to a technical report being filed, the same level of authority should be afforded to non-author QPs to verify the veracity of a technical report.

The limitations outlined above could prevent mineral exploration companies from using the short form prospectus, regardless of whether or not they have complied with all necessary disclosure requirements.

5. **If the requirement to name the technical report authors in the AIF (and as a result, provide consents for short form prospectus offerings) were removed, would reporting issuers continue to obtain approval of prospectus disclosure from technical report authors or would they rely more on internal or external non-author QPs?**

PDAC response: Yes, it is very likely that if companies were able to rely on non-author QPs, they would take advantage of this right as it would expedite filing processes and reduce costs for many issuers. However, author QPs are solely relied upon to facilitate all public disclosure for some mineral exploration companies, and in such cases the proposed rule change would likely have no impact on issuer consent or disclosure practices.

6. **If reporting issuers were to rely on internal or external non-author QPs for purposes of providing consents for short form prospectus offerings, in your view, would investor protection be impacted? Would relying on an internal QP for consent purposes (where an external QP authored the original report) raise potential conflict of interest concerns?**

PDAC response: Consent from an author QP should ideally be obtained by an issuer to support a short form prospectus filing, however, as long as an issuer has disclosed all relevant changes and material information through the continuous disclosure regime, consent by a non-author QP should not negatively impact investors. A non-author QP is most commonly the person managing exploration and will be most familiar with both previously filed technical reports and the current technical status of a project. QPs have professional and ethical standards that they must follow and are tasked with providing unbiased professional opinions. In general, we think that a greater focus on regulatory enforcement of bad actors would be a greater benefit to investor protections and market participants.

D) Question relating to impact of refiling on auditor's report (Q7)

7. **Considering that the annual disclosure statement will include annual financial statements, MD&A and, where applicable, AIF, do you think there will be an impact, including on auditing requirements, if a reporting issuer amends or re-files only one of these documents, or re-files the annual disclosure statement in its entirety?**

PDAC response: We support the proposed amendment as it aims to consolidate continuous disclosure practices where appropriate and reduce issuer burden without negatively impacting investor protections. However, external auditing is currently only mandatory for an issuers annual financial statements. As part of auditing financial statements, auditors are required to read "other information" included in an Annual Report (e.g. MD&A), and consider whether it is materially consistent with the audited financial statements. Under the proposed amendment, the scope of "other information" may extend to include the AIF, expand an auditor's requirements and, therefore, the external costs associated with 3rd-party audits. This could erode some or all of the potential benefits for an issuer that come from a reduction in internal resources. As such, we recommend that CSA consider:

- Providing further guidance and clarity to issuers regarding the impact of the amendment on auditing practices, particularly in the case where materials other than financial statements are re-filed.
- Working collaboratively with venture issuers to monitor impacts of the proposed amendments, and to address problems as they arise.

E) Question relating to proposed amendments to Form 41-101F1 Information Required in a Prospectus and Form 44-101F1 Short Form Prospectus (Q8)

8. **To align the continuous disclosure and prospectus regimes, we are proposing to remove certain prospectus disclosure requirements. Are there any concerns with the removal of this information from a prospectus? Please explain.**

PDAC response: We have no concerns regarding the removal of this information from a prospectus.

F) Questions relating to semi-annual reporting for certain venture issuers on a voluntary basis (Q9-12)

9. **Should we pursue the Proposed Semi-Annual Reporting Framework for voluntary semi-annual reporting for venture issuers that are not SEC issuers? Please explain.**

PDAC response: Yes. Quarterly reporting is an important part of public disclosure, particularly for seasoned issuers that generate significant revenue. However, for small-to-medium size companies that are primarily engaged in activities like R&D or mineral exploration and that generate no significant revenue, market valuations are largely determined by incremental developments and disclosures, and not via quarterly results. Allowing venture issuers that are not SEC listed and that do not generate significant revenue to voluntarily move to semi-annual reporting would reduce unnecessary burden for issuers. A summary report that provides financial highlights to investors on a quarterly basis should be sufficient for investors in our view.

10. **Are there specific types of venture issuers for which semi-annual reporting would not be appropriate? For instance, should semi-annual reporting be limited to venture issuers below a certain market capitalization or those not generating significant revenue? Please explain**.

PDAC response: We see significant revenue generation as the most important factor from an investor perspective in determining whether an issuer should be able to voluntarily move to semi-annual reporting. As such, semi-annual reporting should be limited venture issuers that do not generate significant revenue.

11. **Would the proposed alternative disclosure requirements under the Proposed Semi-Annual Reporting Framework provide adequate disclosure to investors? Would any additional disclosure be required? Is any of the proposed disclosure unnecessary given the existing requirements for material change reporting and the timely disclosure requirements of the venture exchanges? Please explain.**

PDAC response: Yes, the requirements under the proposed reporting framework are adequate disclosure in our view, as it provides the essential information to analyze the financial position of an issuer and other material information on which investors could base their decision.

12. Do you have any other feedback relating to the Proposed Semi-Annual Reporting Framework?

PDAC response: We have no additional recommendations or feedback on the semi-annual reporting framework proposal.

G) Questions relating to transition provisions (Q13-14)

13. Do you think the proposed transition provisions are sufficiently clear? If not, how can we make them clearer?

PDAC response: We recommend CSA members ensure sufficient resources are directed towards efficient support mechanisms and staffing that will allow issuers to make inquiries and receive guidance on regulatory compliance practices both before and during the implementation period for the proposed amendments.

14. Do you think the transition provisions in the amending instrument for NI 51-102 would provide reporting issuers with sufficient time to review the Proposed Amendments and prepare and file an annual disclosure statement for a financial year ending on, for example, December 31, 2023 if the final amendments are published in September 2023? Do you think more time should be afforded to smaller reporting issuers (such as venture issuers)?

PDAC response: Given the limitations on available resources in comparison to more seasoned issuers, venture issuers should receive additional time (6-12 months), offered a grace period or similar, to adjust to the many changes proposed in this consultation.