British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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c/o

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Dear CSA members,

Thank you for this opportunity to comment on how Canada can reduce the costs of capital-raising for venture-stage issuers, and strengthen its status as the best place in the world to raise mine equity finance. The Prospectors & Developers Association of Canada (PDAC) has long been an advocate for reforms to the regulations governing capital-raising in Canada, given the important role capital markets play in financing mineral exploration in Canada and around the world.

PDAC is the leading voice of Canada's mineral exploration and development community. With over 8,000 members around the world, operating in all sectors of the mining industry, the PDAC's mission is to promote a globally-responsible, vibrant and sustainable minerals industry. One of our top priorities is to facilitate access to capital for our members, who have struggled through a five-year capital crisis, particularly with respect to companies undertaking early-stage exploration. This is why PDAC advocates for regulatory reforms that will:

1. Facilitate capital-raising from a broader base of investors
2. Reduce the costs of capital-raising and regulatory compliance
3. Strengthen investor confidence in Canadian capital markets, through improved enforcement and criminal prosecution of fraud

Regulators and exchanges in Canada cannot take for granted that Canada will forever remain the predominant source of capital for mining and exploration companies. Accordingly, PDAC appreciates any initiatives designed to simplify the process of raising capital in Canada and to facilitate investor protection. In particular, PDAC welcomes initiatives that help Canada strengthen its niche within international financial markets as a leader in facilitating access to capital for small-cap, venture-stage, pre-revenue companies involved in the high-risk, high-reward business of mineral exploration.

There are a number of interesting proposals contained within 51-404. In response, PDAC has generated a number of recommendations that are summarized in Annex A, and described in detail in Annex B.

I would like to draw your attention to three recommendations. The first relates to one of the primary barriers companies face when attempting to use a short-form prospectus, which requires the filing of an Annual Information Form and also a current technical report for each material property. This requirement, which is rooted in NI 43-101, leads many juniors to either issue securities by way of private placement (and often pay higher sales commissions and include warrants or other sweeteners), or by way of a (more expensive and time-consuming) long form prospectus.

PDAC is proposing that the CSA modify NI 43-101 requirements so that a current technical report would only be required if the new disclosure (whether set out in a long form prospectus, annual information form (AIF) or other disclosure document), discloses for the first time:

- mineral resources, mineral reserves or the results of a preliminary economic assessment on a material property that constitutes a material change in relation to the issuer, or
- a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

This change would allow exploration-stage mining issuers to participate in the short form prospectus system (by filing an AIF), or file a long form prospectus, without incurring the expense and delay of obtaining an updated technical report containing information that does not constitute a material change in the affairs of the issuer.

The second major recommendation to which I would like to draw your attention is related to the barriers companies face in effecting an access-to-market (ATM) offering. These barriers (explained

further in Annex B) make the implementation of the ATM system in Canada almost impractical, and as a result many dual-listed issuers tend to do their ATM offerings only in the U.S. We are proposing that the CSA codify the following elements of exemptive relief for ATM offerings in securities legislation:

- Provided that the issuer publicly discloses that it has engaged a dealer to effect an ATM offering, and sales pursuant to the ATM offering meet the requirements currently specified in NI 44-102 for ATM offerings (including the requirement that the securities sold under the ATM offering do not exceed 10% of the aggregate market value of the issuer's outstanding securities), the issuer and the selling agent are exempt from the Prospectus Delivery Requirement.

- Provided that the issuer files on a timely basis information concerning the number and average price of securities distributed pursuant to the ATM (including information concerning gross proceeds, commissions and net proceeds), and revised the wording of the issuer's and underwriter's certificate to state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering, the Prospectus Delivery Requirement and the Certification Requirement do not apply to an ATM offering, and a purchaser shall have no right of withdrawal by reason of the non-delivery of the prospectus.

Finally, you asked which types of issuers should be allowed to participate in a 'streamlined' (i.e. venture-friendly) regulatory regime. In our view, participation should be restricted to issuers that do not have material revenue, unless the market capitalization of such an issuer exceeds $250 million.

PDAC is encouraged by the release of this paper and welcomes the opportunity to comment. We hope our ideas are helpful and we would welcome the opportunity to engage in further dialogue, either formally or informally.

If you have any questions about, or comments on, the ideas outlined below, please don't hesitate to contact me.

Best regards,

[redacted]

Andrew Cheatle
Executive Director, PDAC

Cc: Michael Fowler, Chair, PDAC Securities Committee
Mark Wheeler (BLG), Member, PDAC Securities Committee

This submission was prepared by Jim Borland and Mark Wheeler, with the help of Sandy Hershaw, James McVicar, Catherine Wade, Ran Maoz and Nadim Kara.

ANNEX A
Overview of PDAC recommendations

*Recommendation #1 (*as outlined in responses to question 1a and 10 below)

Modify NI 43-101 requirements so that a current technical report would only be required if the new disclosure (whether set out in a long form prospectus, annual information form (AIF) or other disclosure document), discloses for the first time:

- mineral resources, mineral reserves or the results of a preliminary economic assessment on a material property that constitutes a material change in relation to the issuer, or
- a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

Recommendation #2 (as outlined in response to questions 14 and 15 below)

Codify the following elements of exemptive relief for ATM offerings in securities legislation:

- Exempt the issuer and the selling agent from the Prospectus Delivery Requirement, provided that the issuer publicly discloses that it has engaged a dealer to effect an ATM offering, and sales pursuant to the ATM offering meet the requirements currently specified in NI 44-102 for ATM offerings (including the requirement that the securities sold under the ATM offering do not exceed 10% of the aggregate market value of the issuer's outstanding securities)

- Exempt ATM offerings from the Prospectus Delivery Requirement and the Certification Requirement, and stipulate that a purchaser shall have no right of withdrawal by reason of the non-delivery of the prospectus, provided that the issuer:
  - Files on a timely basis information concerning the number and average price of securities distributed pursuant to the ATM (including information concerning gross proceeds, commissions and net proceeds), and
  - Has revised the wording of the issuer's and underwriter's certificate to state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering

Recommendation #3 (as outlined in response to question 5a below)

Participation in a 'streamlined' (i.e. venture-friendly) regulatory regime should be restricted to issuers that do not have material revenue, unless the market capitalization of such an issuer exceeds $250 million.

Recommendation #4 (as outlined in response to question 7 below)

Allow venture issuers to provide two years of audited financial statements, as opposed to three.

Recommendation #5 (as outlined in response to question 9 below)

Auditor reviews of interim financial statements only be required for an IPO prospectus, and not for subsequent prospectus filings.

Recommendation #6 (as outlined in response to question 13 below)

An alternative model for an abbreviated form of prospectus should permit (but not necessarily require) the incorporation by reference of documents which have previously been filed by the issuer on SEDAR, including financial statements, material change reports and information contained in the summary of a technical report filed under NI 43-101.

Recommendation #7 (as outlined in responses to questions in section 2.5 below)

Update NP 11-201 and NI 54-101 to allow the utilization of the latest cloud based data and document management strategies and technologies.

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

ANNEX B
Detailed response

SECTION 1

GENERAL DISCUSSION QUESTIONS

1. Of the potential options identified in Part 2:

(a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?

All potential options identified in Part 2 offer opportunities to reduce the regulatory burden, and we give our priorities below. In addition, one change that would have a particularly meaningful, beneficial impact for mineral exploration companies would be a modification to the requirement in National Instrument 43-101 ("NI 43-101") to file a current technical report in support of specified public disclosure.

PDAC is proposing that, once a technical report has been filed by an issuer, a new technical report would only be required if the new disclosure (whether set out in a long form prospectus, annual information form (AIF) or other disclosure document), discloses for the first time:

- mineral resources, mineral reserves or the results of a preliminary economic assessment on a material property that constitutes a material change in relation to the issuer, or
- a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

This change would allow exploration-stage mining issuers to participate in the short form prospectus system (by filing an AIF) or file a long form prospectus without incurring the expense and delay of obtaining an updated technical report containing information that does not constitute a material change in the affairs of the issuer.

(b) Which should be prioritized and why?

Certain questions under Section 2.2 offer the potential for the greatest meaningful impact for issuers in the mineral exploration sector because relatively minor changes could open opportunities for smaller issuers to access capital. In particular, Questions 10, 11, 12 and 14 raise issues that would have a

meaningful impact on smaller issuers by making, in practical terms, short form prospectus and ATM offerings available to them.

Section 2.1 (a size-based distinction) is also a high priority because it is fundamental to other changes. Affirmation of a size-based distinction will not, by itself, reduce the regulatory burden but is necessary to maximize the benefits of other potential options outlined in the discussion paper. A size-based distinction is already accepted in Canadian securities regulations (and in the U.S.), so adjustments to reflect evolving changes in capital markets and to better define the distinction should be relatively easy to achieve.

Section 2.5, enhancing the electronic delivery of documents, also provides opportunities for meaningful improvement. In fact, options outlined in this section are essential simply to keep up with current business practices and technological advances. Section 2.4 also offers options that would be beneficial for our sector. We have outlined some changes we feel would be helpful and achievable but, like section 2.5, believe this is an area for continuous review and updating in response to evolving capital markets.

Section 2.3 also offers some options that would reduce the regulatory burden and would likely be easy to achieve. These changes are welcome but are likely to have less impact than those in Section 2.2.

While we have set out below a relatively simple amendment to NI 43-101, we suggest that it would also be appropriate for the CSA to conduct a comprehensive review and analysis of the requirements of NI 43-101, with a view to reflecting current best practices and eliminating burdensome requirements which do not provide meaningful information or protection to investors.

2. **Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?**
    - Modifying NI 43-101 as outlined in our response to 1(a)
    - Determining the size-based metrics to determine which issuers should be subject to the reduced regulatory burden.

3. **Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.**

    Modifying NI 43-101 as suggested in our response to Question 1(a) above, and as outlined in more detail in our response to Question 10 below, would have a significant impact on the regulatory burden on reporting issuers while preserving investor protection.

2.1 EXTENDING THE APPLICATION OF STREAMLINED RULES TO SMALLER REPORTING ISSUERS

CONSULTATION QUESTIONS

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

Yes, a size-based distinction between categories of reporting issuers would be preferable to the current distinction based on exchange listing. Given the variety of exchanges and alternative trading platforms that are now available to reporting issuers, exchange based listing is no longer appropriate, and in some cases, is irrelevant.

Nonetheless, it continues to be important to distinguish companies (currently considered venture issuers) which are subject to reduced continuous disclosure requirements. They may, indeed, be characterized by size; i.e., smaller issuers. It would be unwise, however, to characterize all smaller issuers as simply at an early stage of development. Many companies – particularly innovative, discovery-oriented companies in a variety of sectors – prefer to develop assets and sell them for sustaining capital and share-price appreciation with no desire or intention to generate operating revenue.

If we were to adopt a size-based distinction:

(a) What metric or criteria should be used and why? What threshold would be appropriate and why?

We suggest that the key metric for determining which issuers should be subject to reduced reporting requirements be 'revenue from operations'. issuers which do not have material revenue should be allowed to satisfy the reduced requirements currently applicable to venture issuers, unless the market capitalization of such an issuer exceeds $250 million, in which case it would be required to satisfy the usual (full) requirements.

(b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?

To avoid confusion with respect to reporting issuers having to report under different regimes from year to year, companies operating within the 'streamlined' regime could be asked to show three years of metrics indicating that the company would be capable of operating in the more onerous regulatory regime on an extended basis.

Companies eligible for the streamlined regulatory regime should not be automatically graduated to a more onerous one.

(c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?

Venture issuers, regardless of how they are defined in the future, should clearly disclose their status on all their continuous disclosure documents and web sites. A TSX Venture Exchange listing ostensibly does the same thing, but as noted in 4, an exchange-listing distinction is no longer appropriate.

This self-identification should be succinct, with prescribed wording in order to be manageable. The reporting issuer's disclosure regime should also be listed on its SEDAR profile. An explanation of the applicable reporting regime should be posted on SEDAR and on CSA member websites for all investors to review. In addition, where a reporting issuer posts its disclosure documents on its website, the reporting issuer should have a link on its website to the explanation of the applicable reporting requirements. This would ensure that all investors are receiving the same information with respect to the applicable reporting requirements when they are reviewing any disclosure documents of a reporting issuer.

(d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

The distinctions between the reporting requirements should be clearly set out in plain language on SEDAR and on CSA member web sites. Reporting issuers could also be listed on SEDAR by disclosure category, which would then allow investors to compare companies based on the same disclosure requirements and metrics.

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?

We should not move beyond our current two-track system. Creating a third track comprised of non-venture issuers using venture issuer disclosure standards would only add confusion to the capital markets. Issuers should be grouped by the disclosure standard under which they are held accountable. CSA member web sites and SEDAR should provide adequate explanations of those standards so that investors will be able to understand the differences.

2.2 REDUCING THE REGULATORY BURDENS ASSOCIATED WITH THE PROSPECTUS RULES AND OFFERING PROCESS

(A) REDUCING THE AUDITED FINANCIAL STATEMENT REQUIREMENTS IN AN IPO PROSPECTUS

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers?

Yes, particularly for issuers that do not yet generate operating revenue, or that have been generating operating revenues for less than two years.

If so:

(a) How would this amendment assist in efficient capital raising in the public market?

For issuers that have been generating operating revenues for less than two financial years, providing audited financial statements for more than two years would provide little useful information to investors. For such issuers, requiring a third year of audited financial statements adds to the cost of going public without necessarily providing valuable information to investors.
If an issuer has more than two years of operating revenue, it may elect to include a third year of audited financial statements in a prospectus.

(b) How would having less historical financial information on non-venture issuers impact investors?

For most early stage issuers, having two years of historical audited financial statements rather than three years would have little or no impact on investors. For those issuers which, at the time of their IPO, have more than two years of relevant operating history, the issuer may voluntarily provide, or their underwriter might require, that more historical financial information be provided.

(c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?

Yes. For issuers that have not generated normal operating revenue prior to the time of their IPO, one full year of audited financial statements would in most cases be sufficient. In the mining sector historical financial information is of relatively little value for exploration and development stage companies, other than to establish 'burn rate' (the rate at which cash is being spent). The 'burn rate' may be materially different after the issuer becomes public. In addition, past expenditures on exploration and development may not be indicative of current market value or of future expenditures.

On the other hand, for mining issuers that have been in production for several years, the existing requirement of three years' historical information is appropriate.

8. **How important is the ability to perform a three year trend analysis.**

The importance of a three year trend analysis is highly dependent on the nature of the issuer's business and its stage of development. A three year trend analysis may be useful for producing companies, to help with identifying trends in operating costs (although not for revenues, as mining revenues are generally dependant on commodity prices, which are usually beyond the control of an issuer). For pre-production issuers, the three year analysis is not important.

(B) STREAMLINING OTHER PROSPECTUS REQUIREMENTS

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

No. Auditor review of interim financial statements should only be required for an IPO prospectus, and not for subsequent prospectus filings. The requirement for auditor review of interim financial statements inhibits quick access to the short form prospectus system. Issuers that don't routinely have their interim financial statements reviewed by their auditors, but are considering filing a short form prospectus, have to plan ahead (and perhaps signal to the market their intention to file a prospectus).

10. Should other prospectus disclosure requirements be removed or modified, and why?

In National Instrument 43-101, the requirement to file a current technical report in support of a preliminary long form prospectus, an annual information form and other base disclosure documents specified in subsection 4.2(1) should be modified to align with the requirement for a preliminary short form prospectus.

Specifically, once a technical report has been filed in respect of a material property, a new technical report should only be required in support of the disclosure document if the disclosure document discloses for the first time (i) mineral resources, mineral reserves or the results of a preliminary economic assessment on the property that constitute a material change in relation to the issuer, or (ii) a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

This change would allow exploration stage mining issuers to participate in the short form prospectus system (by filing an AIF) or file a long form prospectus, without incurring the expense and delay of obtaining an updated technical report with information which does not constitute a material change in the affairs of the issuer.

(C) STREAMLING PUBLIC OFFERINGS FOR REPORTING ISSUERS

(i) Short form prospectus offering system

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

The system is not achieving the appropriate balance.

The current system works reasonably well for larger issuers that file an AIF. Having done that, they can file a short form prospectus reasonably quickly and efficiently. For issuers that wish to be in a position to file a prospectus very quickly, the short form base shelf prospectus procedure is available.

For smaller issuers, the current system does not work well. For junior mining companies with multiple properties, the time and expense required to file a current technical report for each material property makes it difficult for them to file an AIF. If they don't file an AIF, they can't participate in the short form prospectus system. They then have to either issue securities by way of private placement (and usually pay higher sales commissions and include warrants or other sweeteners), or file a long form prospectus, which requires a current technical report (as of the date of filing) for each material property, and takes much longer (increasing the risk of missing a financing window).

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

Yes. It would be desirable for the CSA to eliminate the requirement, for junior mining companies, that a current technical report be filed (or already be on file) for each material property at the time an AIF is filed. As noted above in the response to question 10, this could be accomplished by modifying the provisions of NI 43-101 so that an updated technical report need only be filed in support of an AIF if the AIF discloses for the first time (i) mineral resources mineral reserves or the results of a preliminary economic assessment on the property that constitute a material change in relation to the issuer, or (ii) a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

(ii) Possible alternative prospectus model

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

(a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?

The existing long form prospectus model was developed prior to the internet age, when it was difficult for investors to obtain previously filed disclosure material. As a result, the long form prospectus was required to contain all material information in a single document. Today, public disclosure documents are readily available to investors on SEDAR and issuers' websites.
An alternative model for an abbreviated form of prospectus should permit (but not necessarily require) the incorporation by reference of documents which have previously been filed by the issuer on SEDAR, including financial statements, material change reports and information contained in the summary of a technical report filed under NI 43-101.

(b) What types of investor protections should be included under such a model (for example, rights of rescission)?

We propose that the types of investor protections currently applicable to long form prospectuses and short form prospectus be included in the model for an abbreviated form of prospectus.

(c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

Yes. In practice, larger issuers will likely continue to file an AIF and use the short form prospectus regime, or the base shelf prospectus system, in order to be able to file and clear a prospectus quickly. However, issuers that do not file an AIF should be able to file an abbreviated form of prospectus which, by incorporating previously disclosed information by reference, provides all material information, but without unnecessary duplication.

(iii) Facilitating at-the-market (ATM) offerings

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

We note that under existing securities legislation, ATM offerings may only be effected under the base shelf procedures set out in NI 44-102, since only NI 44-102 provides an

exception to the requirement in section 7.2 of NI 41-101 that prospectus offerings must be at a fixed price. We suggest that securities legislation be amended to permit ATM offerings by way of short form and long form prospectuses, in order that a broader range of issuers may use this distribution method.

As noted in the Discussion Paper, there are provisions in existing securities legislation which make it impractical to effect an ATM offering in Canada (even under the base shelf procedures) without first obtaining exemptive relief.

Specifically, the following requirements of existing securities legislation applicable to prospectus offerings are incompatible with an ATM offering:

- The requirement to deliver to the purchaser of a security distributed pursuant to a prospectus a copy of the latest prospectus and any amendment to the prospectus (the "Prospectus Delivery Requirement"); since distributions under an ATM are made through a stock exchange, the identity of the purchaser is unknown to the selling dealer, such that delivery of a prospectus is impossible;

- The requirement that the issuer's and underwriter's certificates in the prospectus state that the prospectus provides full, true and plain disclosure of all material facts as of the date of the latest prospectus supplement (the "Certification Requirement"). Since an ATM is a continuous distribution, the certification should more appropriately state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering.

- The requirement that the prospectus contain a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in the form prescribed by item 20 of Form 44-101F1 (the "Statutory Rights Requirement"). Since the prospectus will not be delivered to purchasers under an ATM, the statement that a purchaser has a right of rescission or damages if the prospectus is not delivered is not appropriate.

While such exemptive relief is usually granted on a routine basis, it takes time and money to obtain such relief. The result is that dual-listed issuers tend to do their ATM offerings only in the U.S.

We suggest that this be addressed in the short term by way of blanket relief, and in the long term by adoption of a new rule for ATM offerings.

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

We suggest that the following elements of exemptive relief for ATM offerings be codified in securities legislation:

- Provided that the issuer publicly discloses that it has engaged a dealer to effect an ATM offering, and sales pursuant to the ATM offering meet the requirements currently specified in NI 44-102 for ATM offerings (including the requirement that the securities sold under the ATM offering do not exceed 10% of the aggregate market value of the issuer's outstanding securities), the issuer and the selling agent are exempt from the Prospectus Delivery Requirement.

- Provided that the issuer files on a timely basis information concerning the number and average price of securities distributed pursuant to the ATM (including information concerning gross proceeds, commissions and net proceeds), and revised the wording of the issuer's and underwriter's certificate to state that the prospectus will provide full, true and plain disclosure of all material facts as of the date of each distribution under the ATM offering, the Prospectus Delivery Requirement and the Certification Requirement do not apply to an ATM offering, and a purchaser shall have no right of withdrawal by reason of the non-delivery of the prospectus.

(D) OTHER POTENTIAL AREAS

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

The definition of "foreign issuer" (particularly clause (a)) in NI 71-101 and "foreign reporting issuer" (particularly clause (a)) in NI 71-102 are too restrictive and should be revised to permit issuers to access the Canadian system (as foreign issuers or foreign reporting issuers) even if they are incorporated federally or under a provincial or territorial statue so long as the connection to the Canadian market is minimal. Determining what is meant by the term "minimal" is currently based on the test of Canadian resident holders of the securities of the issuer.

This "connection" test is difficult, if not impossible, to meet given the book based system and the underlying assumptions that Canadian dealers hold for Canadian investors. A more compelling connection test would be (i) are the securities of the issuer available for trading in Canada (ii) has the issuer conducted a public offering in Canada within a specified period i.e. 2-3 years.

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the premarketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

We do not have a position with respect to the pre-marketing rules.

2.3 REDUCING ONGOING DISCLOSURE REQUIREMENTS

(A) REMOVING OR MODIFIYING THE CRITERIA TO FILE A BAR

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

While a BAR may provide information which is relevant for secondary market investors, by the time a BAR is filed the information is no longer current. Since the threshold for venture issuers for the asset test and the investment test is 100%, most transactions which require that a venture issuer file a BAR will also require shareholder approval. The management information circular distributed in connection with a shareholder meeting to approve a significant transaction will typically provide the financial information, including pro forma financials, which a BAR provides. A BAR containing substantially the same information which is filed up to 75 days after closing the transaction does not provide relevant or timely information. Moreover, after the transaction is completed, the resulting issuer will then file actual financial statements showing the actual effect of the transaction on the balance sheet, which is generally more useful to investors.

19. Are there certain BAR requirements that are more onerous or problematic than others?

The BAR requirements can be onerous or problematic where acquisitions are other than of an entire entity. Having to do carve-out or constructed statements are time consuming and expensive, particular for smaller transactions where the records of the target business may not have been maintained at accepted standards.

20. If the BAR provides relevant and timely information to investors:

(a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?

As noted above, we do not believe that the BAR usually provides relevant and timely information. For small reporting issuers, and particularly for pre-revenue generating issuers, the profit or loss test is not appropriate, since that test can be triggered when the acquired business has relatively small profits.

(b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?

We suggest that increasing the significance thresholds to 50% for non-venture issuers would still provide investors with sufficient information about significant transactions.

(c) What alternative tests would be most relevant for a particular industry and why?

As noted above, we do not believe that the BAR usually provides relevant and timely information, and do not think that an alternative test would solve the problem.

(d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

If a transaction meets the 100% significance test, we suggest that prospectus level disclosure is generally appropriate. However, as noted above, where only some of the assets of the vendor are acquired, the preparation of carve-out historical financial statements can be very burdensome, and for pre-revenue issuers does not provide very useful information. For acquisitions of non-revenue generating assets, we suggest that a pro forma balance sheet showing the effect of the transaction should be sufficient.

(B) REDUCING DISCLOSURE REQUIREMENTS IN ANNUAL AND INTERIM FILINGS

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

PDAC believes it would be possible to reduce the regulatory burden imposed by disclosure requirements by avoiding duplication. This would not have any impacts on investors, as our proposals would simply eliminate redundancies.

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

Generally, Form 51-102F1 is difficult to follow and to understand exactly what is required to be disclosed. Any clarification of the form requirements would be helpful. MD&A has become an extensive document often repeating information that appears elsewhere in an issuer's disclosure record. Streamlining disclosure in any way that avoids repetition would be beneficial.

(C) PERMITTING SEMI-ANNUAL REPORTING

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

Quarterly reporting does provide the market place with more current information and does assist with comparability with those companies reporting in the United States. However, a cost benefit analysis needs to be considered. Depending on the issuer, quarterly reporting can be burdensome and can require the use of financial and management resources that could be better used in advancing the issuer's business.

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

The option to move to semi-annual reporting should be provided for venture issuers operating in a 'streamlined' regulatory regime. The marketplace will then be able to dictate whether venture issuers will choose quarterly reporting or semi-annual reporting.

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

The experience in the UK and Australia would suggest that semi-annual reporting has been sufficient. As noted above, if semi-annual reporting is optional for venture issuers then the market can and will influence an issuer's selection. In certain industries quarterly reporting may be more relevant and important than others. Ultimately the users of the information will dictate the reporting periods.

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

The focus of this submission from the PDAC is on ways to reduce the regulatory burden for venture issuers.

2.4 ELIMINATING OVERLAP IN REGULATORY REQUIREMENTS

The annual audited financial statements and related footnotes are the base documents for preparation of the unaudited quarterly statements and the Form 51-102F1 MD&A. Many of the disclosure tables in Form 51-102F1 are an exact duplicate of the financial statements. To avoid both error and extra management time all tables that need to be duplicated from the financial statements into the MD&A should be eliminated. The calculation on % change and discussion of trends is also redundant for many of the early stage, pre-revenue companies that make up most of the small-cap issuers on the exchanges. After eliminating all the numeric tables, the MD&A would then provide investors with a qualitative discussion of material financial events and trends.

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

The annual audited financial statements and related notes provide comprehensive information concerning financial instruments, critical accounting estimates, changes in accounting policies and contractual obligations. There is very little benefit to investors in having this information repeated or rephrased in MD&A. We suggest that for larger reporting issuers the MD&A form be streamlined such that it provides a succinct and qualitative discussion of material financial events and trends, with reference to the relevant sections in the financial statements. For smaller reporting companies, this would be in the form of financial highlights.

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

The quantitative information in the MD&A is typically an exact copy of IFRS financial statements.

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

No. A consolidated disclosure document which included financial statements would likely require that the issuer's auditor assume responsibility for the MD&A and other information contained in the consolidated disclosure document. While it is common for auditors to advise on MD&A content (including providing comfort to underwriters with respect to certain financial information contained in the MD&A), much of the information contained in MD&A (and certainly in an AIF) is outside the purview of the auditor's role. The problem is not that an investor may need to review three separate documents rather than one consolidated document - the problem is that the same information is repeated in multiple places, and the total volume can obscure the pertinent information.

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

A practice has developed of repeating risk factors in multiple documents – it is not uncommon for the same risk factors to be set out in MD&A, the AIF, and then again in a short form prospectus. While such risk disclosure may be full and true disclosure, it is generally not plain disclosure. The sheer length of the risk factor section often results in investors ignoring it entirely. More research with investors is required to better understand the efficacy of current disclosure documents in performing their desired functions, in order to identify ways to make disclosure documents more effective.

2.5 ENHANCING ELECTRONIC DELIVERY OF DOCUMENTS

Low cost cloud computing, data storage and readily accessible mobile applications represent a significant opportunity to reduce regulatory compliance costs for issuers while providing superior disclosure, transparency and security for shareholders, investors, regulators and all stakeholders. Targeted cloud based data vaults can now be developed for issuers, shareholders and regulators (SEDAR) to automate delivery of all Issuer documents with secure shareholders and regulators' data storage sites. For reference Broadridge (primary supplier of notice and access for issuer proxy material) has recently developed a Communication Cloud that contemplates the following:

> With one connection, reach customers through a variety of channels, including digital mailboxes, online banking, apps, traditional electronic and app presentment, and the latest cloud-based ecosystems, like Amazon Drive, Box, Dropbox, Evernote, Microsoft OneDrive, Fiserv, Jack Henry iPay and more – even postal delivery. With the Communications Cloud's proprietary algorithms and "network effect", you can increase digital adoption and customer engagement.[1]

As discussed below, it is recommended NP 11-201 and NI 54-101 be updated to allow the utilization of the latest cloud based data and document management strategies and technologies.

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

Utilizing the recommendations of technology consultants will be the most efficient way to update NP 11-201.

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

Notice and access systems work effectively and should be expanded to all issuer documents including financing documents. In the view of the PDAC, few investors continue to prefer paper delivery.

The notice and access system as outlined in NI 54-101 should be adopted for all issuer documents including management circulars, management reports, financials, and all material disclosure documents to ensure that all shareholders have access to all information. The delivery of paper documents should be eliminated except for low cost

[1] Accessed from http://go.broadridge1.com/communications-cloud?oldurl=http://www.broadridge.com/product-insight/a-better-connection.html on July 26, 2017.

streamlined paper notices sent to registered beneficial shareholder addresses on an annual basis. If an issuer decides they prefer delivery of paper documents, this should be by exception only and at the discretion of the issuer.

PDAC also recommends the creation of a new issuer notice and access process for prospectuses, offering memoranda and private placement subscription documents. At this time, only select investors receive these financing documents. From a timely disclosure, transparency and fairness perspective, all financing documents should be available electronically to all shareholders at the same time if they have elected to be part of a comprehensive financing documents notice and access system.

To further optimize the notice and access technology platform for issuers, there should be a transitory move to one class of shareholder by: (i) eliminating all paper certificates and (ii) for CDS shares, eliminating the Objecting Beneficial Owner (OBO) Shareholder category. The proposed one class of digital shareholder (Non-Objecting Beneficial Owner (NOBO)) will ensure direct, efficient, fair and timely distribution of all material information to all shareholders. This will also allow an appropriate transition in the future to blockchain shareholder records.

Objections by intermediaries to eliminating paper certificates or the OBO shareholder category should be carefully reviewed by the CSA to ensure that the status quo is not maintained for short term vested reasons. For example, the often cited reason for the OBO shareholder request for confidentiality does not encourage important direct communications between the issuer and shareholder. It is likely that many OBO shareholders do not have a strong reason for selecting this category other than receiving unnecessary mail.

An up to date notice and access system will eliminate the rationale of not receiving mail for OBO shareholders. Paper certificates are redundant - Australia eliminated this category many years ago.

(b) *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?*

Yes. Notice should be sent that all issuer documents will only be available through notice and access systems. Educational information developed by CSA members can notify investors and shareholders that all documents can be accessed through readily available SEDAR systems. Issuers can maintain a system to send select paper documents to investors and shareholders upon request.

(c) *Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?*

No. There is very little risk of undermining investor protection with notice and access systems. If notice and access is expanded to include financing documents these systems may provide better disclosure and investor protection.

(d) *Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?*

Technology consultants should be engaged by CSA to update NI 54-101 and NI 51-102 to include the latest technologies.

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

As noted above, client communication systems such as those being developed by Broadridge should be reviewed and incorporated into policy.

In addition, we suggest that SEDAR should be more readily accessible to investors. While issuers' public disclosure often states that additional information can be found at www.sedar.com, to access such information the investor must go through multiple steps – choosing English or French, then choosing "Issuer Profiles" from seven choices on the home page, then choosing between Companies and Investment Fund Groups, then scrolling down a very long list of company names to find the issuer profile, then finally clicking on "View this Company's Documents". Issuers should be encouraged, and perhaps required, to provide a hyperlink (or website address for hard copy documents) which takes the investor directly to the issuer's profile page on SEDAR. This may require modifications to SEDAR.