

April 30, 2003

Uniform Securities Legislation Project Steering Committee
c/o Alberta Securities Commission
4th Floor, 300-5th Avenue S.W.
Calgary, AB T2P 3C4

Attention: Ms. Jane Brindle, Legal Counsel

Dear Sirs/Mesdames:

Re: Blueprint for Uniform Securities Laws for Canada

As you may be aware, the Prospectors and Developers Association of Canada (the "PDAC") is a national organization whose membership consists of approximately 4,500 individuals and corporations who are engaged in mineral exploration and mining activities throughout the world. Established in 1932, the PDAC has been supportive of legislation and other regulatory initiatives which foster the responsible development of Canada's mineral resources. Mining companies represent approximately 28% of all issuers listed on the Toronto Stock Exchange ("TSX") and the TSX Venture Exchange ("TSX-V"). In 2002, 32% of the world's equity capital raised for mining companies was for TSX and TSX-V issuers and 91% of the number of equity financings worldwide were for TSX and TSX-V listed issuers. Accordingly, the PDAC believes that changes that would benefit mining issuers would be of net benefit to the Canadian capital markets generally.

During the last 12 months, the PDAC has had the opportunity to make submissions on securities regulatory reform to the September, 2002 Mines Ministers' Conference and to Mr. Harold MacKay (October, 2002). In addition, the PDAC hosted a panel discussion among Messrs. David Brown, Robert Fabes, Doug Hyndman and Harold MacKay in March, 2003 on the issue of securities regulatory reform.

The PDAC, as an organization whose members consist largely of junior resource companies, is supportive of any initiative that aims to simplify and harmonize Canada's fragmented securities regulatory regime. While the current regime is inefficient for all issuers, it is particularly so for junior issuers for whom the costs of adhering to the differing securities regulatory regimes of ten provinces is disproportionately large as compared to more senior issuers. In addition, junior issuers often find themselves accessing the private equity markets more frequently than senior issuers. Accordingly, differences in the various capital raising regimes pose significant problems for junior issuers.

Junior resources issuers are also still suffering from the loss of investor confidence that resulted from the Bre-X scandal. It does not help the industry at all that a full seven years after the scandal first surfaced, no criminal proceedings have been commenced and the only regulatory proceedings commenced have been hopelessly bogged down. This does not compare favourably to the US experience where

criminal charges and/or convictions have already occurred in the Enron, WorldCom and Tyco cases.

It is not surprising, then, that two of the most pressing issues for junior resource issuers are streamlined and cost-efficient access to the capital markets and stronger and more effective enforcement of our securities law.

The PDAC's Securities Committee is pleased to make the following submissions to the Canadian Securities Administrators Uniform Securities Legislation ("USL") Project Steering Committee (the "Steering Committee") regarding the concept proposal (the "Concept Proposal") entitled Blueprint for Uniform Securities Laws for Canada. We applaud the CSA for taking a leading role in seeking to streamline Canada's securities regulatory regime and we believe that harmonized legislation is an important first step in that process.

For convenience of reference, our comments below appear under the same headings used in the Concept Proposal. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Concept Proposal.

I. Introduction

Developing securities legislation and rules across the country which is word-for-word uniform in each jurisdiction would represent a significant improvement over the current situation. The goal of producing a single form of legislation is an objective that the PDAC wholeheartedly embraces. However, we believe that the USL will not function properly unless the interpretation, application and administration of the USL is consistent between jurisdictions. *We recommend that the USL contain a statement of principles to consider in pursuing the principles of the legislation. Such principles should include the principle that the USL and matters regulated thereby should be interpreted, applied and enforced in a harmonized and consistent manner in each jurisdiction.*

We are concerned that the USL endorses the use of Local Rules. We do not agree that Local Rules should be permitted to change the substantive provisions of the USL. Issuers need to be able to look to one source to determine the relevant securities regime across the country. Having to check in each case for Local Rules which may modify the USL would result in complication, delay and expense. The use of Local Rules should only be implemented in exceptional circumstances and they should only be permitted to continue to exist if those exceptional circumstances continue. *If the Steering Committee determines that Local Rules are necessary then we recommend that the principles of the USL expressly state that a Local Rule should only be implemented in exceptional circumstances and that the each Local Rule should be examined every two years to see whether those exceptional circumstances continue to exist such that the maintenance of the Local Rule can be justified.*

We hope that the reform process associated with the drafting of the USL and Local Rules, if any, will make it unnecessary for securities regulatory authorities ("SRAs")

to apply unwritten policies.¹ These unwritten policies, in addition to causing delay and additional expense, contribute to the fractured nature of our current securities law regime. *We recommend that the Steering Committee obtain a commitment from each SRA that it will apply the USL and Local Rules, if any, but will cease to apply unwritten policies.*

II. Administrative Provisions

While it is important to ensure that investigative and prosecutorial powers do not conflict with provincial powers, we ask the Steering Committee to ensure that differences between procedural laws do not result in delay or in the substantive laws being interpreted or enforced differently across the country.

2. Content of Administration Acts

In respect of investigations, SRAs and provincial legislatures should attempt to be consistent in the delegation of investigative powers from SRAs to staff. Given the multijurisdictional nature of securities trading, we believe that it would be important for investigations to be commenced in multiple provinces at the same time. In provinces such as Quebec where investigations may only be commenced upon an order of the Commission (rather than at the staff level which is more common among the other provinces) we believe there to be an unnecessary delay.

We agree with the maximum provincial court penalties proposed by the Steering Committee and hope that SRAs seek to impose them on every appropriate occasion.

While we applaud the principle of delegation among SRAs we hope that the level of delegation contemplated in the Concept Proposal is intended to enhance the efficiency of the existing mutual reliance review system. For example, we hope that the prospectus and AIF review period for non-principal regulators will be eliminated and that opting out by SRAs will not be permitted.

While we support the simplified approval process and reduced processing costs which the delegated decision model offers, we are concerned that the existence of Local Rules will not permit the process to be as efficient as it could be because they would require each SRA to either (i) be intimately familiar with the Local Rules of other jurisdictions or (ii) continue to be involved in each matter to ensure that Local Rules are being adhered to and enforced in the correct manner. In this regard we have particular concerns about prospectus exemptions, registration and enforcement since

¹ For example, the OSC enforces an unwritten policy in respect of underwriters compensation which limits (i) the number of securities issuable to underwriters to 10% of the total number of securities qualified by prospectus and (ii) the number of such securities qualified under the prospectus to 5% of the total number of securities qualified by prospectus. This policy is not adopted by other securities commissions. Accordingly, if a prospectus is filed with the OSC as the principal regulator, the limitations described above are enforced but if another commission is the principal regulator, the limitations are not enforced.

these are the areas where there currently exist numerous minor differences between jurisdictions.

We agree that information sharing is critical. We think that the Concept Proposal's statement² (at page 10) implies that no sharing will be necessary since the delegation would enable one SRA to be in the position of gathering and investigating activities in other jurisdictions pursuant to the laws of those jurisdictions. However, if delegation does not eliminate all of the obstacles to the sharing of information then we agree that information sharing under USL should be paramount to applicable freedom of information legislation.

IV. The Registration Requirement

4. Categories of Registration

We support the elimination of the "security issuer" category of registration. Issuers should be able to raise funds from the sale of their securities on a public or private basis without either involving a registrant or being registered themselves. We are concerned that the Concept Proposal proposes a registration exemption for issuers distributing their own securities "*subject to certain conditions*". The Concept Proposal does not elaborate as to the nature of such conditions. *We urge you not to make this exemption overly restrictive and we intend to scrutinize the draft USL carefully to ensure that issuers will have reasonable access to this exemption.*

V. The Prospectus Requirement

1. and 2. Introduction and Triggering the Prospectus Requirement

We agree that the USL should contemplate a continuous-disclosure based primary offering system and that adherence to an integrated disclosure regime should be a pre-condition to an issuer making use of such system. *We strongly believe, however, that adherence to the integrated disclosure regime should be voluntary.* In other words, issuers should be free to determine whether or not they wish to make use of the simplified system for primary offerings. If they do, the trade-off is adherence to the integrated disclosure regime. *We would not support imposing additional continuous disclosure obligations on all issuers which would have the effect of increasing the compliance costs of being a reporting issuer.*

We recommend that the CSA's request for comments on the USL specifically discuss (i) why integrated disclosure regime (whether in the form proposed by the CSA in January 2000 or in the form of Continuous Market Access as proposed by the BCSC) is not incorporated in the USL and (ii) a proposed timetable for the implementation of an integrated disclosure system.

² "The USL would allow an SRA to delegate a particular function, duty or power to another SRA. The delegate SRA would essentially stand in the place of the delegating SRA."

3. Form and Content of a Prospectus

We also strongly support the harmonization of the form and content requirements for long form prospectuses. It makes no sense for the content of a prospectus filed by an issuer to differ based on which Canadian provinces it is filed in.

VII. Registration and Prospectus Exemptions

1. Introduction

We believe that no area of Canadian securities regulation is in more need of harmonization than the patchwork system of exemptions from the registration and prospectus requirements of the various provincial securities acts. The available exemptions, although comparable in scope and principle, are extremely confusing and inconsistently worded. Harmonizing the system of exemptions would be a major improvement over the current regime.

We fully support an exemption from the registration and prospectus requirements for trades in securities of an issuer as consideration for mining claims or oil and gas rights without the need for the vendor to enter into an escrow agreement. *However, the wording of the exemption needs to be broad enough to deal not only with mining claims but any mineral properties or mineral interests including options to acquire such properties or interests as well as royalties. In this regard, we favour the approach taken by British Columbia (in subsection 74(2)(18)) to that of Alberta and Ontario (in subsections 131(1)(m) and 72(1)(m), respectively).*

2. Capital Raising Exemptions

Harmonization of the various capital raising exemptions is a crucial exercise that must be accomplished in order to simplify the exempt market. *We recommend that all provinces adopt an accredited investor exemption with identical wording.* The current situation is extremely inefficient. Notwithstanding that B.C., Alberta and Ontario have each adopted an “accredited investor” exemption that is equivalent in principle, minor differences in wording of the exemption has led to unnecessary complication. This results from the common practice of including the exact wording of the exemption as a schedule to most subscription agreements and requesting that the subscriber check the category of accredited investor that they fall under. Where subscribers may be resident in B.C, Alberta and Ontario, this has resulted in attaching two schedules (one for B.C. and Alberta and another for Ontario) to the subscription agreement.

It is not clear from the Concept Proposal whether the CSA intends to include in the USL the liberal prospectus exemptions contained in the British Columbia and Alberta legislation such as trades to family, close friends and business associates. This is another example of the inconsistent approach to the exempt market in Canada. *We would support the inclusion of such exemptions as they would allow issuers to raise funds from those persons most likely to support an issuer and to have knowledge of and faith in the principals of the issuer.*

We are concerned that the USL may not provide a uniform exemption for offerings conducted pursuant to an offering memorandum. The Concept Proposal leaves us with the impression that Ontario and Quebec may not support such an exemption. If the various provinces cannot agree at this stage, we are concerned that the level of harmonization that is desired may not in fact be achieved. *The offering memorandum exemption is very important for junior resource issuers as it provides an opportunity to raise funds in the exempt market quickly. The need for an offering memorandum in required form combined with statutory (or contractual) rights of action provides sufficient protection for prospective investors. The ability to incorporate by reference previously filed technical reports (as well as other publicly filed documents for qualifying issuers) should also be included in such an exemption.*

3. Certain Common Exemptions

Another area where harmonization is critical is the approach regarding distributions outside of the local jurisdiction. Currently, some securities commissions take the view that where an issuer located within one province issues securities to a subscriber in another province, the issuer needs to utilize a prospectus exemption in each of the two provinces. Problems can occur if the two provinces have inconsistent exempt market regimes. As well, some jurisdictions take the same view even if the purchaser is located in another country. This is an example of an area where harmonization of interpretation is required as opposed to merely harmonization of legislation. As securities legislation is essentially “consumer protection” legislation, we believe that the approach referred to above does not make sense. The focus of the legislation and the regulators should be on the jurisdiction of the purchaser, not the vendor. It is the purchaser that is the party whose interests are being protected. It makes no sense to apply two sets of rules to a single distribution. *We recommend that the USL explicitly contain a statement as to the scope of application of each provincial act.*

We are also concerned that the USL may result in a substantive change to the exempt market as it relates to sales to foreign purchasers. It is extremely common that an issuer will undertake a private placement in Canada and at the same time make sales to purchasers outside of Canada. Sales in Canada are made in accordance with the prospectus exemptions available under applicable provincial securities legislation while sales to foreign purchasers are made in accordance with practices that have developed based on Interpretation Note 1.5 of the Ontario Securities Commission. These practices generally include a covenant of the foreign purchasers not to resell the securities into Canada for some period of time (usually four months) and the securities being legended to reflect such restriction. The Concept Proposal would not permit this type of dual private placement as it would be a condition of the foreign sale that no sales be made in Canada. If this type of approach is adopted, issuers will have to decide ahead of time whether a given placement will be “Canada only” or “foreign only”. In reality, if a dealer is being used to assist in finding purchasers, issuers don’t really know until shortly before closing where the purchasers will be located. This represents an extremely unrealistic view of the domestic and international capital markets. It also represents an unnecessary restriction on Canadian issuers. We cannot understand why it makes any difference whether sales

are also being made in Canada. The issue should be “are appropriate steps being taken to prevent the foreign placed securities from flowing back into Canada in the short term?”

Finally, we fully endorse an exemption for trades by an issuer of its own securities to satisfy a bona fide debt, regardless of the amount.

VIII. Continuous Disclosure Requirements

1. Introduction

Junior issuers continue to be troubled by the costs of providing mandated disclosure documents to their shareholders. These costs include printing and/or photocopying costs, mailing costs for bulk packages and the fees of intermediaries for sending materials to beneficial shareholders. While National Policy 11-201 - *Delivery of Documents by Electronic Means* (“NP 11-201”) permits the delivery of documents in electronic form in certain circumstances, it does so only with the prior consent of the shareholder. Obtaining consents from all shareholders can be a difficult task as invariably a large portion of an issuer’s shareholders do not respond to materials sent to them. In addition, new consents would need to be obtained as shares change hands or new shares are issued. *We believe that the Steering Committee should take the opportunity to incorporate permissible electronic document delivery into the USL. The USL could incorporate much of the substance of NP 11-201 but could go further and provide that if a shareholder does not respond to an issuer’s request for consent, the issuer could satisfy its delivery obligations to such shareholder by mailing a one-page notice to such shareholder each time a document is required to be delivered explaining how the document in electronic form could be accessed or that a hard copy of the document will be made available (at no charge) upon request. Shareholders who take the positive step of responding in the negative to an issuer’s request for permission to deliver documents in electronic form would still be entitled to receive their materials by mail.*

2. Becoming a Reporting Issuer

We agree that the definitions of “reporting issuer” should be identical in all jurisdictions. We request that the Steering Committee clarify its statement (at page 35) that “an exchange must be carrying on business within a jurisdiction and must be recognized or designated for reporting issuer purposes in that jurisdiction before a listing on that exchange results in reporting issuer status”. When CDNX was formed as a result of the combination of the VSE, ASE, CDN and WSE many members of the PDAC found that they were deemed to be reporting issuers in jurisdictions where they had previously not been reporting issuers. In the case of former CDN issuers, they found themselves to be reporting issuers in three provinces where they had previously only been reporting issuers in one. These issuers have complained about extra regulatory fees and filings as well as increased costs of lawyers and other professional advisors needed to advise in those jurisdictions.

We agree with the principle that listed companies should be subject to the securities laws of at least one province. Thus, foreign and domestic companies with listings on Canadian exchanges should be reporting issuers in at least one province. However, we do not believe it appropriate to require companies to be reporting issuers in multiple jurisdictions simply because they are listed on the TSX Venture Exchange. We urge the Steering Committee to ensure that TSX Venture Exchange issuers will not be deemed to be reporting issuers in each of the provinces of British Columbia, Alberta and Ontario solely by virtue of their listing. *We recommend that issuers only be deemed to be reporting issuers if they meet criteria (1), (3) and (4) set out on page 35 of the Concept Proposal, provided that listed issuers who do not comply with any of such criteria will be deemed to be reporting issuers if they meet the criterion set out in (2).*

The Steering Committee has not stated any circumstances under which an issuer's reporting issuer history should **not** be considered by an SRA in deeming the issuer to be a reporting issuer. We cannot think of any. *We therefore recommend that SRAs be obliged to recognize an issuer's reporting issuer history in another jurisdiction unless the SRA determines that it is against the public interest to do so.*

4. Continuous Disclosure Obligations

We agree that SRAs should be authorized to conduct continuous disclosure reviews. The importance of adequate continuous disclosure to investor confidence cannot be understated.

We also agree with statutory civil liability subject to the availability of reasonable defenses and limitations on liability as set out in the Ontario legislation. We expect to provide specific comments on statutory civil liability scheme when the USL is published for comment.

We expect that statutory civil liability and continuous reviews will reinforce among issuers the importance of their continuous disclosure obligations and that an integrated disclosure regime can be implemented in the medium term.

IX. Insider Reporting Obligations

2. Definition of an Insider

We are supportive of the adoption of a "function-based" approach to the definition of the term "senior officer". It does not make sense to impose insider reporting obligations on a person merely based on their job title unless they also regularly have access to non-public information regarding a reporting issuer. This change will place the onus on issuers to determine which of its executives regularly have access to non-public information.

3. Disclosure Triggers

We also support ensuring that insiders report equity monetizations and other similar transactions designed to be the economic equivalent of a purchase or sale of the securities of a reporting issuer.

We intend to provide specific comments on the disclosure triggers when the USL is published for comment.

XI. Control Persons

3. Control Distributions

We support requiring control persons that propose to dispose of securities by way of a private placement to adhere to the requirements regarding giving advance notice and accelerated insider reporting. A disposition of securities by a control person is important information for all market participants whether or not such distribution is to be made privately or through a stock exchange. We also support requiring such notices to be filed via SEDAR.

XII. Take-over and Issuer Bids

2. Direct and Indirect Offers

We believe that a provision similar to section 92 of the *Securities Act* (Ontario) would be acceptable.

3. Exempt Bids

We consider that the *de minimus* exemption for bids made for Canadian targets should apply across the country and that Quebec should not apply a separate *de minimus* exemption in respect of the translation of documentation.

XIV. Civil Liability

2. Primary Markets

We intend to make specific comments on the civil liability provisions when the USL is published for comment. We are concerned about the extension of liability for OMs and circulars to experts. We expect that the expert's liability will be restricted solely to the "expertised" portions of these documents and that there will be appropriate limitations on the expert's liability.

XV. Enforcement

As discussed above, we strongly believe that Canada needs a more coordinated and aggressive approach to enforcement as it relates to participants in the Canadian securities markets. Investors need to have confidence that transgressions of Canadian

securities laws will be met with prompt, vigorous prosecution and, where appropriate, substantial penalties (including imprisonment). To date, Canada's SRAs have been unable to instil this confidence. While it is true that there has been a move towards wider enforcement powers for SRAs, these powers are meaningless without a coordinated approach to investigation and prosecution. As well, there should be mutual recognition of penalties imposed by other SRAs.

1. and 5. Introduction and Administrative Penalties

We do not understand why administrative penalties will not be harmonized. Given that the Steering Committee has recommended the harmonization of maximum penalties available in a provincial court, we think that all administrative penalties should be harmonized as well – to the highest possible standards.

We agree that high administrative penalties may be necessary in order for SRA enforcement powers to be meaningful. However we do not accept that penalties should be allowed to be lower in any jurisdiction. We believe that lower administrative penalties in some jurisdictions signal that those jurisdictions take some offences less seriously than other jurisdictions.

Even if the Steering Committee were to accept the principle that larger markets require higher administrative penalties, it should not accept the discrepancies that currently exist. The four major Canadian markets are Ontario, Quebec, British Columbia and Alberta. It would not be acceptable under a harmonized system that the maximum penalties in Alberta are half of those in Ontario and Quebec. *We recommend that administrative penalties be harmonized to the highest possible standards.*

2. Prohibited Acts

We support the Steering Committee's recommendation that fraud, market manipulation and engaging in unfair practices be expressly prohibited. We hope that SRAs will actively enforce these provisions and that, where the criminal code has application to the same circumstances, criminal proceedings will also be brought. *We recommend that the Steering Committee and the CSA explicitly invite the participation of criminal law enforcement in criminal offences involving securities trading.*

6. Public Interest Powers

We are interested in how the USL will define "investor relations activities" and whether persons conducting such activities will be required to register or otherwise be regulated under the USL. In the absence of specific laws or professionally recognized standard and guidelines for investor relations professionals, we are concerned that enforcement activities in this regard will seem arbitrary.

8. Orders for Failing to Comply with Filing Requirements

We disagree that cease trade orders are acceptable under the circumstances described. Most failures to file information are inadvertent. Accordingly SRAs should be required to provide advance notice before a cease trade order is made.

If SRAs are to have the power to issue cease trade orders without a hearing in the circumstances described, we recommend that SRAs should be required to provide (i) advance notice to issuers so that they can cure their default before the cease trade order being issued and (ii) after the cease trade order has been issued, SRAs should be required to provide immediate notice to the issuer.

XVI. Joint Hearings

We urge the Steering Committee to ensure that the joint hearing procedures are included in the USL. These procedures should be implemented in an identical manner across the country and must not be subject to variation or change by any individual province.

In addition to joint hearings, we believe that sanctions imposed by one SRA should be adopted by others. For example, sanctions imposed against an individual by an SRA under its public interest powers should be adopted by the other SRAs.

XVII. General Provisions

We agree that SRAs should have the authority to make blanket orders. We hope that blanket orders would be a matter delegated to a small number of SRAs so that identical cross country relief would be provided simultaneously.

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We thank the Steering Committee for its consideration of our comments. If the Steering Committee or any of its members would like to discuss our comments further, please contact either Gregory Ho Yuen (416) 865-4534 or Kevin Rooney (416) 865-3415.

Yours truly,

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

Signed by Bill Mercer
President

