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The Ontario Securities Commission
Attention: Secretary
20 Queen Street West, Suite 1900
Toronto, Ontario M5H 3S8

September 17, 2002

Re: **Notice and Request for Comment On The Application for Recognition and Quotation of Canadian Trading and Quotation System Inc.**

Secretary:

The Prospectors and Developers Association of Canada (the "**PDAC**") is a national organization whose membership includes 4,500 individuals and corporations who are engaged in mineral exploration and mining activities throughout the world. Established in 1932, the PDAC has been supportive of legislation and other regulatory initiatives which foster the responsible development of Canada's mineral resources. We are pleased to respond to the Commission's request for comments (the "**Request for Comment**") in respect of the application by Canadian Trading and Quotation System Inc. ("**CNQ**") for recognition as a quotation and trading system.

Unless otherwise defined in this letter, capitalized terms have the meanings assigned to them in CNQ's draft policies attached to the Request for Comment.

We thank you for the opportunity to provide our comments. If you have any questions about our submission please contact either of the co-chairs of our Securities Committee as set out at the end of our submission.

Yours truly,

Bill Mercer
President,
Prospectors and Developers Association of Canada
Enc.

Submission

As a Response To

A Notice and Request for Comment On

The Application for Recognition and Quotation of Canadian Trading and Quotation System Inc.

Produced By The Prospectors and Developers Association of Canada (PDAC) to The Ontario Securities Commission (OSC)

September 17, 2002

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PDAC Comments On The Application for Recognition and Quotation of Canadian Trading and Quotation System Inc.

Introduction

Anecdotal evidence from PDAC members indicates that the junior mining sector has not enjoyed a positive experience after the consolidation of the Canadian Dealing Network and the various junior stock exchanges into the Canadian Venture Exchange (now the TSX Venture Exchange). These companies have complained of high maintenance and additional listing fees, the application of unwritten rules and policies in an inconsistent and impractical manner and slow responses from exchange staff. As a result, the PDAC supports the establishment of a new, viable, regulated marketplace for the trading of securities of small issuers.

The CNQ was conceived to fill a need for a trading platform for the shares of public companies which cannot meet the criteria of the other two stock exchanges in Canada – the TSE and the TSX-Venture exchanges. The CNQ proposal identifies three types of companies as their target market:

- Companies which were previously quoted on the CDN exchange which do not qualify for trading on the TSX-Venture Exchange
- Companies whose securities have been delisted by the TSX-Venture Exchange
- Companies which do not want to be listed on a recognized Canadian Stock Exchange

The PDAC would suggest that there is a fourth type of company that would be a natural candidate to have securities traded on the CNQ – the companies in the natural resources field where they are "resting" or not conducting exploration because they have not been able to raise sufficient funds for exploration because of market or commodity prices forces or where they are seeking a new property on which to conduct exploration.

In order to create a cost-effective mechanism for the trading and regulation of inactive or cash-poor companies, the PDAC strongly recommends that the CNQ policies be streamlined to reduce the number of periodic filings and eliminate the requirement to file documents already required to be filed under Ontario securities laws.

We understand that the Toronto Stock Exchange/TSX Venture Exchange have filed an application with the securities commissions in Alberta and British Columbia for the recognition of an exchange or quotation system designed for junior issuers ("**J2**"). Until we have had the opportunity to review and comment on that application, we cannot endorse either of CNQ or J2 over the other.

General

Our detailed comments on each proposed CNQ policy are set out below or on the attached markup. However we have the following general comments:

- many of the documents required to be filed on the CNQ Website are already required to be filed on SEDAR. In addition, CNQ will require the posting of a large number of documents which are not currently required to be filed on SEDAR which may not provide meaningful information to an investor (such as Certificates of Compliance and legal opinions). We believe that the combined effect of the duplication of previously filed documents as well as the requirement to post documents which do not provide meaningful information will result in a very cluttered CNQ Website and would reduce the usefulness of the Website. We submit that it would be easier for a reader to search the CNQ Website if its contents were limited to documents required to be filed by CNQ which are not already available on SEDAR and those which provide meaningful disclosure.

- experienced and capable management and directors are fundamental to the success of a junior company. Whether a company possesses these ingredients should be explicitly given priority in determining whether a company should be listed, suspended or de-listed.

- recent experiences have demonstrated that each company requires an effective corporate governance structure. While we agree with the CNQ policies that there can be no single structure appropriate for all companies, we believe that the lack of an appropriate corporate governance structure should constitute grounds for suspending or de-listing a company.

- the effective regulation of junior companies should strike the right balance between public disclosure and the company's interests in minimizing its compliance costs and the amount of management time required to prepare and update regulatory filings. We believe that documents required to be filed with CNQ should supplement information contained in other documents required to be filed under securities laws as opposed to duplicating the information contained therein.

- CNQ should not require the filing of Monthly or Quarterly Reports. Since the information required to be contained in these reports should already be in press releases and other continuous disclosure filings, we do not believe that the large amount of management time devoted to preparing these reports can be justified.

- fair regulation is best achieved when a regulator possesses the ability to exercise discretion and does so in a responsible and practical manner. However, fair regulation also requires that the rules and policies be as clear and comprehensive as possible. While we agree that discretion is necessary in deciding to accept or reject a company's application for quotation, we do not believe that CNQ should have such broad discretion to ignore written rules and policies after an issuer has been accepted for quotation.

- provisions in the policies and rules dealing with compliance with laws, rules, policies etc. should have a "materiality" standard so that the applicable test is "material compliance".

Policy 1

Paragraph 1.4: The text of the Certificate of Compliance implies that the certificate is provided by the signatory in his personal capacity. We do not believe this to be appropriate. In addition, the sanctions provided for in paragraph 7-104 of Rule 7 do not specify the sanctions for filing a false Certificate of Compliance whether advertently or inadvertently.

We recommend that (i) the text of the Certificate of Compliance be worded such that the signatory is filing it "for and on behalf of the issuer and not in his personal capacity"; (ii) the text of the Certificate of Compliance should state that the issuer is in "material" compliance with securities laws and (iii) paragraph 7-104 of Rule 7 should specify the range of proposed sanctions for filing a false Certificate of Compliance.

Paragraph 2.1: We note that CNQ will reserve the discretion to "grant or deny an application ... notwithstanding the published policies of CNQ." We believe that fair regulation is best achieved when a regulator possesses the ability to exercise discretion and does so in a responsible and practical manner. However, fair regulation also requires that the rules and policies be as clear, comprehensive and consistently applied. We believe that the discretion described above should be applied in the context of original listings. In all other situations, we believe that the rules and policies of CNQ should be clearly stated and should not be disregarded except in the most unique circumstances.

Policy 2

Paragraph 1.3: We note that the number of board lot holders required by the Canadian Dialing Network was 100. We believe that many issuers who will be applying for quotation on CNQ will be former CDN issuers and recommend that the CNQ requirement be lowered to 100 board lot holders in recognition of this.

Paragraphs 1.4 and 1.5: It is not clear to us why the "thin float issuer" designation is necessary at all. It is not a feature of any other stock exchange.

Members of our committee have calculated that an issuer would be required to have at least 500 board lot holders in order to avoid such a designation. We believe this number to be too high.

In any event, we do not believe that Issuers should be required to identify themselves on **ALL** disclosure documentation. The current draft of the CNQ policies will oblige issuers to file documents prepared under securities legislation with CNQ. None of these documents require issuers to designate themselves as "thin float issuers". CNQ should not be permitted to dictate the content of documents filed under the Securities Act. If the "thin float" designation is required at all, we believe that CNQ could achieve its objective by designating issuers as "thin float issuers" on the CNQ website – perhaps in the Quotation Summary.

Paragraph 1.10: The policy should explicitly state that CNQ will refuse to approve the quotation of an issuer whose management or directors lack experience.

Paragraph 2.4: We do not see any need to designate a specific individual to serve as posting officer.

Furthermore, we believe that CNQ should state more clearly how it means for the posting officer to be "responsible" for executing all postings. Does this mean that it intends to assign to the posting officer any liability for the form, content and sufficiency of the company's postings? If so, CNQ should specifically say so and state the available range of sanctions in paragraph 7-104 or Rule 7. If not, CNQ should specifically say so.

Paragraph 3.1(c): The words "and the Quotation Agreement;" should be added to the end of the sentence. Please also see our comment on paragraph 3.1 of Policy 3.

Policy 3

Paragraph 1.1: There may be situations in which the public interest justifies a halt or suspension in quotation of an issuer's securities. However, we do not agree that CNQ should be able to disqualify an issuer's securities for quotation without notice. CNQ has the power to suspend trading in an issuer's securities pending the service of a notice of disqualification and the exhaustion of the appeal procedures under Policy 1. Accordingly, we do not see that the public interest can outweigh an issuer's right to due process so as to justify disqualification without notice.

Paragraph 3.1: Items (b) and (c) are duplicative of the requirements for continued listing set out in (b) and (c) of paragraph 3.1 of Policy 2. They should be deleted or conformed to paragraph 3.1 of Policy 2.

Paragraph 3.3: Since a suspended issuer's securities may continue to trade over the counter or on other markets, CNQ should be required to post reasons for suspending an issuer on the CNQ Website so that persons who continue to trade in its securities are fully informed.

Paragraph 4.2: Please refer to our comments on paragraph 1.1.

Policy 4

We agree with the principles set out in paragraph 1.2 of Policy 4. However CNQ should consider reviewing the adequacy of the corporate governance structures of its issuers on a periodic basis.

Policy 5

Paragraph 13.1: The documents required to be posted on the CNQ Website under items (b) and (c) are already required to be posted on SEDAR. We believe that obliging issuers to post them on the CNQ Website is unnecessary.

Issuers are obliged to post their quarterly financial statements on SEDAR. Requiring them to be part of the Quarterly Quotation Statement under item (d) is not be necessary.

Issuers are already obliged to file all press releases and material change reports on SEDAR. We do not see any benefit to obliging them to amend their Quotation Statements under the circumstances set out in item (g) and suggest that, in any event, the deadline of 2 days is too short.

We do not believe that Monthly Reports will add any meaningful disclosure to the content of prior press releases and material change reports. We also wish to point out that management of resource issuers are often away for extended periods and the obligation to file a monthly report would conflict with their travel schedules. If an interim update is necessary, we believe that Quarterly and Monthly Reports should be replaced by a mid-year report.

We believe that most of the information contained in the Quotation Statement is found in the form of annual information form required to be filed under securities laws. We believe that CNQ should permit issuers who file annual information forms under securities laws to satisfy the requirements of item (h) if they file annual information forms with CNQ contemporaneous with filing them on SEDAR. While we recognize that

there would be duplication in such a filing, we believe it to be acceptable in light of CNQ's desire to make relevant and current information available on the CNQ Website to investors in one document. We do not see the need to require issuers to generate two separate documents which contain the same information.

Policy 6

Paragraph 2.1: The minimum issue price of $0.05 should be removed. We believe that many CNQ issuers will trade at prices which make this a hurdle to raising financing. The determination to raise financing and the price at which it is done should be left to the directors of a company. We believe that a minimum price of $0.05 is inappropriate for private placements to arm's length purchasers. If CNQ believes that the involvement of insiders in private placements to be a potential problem then we suggest that their participation in private placements at less than $0.05 be limited to a maximum of 50%.

Paragraph 2.6: Forms 45-501F1 are publicly available to interested parties. We do not see any need for them to be filed on the CNQ Website. In any event, a Form 45-501F1, if applicable to the transaction, is only required to be filed 10 days after the trade. We do not believe that it is appropriate for CNQ to oblige an issuer to file a form before it is required to be filed under the Securities Act.

Paragraph 2.7: We believe that the issuer should not be obliged to make any filing with CNQ if it has issued a press release in respect of the closing of the private placement.

Furthermore we do not see any significant value to be derived from posting the documents contemplated by this paragraph. In respect of the legal opinion contemplated by item (b) we note that: (i) such opinion would only be addressed to specified parties who could rely upon it (accordingly the posting of such an opinion on the CNQ Website would be potentially misleading since investors might assume that they would avail themselves of it) and (ii) opinions of the sort contemplated by subparagraph (ii) typically only cover jurisdictions in which purchasers are resident (accordingly the requirement to deliver an opinion in additional jurisdictions will result in additional cost to the issuer).

We believe that the appropriate legal opinion would be one addressed to CNQ and be limited to an opinion that the issuance of the securities has been duly authorized and that they have been issued as fully-paid and non-assessable. We note that our recommendation is consistent with the current requirements of the TSX and the TSX Venture Exchange.

Paragraph 3.2: Please refer to our comments on paragraph 2.6.

Paragraph 3.3: Please refer to our comments on paragraph 2.7.

Paragraph 4.1: Current practice of issuers is to file a news release announcing a prospectus offering after the filing of the preliminary prospectus. We are concerned that the dissemination of a press release prior to the filing of a preliminary prospectus may violate section 53 of the Securities Act (Ontario).

Paragraph 4.2: These documents are available on SEDAR. We do not believe that issuers should be required to post them on the CNQ Website as well.

Paragraph 4.3: In respect of the opinion contemplated by item (e), please refer to our comments on paragraph 2.7.

Paragraph 5.4: Current practice with the TSX and TSX Venture Exchange is for an issuer to file a legal opinion upon the implementation of a stock option plan. This opinion covers all shares which may be issued upon the exercise of options granted under the plan. The current draft of the CNQ policy would require an opinion to be provided by the CNQ issuer upon each grant of options. We do not see the need to put CNQ issuers through the added expense of obtaining legal opinions on each grant of options under a stock option plan when an opinion provided at the outset will suffice.

In respect of options granted outside of a stock option plan, we accept that separate legal opinions should be provided upon each grant of options.

Paragraph 5.5: We believe that issuers should be permitted to amend the terms of stock options with shareholder approval.

Paragraph 6.1: The document identified in item (i) of subparagraph (c) is available on SEDAR. We do not believe that issuers should be required to post it on the CNQ Website as well. In respect of the opinion contemplated by (i) of subparagraph (c) please refer to our comments on paragraph 2.7.

Paragraph 6.7: We do not see why it would be necessary to disseminate a news release (contemplated by item (b)) which describes the terms of the rights offering after the rights have expired.

Paragraph 7.5: We believe that issuers should be able to amend the terms of convertible securities (other than stock options) granted to arms' length parties. CNQ should explain why it has elected not to permit this.

Paragraph 8.2: A corporation is a separate legal entity from its shareholders. We believe it to be unfair and potentially harmful to an issuer and its shareholders for CNQ to hold an issuer responsible for the activities of its control block shareholders.

Policy 7

Paragraph 1.7: We do not believe that it is necessary to require issuers to post any of the documents required by this paragraph. CNQ issuers are obliged to issue press releases upon the occurrence of material information relating to significant transactions as well as file and amend Form 10 notices with CNQ. We do not see how investors would benefit materially from information contained in the documents listed in paragraph 1.7. We note that the opinion required by item (b) would not typically be given in a transaction not involving equity securities of the CNQ issuer and would certainly not opine on reporting issuer status in jurisdictions in which no securities are being issued. We believe that the requirement to file a Form 6 on closing of a significant transaction is unnecessary since this is already a monthly filing requirement.

Policy 8

Paragraph 1.2: We do not believe that CNQ should ignore the thresholds set out in Policy 8 in characterizing a transaction as a fundamental change. The tests set out in paragraphs 1.1 and 1.2 are clear and easily determined. We do not see the need for discretion.

In paragraph 1.1, a fundamental change is defined to include a change of control. The paragraph in paragraph 1.2 which begins "In broad terms ..." should be deleted since it describes circumstances which include a change of business by the issuer without a change of control. We believe that the obligation on the part of CNQ issuers to update their Quotation Statements and file Monthly Reports, in addition to their disclosure obligations under corporate and securities laws, would constitute sufficient disclosure to their shareholders of an issuer's change of business such that the regulation of a mere change of business would not be necessary. We believe that our submission is supported by the fact that the definition of "fundamental change" in paragraph 1.1 does not include a change of business.

Paragraph 1.5: In light of the various disclosure obligations imposed under securities and corporate laws in addition to those which are proposed by CNQ, we believe that trading halts in respect of fundamental changes should be limited to the time required to issue a press release rather than encompass the period up to the mailing of any required information circular.

Paragraph 1.6: We note that historical and pro forma financial statements are less relevant in the case of mineral exploration companies. We suggest that the requirement to include historical and pro forma financial statements in information circulars should not apply to mineral exploration companies.

Paragraph 1.8: We note that the wording of this paragraph imposes escrow requirements on all principals of the company as opposed to only the principals who acquire shares as a result of the fundamental change? If that is not the intent then the paragraph should be clarified.

We also believe that the release periods applicable to escrowed securities should contemplate that issuers will graduate from "emerging issuer" status to "established issuer" status.

Rule 7

We believe that the obligations set out in paragraph 7-102 are too broad and do not appear to require any notice provisions. We believe that the extent of these powers are not justified and should not be granted to CNQ without procedural safeguards similar to those contained in Part VI of the Securities Act (Ontario).

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We thank you for the opportunity to provide our comments. If you have any questions about our submission please contact either of the co-chairs of our Securities Committee as set out below:

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