



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

October 5, 2015

The Secretary
Ontario Securities Commission
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M^{re} Anne-Marie Beaudoin
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Re: CSA Notice 45-106 Proposed Amendments to *National Instrument 45-106 Prospectus Exemption* relating to Reports of Exempt Distribution (the “Notice”)

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 amendments (the “Proposed Amendments”) and the proposed new form of harmonized report of exempt distribution (the “Proposed Report”) outlined in the Notice.

The PDAC is the national voice of Canada’s mineral exploration and development community. With a membership of over 8,000 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 6 to 9, 2016, at the Metro Toronto Convention Centre in downtown Toronto.

The PDAC is advocating for regulatory reforms that accomplish the following key policy goals:

1. Facilitate capital raising from a broadened base of investors;
2. Reduce the costs of compliance (by, for example, reducing duplicative regulations, eliminating complexity, using simpler formats etc.); and
3. Improve enforcement and criminal prosecution of fraud.



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General Comments on the Proposed Amendments

We have the following general comments on the Proposed Exemption:

- PDAC supports the approach taken in the Proposed Amendments and the Proposed Report. Issuers will benefit most if the reporting of exempt distribution is harmonized across Canada.
- The additional information concerning the issuer required by Item 4 of the Proposed Report will provide securities regulators with the necessary information to improve analysis for policy development purposes. Such information must be readily accessible by the public, in order for organizations such as PDAC to have timely, accurate information concerning the types of issuers (nature of business, size and stage of development) which are using particular prospectus exemptions. Better information will facilitate better policy development by all capital market participants.
- The form of the Proposed Report requires a high level of detailed information. This level of detail will place a significant compliance burden on issuers and underwriters.
- We respectfully submit that the level of information required by Item 5(a) of the Proposed Report, and in particular the requirement to disclose the total amount paid by insiders for securities of non-reporting issuers which they hold as of the date of the exempt distribution, is not appropriate. This information would generally not be available in the public disclosure record of reporting issuers, and we suggest that the compliance burden to non-reporting issuers of providing this information outweighs the benefit of such information to regulators and the investing public. Information concerning the amount paid by insiders and promoters for the securities of the issuer may be of interest to investors at the time they are making the investment decision as to whether to participate in the exempt distribution, but it is of little or no value to them when the information is only provided afterwards in the report of the exempt distribution.
- With respect to item 7(c) – *Offering Materials*, we respectfully submit that to the extent that issuers will be required to list any offering materials in the Proposed Report, the underlying platform for the Proposed Report should contain an electronic field whereby the applicable offering materials can be attached and subsequently filed or delivered to the applicable jurisdictions automatically. The program should be designed such that the applicable filing or delivery requirements and applicable jurisdictions can also be automatically determined based on: (i) the exemption(s) used, (ii) the jurisdiction of the issuer and (iii) the respective jurisdictions of the purchasers. Adding this feature to the Proposed Report would simplify the filing process for all issuers and enhance compliance with respect to any: (i) new filing or delivery requirements or (ii) existing filing or delivery requirements.



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Comments in response to specific questions on the Proposed Exemption

We wish to respond to the respective questions posed in the Notice as follows:

1. *The information collected in the Proposed Report would enhance our understanding of exempt market activity and, as a result, facilitate more effective regulatory oversight of the exempt market and inform our decisions about regulatory changes to the exempt market. Do the reporting requirements of the Proposed Report strike an appropriate balance between: (i) the benefits of collecting this information, and (ii) the compliance burden that may result for issuers and underwriters? If not, please explain.*

The reporting requirement of the Proposed Report places a high priority on the collection of information. If such information is collected, to be useful it must be available electronically to the public in a format that can be sorted and analyzed.

2. *Are there reasons why any of the information requested in the Proposed Report should not be required? Is there any alternative or additional information, including as requested in the March 2014 Proposals, that would better support compliance or policy analysis?*

As noted above, we do not think that information concerning historic acquisition cost of securities held by insiders and promoters of non-reporting issuers should be required. The benefit of this information to securities regulators does not warrant the compliance burden of providing it.

3. *The Proposed Report would require information about the issuer's size by number of employees, size of total assets or, for investment funds, net asset value. Are there other metrics that would be more appropriate to assess the issuer's size? Do the pre-selected ranges compromise sensitive financial or operational information about non-reporting issuers that participate in the exempt market?*

We think that the metrics for calculating the issuer's size used in the Proposed Report are appropriate.

4. *The Proposed Report would require issuers, other than investment funds, to use the NAICS codes to identify their primary industry. As noted above, using a standard industry classification is intended to provide securities regulators with more consistent information on the industries accessing the exempt market and to facilitate more direct comparison to other statistical information using the same classification, such as reports from Statistics Canada. Would the*



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application of NAICS present challenges for issuers? Are there alternative standard industry classification systems that may be more appropriate? If so, please specify.

We agree that the use of the NAICS codes is appropriate.

5. *The Proposed Report would not require: (i) foreign public issuers and their wholly owned subsidiaries, or (ii) issuers that distribute eligible foreign securities only to permitted clients, to disclose information about their directors, executive officers, control persons and promoters. Do these carve-outs provide appropriate relief to issuers that are either subject to certain foreign reporting regimes or have their mind and management outside of Canada? If not, please explain.*

We agree that the carve-outs provide appropriate relief.

6. *The Proposed Report would require public disclosure of the number of the issuer's voting securities owned or controlled by directors, executive officers, control persons and promoters of certain non-reporting issuers, and the amount paid for them. This information is intended to provide valuable information for investors and increase transparency in the exempt market. Would disclosure of the percentage of voting securities owned or controlled by directors, executive officers, control persons and promoters of the issuer also be useful information for potential or existing investors?*

While this information may be of interest to potential or existing investors, we note that this information is not specifically required in a prospectus, and is often not contained in the public disclosure record of reporting issuers. We question whether it is appropriate to require that non-reporting issuers provide more detailed information than is required of reporting issuers.

7. *The Proposed Report would require the disclosure of the residential address of directors, executive officers, control persons and promoters of certain non-reporting issuers in a separate schedule that would not be publicly available. Do you have any concerns regarding the requirement to disclose this information to securities regulators?*

We agree with the collection of addresses only if such information will be kept strictly confidential.

8. *The information collected in the Proposed Report will be publicly available with the exception of the information required in Schedule 1 and Schedule 2. Does the Proposed Report appropriately delineate between public and non-public information? In particular:*



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- a. *Would non-reporting issuers have specific concerns regarding the public disclosure of this information and, if so, why?*
- b. *Is the publication of firm NRD number, which will help identify the involvement of a registrant in a distribution for compliance purposes, appropriate?*

We have no position on the appropriateness of these requirements.

9. *In an effort to simplify and streamline the exempt market reporting regime for market participants, the Proposed Amendments would create one form for all issuers, with some items applicable only to non-investment fund issuers and some items applicable only to investment fund issuers. Should we require a specific form for investment fund issuers, as proposed in the March 2014 Proposals and, if so, why?*

We have no position on whether there should be a separate form for investment fund issuers, as PDAC does not represent investment funds.

10. *The Proposed Report would change the deadline for investment funds reporting annually to within 30 days after the calendar year-end (i.e. by January 30), rather than 30 days following their financial year-end. The purpose of this proposed change is to improve the timeliness and comparability of information from all investment fund issuers, regardless of their different financial year-ends. Would this proposed change present a significant burden for investment fund issuers?*

PDAC does not have a position on the timing requirement for reporting by investment funds.

11. *The Proposed Report includes Schedule 1 and Schedule 2, which would be required to be filed in electronic format. We anticipate that filing in electronic format will improve our information collection, enhance our ability to conduct compliance and policy analysis, and potentially lead to technological efficiencies for filers. If we were to provide templates in Excel format, would there be any specific technological barriers that would be burdensome for filers to overcome? If so, are there other formats that would be less burdensome and would accomplish the same goals of filing in the proposed format?*

We do not anticipate that the technological barriers for issuers to file Schedules 1 and 2 in Excel format would be unduly burdensome to overcome.



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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,



Rodney N. Thomas, P.Geol.
President
Prospectors & Developers Association of Canada (PDAC)

Cc:

Jim Borland: Co-Chair, PDAC Securities Committee
Michael Marchand: Co-Chair, PDAC Securities Committee and Member, PDAC Board
Andrew Cheatle: Executive Director, PDAC