PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

March 11, 2015

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

Re: CSA Notice (the "Notice") and Request for Comment – Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions, National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions and National Instrument 45-102 Resale Restrictions and Proposed Repeal of National Instrument 45-101 Rights Offerings (collectively, the "Proposed Amendments")

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 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.

General Comments on the Proposed Amendments

We have the following general comments on the Proposed Amendments:

- PDAC views rights offerings as an important and useful means of raising capital in Canada, particularly for junior issuers in the mining industry. By permitting all security holders to participate on a *pro rata* basis, rights offerings are inherently fair to investors and therefore should be viewed as positive for Canada's capital markets. However, the ability of issuers to efficiently raise meaningful amounts of capital by way of a rights offering, on a prospectus-exempt basis, can be limited by the existing 25% market capitalization limit.

- For those reasons, PDAC is generally supportive of the Proposed Amendments insofar as the amendments would reduce the cost of capital raising by:
    - simplifying and standardizing the offering documentation used to effect a rights offering
    - eliminating regulatory review of the rights offering circular; and
    - reducing the average period of time to complete a rights offering

- PDAC is also supportive of the proposal to increase the maximum dilution limit from 25% to 100% over a 12 month period, which, when combined with the other aspects of the Proposed Amendments, should enable issuers to more efficiently raise larger amounts of capital on a prospectus-exempt basis.

Comments in response to Questions Relating to the Proposed Exemption

We also wish to provide the following comments in response to the questions posed in the Notice (using the same numbering):

1. *We propose that the exercise period for a rights offering under the Proposed Exemption must be a minimum of 21 days and a maximum of 90 days. These time periods are substantially*

consistent with those under the Current Exemption. Some market participants have told us that an exercise period of 21 days is too long. Others thought a longer exercise period is beneficial. Reasons cited for a longer exercise period are that at least 21 days may be necessary to reach beneficial security holders and foreign security holders and that institutional investors often need a longer period to receive approvals.

a. *Do you agree that the exercise period should be a minimum of 21 days and a maximum of 90 days?*

b. *If not, what are the most appropriate minimum and maximum exercise periods? Why?*

We believe that an exercise period of a minimum of 21 days and a maximum of 90 days is appropriate.

2. *We propose that the Notice must be filed and sent before the exercise period begins and that the Circular must be filed concurrently with the Notice. Do you foresee any challenges with this timing requirement?*

In our view, the proposed requirement to send a copy of the Notice to security holder would add an unnecessary expense to the rights offering process. We would propose that that requirement be removed and replaced with an obligation on the issuer to issue a press release containing the information set forth in the Notice, concurrently with the filing of the Notice on SEDAR. In this regard, please also refer to our response to Question 3 below.

3. *Some market participants have suggested we consider requiring the issuer to only file and not send the Notice and the Circular. While we do not think that the issuer should have to send the Circular itself, it is our view that the issuer should send the Notice to ensure that each security holder is aware of the offering. We also understand that the issuer would have to send rights certificates to security holders in any event.*

a. *Do you foresee any challenges with requiring the issuer to send a paper copy of the Notice?*

Any effort which results in a reduction in the cost to raise capital is welcomed by our members. In this regard, we would request that you consider our comments in response to Question 2 above. In particular, in our view the proposed requirement to deliver a paper copy of the Notice to security holders should not be necessary if the issuer issues a press release containing the information in the Notice, files the Notice on SEDAR and posts the Notice on the issuer's website. In any event, issuers

whose securities have been issued and are maintained on a book-entry only basis should not be required to deliver a paper copy of the Notice if the issuer satisfies those conditions.

b. *Do you foresee any challenges with the Circular only being available electronically?*

No. We view this change positively as it should greatly reduce the cost of an exempt rights offering without prejudicing investors.

4. *The required disclosure in the proposed Circular focuses on information about the offering, the use of funds available and the financial condition of the issuer. We do not propose to require information about the business in the Circular.*

a. *Have we included the right information for issuers to address in their disclosure?*

No. We believe that the proposed prescribed information is sufficient.

b. *Is there any other information that would be important to investors making an investment decision in the rights offering?*

No.

5. *Under the Proposed Exemption, we would require the issuer to include certain information in their closing news release including the amount of securities distributed under each of the basic subscription privilege and the additional subscription privilege to insiders as a group and to all other persons as a group. Other required disclosure includes the aggregate gross proceeds of the distribution, the amount of securities distributed under any stand-by commitment, the amount of securities issued and outstanding as at the closing date and the amount of any fee or commission paid in connection with the distribution. This information will give investors a more complete understanding of who acquired securities under the rights offering.*

Do you think that this disclosure will be unduly burdensome? If so, what disclosure would be more appropriate?

We do not believe that the information required to be disclosed in the closing press release will be unduly burdensome. However, we note that the issuer may not necessarily know, at the time of closing, the number of shares issued to persons that were insiders prior to the rights offering or who become insiders as a result of the rights offering, in either case where the security holder is an insider solely as a result of holding 10% of share of the

issuer's outstanding voting securities and disclosure of the holder's securities of the issuer is known only as a result of insider reports and/or early warning filings. We would suggest that, in those circumstances, the issuer be entitled to rely on SEDAR filings for purposes of its closing press release disclosures or that the disclosure requirement be removed on the basis that the insider will have an obligation to make the disclosure as required by applicable securities laws.

6. *The Current Exemption permits the trading of rights and we propose to allow for the trading of rights under the Proposed Exemption. We have received mixed feedback from market participants on the costs and benefits of allowing rights to trade freely. On the one hand, the trading of rights adds complexity to a rights offering and could potentially add a few days to the timeline for an average rights offering. The trading of rights also allows the issuance of free-trading securities to new investors. On the other hand, the trading of rights may benefit issuers as it often puts the rights into the hands of holders who are more likely to exercise the rights. It allows for monetization, which means that security holders who are unable to exercise rights could receive compensation for the rights. It also benefits foreign security holders as the issuer's transfer agent will typically attempt to sell the rights of ineligible security holders on the market.*

    a. *Should we continue to allow rights to be traded? If so, why?*

        We believe that rights should be allowed to be listed and traded in order to permit shareholders to elect to monetize the rights (particularly non-resident investors); and to encourage greater levels of participation in the rights offering and therefore the amount of proceeds raised.

    b. *What are the benefits of not allowing rights to be traded?*

        By not allowing the rights to trade, issuers may be less vulnerable to unsolicited attempts to effect a change of control at a discount to the market, as aggregation of rights (and the underlying securities) would be more difficult. However, as noted in item 6(a) above, we believe that the benefits of permitting trading in the rights generally outweigh any benefit of prohibiting trading.

    c. *Should issuers have the option of not listing rights for trading?*

        We believe that issuers should have the option of not listing rights for trading, as the cost of the listing may not be warranted in the circumstances.

7. *When we looked at historic use of rights offerings by reporting issuers, we found that the time between the filing of the draft circular and the notice of acceptance was quite lengthy (an average of 40 days). As a result, we considered options to reduce the review period. One of the options was to conduct a more focused initial review in three days rather than 10 days prior to the regulators' acceptance of the offering. The review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders, and other issues that raise significant investor protection or public interest concerns. We decided not to proceed with this option but instead to remove regulatory review prior to use. This is similar to other prospectus exemptions and it would significantly improve issuers' time to market. Certain jurisdictions are also proposing reviewing rights offerings on a post-distribution basis for a period of two years to assess the use of and compliance with the Proposed Exemption.*

    a. *Do you agree with our proposal to remove pre-offering review?*

        We agree with your proposal to eliminate the pre-offering review of the Circular. In our view, this proposal should reduce offering costs and management resources, and enable issuers to complete a rights offering more quickly and efficiently. Concerns over the elimination of a regulatory review should be adequately addressed by the introduction of statutory liability for disclosure in the Circular.

    b. *Do the benefits of providing issuers with faster access to capital outweigh the costs of eliminating our review?*

        In our view, that is the case.

    c. *Post-distribution review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders and other issues that raise significant investor protection concerns. Are there other areas that we should focus on?*

        We believe that those are the areas on which the regulators should focus their review.

8. *Currently, an investor in a rights offering has no statutory recourse if there is a misrepresentation in an issuer's rights offering circular or continuous disclosure record. We propose that civil liability for secondary market disclosure provisions would apply to the acquisition of securities in a rights offering under the Proposed Exemption.*

    a. *Is this the appropriate standard of liability to protect investors given that there will be no review by CSA staff of an issuer's rights offering circular?*

We believe that civil liability for secondary market disclosure would be an appropriate standard of liability for misrepresentations in a rights offering circular and related continuous disclosure record used in connection with a rights offering. That approach should assist in enhancing the integrity of Canada's capital markets and investor confidence in rights offerings as a financing method.

b. *Would requiring a contractual right of action for a misrepresentation in the circular be preferable? If so, what impact would this standard of liability have on the length and complexity of an issuer's offering circular, given that in order for the contractual liability to cover additional continuous disclosure record documents, the issuer may have to incorporate by reference those documents into the issuer's circular.*

We do not believe that requiring a contractual right of action would be preferable. In our view, that approach would only serve to add time and expense to the rights offering process.

9. *Given the potential size of rights offerings, there may be circumstances where it is desirable to mitigate the effect of the offering on control of an issuer. In this regard, CSA staff question whether security holders would benefit from separating the timing of the basic subscription and additional subscription privilege such that an issuer would announce the results of the basic subscription before commencing the additional subscription privilege period. An issuer's announcement of the results of the basic subscription may help security holders make more informed decisions about their participation under the additional subscription privilege.*

a. *Would security holders benefit from knowing the results of the basic subscription before making an investment decision through the additional subscription privilege?*

In our view, to separate the timing of the basic and additional subscription privileges would unnecessarily complicate the offering process. We believe that investors are sufficiently capable of understanding the potential impact of an additional subscription privilege on control, particularly given the disclosure regarding the number of securities to be issued in the offering and insider participation set out in proposed Form 45-106F15.

However, in our view issuers should have the option (but not the obligation) to separate the timing of the basic and additional subscription privileges.

b. *Would security holders make a different investment decision through the additional subscription if the results of the basic subscription were announced? If so,*

- *Should the additional subscription privilege be inside or outside of 21 days?*

- *Should the split timing for basic subscriptions and additional subscriptions always be required or only required in circumstances where there may be an impact on control?*

  In our view, investors would likely not make a different investment decision.

c. *What are the costs and benefits of having a two-tranche system for security holders?*

   See our response to Question 9(a) above.

<u>Questions relating to the repeal of the Current Exemption for use by non-reporting issuers</u>

10. *We propose repealing the Current Exemption for use by non-reporting issuers. There is very little use of the Current Exemption by non-reporting issuers. We also have concerns that existing security holders of non-reporting issuers do not have access to continuous disclosure about the issuer and the rights offering circular contains very limited disclosure about the issuer and its business. Accordingly, there may not be sufficient disclosure upon which an investor can make an informed investment decision.*

    a. *If we repeal the rights offering prospectus exemption for non-reporting issuers,*

        - *Would this create an obstacle to capital formation for non-reporting issuers?*

          In our view, the repeal of the Current Exemption for use by non-reporting issuers could create an obstacle to capital formation for non-reporting issuers. For that reason, we would suggest that the rights offering exemption continue to be available for non-reporting issuers so long as the issuer provides the same level of disclosure about its business as is currently required by National Instrument 45-101.

        - *Do you foresee any other problems?*

          No.

        - *Would repealing the Current Exemption cause problems for foreign issuers that do not meet the Minimal Connection Exemption? If so, should we consider changes to the Minimal Connection Exemption? Please explain what changes would be appropriate and the basis for those changes.*

We do not believe that repealing the Current Exemption for non-reporting issuer should cause material problems for foreign issuers because we believe that those issuers are generally adverse to complying with the requirements of the Current Exemption for practical reasons.

b. *Do you think we should consider changes to the Current Exemption instead of repealing it? If so, what changes should we consider?*

   - *If you think we should change the disclosure requirements, please explain what disclosure would be more appropriate.*

   See our response to Question 10(a) above.

   - *Should non-reporting issuers be required to provide audited financial statements to their security holders with the rights offering circular if they use the exemption?*

     No. In our view, the obligation to provide audited financial statements could unduly burden a non-reporting issuer.

c. *If the Current Exemption is repealed, non-reporting issuers could continue to offer securities to existing security holders under other prospectus exemptions such as the offering memorandum exemption, the accredited investor exemption, and the family, friends and business associates exemption. Are there other circumstances in which non-reporting issuers need to rely on the Current Exemption? If so, please describe.*

   In our view, the Current Exemption may not be a more effective and efficient means of raising capital than the other prospectus exemptions cited and therefore we would recommend that the Current Exemption continue to be available to non-reporting issuers and their security holders (all of whom would have acquired their securities of the issuer on a basis that presumes a different level of disclosure but also a different level of familiarity with the issuer and its affairs).

<u>Questions relating to the Stand-by Exemption</u>

11. *We propose that the securities distributed under the Stand-by Exemption to a stand-by guarantor who is not a current security holder or who is a registered dealer will be subject to a four-month hold period. We understand that stand-by guarantors are often either insiders of the issuer or registered dealers.*

a. *Should stand-by guarantors be subject to different resale restrictions depending on whether or not they are security holders of the issuer on the date of the notice?*

In our view, standby guarantors often play an important role in a rights offering by providing the issuer with the assurance that a minimum amount of capital will be raised in the offering. This enables the issuer to properly assess the pros and cons of pursuing the financing, including the estimated costs of the financing relative to other capital raising alternatives. For that reason, we do not believe that a standby guarantor that is not an existing security holder should be subject to different re-sale restrictions than those imposed on an existing security holder. To the extent that the standby guarantor will acquire a control position in the issuer, the restrictions on control block distributions and applicable stock exchange rules should be sufficient to regulate that type of distribution. Further, the issuer is free to negotiate the terms of any standby arrangement, including appropriate standstill provisions where warranted.

In our view, distributions of securities acquired under the proposed Standby Exemption should be subject to the same seasoning period applicable to a standby guarantor that is an existing security holder (subject to the existing restrictions on control block distributions).

We believe that drawing a distinction between existing and non-existing security holders in these circumstances could prejudice issuers' ability to attract standby guarantors and therefore to complete what would otherwise be an efficient capital raising exercise in which all affected security holders are entitled to participate on a *pro rata* basis.

b. *What challenges would there be for issuers trying to find a stand-by guarantor that is not already a security holder?*

See our response to Question 11(a) above.

12. *We are considering whether securities distributed under the Stand-by Exemption to a stand-by guarantor that is an existing security holder should also be subject to a four month hold.*

a. *If the stand-by guarantor is an existing security holder, should we require a four month hold? Why or why not?*

b. *We understand that in many cases, a stand-by guarantor receives a fee for providing a stand-by commitment. Should a stand-by guarantor that receives a fee and is a*

current security holder be subject to a restricted period on resale when other security holders are not subject to the restricted period?

c. *What challenges do you foresee if we require a four-month hold?*

For the reasons set out in our response to Question 11 above, we are of the view that a hold period should not be imposed on a standby guarantor that is an existing security holder, whether or not that security holder receives a fee for providing the standby commitment.

Question relating to the Minimal Connection Exemption

13. *We are considering whether we should require the filing of materials with the regulator through SEDAR as part of the Minimal Connection Exemption. Most issuers using the Minimal Connection Exemption would be foreign issuers. We understand that some, but not all, of these issuers use local counsel to file the materials. Do you anticipate challenges if we require that materials for the Minimal Connection Exemption be filed on SEDAR?*

We would not anticipate material challenges should the regulators require the filing of rights offering materials with the regulator through SEDAR, which we would expect would occur through law firms and commercial printers.

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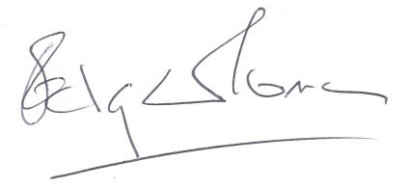
PDAC appreciates this opportunity to provide our comments. If you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,



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PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

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This submission was originally authored by Jonathan Grant (Member, PDAC Securities Committee), with the support of Jim Borland (Co-Chair, PDAC Securities Committee) and Samad Uddin (Director, Capital Markets, PDAC)