PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

May 28, 2014

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

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

Re: CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106)

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 changes to NI 45-106.

The Prospectors & Developers Association of Canada (PDAC) is the national voice of the Canadian mineral exploration and development community. With a membership of over 9,000 individual and 1,200 corporate members, 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 1-4, 2015, at the Metro Toronto Convention Centre in downtown Toronto.

The PDAC has long been an advocate for regulatory reforms that facilitate capital-raising while protecting investors. These reforms are even more necessary now, as mineral exploration companies experience a profound capital-raising crisis. Globally, expenditures were down more than 20% year-over-year in 2013 (SNL-MEG). In 2013, according to Gamah International, the total value of junior financings in Canada was $6.3 billion – continuing the decreasing trend since 2010. The number of financings was down 17%, and the value of financings was down more than 50%.

Many of these financings were for very small amounts - 12% of financings on the TSX Venture Exchange (TSXV) were for $100K or less (0.5% in 2010). 52% of all financings in 2013 were for less than $500K (13% in 2010). More than half of the financings in 2013 have been priced at $0.10 per share or less (13% in 2010). This type of financing can be considered as desperation financing, enough to keep the lights on.

As at May 5, 2014, almost 60% of TSXV companies tracked by John Kaiser had working capital balances under $200,000. Low working capital balances are strongly correlated with share price; for companies trading below 10 cents/share, net working capital balances were negative $1.3 billion.

As such, the PDAC is concerned about proposed changes to NI 45-106 which would make it more difficult and costly for our members to access the capital markets. The PDAC agrees with the CSA that "*some individual investors may not understand the risks of investing under the AI Exemption*." We also agree that "*…the MA Exemption may not be a proxy for sophistication or ability to withstand financial loss."*[1] However, certain changes to the proposed Rule could potentially increase regulatory costs and complexity, particularly for junior issuers without providing the investor protection that the rule is aiming to achieve.

Two aspects of the proposed changes are of particular concern: one – they impose obligations on issuers more akin to those expected of registrants by raising liability concerns that seem unwarranted. Two – implementation of the rules (as proposed) will likely create undue administrative and implementation costs. Both of these issues are discussed further below.

A Fine Balance: Distinguishing Between the Responsibilities of Issuers and Registrants

Items 4 and 5 in the Summary of the Proposed Instrument (page 4) will create additional administrative burdens on issuers which seem unwarranted. In addition, they may create liability issues for issuers that hamper their ability to raise capital.

Registrants are in the business of providing investment advice and are compensated for that activity. Investment Funds also have portfolio management latitude in the nature of funds allocation and work toward maximizing the risk/return proposition as presented to clients.

The goal of the management and directors of an issuer is very different. Their objective is to raise capital to advance the business plan as disclosed. Any investors that choose to invest directly in an issuer should, with proper risk disclosure, accept the inherent risk associated with the issuer's business plan. Issuers should not be given the same regulatory responsibilities as Registrants or Investment Funds. Moreover, an issuer may not possess the expertise to evaluate an investor's investment objectives to the degree that a registrant, or portfolio manager in an investment fund could.

[1] Source: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions Relating to the Accredited Investor and Minimum Amount Investment.

An estimated 50% of the funds raised and 80% or more of the individual public equity issues in the mining, oil and gas and technology sectors are non-brokered private placements where the funds are raised directly and when registrants are involved, they do so with limited liability.

The process involves the issuer complete the NI 43-106 Forms based on the limited and professional relationship between Management and future investor. Typically, this relationship does not involve a detailed inquiry into the private financial details of an investor's net worth and income. However, in the proposed rules, the forms ask for personal questions that are better suited for a Registrant who is in the business of providing professional investment advice for compensation. An issuer on the other hand may not be qualified to provide such professional investment advice and should not be required to do so.

Furthermore, small cap pre-revenue companies are not registrants and typically have limited staff and resources on hand to comply with the proposed changes. Items 4 and 5 will impose an additional regulatory burden for which the policy impact on issuers has not been properly analyzed. Although the Summary of Proposed Amendments has a section titled "impact on investors", it does not have a necessary counter-balancing "impact on issuers" analysis. Impact assessment on issuers should be conducted before proposing changes to NI 45-106.

Reducing Regulatory Burden: Suggestions to Facilitate Implementation Cost-Effectively

The PDAC has consistently noted the growing costs of regulatory compliance for publicly listed companies, costs which are disproportionately impactful on pre-revenue small-cap companies. Should the proposed changes go forward, the PDAC would suggest that the following be taken into consideration to reduce the costs of compliance without compromising the regulatory intent.

1. Distinguish between investment funds and issuers

   Develop distinct, harmonized NI 45-106 F Forms (and associated regulations) to serve the specific needs of issuers and Investment Funds. The PDAC would suggest that BC, where many of the junior issuers are registered, take the lead on the issuer F Form and Ontario, where most investment funds are domiciled, take the lead on the Investment Fund F Form.

2. Develop a common spreadsheet-based format for NI 45-106 Forms

   The harmonized NI 45-106 Forms should be developed in some type of user friendly format that can be easily transferred to and from databases to reduce errors and improve efficiency. Even for small issuers the cumbersome nature of MS Word-based NI 45-106 forms are expensive to administer and prone to error. It is important to remember that small issuers are typically managing and coordinating the entire private placement process in-house with varying degrees of assistance from legal counsel and transfer agents.

3. Adapt regulatory filing requirements to the digital age

   - Signatures should be accepted in digital format since regulatory reporting in corporate finance is becoming more and more automated and internet-based.

   - The new requirement for investors, issuers and applicable sales personnel to complete a Risk Acknowledgement Form for Accredited Investors (45-106 F9) requires that the salesperson must ensure that the purchaser and the issuer receive originally signed copies. "Originally signed copies" is somewhat impractical in today's electronic world and a fax or PDF copy in counterparts is as good as receipt of originally signed copies. To accept anything less is to create a substantial transactional bottleneck for everyone involved in the process. This requirement to obtain "originally signed copies" will likely drive up the transaction costs of offerings for issuers and provide no appreciable benefit with respect to investor protection.

4. Adopt more reasonable record retention requirements

   The "8 year" record retention requirement is another administrative storage cost that issuers will have to absorb, especially if these storage costs are related to hard storage of paper documents. We propose fully digital record keeping.

5. An annual issuer exemption for issuance of less than $500,000 per year

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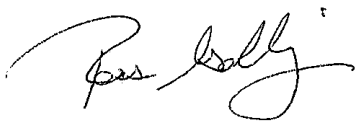
There should be consideration to exempting from any F Form reporting, regulated subscription agreements or associated regulatory restrictions and fees for any funds raised under $500,000 per year for issuers.

In this proposal an issuer would only be required to close legal transaction based forms required by corporate lawyer, transfer agent and exchanges. The issuer would not be bound by accredited investor rules or any perception that the issuer must act like a registrant. The process would be very similar to what is currently taking place except that it would allow for small issuers to have lower transaction costs and stimulate future internet automation of corporate finance activities.

Once the annual issue exceeds the $500,000, some form of regulatory reporting (and investor restrictions) may take place with associated capital regulatory fees.

The PDAC appreciates this opportunity to provide our comments. If you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,



Ross Gallinger, P.Ag.

Cc:

Rodney Thomas: President, PDAC Board of Directors
Michael Marchand: Co-Chair, PDAC Securities Committee and Member, PDAC Board
Jim Borland: Co-Chair, PDAC Securities Committee

This submission was originally authored by James Hershaw (Member, PDAC Securities Committee) and Samad Uddin (Director, Capital Markets, PDAC) with the support of Jim Borland (Co-Chair, PDAC Securities Committee); Brian Prill (Member, PDAC Securities Committee) and Nadim Kara (Senior Program Director, PDAC).