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Submissions

SUMMARY OF SOME PDAC TESTIMONY BEFORE WISE PERSONS' COMMITTEE

The PDAC's Objectives

The PDAC has sought securities reform which ensures "one set of rules consistently applied from coast to coast." Within this procedural framework, we have attempted to influence changes to the substance of securities laws to provide (i) the ingredients necessary to restore and maintain public confidence in the capital markets, and (ii) access to capital on a speedy, effective and cost efficient basis.

How do you perceive the timeliness, responsiveness and flexibility of the current system in developing policies, rules and regulations and, where necessary, in revising or simplifying them to meet new circumstances?

We believe that the evolution of new ideas has in some cases been relatively quick and very effective at the provincial level but not at the CSA level. For example, the 4 month hold period for securities placed under prospectus exemptions was an excellent idea. Initially introduced in B.C. it has spread to the other jurisdictions and is now a cornerstone to raise formation at the junior level. However, this concept took several years to migrate across the country.

I'll offer up two examples of where revision at the CSA level has bogged down. The first is National Instrument 54-101, the policy which now regulates communications between an issuer and its beneficial shareholders. This policy took about 4 years to enact and even then it was enacted in different stages across the country. The second example is the proposed policy on Integrated Disclosure which was first published by the CSA in 2000. Today, the draft BC legislation features a modified form of integrated disclosure known as Continuous Market Access while Integrated Disclosure seems to have foundered everywhere else - most notably in the draft Uniform Securities Legislation. In light of the divergence today between the BC Model and USL, it is obvious that the initial delay on Integrated disclosure has had a ripple effect.

Our members feel despair when they look at the length of time that it takes for regulatory reform to be generated at the CSA level. Many fear that the slow pace and resulting compromises will kill the industry before it begins to enjoy the benefits they seek. Some of these members have concluded that the CSA is incapable of constructing a substantive legislation which fosters the formation of capital in a speedy and cost effective manner. Accordingly, they are willing to forego the obvious cost and efficiency advantages of a harmonized framework in order to have access to capital. I don't think that this means that these members reject a single regulator. I think that their distrust of the CSA and provincial cooperation is a compelling argument for a single regulator as a framework provided that substantive law as administered by this single regulator recognizes the interests of junior issuers.

Are there unique regional and local characteristics of capital markets across Canada that affect you? What regional and local requirements are met by the current structure and how? In particular do small and medium sized growth companies have unique needs and how does the current regulatory structure accommodate these needs?

We have, to an extent, benefited from the favourable regulatory developments that originated on a regional basis and spread across the country. We are also an industry whose participants are generally located in Vancouver and Toronto. Our members face the same root issue: they don't have revenues so they require access to small amounts of public financing on a frequent basis. However, this doesn't mean that it is a regional industry or that the solutions to its problems are best solved on a regional basis.

We believe that the exploration industry is a national industry for several reasons. First, the issuers are resident in primarily BC and Ontario but they also exist in Quebec, Alberta, Saskatchewan and the Maritimes. Second, investors are resident in primarily in BC and Ontario but they also exist in Quebec, Alberta, Saskatchewan and the Maritimes. This means that issuers, regardless of their home jurisdiction, must raise financing in multiple jurisdictions - particularly as their projects advance. We don't accept the notion that certain provincial regulators should be charged with advancing the interests of certain industries or certain sized issuers because this implies that the other regulators are letting down companies or investors who reside in their jurisdictions. As well, we don't see why these so-called regional issues could not be handled by the local offices of a single regulator or by the office of a single regulator which is charged with administering the affairs of an industry or other issuer group.

The current regulatory structure does not address those needs. The fact that there are differences among the various jurisdictions means that local lawyers need to be retained to ensure that the terms of one offering are consistent and acceptable across the country. Where exemptive relief is required, there is additional uncertainty, cost and delay. As well, where exemptions exist in some jurisdictions but not in others, the available pool of investors differs from province to province.

There are also very few dealers available to serve the needs of the junior sector. I don't know whether the cumbersome dealer registration and compliance rules have brought this about but I'll make the observation. Several years ago, the industry seemed to be split between the bank owned dealers whose clients and internal cost structures led them to exclude small issuers and small financings from their list of targets and the independent dealers who served the niche fairly effectively, albeit for very high commissions. A number of small dealers seem to have disappeared and don't seem to have been replaced. If this is partly the result of regulatory barriers to entry, we urge the WPC to make recommendations that will ensure that investors and issuers have access to appropriate dealers and advisors.

What would be the best securities regulatory system for Canada?

I've given examples of the slow manner in which regulatory change has developed in the context of 13 regulators attempting to cooperate. I have also presented our view that the financing needs of mineral exploration industry and protection of its investors should not be considered a regional issue.

While this is clearly not our end goal, we recognize that the introduction of a "passport system" or some continuation of the mutual reliance system may be a necessary intermediate step. The political reasons for this are outside of our control. From a timing perspective, we recognize that it may result in the faster implementation of reform. Finally we recognize that it will enable us to enjoy some cost savings as a result of some level of integration and efficiency while we continue to enjoy the benefits of "regulatory competition" on a regional basis.

The end goal we advocate may not be attainable in one step for political and timing reasons but it should always be borne in mind. In our opinion the end goal, from a framework perspective, should be a regulatory system administered by one regulator overseeing one set of rules and applying them in a consistent manner. We believe that the end goal from a substantive perspective should have as its objectives (a) to ensure the public confidence in the integrity of the capital markets. This means the development of effective rules and tools for the aggressive enforcement initiatives. It also means the careful design of rules to ensure that issuers are obliged to make full disclosure of information that matters most. In our industry we believe that this has largely been achieved by NI 43-101 which addresses the nature and quality of technical and geological information disseminated. (b) access to capital for junior issuers. This means, initially, a conscious attempt to unify and liberalize the prospectus exemptions so that issuers, investors and securities dealers can get their financing transactions completed in a speedy and cost efficient manner. In the longer term we believe that this will require a revisitation of integrated disclosure and reconsideration as to whether hold periods will remain necessary and (c) a reduction in the duplication of filings, the elimination of filing fees and the simplification of the legislation.

Prospectors and Developers Association of Canada