PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

June 18, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.gov.on.ca

Re: Amendments to NI 45-106 on Family, Friend and Business Associate (FFBA) Prospectus Exemption, prescribe Form 45-106F12 Risk Acknowledgement Form for Investors (Form 45-106F12), and amendments to 45-106CP to provide policy guidance on the FFBA Prospectus Exemption

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.

After consultations with PDAC members[1], PDAC prioritized five risks to maintaining Canada's status as the world's #1 jurisdiction for raising mining equity capital:

- Exempt market rules that limit access to a broad base of investors
- The ever-increasing costs of regulatory compliance for publicly listed companies due to duplication and complexity of regulations
- A regulatory structure that is heavy-handed on regulatory requirements but light on enforcement and criminal prosecutions of fraud
- Concerns about the adverse effects of market fragmentation and technology
- A regulatory system that is slow to react to market changes

[1] http://www.pdac.ca/public-affairs/securities/public-affairs/2013/04/23/member-consultation-on-securities-regulatory-reform

Related to these identified risks, PDAC is advocating for regulatory reforms that accomplish the following key policy goals:

- Facilitate capital-raising from a broader base of investors
- Reduce regulatory burden and compliance costs
- Improve enforcement and criminal prosecution of fraud
- Harmonize regulatory regimes across Canada

PDAC is pleased to see that a number of jurisdictions have come out with proposals to reform the exempt market, and facilitate access to capital for pre-revenue companies like those in the mineral exploration industry. The PDAC has long been an advocate for regulatory reforms that facilitate capital-raising while protecting investors.

PDAC is also calling for a simplified, proportional regime (with specific, less onerous rules) for junior exploration companies, start-ups and other pre-revenue generating industries dependent on risk-tolerant capital. This regime could rely on integrated disclosure (or simplified disclosure requirements) by removing requirements that add costs without enhancing investor protection.

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 independent industry analyst 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.

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

General Comments

PDAC strongly supports initiatives that facilitate capital raising from a broader base of investors. The Family, Friend and Business Associate (FFBA) Prospectus Exemption is a welcome initiative for our members, who will benefit from this exemption. Filing prospectuses for junior mining companies is an expensive regulatory cost, particularly now that the industry is facing financing difficulties. For small exploration companies without any revenues, every dollar spent on unnecessary compliance costs is a dollar that could be spent looking for the minerals and metals that make modern life possible.

Specific comments – FFBA Prospectus Exemption

In support of our position to facilitate capital raising by expanding the investor base, we are providing detailed responses to your questions below:

Types of securities

1. Do you agree with our proposal to limit the types of securities that can be distributed under the FFBA Prospectus Exemption to preclude novel and complex securities? Do you agree with the proposed list of permitted securities?

Response: We agree with limiting the types of securities to preclude novel and complex securities. We emphasize the importance of keeping flow-through shares under the Income Tax Act as this type of securities is an important part of raising capital for the exploration issuers.

Offering parameters

2. Should there be an overall limit on the amount of capital that can be raised by an issuer under the FFBA Prospectus Exemption?

Response: There should be no limit to the amount of capital raised by an issuer under the FFBA Prospectus Exemption. However, if a limit is applied, it should be adjusted annually for inflation.

Investor qualifications

3. Do you agree with the revised guidance in sections 2.7 and 2.8 of 45-106CP regarding the meaning of "close personal friend" and "close business associate"? Is there other guidance that could be provided re: the meaning of these terms?

Response: We support the increase in clarity in sections 2.7 and 2.8 with respect to "close personal friend" and "close business associate". However, we do not support going beyond what is stated in the revised section 2.7 and 2.8 and being more specific on the definitions of FFBA. For example, definitions outlining the specific number of years a person has had contact with the investor would be unfair. FFBA can be subjective and left to the interpretation of individuals on who they consider close friends or close business associate. It can also depend on the type of personalities and nature of the business. We suggest not going beyond what is suggested in the revision.

Investment limits

4. Should there be limits on the size of each investment made by an individual under the FFBA Exemption or an annual limit on the amount that can be invested?

Response: No. Setting limits would undermine the spirit of FFBA. The broader criteria set out in section 2.7 and 2.8 should provide sufficient information and clarity between the parties (issuer and investor) so that an investment decision is made with good judgement and with good intention. A FFBA Exemption would be of less use if limits on amounts or other limitations are introduced.

Risk acknowledgement form

5. Does the use of a risk acknowledgement form that is required to be signed by both the investor and the person at the issuer with whom the investor has the relationship mitigate against potential risks associated with improper reliance on the FFBA Prospectus Exemption?

Response: We do not support the current version of the risk acknowledgement form. We agree that there should be a risk acknowledgement form, however, it should be based on the Saskatchewan model (Form 45-106F5 Risk Acknowledgement). For small issuers, taking on the responsibility to verify the information of the FFBA investor is burdensome. It is up to the investor to ensure they acknowledge taking on the risk since they have the most to lose. It should be sufficient that the issuer retain a copy but not be required to sign the document. Retaining the form in electronic format by the issuer should be permitted.

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

Please see PDAC's submission on May 28th on CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) that provides guidance on implementation of the Forms.

Reporting of distribution

6. We believe it is important to obtain additional information in Form 45-106F11 to assist in monitoring compliance with and use of the FFBA Prospectus Exemption. Form 45-106F11 would require disclosure of the person at the issuer with whom the investor has a relationship. This additional information is provided in a schedule to Form 45-106F11 that does not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

Response: PDAC has provided detailed comments on 45-106F forms. We suggest using the BCSC's version of such forms as stated in our submission on CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) that provides guidance on implementation of the Forms. Also, see the previous response (Q5).

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
President
Prospectors & Developers Association of Canada

Cc:
Jim Borland: Co-Chair, PDAC Securities Committee
Michael Marchand: Co-Chair, PDAC Securities Committee and Member, PDAC Board

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

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Re: Amendments to National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) on Offering Memorandum Prospectus (OM) Exemption, Prescribe Form 45-106F13 Risk Acknowledgement Form for OM Investors (Form 45-106F13), and amendments to Companion Policy 45-106CP Prospectus and Registration Exemptions (45-106CP) to provide policy guidance on the OM Prospectus Exemption. Additionally, amendments to NI 45-106 that prescribe Form 45-106F10, and Form 45-106F11, amendments to NI 45-106 and OSC Rule 45-501 that mandate the filing of the Proposed Reports, and amendments to 45-106CP to provide policy guidance on filing the Proposed Reports.

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.

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PDAC is pleased to see that a number of jurisdictions have come out with proposals to reform the exempt market, and facilitate access to capital for pre-revenue companies like those in the mineral exploration industry. The PDAC has long been an advocate for regulatory reforms that facilitate capital-raising while protecting investors.

PDAC is also calling for a simplified, proportional regime (with specific, less onerous rules) for junior exploration companies, start-ups and other pre-revenue generating industries dependent on risk-tolerant capital. This regime could rely on integrated disclosure (or simplified disclosure requirements) by removing requirements that add costs without enhancing investor protection.

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%.

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General Comments

PDAC strongly supports initiatives that facilitate capital raising from a broader base of investors and harmonization of securities regulations across Canada. The Offering Memorandum (OM) Prospectus Exemption is a welcome initiative for our members who could benefit from this exemption. Filing prospectuses for junior mining companies is an expensive regulatory cost, particularly now that the industry is facing financing difficulties. For small exploration companies without any revenues, every dollar spent on unnecessary compliance costs is a dollar that could be spent looking for the minerals and metals that make modern life possible.

Specific requests for comment – OM Prospectus Exemption

In support of our position to facilitate capital raising by expanding the investor base, we are providing detailed responses to your questions below:

<u>General</u>

1. We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and SMEs. Have we proposed changes that will encourage start-ups and SMEs to use the OM Prospectus Exemption? What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

Response: The lack of popularity with respect to the use of OM could be due to the inappropriate amount of information being disclosed in the OM documentations. The purpose of the OM Exemption is to make is less onerous and reduce disclosure costs for issuers. Regulators need to provide clearer guidance on the amount of information that needs to be disclosed to sufficiently satisfy prospectus filing requirements under the OM Exemptions. For example, instituting a strict limitation on the number of pages and ability to make reference to supporting documents without having to include them in the OM (similar to Shelf Prospectus) can be a basis for reducing the length of prospectus and associated cost, or alternatively, developing a consistent OM template.

Issuer qualification criteria

2. We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? If so, what should that limit be and for what period of time? For example, should there be a "lifetime" limit or a limit for a specific period of time, such as a calendar year?

Response: No. Business decisions and economic factors should dictate the amount of capital that is raised under this exemption. Issuers can only raise the amount the markets will bear, hence an inherent natural limit already exists. Regulators should not decide the demand and supply factors of capital raising, nor should issuers be penalized for being successful.

3. What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? Should we vary the requirements of the OM Prospectus Exemption to be different (for example, disclosure requirements) depending on the issuer's industry, such as real estate or mining?

Response: Majority of the issuers are SMEs or start-ups that need access to risk capital. Also, for some issuers in this category, it is more efficient to raise risk capital in the exempt marketplace than the public marketplace.

A proportionate regulatory prospectus is desirable as long as it serves the purpose of the issuer in raising capital efficiently without added regulatory cost. Canada has certain dominant sectors such as mining and finance. As an example, a tailor-made disclosure regime that facilitates pre-revenue issuers' ability to raise capital is desirable.

4. We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?

Response: Although we do not have specific comments regarding real estate securities using the OM exemption we do not want issues of this nature to postpone the implementation of the OM exemption in Ontario.

Types of securities

5. We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?

Response: Yes, we agree that this is a reasonable approach.

6. Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

Response: Specifying the type of securities that may not be distributed under the OM Exemption is sufficient at this stage.

Offering parameters

7. We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? How long does an OM distribution need to stay open? Is there a risk that "stale-dated" disclosure will be provided to investors?

Response: PDAC supports harmonization as a priority. Hence, OM offering should remain consistent with other jurisdictions. However, the preference is to have a reasonable time limit applied across all provinces.

Registrants

8. Do you agree with our proposal to prohibit registrants that are "related" to the issuer (as defined in National Instrument 33-105 Underwriting Conflicts) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of "related" issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?

Response: We agree with the proposal to prohibit registrants that are related to an issuer from participating in an OM distribution. However, as proposed, registrants that are connected to an issuer should not be prohibited from participating in an OM distribution.

9. Concerns have been raised about the role of unregistered finders in identifying investors of securities. Should we prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? What role do finders play in the exempt market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising?

Response: The OSC should not prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution. SMEs and start-ups depend on experts in their field who are knowledgeable in their field, particularly for a start-up company. Non registered person/s may at times be able to promote a company to investors more efficiently than registered dealers. We do not support the limitation proposed to only registered dealers.

<u>Investor qualifications – definition of eligible investor</u>

10. We have proposed changing the $400,000 net asset test for individual eligible investors so that the value of the individual's primary residence is excluded, and the threshold is reduced to $250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets. Do you agree with excluding the value of the investor's primary residence from the net asset test? Do you agree with lowering the threshold as proposed?

Response: We do not support changing the net asset test for individual eligible investors to exclude their principal residency if it reduces the number of overall eligible investors. The OSC should first determine the impact on the number of investors able to use the OM Exemption with the $250,000 asset amount (without principle residence) before making this change.

11. An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). Is this an appropriate basis for an investor to

qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

Response: Yes, advisors' compliance with the know-your-client, know–your-product and suitability obligations are meant to address concerns investors may have before making investment decisions. Yes, EMDs are also obligated to follow the same rules and therefore should be included.

Investment limits

12. Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

Response: We support the proposed limit of $10,000 for individuals that do not meet the eligible investor definition. We do not support the $30,000 limit set for eligible investors as we feel that this limit is low. A more appropriate limit would be $50,000. The data from Alberta in Annex B "Background – Local Experience with OM Exemption" in the Multilateral CSA Notice of Publication and Request for Comment Proposed Amendments to National Instrument 45-106 the Alberta data indicates the average size of investments by individual investors was $47,900 in 2012. Therefore a $50,000 limit strikes the right balance between the investor protection and the need for raising capital by issuers.

Point of sale disclosure

13. Current OM disclosure requirements do not contain specific requirements for blind pool issuers. Would blind pool issuers use the OM Prospectus Exemption? Would disclosure specific to a blind pool offering be useful to investors?

Response: We do not have a position on this issue.

14. We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other

tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

Response: It is important that streamlined and defined clear rules be imposed on the length of the OMs. Other jurisdictions that already use OMs have had issues with respect to the length of the document being equivalent to a standard prospectus. In order for the OM to be a success in Ontario, a limitation on the length of an OM is very important. See response to Q1.

Advertising and marketing materials

15. In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

Response: Yes. Issuers should be held accountable for providing false information.

Ongoing information available to investors

16. Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements? In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

Response: Yes, an annual financial statement should be sufficient however, they do not need to be audited if amount raised is $500,000 or less. Yes, a review of financial statement is adequate if the amount raised is $500,000 or less.

17. We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?

Response: Yes, we agree that security holders should be notified in the event of a significant event as defined in the proposal. However, the time period should be extended to 15 days since start-ups

and SMEs may not have the resources to disseminate the information within 10 days. Also, the method for distribution should not be costly. For example, an email distribution of such information would be sufficient.

18. Is there other disclosure that would also be useful to investors on an ongoing basis?

Response: No. The proposed disclosure for OM is sufficient. Added disclosure would undermine the purpose of the OM Exemption.

19. We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

Response: No. Non-reporting issuers should not be required to provide disclosure after the proceeds have been spent. Ongoing disclosure defeats the purpose of an OM Exemption in this case.

Reporting of distribution

20. We believe that it is important to obtain additional information to assist in monitoring compliance with and use of the OM Prospectus Exemption. Form 45-106F11 would require disclosure of the category of "eligible investor" that each investor falls under. This additional information is provided in a confidential schedule to Form 45-106F11 and would not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

Response: The PDAC supports a risk-based approach to compliance. The proposed mandatory requirements to file Form 45-106F11 adds additional compliance cost to start-ups and SMEs. We do not support the use of this form and if implemented, it should be voluntary.

Specific requests for comment – Activity fees

1. Are the proposed activity fees appropriate? Do they address the objectives and concerns by which were guided?

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

Response: The proposed activity fees are excessive for start-ups and SMEs. All fees in the OSC Rule 13-502 Fees should be reduced by 50%.

2. Should we consider any other activity fees for exempt market activity?

Response: No.

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
President
Prospectors & Developers Association of Canada

Cc:

Jim Borland: Co-Chair, PDAC Securities Committee
Michael Marchand: Co-Chair, PDAC Securities Committee and Member, PDAC Board

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To the Following:
Ontario Securities Commission

Re: Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

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 Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements.

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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%.

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PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

General Comments

PDAC strongly supports initiatives that facilitate capital raising from a broader base of investors and harmonization of securities regulations across Canada. The proposal for a Crowdfunding Exemption, and a Start-Up Exemption, could provide junior issuers with a much-needed alternative source of capital.

Specific requests for comment – Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

In support of our position to facilitate capital raising by expanding the investor base, we are providing detailed responses to your questions below:

Crowdfunding Prospectus Exemption

Issuer qualification criteria

1. Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?

Response: No, it should also be available to reporting issuers since many reporting issuers are SMEs in the venture exchanges.

2. Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?

Response: We do not have a comment in this issue.

3. The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?

Response: We do not agree with this proposal since many Canadian companies are global in nature and may have operations abroad along with strong ties to Canada. While we recognizing that having Canadian directors would facilitate oversight, accountability and enforcement, restricting this exemption to issuers with a majority of director's being resident in Canada would unnecessarily impact capital-raising efforts by Canadian companies. We propose that the restriction be limited to 25% Canadian residents.

Also, given that there is an existing memorandum of understanding with the SEC and most of the major securities regulators in Canada (Alberta Securities Commission, British Columbia Securities Commission, Ontario Securities Commission, Autorite des marches financiers du Quebec), U.S. residents should not be considered foreign. The MoU "Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities" would allow Canadian regulators to collect information and conduct enforcement through the SEC and/or the appropriate law enforcement agencies.

Offering parameters

4. The Crowdfunding Prospectus Exemption would impose a $1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is $1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? Is the 12 month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?

Response: The $1.5 million limit is too low. For example, a junior mining company starting an exploration program may need to raise $3-5 million. We propose a limit of $1.5 million per issuance with a cap of $3 million a year per issuer. This limit should not extend to an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer. Yes, the 12 month period limit is appropriate.

Additionally, there should be a clause whereby the cap amount is increased annually based on the rate of inflation, as measured by the Bank of Canada's inflation index.

5. Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?

Response: Yes, there should be an option to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering. We propose that 50% of the target offering should be achieved in order to extend the subscription, however, limited to be extended not more than twice.

Restrictions on solicitation and advertising

6. Are the proposed restrictions on general solicitation and advertising appropriate?

Response: Yes, centralized portal where consistent information that is also filed to regulators is appropriate. However, an issuer should not be restricted to duplicate the same information on the company website or social media site.

Investment limits

7. The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than $2,500 in a single investment under the exemption and more than $10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

Response: The $2,500 limit for a single investment is not appropriate given that the total allowed under this exemption is $10,000. By diversifying the risk, an investor does not eliminate risk nor can they reduce risk exposure if invested in similar issuers. In our view, there should only be a limit on the total allowed per year. The total limit allowed for non-accredited investors should be increased to $15,000, and adjusted annually with the rate of inflation as reported by the Bank of Canada.

We support the current proposal that there should be no limits for accredited investors, since they do not face any limits in other exempt market investment categories.

Statutory or contractual rights in the event of a misrepresentation

8. The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?

Response: The proposed standard of liability is excessive. Current laws prohibit misrepresentation and criminal prosecutions can be made under existing criminal laws. There is no need to implement additional contractual right of action for rescission or damages in the event of a misrepresentation. The rationale for proposing crowdfunding is to reduce regulatory burden on SMEs and to expand investor participation in the capital markets. By adding documentations on contractual rights,

there is no overall benefit to investors or issuers. PDAC and its members would rather see time and resources allocated to improved enforcement of fraud and misrepresentation.

Provision of ongoing disclosure

9. How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?

Response: The disclosure documents should be accessible in a standardized electronic formal on the portal website and if available, the company website. There is no need for an intermediary to distribute the prospectus information on behalf of the issuer. The documents can be made public if agreed by issuers' management but should be made available to the investors.

10. Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?

Response: No. All non-reporting issuers should not be mandated to provide audited financial statements. An annual financial statement that has been reviewed by a public accounting firm should be adequate. An audited financial statement is expensive. Our estimates indicate $20,000 to $60,000 for an audited financial statement and more if the issuer has operations abroad.

11. The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

Response: Yes the parameters are appropriate however the threshold amount should be increased to $750,000 and adjusted for inflation annually. The $500,000 threshold is low given the cost of producing the audited financial statements is high ($60,000 per year or more for issuers with operations in foreign jurisdictions).

Other

12. Are there other requirements that should be imposed to protect investors?

Response: As a starting point, the proposed requirements are adequate. Any new requirements should be assessed once the result of the crowdfunding is observed in practice. A post-

implementation assessment of the exempt market will indicate whether additional requirements are necessary.

Crowdfunding Portal Requirements

General registrant obligations

13. The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital requirement of $50,000 and a fidelity bond insurance requirement of at least $50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?

Response: The amount proposed is too small. The minimum net capital should be increased to $250,000 and fidelity bond insurance of $100,000 is appropriate.

Additional portal obligations

14. Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

Response: Given that the intention here is to create cost-effective avenues for capital-raising, regulators should (at least initially) not require portals to undertake the duties noted above. Rather than mandating (from the outset) that portals undertake these responsibilities and absorb related costs, regulators should instead require portals to provide links to existing resources that allow potential investors to do their own due diligence. Some portals may choose to undertake this due diligence themselves; the market will then decide whether the extra costs associated with this work are worth it. If they are, these portals will flourish.

Prohibited activities

15. The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. Is the investment threshold appropriate? In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?

Response: Due to the inherent conflict of interest, portals should be prohibited from receiving any fees in the form of securities.

16. The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?

Response: Yes, this is appropriate. Portals should not be giving investment advice but rather provide analytical tools for the investor to make their own decisions. A portal can determine its own business model to generate profit and regulators should not influence their decision.

Other

17. Are there other requirements that should be imposed on portals to protect the interests of investors?

Response: Portals should be held accountable if they do not provide sufficient protection from cybercrime and other online threats to investor information. The portals should adhere to high industry standards to avoid cybercrime and other online criminal activities. Regulators should audit portal's cyber resiliency practices annually as they do with registered exchanges.

On the other side, however, some requirements should be in place to protect portals. For example, if multiple portals are established, how would any given portal be able to ascertain if an investor has exceeded their annual investment limit? Regulators and portals may want to consider options to manage this risk, such as (for example) the development of an integrated national investor database that can, in a confidential manner, confirm whether an investor still has room available to invest in a crowd-funding initiative.

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18. Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?

Response: Yes, there is plenty of interest in the portal business. However without implementation of the proposals it is difficult to make a concrete assessment of the business model for a portal.

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
President
Prospectors & Developers Association of Canada

Cc:
Jim Borland: Co-Chair, PDAC Securities Committee
Michael Marchand: Co-Chair, PDAC Securities Committee and Member, PDAC Board

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