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Dear Sirs/Mesdames:

**Re: Canadian Securities Administrators (CSA) Staff Consultation Note 45-401  
Review of Minimum Amount and Accredited Investor Exemptions (the "Notice")**

I am writing to you with regard to the possible modification of exempt product rules in 45-401. We have also participated and support the letter provided to you from IIAC but felt the issue was important enough that we wanted to also make comment.

#### A Little History

At a point in the past, exempt product was sold exclusively through licensed members of a stock exchange and in conjunction with an offering document. This was prudent for two reasons. First, clients were screened by someone who had a duty to look after them and second, the clients had the opportunity and resources to be properly informed.

This changed at two points in time. The first change, which happened in the 80's, was that large institutions made the case that they were sophisticated enough to look after themselves and therefore should be allowed to deal directly with the public companies. The second change, which happened in the late 90's, was that regulators recognized that the best deals were being done by companies or investment dealers, directly with their best clients and the general public was missing out.

In response to this regulators significantly loosened the regulations around who can sell and purchase exempt products. They also loosened the rules around who can hold themselves out to the public and be paid for their selling efforts.

### Today

Today, over 90% of money raised by public companies is raised through exempt product mostly without the assistance of an investment dealer. The issue that has resulted from this is that the public is being left unprotected and uninformed.

**The question I would ask is, "Who is protecting the public?"**

### Public Companies

Public companies raise money directly from the general public. Their distributions take the form of non-agency deals which allows them to preference or select their investors, especially in the case of hot deals. In most cases they use only a subscription agreement and a schedule of available exemptions. Telling the public, "If you don't check off an exemption you can't get any". They collect no information from the investors nor do they do any due diligence to qualify that the investors meet the requirements of a particular exemption. If asked, they would maintain that they owe no duty to an investor and that they can rely on their subscription agreement without taking any other steps.

### Stock Exchanges

Stock Exchanges exist on the basis of their listing fees. Their primary concern is to make sure their customers can continue to easily raise money and pay their fees. If asked, they would tell you that the securities commissions are responsible for protecting public investors and that it is not in their mandate to make sure their members are not taking advantage of investors. They do not review their members' adherence to securities legislation around distributions.

### Private Individuals

Due to a loosening of regulations, private individuals can now qualify to receive commissions (finder's fees) and agent's warrants (warrants) in amounts that mimic what they would receive as a dealer selling exempt product. On this basis, they are helping public companies distribute stock to the general public more than ever. **In my opinion, this is the single largest problem today in the markets and the single largest risk to the investing public.** Again as unregistered individuals, their only interest is in getting a signature and a cheque. No one holds them accountable and they certainly don't ask any questions which might get in the way of obtaining another investor (and a paycheque). In many of these cases the company has never met the investor nor do they have any information about the investor other than a name, address and the exemption they checked off.

### Discount Dealers

Discount dealers have done a spectacular job of managing the regulators. They have successfully drawn a line between recommending and soliciting. A huge feat given that the definition in the US of recommending is "acting in furtherance of a trade".

**Discount dealers now make the case that they are not recommending an underwriting to their customers when they solicit them to purchase investments, they are merely “pointing out the opportunity”. I have to wonder how many customers would believe that their dealers were soliciting them for bad investments. Clearly, there is an expectation that if it is being specifically offered, there must be a reason. It must be an investment the company likes.**

#### Exempt Market Dealers

I think Exempt Market Dealers are in flux. When I talk to them, they tell me that they can have retail clients, they have compliance systems and they put up capital. When I ask for more detail they tell me they are unsure; **that the rules are unclear.**

If ultimately exempt market dealers are audited on a reasonable basis by an independent third party, if they are required to put up sufficient capital to protect their clients (more than a token \$50,000) and they are required to keep thorough client records with which to judge their suitability obligations, then I think the public will be reasonably served.

Given that, the last time I checked, there were hundreds of registrants under the BCSC alone and the BCSC had two auditors to look after them. The standards need to come a long way before the public could expect the same level of protection as an IIROC member.

#### Recommendation:

**I think as CSA looks at how 45-401 will function they need to seriously consider who will be responsible for qualifying investors, who will be responsible for adherence to the available exemptions and finally, what will motivate them to do so.**

#### To be constructive, three possible paths might be:

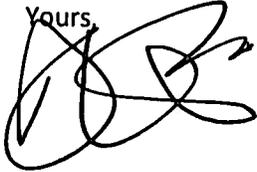
- **Continue to allow the current groups to use the available exemptions but only allow SRO supervised registrants to receive cash commissions or warrants in connection with the sale of exempt product. This would eliminate the motivation on the part of other parties to sell product at any risk.**
- **Allow only SRO supervised registrants to use the Accredited Investor Exemption for sales of exempt product. This would ensure that clients availing themselves of exempt product have proper access to good advice and are properly qualified.**
- **Give the public company and its directors specific responsibility and liability for qualifying investors as Accredited Investors unless they have already been qualified by a SRO supervised registrant. This responsibility should reach beyond simply filling out a form and should require reasonable inquiries into each investor’s personal circumstances. Require that their listing exchange audit this responsibility.**

**Lastly, I would also respectfully suggest that although at times an IIROC dealer may be involved by way of providing the funds or receiving the shares, to try to thrust the burden of advising the client when the member is not involved as a party to the transaction or privy to the transaction in advance does not serve the investing public. IIROC members can only truly protect the investor if they have a say in the form of the subscription agreement, a say in the proposed settlement process and the**

**chance to demand information around the distribution in advance. Without involvement, it is simply unfair and ineffective to ask an IIROC dealer to address any issues.**

Thank you for considering our submission. We would be pleased to respond to any questions that you may have in respect of our position.

Yours,

A handwritten signature in black ink, appearing to be 'Brent Wolverton', written over the word 'Yours,'.

Brent Wolverton, FCSI PM  
President, Wolverton Securities Ltd.