

# 2012 BCSECCOM 142

April 16, 2012

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-102, s. 19.1 *Mutual Funds* – A mutual fund seeks approval to suspend redemptions of its securities under Section 5.5(1)(d) of NI 81-102 - The fund will not resume distributions during the suspension period; the approval is for at most six months; the fund’s independent review committee has or will approve suspending the redemptions for up to six months; the fund will also suspend redemptions in Ontario; the fund will not make any new illiquid investments, except follow-on investments; the fund has filed or will file a material change report and has issued or will issue a press release announcing the suspension and the rationale for the suspension; the fund’s board of directors will assess strategic options for managing the fund’s liquidity

1996 *Securities Act* s. 171 - Revoke or Vary Decision - An issuer wants to vary a previous decision it received to revise the representations or conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the representations or conditions to the relief are no longer appropriate because of a change in the issuer's circumstances; alternative conditions can be structured that address the issuer’s new circumstances

## **Applicable Legislative Provisions**

National Instrument 81-102 *Mutual Funds* s. 5.5(1)(d)  
1996 *Securities Act* s. 171 - Revoke or Vary Decision

In the Matter of  
the Securities Legislation of  
British Columbia  
(the Jurisdiction)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
GrowthWorks WV Management Ltd.  
(the Filer)

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and

In the Matter of  
GrowthWorks Canadian Fund Ltd.  
(the Fund)

## Decision

### **Background**

¶ 1 The principal regulator in the Jurisdiction (the Decision Maker) rendered a decision (the Original Decision) dated November 10, 2011, granting the Filer approval on behalf of the Fund under paragraph 5.5(1)(d) of National Instrument 81-102 *Mutual Funds* (NI 81-102) for the Fund to suspend the rights of securityholders of Class A Shares (as defined in the Original Decision) to request redemption of their securities.

Among other things, the Original Decision is subject to the following condition (the Old Condition):

“This decision terminates on the earlier of (i) the date on which the Fund resumes regular redemptions of Class A Shares in accordance with its prospectus in all jurisdictions, and (ii) the date on which the Fund is granted a further decision from the Jurisdiction with respect to redemptions of its Class A Shares, which shall be no later than April 16, 2012.”

The Decision Maker has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) requesting the Decision Maker vary the Original Decision by replacing the Old Condition with the following new condition (the New Condition):

“This decision terminates on the earlier of (i) the date on which the Fund resumes regular redemptions of Class A Shares in accordance with its prospectus in all jurisdictions, and (ii) the date on which the Fund is granted a further decision from the Jurisdiction with respect to redemptions of its Class A Shares, which shall be no later than July 31, 2012.”

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and

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(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut, and Yukon Territory.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and National Instrument 81-102 *Mutual Funds* have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the facts set out in paragraphs 1 to 32 under Representations of the Original Decision continue to apply except that paragraph 24 is replaced in its entirety with the following:

“24. the Filer estimates that the Fund currently has approximately \$92.3 million of Class A Shares eligible for redemption on or before March 31, 2012 without a Tax Recapture Event or payment of a redemption fee (the CMDF redemption fee) for the same or higher amount as the Tax Recapture Event and that, between March 31, 2012 and March 31, 2013, an additional approximately \$21.2 million of Class A Shares will become eligible for redemption without a Tax Recapture Event and \$32.4 million without payment of the CMDF redemption fee;”;

2. the Filer seeks to replace the Old Condition with the New Condition because the Decision Maker, in consultation with the CSA, requires more time to consider the Filer’s application for longer term relief.

### **Decision**

- ¶ 4 The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Original Decision is varied by replacing the Old Condition with the New Condition.

Andrew S. Richardson, CA  
Acting Director, Corporate Finance  
British Columbia Securities Commission