SUBMISSIONS TO THE TASK FORCE TO MODERNIZE SECURITIES LEGISLATION

The Prospectors and Developers Association of 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.

Mining companies represent approximately 28% of all issuers listed on the Toronto Stock Exchange ("TSX") and the TSX Venture Exchange ("TSX-V"). As of June 30, 2005 mining companies accounted for 46% of the market capitalization of all TSX-V listed issuers. In 2004, 51% of the equity capital raised worldwide for mining companies was for TSX and TSX-V issuers. Accordingly, the PDAC believes that changes that would benefit mining issuers would be of net benefit to the Canadian capital markets generally.

The most important issue facing the mining exploration sector in Canada is the cost of raising capital. The main challenge at the heart of this issue is the structure of the securities regulatory regime in Canada. The current regime consists of multiple jurisdictions and multiple securities policies and regulations, which forces companies to spend unnecessary funds and time raising capital for exploration projects. The PDAC has advocated for a regulatory system in Canada that would be administered by one securities regulatory authority ("SRA") applying one set of rules in a consistent manner across the country, while recognizing that the incoming passport system is a good interim measure but not a final solution.

We have attempted to influence changes to the substance of securities laws to provide (i) investors with timely and useful disclosure; (ii) our members with access to capital on a speedy, effective and cost-efficient basis; (iii) a corporate governance regime which is appropriate to the financial strength and nature of the issuer; and (iv) regulators with the enforcement tools required to safeguard the public confidence in the capital markets. A more efficient regulatory framework would make the existing securities legislation more efficient. However, outmoded, cumbersome and unduly restrictive legislation will hamper the growth of Canadian companies and make it difficult for them to raise capital. Even the best procedural framework could not correct that. The PDAC advocates the development of securities laws that ensure that the maximum amount of a company's financial and managerial resources are available for mineral exploration and development work.

We are pleased to have the opportunity to make submissions to the Investment Dealers Association ("IDA") and comment on the issues raised by the Task Force to Modernize Securities Legislation in Canada (the "Task Force"). For ease of reference we have repeated questions posed in your request for comments and provide our responses below them.

Protecting Individual Investors

Effective disclosure: content of prospectuses and other disclosure documents - is the current prospectus useful or obsolete?

The new National Instrument 44-101 *Short Form Prospectus Distributions,* Form 44-101F3 *Short Form Prospectus* and Companion Policy 44-101CP *Short Form Prospectus Distributions* (collectively, the "New 44-101") will provide more issuers with access to the short form prospectus system by eliminating the minimum market capitalization requirement and the requirement that an issuer be a reporting issuer for a certain length of time. The New 44-101 will serve to speed up the financing process, streamline the short form prospectus procedure and reduce duplication. Such substantive change is a welcome step towards reducing unnecessary and costly duplication of paperwork in the context of public offerings, while recognizing the quality of the continuous disclosure filings of junior issuers.

We believe that a conscious attempt must be made to unify and liberalize the prospectus exemptions across Canada so that issuers, investors and securities dealers can complete their financing transactions in an expeditious and cost efficient manner. In the longer term we believe that this will require a reconsideration as to whether hold periods will remain necessary, a reduction in the duplication of filings, the elimination of filing fees and the simplification of legislation.

Sophisticated purchase rules - who needs protection? Is wealth a proxy for sophistication? If not, is there a better definition?

With respect to sophisticated purchaser rules, we believe that the definition of the sophisticated purchaser should not solely be determined on the basis of wealth. We are of the opinion that, by virtue of their academic qualifications or work experience, some people do not require protection under the prospectus and disclosure system, and that it is unfair to deny them access to exempt trades where they do not meet certain wealth thresholds. The definition should be broadened to include persons whose academic qualifications or work experience give them particular knowledge of an industry or company. For example, "Qualified Persons" within the meaning of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("NI 43-101") should be considered "sophisticated" in the context of investments in the mining industry and we believe that persons who are directors or officers of companies should be considered sophisticated purchasers in investments in companies with the same, or related, SIC Codes.

Balancing Cost and Effectiveness of Modern Governance

Cost Benefit analysis of governance in Canadian context - can there be a Canadian context? To what extent are we in North American market and concepts for a Canadian capital market are inappropriate?

Within the international community, Canada should recognize that it is a small and medium-capital marketplace. Its approach should not be to attempt to replicate the approach to regulation used in the U.S., where both the capital markets and size of public issuers dwarf those in Canada. Rather, Canada has an opportunity to develop a niche within the international financial markets to become a leader in facilitating market access for small and mid-capitalization companies and access to venture capital for new and emerging enterprises. Small and medium-sized companies do not always have ready access to global capital markets; this is readily apparent in North America, as the TSX-V is the only exchange of its kind in North America for attracting start-up capital.

There is also an opportunity for Canada to create a competitive advantage for itself by differentiating its approach to securities regulation from the approach in the United States. Many market participants believe that Sarbanes-Oxley is an over-reaction that has gone too far. The problems in the U.S. did not necessarily result from a lack of rules, but, rather, a lack of enforcement of rules and a failure to promote a corporate culture of compliance.

Regulators in Canada cannot take for granted that Canada will forever remain the predominant source of capital for mining and exploration companies. By fostering and emphasizing the relative strengths of Canadian capital markets, regulators in Canada may be able to seize these opportunities and improve Canada's relevance to the world stage. Mining and exploration companies, in addition to research and development companies in industries such as technology and bioscience, seek the "first mover advantage" which requires rapid access to capital in order to be the first to develop new products and claims. Canadian capital markets, while well placed to service such companies, need an agile and efficient regulatory framework in order to provide that advantage.

Re-examination of governance requirements, in part in the light of rethinking of Sarbanes-Oxley in the U.S.

Re-examination of governance requirements should be made in light of the experience of small and mid-capitalization markets in the U.S. under Sarbanes-Oxley. As is illustrated by the attached articles from the Wall Street Journal and Washington Post, the market for small capitalization companies has suffered in the U.S. with many junior companies having either gone private and delisted, or either delayed or foregone going public at all. This trend has also been driven by capital, where private equity funds are growing as investors seek to avoid regulators. Junior issuers in the U.S. have sufficiently raised issues with Sarbanes-Oxley that the Securities Exchange Commission ("SEC") has created an advisory committee to examine its impact and avenues for reform.

Difficulties with Sarbanes-Oxley experienced by small and mid-capitalization companies in the U.S. include: huge outlays in designing, documenting and auditing financial controls; a one-size-fits-all approach; the requirement of segregation of management duties within companies with limited management capacity; and escalating auditing fees. Further, the opportunity cost of management time devoted to compliance significantly reduces shareholder value. Requiring a certain number of independent directors is problematic as the cost of professional independent directors is rising in the face of increased liability and smaller companies are already

experiencing difficulty attracting top talent. Following the Sarbanes-Oxley model could prevent many Canadian small issuers from listing due to similar cost and practical issues.

The PDAC wishes to emphasize the fact that in Canada capital markets and companies in general are smaller than in the U.S., which leaves them disproportionately more vulnerable. Also, a larger percentage of Canadian public companies are small and micro-capitalization, which would further exacerbate the overall effect on Canadian markets.

The benefits of adopting a Sarbanes-Oxley model are limited with respect to smaller companies. Many of them are not in a position to list in both Canadian and U.S. markets, and would be unduly penalized should they be required to meet standards similar to those under Sarbanes-Oxley. The intended benefits of certified financial information under Sarbanes-Oxley would be limited in the mining industry for two reasons. First, junior companies do not have cash flow, and need to finance frequently. Therefore, investors are not concerned with financial statistics. Second, NI 43-101 requires certified technical data, which is of main concern to investors. Because of NI 43-101, mining and exploration companies are already under more onerous disclosure obligations than companies of similar size in other industries.

Potential need for differentiated regulation, i.e., for small issuers, in terms of the nature of differences

Given the large number of junior resource companies in Canada, the PDAC is supportive of any initiative that aims to provide differentiated continuous disclosure requirements between junior and senior issuers. 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. Larger issuers should be subject to more stringent continuous disclosure requirements than their smaller counterparts in order to make capital markets more accessible and being a reporting issuer more plausible for smaller start-up companies. Where appropriate, small issuers need a small issuer regime.

Potential need for differentiated regulation, in terms of an appropriate cut-off

Since the definition of a venture issuer is not based on size, the use of this definition as the differentiating criteria will unavoidably subject small issuers listed on the TSX to burdensome disclosure requirements, while not capturing larger issuers listed on the TSX-V. Moreover, this method does not take into consideration a company's growth. A company may not necessarily move from the TSX-V to a senior exchange even though it has grown in terms of assets or market capitalization.

A revenue test should be a criterion for differentiating between issuers. We believe this method appropriately distinguishes issuers and allows for flexibility when issuers grow or divest of assets and operations. For the purposes of differentiating between issuers in the mining industry, the PDAC would like to use the concept of "producing issuer" (as already defined and used in NI 43-101) to define a cut-off between increased corporate governance and continued level of

corporate governance. The concept of producing issuer has precedent, as it is already in place in NI 43-101. The definition of "producing issuer" means an issuer with annual audited financial statements that disclose:

(a) gross revenues, derived from mining operations, of at least $30 million for the issuer's most recently completed financial year; and

(b) gross revenues, derived from mining operations, of at least $90 million in the aggregate for the issuer's three most recently completed financial years.

We are flexible with respect to the $30 million annual gross revenue amount, as an amount as low as $5 million is a reasonable amount that denotes 'operations' as opposed to interest income. The rationale for using the NI 43-101 definition of producing issuer is that junior exploration companies and senior operating companies have different structures; not the least of these differences is financial strength. The majority of exploration companies have only a small number of assets that they explore as their financial resources permit. When sufficient value has been added to an asset, it may be sold to an operating company or the junior becomes a partner in a friendly combination or target for a takeover. The junior company adds value to the asset, which is realized by its shareholders. In recent years, it has become common mining industry practice for senior companies to back away from in-house exploration and enter into numerous joint ventures with junior companies. This is clearly a win-win situation. The exploration risk is kept in the junior realm and the senior company can estimate its known business risk in a manageable manner. This adds both agility and strength to the Canadian capital market.

Regulatory Burden

The PDAC sees a greater role for a principle-based approach with respect to regulation. When SRAs mandate excessively detailed and prescriptive requirements, market participants tend to follow the letter and not the spirit of the rules, and the costs imposed on the market often exceed any benefits. Rules should be outcomes-based as opposed to process intensive, and provide market participants with the flexibility to adopt business practices that achieve required outcomes while reflecting the different business realities in which they operate. Business parameters change much faster than SRAs can respond, and in order to stay competitive rules should be flexible enough to allow directors and senior management to apply adequate systems and controls to meet regulatory obligations while adapting to changing business environments.

Enforcement

The investigation and prosecution of securities offences and the enforcement of remedies is one area where a system of multiple SRAs and multiple securities acts is unavoidably more cumbersome than a system administered by a single regulatory and a single securities act. The draft Canadian Securities Administrators Uniform Securities Legislation ("USL") does not go far enough in terms of harmonizing the enforcement mechanisms, and further work needs to be done in this area.

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 are consistent between jurisdictions. SRAs and provincial legislatures should attempt to be consistent in the delegation of investigative powers from SRAs to staff. Given the multi-jurisdictional 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 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). 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. 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.

Methodology

The PDAC suggests following the model adopted by the BC Securities Commission in developing new legislation, which is a zero-based analysis of current legislation, which involves cost/benefit analyses conducted for each rule. Each rule should be examined for what problem each requirement was designed to address, whether the problem still exists, and whether there is a better way to address the problem such as through education or enforcement. If not, the rules should be evaluated with a view to streamlining, simplifying, putting them into plain language, and creating neutrality as between federal and provincial jurisdiction.

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We thank the Task Force for its consideration of our comments. If the Task Force or any of its members would like to discuss our comments further, please contact Greg Ho Yuen (416) 865-4534.