PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

December 22, 2015

Emailed to: comment@ccmr-ocrmc.ca

Re: Revised consultation draft of the provincial/territorial Capital Markets Act

This letter is submitted on behalf of the Prospectors & Developers Association of Canada ("**PDAC**") in response to the invitation to comment on the revised consultation draft of the provincial and territorial Capital Markets Act (the "**CMA**").

PDAC is the national voice of Canada's mineral exploration and development industry. With a membership of over 8,000, 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. PDAC is known worldwide for its annual PDAC Convention, regarded as the premier event for mineral industry professionals. The PDAC Convention has attracted over 25,000 people from 125 countries in recent years and will next be held March 6-9, 2016, in Toronto. Please visit www.pdac.ca.

Capital markets: The lifeblood of the mineral exploration industry

Capital markets underpin the success of Canada's unique mineral industry ecosystem, which is comprised both of major mining companies, and the world's largest concentration of junior exploration companies. A majority of the 1,806 companies listed on the TSX Venture exchange are junior mining issuers (which make up 60% of all the TSX Venture exchange). In addition, there are a significant amount of mining companies listed on the TSX main board. Between 2009 and 2013, Canada's capital markets helped raise more than 40% of all the mining equity capital globally, solidifying Canada's position as a global mine finance hub.

Given the importance of capital markets and securities regulations to the Canadian mineral industry, PDAC has had a long history of advocating for key reforms that will allow businesses in our industry to benefit from greater access to capital.

PDAC advocacy in this area is focused on achieving three priority goals:

- expanding the pool of capital available to venture issuers;

- reducing the costs of raising capital (through reduced compliance costs) for all capital markets participants; and

- providing a more effective enforcement regime in participating jurisdictions.

Cooperative Capital Markets Regulatory System

PDAC believes that the cooperative capital markets regulatory system (Cooperative System) can, if designed properly, help to advance all three priority goals listed above. As a result, PDAC has actively supported efforts to harmonize capital market regulations in Canada for decades.

We continue to appreciate the efforts that have been made in the design of the Cooperative System to allow the consideration and adoption of best practices from other jurisdictions in the areas of access to capital, compliance costs and enforcement. We encourage efforts in this regard to continue (and to include consideration of experiences outside of North America). Our organization is particularly supportive of the adoption of the various new exemptions that are being proposed by participating jurisdictions, such as the Offering Memorandum and Crowdfunding exemptions. We are pleased that these would essentially continue under the Cooperative System.

PDAC is encouraged to see that the list of jurisdictions participating in the Cooperative System has recently expanded. We encourage participating jurisdictions to continue their efforts to persuade other jurisdictions to also join, as the advantages of the Cooperative System will be maximized when all Canadian jurisdictions are part of the Cooperative System. We also encourage jurisdictions that have not yet joined to make their participation contingent upon receipt of a commitment, from participating jurisdictions, that they will ensure the new system acknowledges and addresses the capital-raising needs of venture issuers, including mineral exploration companies.

Comments on the Revised Capital Markets Act

On behalf of PDAC, the following comments are provided by reference to the Revised Consultation Draft of the CMA. For ease of reference, our comments are correlated to the

corresponding sections of "Commentary on the revised consultation draft of the provincial/territorial Capital Markets Act"[1] (the "**Summary Document**").

Part II. A Modern regulatory approach

The Summary Document points out that "…the CMA takes a platform approach to capital markets regulation. It sets out the fundamental provisions of capital markets law while leaving detailed requirements, including some requirements that are currently contained in provincial and territorial securities legislation, to be addressed in regulations." This approach is contrasted with the approach taken under the *Securities Act* (Ontario), which is described as a prescriptive approach.

While PDAC understands the practical advantages offered by a platform approach, we urge participating jurisdictions to ensure that when regulations are adopted or amended, appropriate consultation with capital markets participants are undertaken. Under the current regime, the ability of regulators to make far-reaching changes to the system is constrained to the extent that doing so requires an amendment to the more prescriptive securities legislation that governs in this area. As a result, far-reaching changes to the system are subject to consultation by regulators, as well as additional consultation that can draw input from a broader range of stakeholders when legislative amendments are sought and considered in provincial or territorial legislatures.

The move to a platform approach for the CMA highlights the importance of ensuring that robust, comprehensive and inclusive consultation protocols will be mandated when regulations and regulatory amendments are proposed. Otherwise, there is a risk that the broader stakeholder consultation that is undertaken by legislatures will be removed from the system's process. (Also see our comments re: Part II (k), below)

Part II(b). Registration, prospectuses, continuous disclosure and take-over bids

The possibility of mandating continuous disclosure and other compliance from exempt issuers

The Summary Document explains that the CMA allows for the possibility that continuous disclosure, proxy and possibly other requirements applicable to reporting issuers could be

[1] http://ccmr-ocrmc.ca/wp-content/uploads/cma-commentary-en.pdf

extended to other types of issuers or companies, including businesses making certain types of exempt offerings.

PDAC understands that the Cooperative System must be equipped to address the evolution of capital markets and the development of new capital raising techniques. However, we caution the Cooperative System and its participants not to reflexively impose expensive reporting requirements on junior issuers just because the requirements make sense for larger issuers. Reporting and other requirements should be tailored to the activities of the businesses being regulated and to the informational needs of investors in those businesses. If expansive and costly reporting obligations are imposed, the companies subject to those obligations will find that they are required to devote a disproportionate amount of their limited financial resources to fulfilling those obligations, thereby reducing the funds available for business activities. This is particularly the case for junior mining issuers where we have observed a large portion (sometimes up to 100%) of the capital raised devoted to compliance costs.

Currently, there are many areas in which continuous disclosure requirements require many of PDAC's members to report information that is of questionable value or interest to their shareholders. For example, they are required to file financial statements on quarterly basis notwithstanding they often experience long periods of time during which there are no material financial activities to report. In addition, the quarterly financial filings include a management's discussion and analysis report that requires disclosure and discussion on many topics that are often meaningless for junior resource companies that have no revenue and irregular, project-driven expenditures that do not correlate to a calendar. We urge the Cooperative System's participants to use every effort to ensure that continuous reporting obligations (and other related obligations) are targeted and proportionate to the businesses and activities being regulated.

The possibility of other types of offering documents

PDAC supports the possibility that, under the CMA, prospectuses and other forms of offering documents might be available for use in communicating with prospective investors to raise capital. This will be of particular use to our members because, to the extent that alternatives to the prospectus are allowed under the CMA, those instruments would be available in all Cooperative System jurisdictions.

In order to further encourage the use of other types of offering documents, PDAC encourages Cooperative System jurisdictions to continue to harmonize regulations with those Canadian

jurisdictions that have opted not to participate. This would encourage issuers in all jurisdictions to use alternatives to a prospectus if it is suitable for their financing needs.

Part II(d). Regulatory obligations and prohibitions

As discussed in the Summary Document, Section 58 of the proposed CMA foresees that regulations may be imposed requiring companies and their directors and officers to identify, disclose and manage conflicts of interest in connection with certain transactions. Many of PDAC's members are smaller resource exploration and development companies whose management and directors are often involved at senior levels with other companies in the same industry. In addition, a significant percentage of the directors on the boards of smaller issuers in our industry (and others) receive little or no real compensation for their service as directors. Indeed, it is a credit to participants in our industry that those with experience and expertise are so willing to sit on multiple boards, notwithstanding that in so doing they are sometimes providing assistance to companies that directly compete for capital and attention with other businesses in which they are more heavily involved as management, key shareholders or promoters.

With this information in mind, PDAC cautions against the arbitrary adoption of new measures and obligations for managing conflicts of interest by issuers and their management without first considering their impact on exploration companies. The current system works well, as it allows issuers to access the advice, guidance and other services they require from experts involved with numerous other projects, while also ensuring that shareholders and investors are informed of conflicts of interest, that those subject to conflicts of interest are appropriately removed from decision-making where those conflicts might skew their judgement, and that in certain circumstances shareholder approval and/or third party opinions are sought. To the extent that any future measures in the area of conflict of interest reporting and mitigation dissuade experts from working with multiple issuers, our industry would suffer considerably.

Part II(i). Immunity and privilege

The Summary Document advises that consideration is being given to granting full immunity to self-regulatory organizations (to the same extent immunity is extended to the CMRA and recognized auditor oversight organizations). This would be in contrast with the current provisions of the draft CMA (specifically Section 201(3)) which limit a self-regulatory authority's immunity to actions taken by it within the scope of authority delegated to it under the CMA.

PDAC does not support unlimited immunity for self-regulatory authorities. Our view is that an extension of unlimited immunity could encourage self-regulatory authorities to extend their reach outside their delegated areas of responsibility.

Part II(k). Regulation-making process and authority

As previously discussed in this letter, PDAC is concerned that the platform approach reflected in the CMA could reduce the extent of public consultation that is required when new regulations and regulatory amendments are proposed. A 90-day comment period for a regulatory proposal (supplemented by an additional 30 days of consultation if the original proposal is amended) would not be sufficient for the implementation of what could amount to a fundamental change to the securities regulatory framework governed by the CMA.

PDAC also finds that the CMA's consultation provisions would be improved if they required greater transparency, by requiring that comments from the public be published and also fully shared with the Council of Ministers.

In addition, PDAC submits that in order for regulatory proposals to be adopted, the Council of Ministers should be required to approve them. In our view, allowing regulatory proposals to become "law" because the Council of Ministers has failed to reject them vests too much authority in the CMRA. If the CMRA proposes a regulatory action to the Council of Ministers and is unable to persuade the Council of Ministers to adopt those proposals, the proposals should fail.

Similarly, PDAC submits for consideration the following changes to the regulatory consultation and approval framework as outlined in the CMA:

- Sections 205(3) and 205(6) should state that for any regulatory proposal under consideration, the CMRA must provide a public comment period that is appropriate in light of the nature and extent of the proposal presented, such comment period to be no shorter than 90/30 days.

- When the CMRA submits regulatory proposals to the Council of Ministers, Section 206(1) should require the CMRA to provide an explanation as to whether and how, in its view, the comment period provided to the public was adequate. PDAC also submits that the CMRA's review of the problem it is proposing to address with a regulatory proposal should be accompanied by cost-benefit analysis (undertaking from the point

of view of issuers and other regulated businesses, as well as from the perspective or regulators).

- All comments submitted to the CMRA in response to published regulatory proposals should be posted for viewing on the CMRA's website before submissions are made to the Council of Ministers.

- In Section 206(1), in addition to being required to provide the Council of Ministers with a report summarizing comments received, the CMRA should be required to provide the Council with all written comments received during the consultation periods.

- In addition to inviting comments, the CMRA should be mandated to actively seek input and comments from parties likely to be interested in or affected by regulatory proposals. Section 206(1) could therefore be revised to require that when the CMRA submits regulatory proposals to the Council of Ministers, it must report on the efforts undertaken to solicit comments from interested and affected parties or industry groups.

- Considering that junior or smaller Canadian issuers represent a greater portion of public or reporting issuers than they do in other jurisdictions, PDAC suggests that the CMRA should be required to separately report on the anticipated impact that proposals would have on junior or smaller issuers, as opposed to larger issuers.

- Section 206(4) should be revised to require the affirmative approval of regulatory proposals by the Council of Ministers. Failing to do so will result in those proposals not to take effect.

In this area, PDAC also questions why the CMRA requires the ability to extend regulations that are adopted without consultation for a period of up to 36 months. Whenever new regulations (that involve material amendments to existing regulations) are adopted without consultation, this should be viewed as an emergency action. Section 210(d) of the CMA provides that such emergency actions expire 18 months after adoption, and 18 months provides sufficient time for a robust consultation to be completed.

Part II(l). Other matters

Investor advisory panel – an additional proposal

The Summary Document advises that the possibility of establishing an investor advisory panel is under consideration. PDAC submits that a similar panel be considered to represent industries and businesses that depend on capital raised from "retail" and other investors. In order for the Canadian economy to remain dynamic, for new businesses and ventures to be launched, for mineral exploration prospects to be explored, entrepreneurs must have access to capital.

PDAC fully supports investor protection initiatives, as it is important to the continued functioning of capital markets that investors have confidence in the system and in its participants. However, we think it is equally important to look for ways for capital to be made available for entrepreneurs and others. It would therefore be useful if a forum was established through which entrepreneurs could discuss obstacles to capital formation that may not actually protect investors, as well as discuss possibilities for reducing regulatory compliance burdens. Furthermore, the establishment of such a panel would further the aims set out in Section 1(a)(i) of the *Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System*, which states that one of the aims of the Cooperative System is to facilitate the raising of capital from investors across Canada.

We recommend establishing a small-cap issuer advisory panel.

Interface

The Summary Document confirms that the CMRA will use its best efforts to negotiate and implement an interface mechanism with non-participating jurisdictions.

PDAC's view is that the establishment and operation of the Cooperative System should be done in a manner that does not jeopardize the current passport system. In our view, that system operates relatively smoothly and has provided Canada's capital markets with a high level of harmonization and regulatory unity in the absence of a federal framework. If the introduction of the Cooperative System results in the destruction of the passport system and creates, in its place, a system where an issuer must answer to more than one regulator (i.e. the CMRA and one or more non-participating jurisdictions), the result will be to increase the regulatory burden on issuers, the transactional costs for raising capital and the costs of being a reporting issuer. This would be counterproductive.

It is critically important to our membership that the Cooperative System interface with non-participating jurisdictions in a manner and under a framework that is similar to the current

passport system, so as to minimize the regulatory burden and compliance costs, and also maximize regulatory efficacy.

Other General Comments

Registered Dealers

Regarding the regulation of securities, dealers and other capital market actors and advisors, PDAC submits that efforts should be made to ensure that smaller brokerage firms, exempt market dealers and similar participants are able to continue to operate. Our members have often found that smaller or boutique firms are more inclined to work with 'junior' resource companies and present them as investment opportunities to appropriate investors. As we watch more and more smaller or boutique firms cease their operations, we are concerned that our members will be left with little or no access to retail investors, and reduced access to institutional investors. This is clearly unfortunate (and possibly devastating) for our members, but it could also prove to be a loss for investors, as they will not be presented opportunities to invest in our industry.

We are aware that investments in exploration companies are generally high risk, but those risks can also carry great rewards. (This is also true of investments in development-stage or developing companies in high technology industries, consumer products, etc.) Furthermore, as in all industries, it has to be possible for new firms to establish themselves, grow and challenge larger incumbents. Without the support of specialized brokers/dealers, this would limit growth prospects of new and innovative companies.

With this in mind, PDAC submits that the regulatory system applicable to securities dealers must always be designed and administered in a way that does not make it prohibitively expensive (or practically impossible) for smaller (or boutique), well-run firms to continue to operate.

Governance of the Cooperative System

Regarding the governance structure for the Cooperative System, PDAC submits that at least one of the seats on the Board of Directors of the CMRA should be reserved for a qualified representative of the mineral exploration industry. Canada is, without question, the leader in this industry, and reporting issuers active in this area account for a significant portion of exchange-listed companies in Canada, as well as a significant portion of trading activity. For example, for the 11 months ended November 30, 2015, the mining sector accounted for 14% of

the volume of stocks traded on the TSX Venture Exchange, 22.8% of the volume of stocks traded on the TSX, and 40% of the companies listed on both exchanges. By all measures, our sector accounted for more volume and more listed companies than any other sector, notwithstanding that the sector is experiencing a challenging capital raising environment.

PDAC submits that the governance structure for the Cooperative System should recognize the historic and ongoing importance of mineral exploration to the establishment and continued dynamism of our capital markets by providing the sector with an opportunity to participate in the oversight of the CMRA.

A focus on sectoral and regional needs

Finally, the PDAC submits that the internal decision-making of the CMRA must be designed in a way that allows regulators to adapt to sectoral and regional needs. For example, our members have historically found that regulators in Alberta and British Columbia are particularly sensitive to the unique needs and concerns of the mineral exploration industry. Publicly traded junior resource companies are a unique feature of the Canadian capital markets that have needs and face challenges which are different from those of large-cap issuers.

Issuers in junior exploration companies know that their investors are making high risk investments. These companies work hard to earn and retain the trust of these investors. The tendency to regulate all issuers as though they are large companies with access to dedicated staff resources that are able to devote to compliance must be constrained.

PDAC's view is that the effective way to do this is to ensure sectoral views are taken into consideration, particularly from jurisdictions with the largest share of a particular sector amongst the provinces and territories participating in the Cooperative System. For example, with respect to decisions about matters that would affect the oil and gas sector, recommendations from Alberta and other hydrocarbon-rich jurisdictions would receive a higher priority.

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PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

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,

Rodney N. Thomas
President
Prospectors & Developers Association of Canada

Cc:

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This submission was originally authored by Samad Uddin (Director, Capital Markets, PDAC) and Denis Frawley (Member, PDAC Securities Committee), with the support of Jim Borland (Co-Chair, PDAC Securities Committee), Nadim Kara (Senior Program Director, PDAC) and members of the Securities Committee's Working Group on CCMR.