PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

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)
Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o
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RE: Proposed Amendments to National Instrument 44-102 *Shelf Distributions* (NI 44-102) and a proposed change to Companion Policy 44-102CP *Shelf Distributions* (44-102CP).

Dear members of the Canadian Securities Administrators (CSA),

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development community that represents over 7,500 members around the world, including significant representation from the nearly 1,200 mineral industry issuers listed on Canadian stock exchanges.

Junior exploration and development companies in the minerals sector require continual injection of capital investment in order to survive, especially given the lack of material revenue and the significant time and cost that go hand-in-hand with the mineral exploration process. As such, PDAC continually works to improve access to capital, while also advocating for regulatory reforms that reduce the various costs associated with raising capital to ensure that Canada remains a top destination for mineral industry financing.

PDAC appreciates the opportunity provided by CSA to submit comments on proposed amendments to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) and Companion Policy 44-102CP *Shelf Distributions* (**44-102CP**), which aim to improve the practicality of the at-the-market (ATM) financing mechanism in Canada. PDAC has been a vocal supporter of reforms to regulations that govern ATM financing in Canada, and applaud CSA for the current initiative.

Recommendations

- In consideration of the two different approaches outlined by CSA in the request for public comment (*Option 1* and *Option 2*), PDAC recommends that CSA move forward with implementing ***Option 2***, which would place no limitations (i.e. 25% daily cap) on the amount of securities issued at a point in time based on market liquidity.
- In addition, we recommend that CSA consider creating a prospectus exemption for ATM financings with gross proceeds up to **$3 million** so that the ATM mechanism can be effectively employed by companies with small market capitalizations, daily trading volumes, and that may only require small financings to maintain a viable business.

In the following section PDAC's line of reasoning for both recommendations will be explained.

Background

Based on 2019 market data, **over 35% of all issuers** listed on the TSX and TSXV exchanges are mineral industry companies. The vast majority are junior exploration companies, which is reflected in the fact that nearly 80% of these issuers have a market capitalization below $50 million and over 55% are below $10 million. Junior explorers are highly dependent on new investment to fund activities and access to capital is becoming increasingly constrained as highlighted by the near 65% year-over-year decline in equity financing for the sector in H1/2019 (see Figure 1 on page 2).

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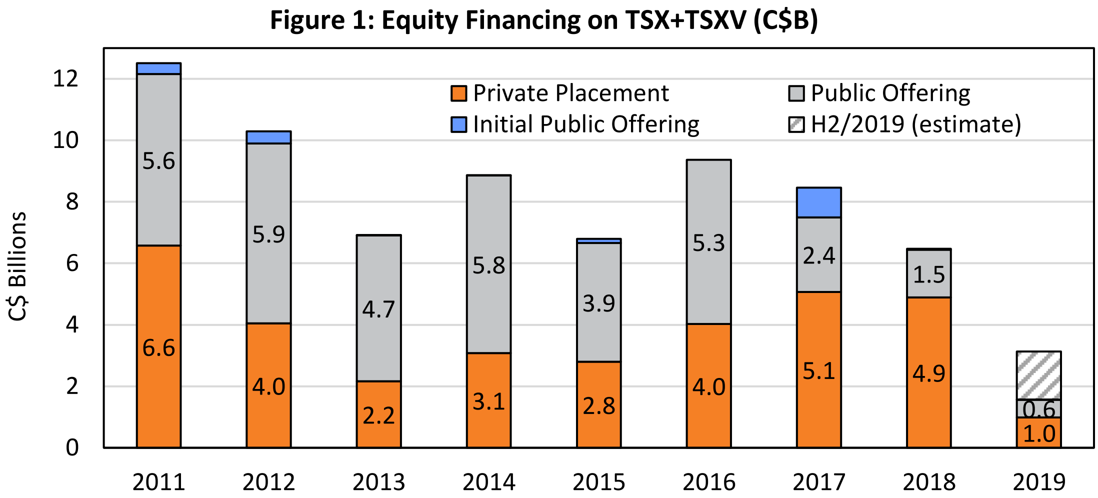
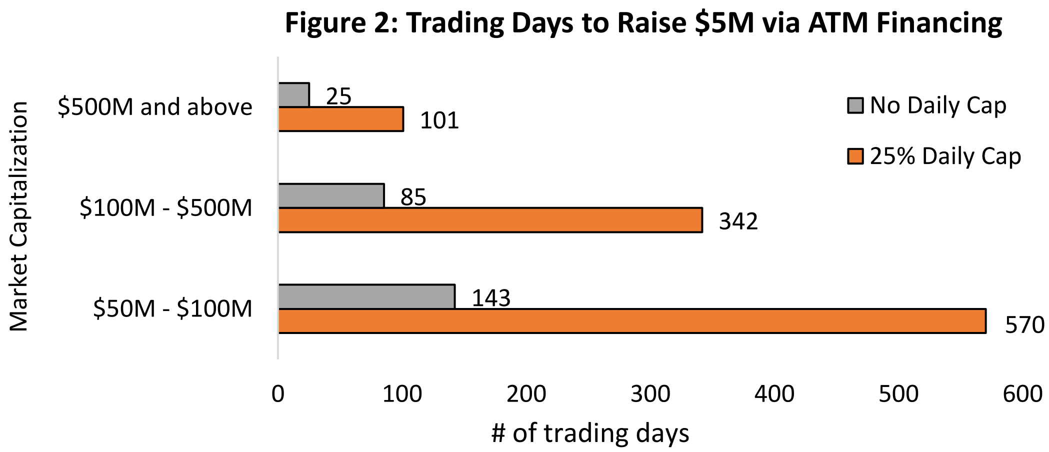


Another alarming trend from the chart above is the material decline in the proportion of public offerings for mineral industry issuers over the last several years. The trend suggests a narrowing of the investor base for a significant number of Canadian capital market issuers. In this environment, mineral industry companies increasingly rely on lower-cost mechanisms to source new capital, making access to a practical ATM mechanism a notable benefit.

Figure 2 below is based on 2019 data provided by TMX Group with significant outliers removed. It shows how the top ~20% mineral industry companies in terms of market capitalization (>$50 million) would require, on average, more than 350 trading days to raise a minimum $5 million or 1% of their respective market capitalizations if the "25% Daily Cap" were in place. This average timeframe would drop to less than 90 trading days if the daily cap were not in place.



It is apparent that the "25% Daily Cap" would render the ATM mechanism unworkable for larger companies in the mineral industry. The time required to generate necessary funds would make financial planning impossible and, therefore, make the ATM mechanism unusable.

Current continuous disclosure requirements ensure that any material changes to a public issuer are publicly announced and reported within a 10-day period. Given the potential length of time anticipated for a mineral industry issuer to raise just 1% of its market capitalization via an ATM, it is extremely unlikely that material changes could occur during or due to an ATM offering that would not be disclosed in various public documents. As such, there likely would be no increased risk to shareholders if the “25% Daily Cap” were not in place.

A typical mineral exploration program may require expenditures ranging from $100,000 to $500,000 per annum at initial stages, and eventually can reach multiple millions of dollars at more advanced-stages. In this context, it is unsurprising that according to TSXV data from 2011 to 2018, over 60% of the mineral industry’s financings reported were below $1 million.

The average daily value traded for mineral industry issuers with market capitalization below $50 million has been roughly $10,000 based on 2019 data. If the “25% Daily Cap” were applied to ATM transactions it would likely take a junior exploration company over 200 trading days on average to complete a $0.5 million financing and over 400 trading days to raise just $1 million.

Figure 3: Number of Days to Raise $500K via ATM Financing

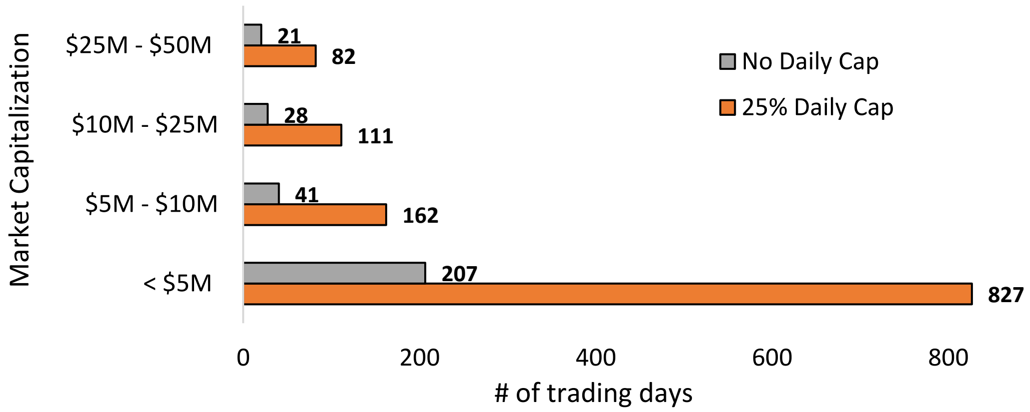


Figure 3 above reflects CSA’s acknowledgement of the limited benefit the exemptions in the Proposed Amendments will provide for small to mid-size issuers. The protracted timelines that may result from applying a “25% Daily Cap” would make the ATM regime impractical for junior mineral exploration companies.

Over the last several years it has become increasingly difficult for junior exploration companies to source new capital, and Flow-through share (FTS) financing has accounted for nearly 80% of the funds invested in mineral exploration in Canada over the last decade. While it’s encouraging to see FTS incentivizing domestic exploration investments, FTS funds must be explicitly used for exploration expenditures and cannot be used to support general corporate costs that sustain a business.

Although the potential timeframe required for a junior explorer to raise $500,000 even without the “25% Daily Cap” could be significant, the ATM mechanism would be more viable for raising ongoing funds without the daily cap, provided the cost of capital is comparable with other lower-cost mechanisms. In such a case, a junior exploration company could consider using an ATM financing to complement FTS financing to fund both exploration and corporate activities.

With respect to potential volatility implications of permitting ATM financings without a "25% Daily Cap", PDAC understands that financial institutions and brokerages operating in Canadian capital markets are bound by regulatory requirements, codes of conduct, and ethics from acting in a manner adverse to their clients' interests. Issuing shares via an ATM financing in a manner that would have a material adverse impact on a security's market value would go against such obligations and PDAC views this as an unlikely risk.

ATM as Prospectus Exemption

Many junior exploration companies fund themselves by way of small financings (i.e. < $1 million). In recent years, the significant increase in private placement financings reflects an overall decline in investment in the mineral sector, but also the need for junior companies to control their financing costs and the resulting aversion to costly public offerings in favour of smaller, private equity raises.

For the amount of funds that a junior company could expect to raise, an ATM offering that is based on filing a shelf prospectus would be prohibitively expensive. The cost of a shelf prospectus can typically range from $100,000 to $300,000 depending on aspects such as deal complexity, regions of distribution, translation requirements, etc. This means that the cost of completing the prospectus could exceed 10% of expected gross proceeds for deals up to $3 million. Such a high cost would make the ATM regime impractical for small financings.

In order for the ATM regime to be practical for junior mineral explorers, a prospectus exemption that allows a company to rely on continuous disclosure would be necessary and PDAC recommends that CSA consider such an exemption in the near future.

We submit that the risk to the public associated with such an exemption would be minimal or even non-existent, given that buyers in an ATM offering are acquiring their shares on the stock market in the same manner as a buyer acquiring shares in the secondary market. Indeed, a buyer in an ATM offering may not necessarily realize that they are acquiring treasury shares rather than previously-issued equity. It is uncontroversial that buyers in the secondary market are able to make their purchasing decisions on the basis of the issuer's public disclosure record. PDAC is of the view that the risk profile of a purchase in the primary market on an exchange under an ATM offering is identical to that of a purchase in the secondary market on the same exchange.

We thank the CSA for providing PDAC the opportunity to comment on proposed ATM amendments and invite future correspondence regarding the recommendations provided in this letter.

Sincerely,

Lisa McDonald
Executive Director
Prospectors & Developers Association of Canada (PDAC)