PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

December 8, 2014

Emailed to: commentonlegislation@ccmr-ocrmc.ca

Re: Consultation draft Provincial Capital Markets Act (PCMA) and Capital Markets Stability Act (CMSA)

This letter is submitted on behalf of the Prospectors & Developers Association of Canada ("PDAC") in response to the invitation to comment on the consultation draft Provincial Capital Markets Act (the "PCMA") and Capital Markets Stability Act (the "CMSA").

The Prospectors & Developers Association of Canada (PDAC) is the national voice of the Canadian mineral exploration and development community. With a membership of over 9,000 individual and 1,200 corporate members, the PDAC's mission is to promote a responsible, vibrant and sustainable Canadian mineral exploration and development sector. The PDAC encourages leading practices in technical, environmental, safety and social performance in Canada and internationally. The PDAC is also known worldwide for its annual convention that is regarded as the premier event for mineral industry professionals. The PDAC Convention has attracted over 30,000 people from 125 countries in recent years and will be held March 1-4, 2015, at the Metro Toronto Convention Centre in downtown Toronto.

The PDAC views the proposals in relation to the Cooperative Capital Markets Regulatory System (the "CCMRS") as presenting a great opportunity to improve the regulatory efficiency of Canada's capital markets. In particular, the PDAC is advocating for the Authority to expand the pool of capital available to junior issuers; reduce compliance costs; and implement a more effective enforcement regime. We recognize the efforts that have been made in the elaboration of the CCMRS to consider and adopt best practices from other jurisdictions on these three areas, and we would encourage efforts in this regard to continue. Among the proposed measures found in the CCMRS proposals that are particularly supported by the PDAC are enhanced and potentially streamlined enforcement abilities, and those relating to whistle-blowers.

The PDAC commends the Governments of Canada, British Columbia, New Brunswick, Ontario, Prince Edward Island and Saskatchewan (the "Participating Governments") for moving forward with the CCMRS initiative. We are hopeful that other provinces will choose to participate, provided that the concerns raised by the PDAC on the proposed CCMRS are addressed.

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We are limited in our ability to provide detailed comments on the consultation drafts as it is difficult to assess the implications for our members without having seen both the draft legislation and the accompanying regulations. This is particularly so because, within the framework proposed in the draft PCMA and CMSA, the legislation deals in generalities and the specific terms and conditions that would govern in the CCMRS are to be expressed in the regulations. We anticipate providing a more detailed response to the CCMRS once the draft initial regulations are released in the Spring of 2015; we were encouraged by the announcement published on December 5, 2014 confirming that participating provinces are working to "maintain continuity and minimize disruption for market participants" and "plan to propose initial regulations that substantially maintain the harmonization achieved under the current structure."

General Comments

At a high level, the PDAC has the following concerns with respect to the CCMRS (specifically the PCMA, the CMSA and the Memorandum of Agreement signed by the Provinces of British Columbia, Saskatchewan, Ontario, New Brunswick and Prince Edward Island and the Federal Government of Canada):

1. In light of the recent tumult in Canadian and international capital markets, small and mid-sized businesses have experienced unusually difficult capital-raising conditions. A tremendous amount of effort and thought has gone into expanding capital raising exemptions, and introducing new capital-raising exemptions, to alleviate these difficulties and allow capital formation and capital raising activities to continue.[1] Canada is a global leader in mining finance; between 2009 to 2013, Canadian stock exchanges raised almost half of the mining equity finance raised globally. It is critical to our members that they be able to access private capital to fund mineral exploration and mining in Canada and elsewhere. Unfortunately, notwithstanding the statement contained in the CCMRS announcement of December 5, 2014, it is not clear that these expanded (or new) capital raising tools will be included in the CCMRS regulations.

2. The CCMRS framework would be improved if it placed a greater emphasis on the importance of a continually evolving securities regulatory framework that fosters efficient capital formation. The PDAC recognizes the importance of protecting investors and

[1] For example, the recent changes and proposed changes relating to the offering memorandum exemption, the friends/family/business associate exemption, the existing security holders exemption and various crowdfunding initiatives.

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properly regulating the securities industry, particularly since those are necessary for the operation of (and to maintain public confidence in) a well-functioning capital market. However, we encourage participating jurisdictions to consider that in order for Canada's economy to remain dynamic and creative, businesses with higher risk profiles must be able to access capital. In that regard, the PCMA would be improved if section 1 (regarding the Purposes of the Act) was revised to include a reference to fostering efficient capital formation, if the Capital Markets Regulatory Authority (the "Authority") had in its mandate a responsibility for fostering capital formation, and if other opportunities to support capital formation were considered in the proposed legislation and regulations comprising the CCMRS framework.

3. The CCMRS appears to leave participating provinces with the ability to continue to promulgate other securities-related legislation and regulations. As a result, there is a risk that the implementation of the CCMRS will result (initially or over time) in an added layer of securities regulation, rather than a streamlining of regulations. This would obviously undermine what we understand was meant to be achieved through the CCMRS initiative, and it would certainly reduce the efficiency of capital markets in Canada.

4. We have two concerns about the ability of the Canadian regulatory system to respond rapidly to changing circumstances. The first is internal to the CCMRS, in that the structure of the CCMRS may not permit rapid policy changes in a timely manner because of the need to have multiple governments approve changes. The second involves collaboration and coordination with non-participating jurisdictions, notably Quebec and Alberta. Accordingly, the PDAC suggests that , within the CCMRS framework, mechanisms be put in place to require participating jurisdictions to swiftly coordinate rule-making and rule-changing efforts, and that such efforts be coordinated with parallel initiatives in non-participating jurisdictions.

5. Canada's securities regulatory regime would be improved if a thorough cost benefit analysis was conducted prior to the adoption of new rules or changes to existing ones, as well as periodically with respect to existing rules. Therefore, we ask that both the PCMA and the CMSA include a requirement that such cost benefit analyses be conducted for new rules, for rule changes, and periodically, in an effort to ensure that the compliance costs resulting from securities regulations are appropriately aligned with the benefits sought (or dangers averted).

6. Both the PCMA and the CSMA should state that the purpose of both Acts is to harmonize securities regulatory regimes across Canada. We understand that in developing the CCMRS,

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the participating jurisdictions aim to increase and support harmonization, and it is the view of the PDAC that both Acts should repeat this central goal. The Authority should also be given a clear mandate to ensure that the CCMRS does not reduce harmonization between the CCMRS and securities regimes in non-participating jurisdictions.

7. Many of the PDAC's members are "junior" exploration companies, and all of our members are sensitive to increased regulatory costs. Accordingly, the PDAC hopes that in setting filing fees applicable to the CCMRS, participating provinces and the Authority will not increase current costs, but will in fact look for opportunities to lower fees.

Specific Comments on the PCMA Consultation Draft

Council of Ministers

It is proposed that the CCMRS will be overseen by a Council of Ministers (the "Council"), composed of a Minister from each of the participating provinces and territories and the Minister of Finance of Canada. Currently, no details have been published regarding how the Council will operate, and how decisions on the Council will be reached (*e.g.* Will decisions be reached by consensus, or majority voting?). The ability of the Council to effectively oversee the CCMRS and introduce modifications (in a timely manner) to address changing conditions will depend in large part:

- on the Council operating under well-understood and transparent rules;
- on the adoption of procedures that encourage communication and dynamism;
- on whether decisions will be reached efficiently;
- to what extent the Council will be accountable for its decisions.

Regional Offices

The Commentary on the Cooperative Capital Markets Regulatory System Governance and Legislative Framework states that "each participating province will have a regulatory office that will continue to provide the services that are provided by securities regulators today with local decision-making authority that is exercised in accordance with common standards. Each regulatory office will have the staff, expertise and resources that are commensurate with the regulatory and enforcement demands of the participating jurisdiction."

The PDAC is concerned that the desire to ensure a physical presence in each participating province will perpetuate the duplication and unnecessary overlap that is a hallmark of our current system, thereby increasing costs and introducing the risk of inconsistency within the CCMRS in the application and interpretation of securities laws and regulations. In addition, the result of continuing this provincial presence will be higher costs than could otherwise be achieved if oversight was more centralized. This is of particular concern to the PDAC and its members, because the CCMRS is intended to be self-funded (meaning that our membership may pay higher regulatory/filing costs than would otherwise be the case).

The efficiency of creating a single regulator is lost by keeping several offices across the country if the sole purpose is to maintain a physical presence in all participating provinces. Provinces can provide local input for policy making without duplicating all functions of the CCMRS at every provincial office.

Alternative Disclosure Documents

We noted that the PCMA would provide the Authority with the ability to prescribe regulations allowing an Alternative Disclosure Document (an "ADD") to be used in the place of a prospectus. While this is interesting, our members regularly advise us that the current menu of securities disclosure documents is, in certain respects, difficult to manage. In theory, the introduction of an ADD should not burden issuers as it would be parallel to a prospectus. However, if the ADD came to be preferred by certain investors (or classes of investors), issuers could find that in order to access certain classes of capital, the ADD was required, whereas for others (and particularly those outside the CCMRS) a prospectus was still necessary. With this in mind, the PDAC asks that any effort to further broaden the range of disclosure documents available for use in Canada is approached with caution.

Specific Comments on the CMSA Consultation Draft

Promoting Financial Stability

Without the full participation of all jurisdictions, it will be difficult for the Authority to promote financial stability. Section 3(1) of the draft CMSA states that "systemic risk related to capital markets means a threat to the stability or integrity of Canada's financial system that originates in, is transmitted through or impairs capital markets and that has the potential to have an adverse effect on the Canadian economy." A systemic risk could therefore originate in or be transmitted through any Canadian jurisdiction, whether or not that jurisdiction is a participating province. In addition, risks can be transmitted quickly, as we have experienced during previous financial disruptions, and without a regulatory structure that incorporates all jurisdictions, it is not possible to fully address financial stability. Section 6(2) of the draft CMSA

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rightfully acknowledges the need to coordinate the Authority's efforts to address systemic risk (and any other measures taken under the CMSA) with those of other federal, provincial, and foreign financial authorities. The PDAC recommends that one of the first priorities of the CCMRS be to reach agreements with the securities regulatory authorities of non-participating Canadian jurisdictions with respect to how efforts to address systemic risk will be harmonized and coordinated across Canada.

Urgent Orders

We note that section 34 of the draft CMSA provides the Authority with the power to make urgent orders in certain circumstances to address a serious and immediate risk related to capital markets. The PDAC's view is that where this risk is one that originates in or primarily affects an exchange-traded security, the applicable exchange would be in a better position to assess the risk and react quickly with an appropriate measure. As a result, the PDAC suggests that this provision (and any related provisions that might be included in the draft regulations) include the need to first consult with exchanges, to coordinate efforts with those of Canada's exchanges, and to only supersede the authority of exchanges when faced with extreme circumstances.

Data Collection and Record Keeping

The CMSA includes data collection and record keeping provisions. Our members recognize that in order to properly and effectively regulate capital markets, information regarding the operations of, and transactions within, those markets must be gathered and analyzed. However, the PDAC and its members would not welcome the introduction of new reporting requirements and reports, nor would the introduction of a new reporting system or platform (*e.g.* for the transmission of information and data to the Authority and to participating provinces) be greeted positively. The forms and filings mandated in the current regime are comprehensive, and they provide regulators and investors with detailed disclosure. Therefore, it is the PDAC's view that substantially all the information required to properly understand the functioning of Canada's capital markets is available to the Authority through the current range of securities reports and filings, and the Authority should be able to gather the information it requires from these sources rather than introducing new forms and reports that would increase the compliance burden (and costs) faced by our members.

Understanding and Promoting Capital Formation

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Over time, securities regulations grow increasingly complex and frequently introduce barriers to capital information. The PDAC feels that in tandem with monitoring capital markets (with a view to detecting and minimizing systemic risks) the Authority should also work to understand capital formation activities and identify any regulatory or other barriers to efficient capital formation that could be reduced or removed without creating or increasing systemic risk. The PDAC would be encouraged if the Authority was also mandated to constantly or periodically consider whether current regulations are unnecessarily impeding or discouraging capital formation for small and mid-sized businesses that depend on risk tolerant capital.

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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,

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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) and Denis Frawley (Member, PDAC Securities Committee), with the support of Jim Borland (Co-Chair, PDAC Securities Committee) and Nadim Kara (Senior Program Director, PDAC)