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## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – labour-sponsored investment fund granted relief from the provisions that a mutual fund may not knowingly make or hold an investment in a person in which the mutual fund is a substantial security holder, provided that the investment is an eligible investment under the fund’s governing legislation

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 123

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

### **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

### **IN THE MATTER OF WORKING VENTURES OPPORTUNITY FUND INC.**

## **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Working Ventures Opportunity Fund Inc. (formerly Working Ventures II Technology Fund Inc.) (“WV Opportunity Fund”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the provisions in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related funds, is a substantial security holder (the “Substantial Security Holder Restrictions”) shall not apply to WV Opportunity Fund for the purpose of making or holding investments in issuers in which WV Opportunity

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Fund, alone or together with Working Ventures Canadian Fund Inc. (“WV Canadian Fund”) or other related funds, is a substantial security holder;

- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS System”), the British Columbia Securities Commission (the “Commission”) is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS WV Opportunity Fund has represented to the Decision Makers that:
1. WV Opportunity Fund is a labour-sponsored investment corporation registered under the *Community Small Business Investment Funds Act* (Ontario) (the “Ontario Act”) and WV Canadian Fund is a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada) (the “Tax Act”);
  2. Each of WV Opportunity Fund and WV Canadian Fund is a mutual fund under the Legislation;
  3. the outstanding capital of WV Opportunity Fund consists of Class A Shares, which are widely held, 1,000 Class B Shares held by the Canadian Federation of Labour, and 1,500,000 Class C Shares, Series I, which are held by WV Canadian Fund (“Seed Capital Investment”);
  4. a *pro forma* prospectus dated December 11, 2002 was filed with the securities regulatory authorities in all provinces and territories of Canada, except British Columbia, qualifying the Class A Shares of WV Opportunity Fund and WV Canadian Fund (collectively, the “Funds”) for distribution in all provinces and territories except British Columbia (the “Prospectus”);
  5. WV Opportunity Fund invests in small- and medium-sized Canadian technology companies in Ontario that qualify as eligible investments for labour-sponsored investment funds under the Ontario Act, with the objective of achieving long-term capital appreciation (the “Eligible Investments”);
  6. WV Canadian Fund invests in small- and medium-sized Canadian businesses, that qualify as eligible investments under the Tax Act, the Ontario Act and similar legislation or pursuant to certain commitments undertaken in other provinces, with the objective of achieving long-term capital appreciation;

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7. GrowthWorks (WVIS) Ltd. (formerly Working Ventures Investment Services Inc.) (the “Manager”) manages the on-going business and administration of the Funds, including investment management and distribution of the Class A Shares;
8. each of the Funds is a reporting issuer in each of the Jurisdictions and is not on any list of defaulting reporting issuers maintained by the Decision Makers;
9. as disclosed in the Prospectus, the Funds may invest in more than 10% of the securities of any one issuer; however, such investments are generally made for business reasons and not for the purpose of exercising control;
10. WV Opportunity Fund has made one investment in an issuer in which WV Canadian Fund holds voting securities carrying more than 10% of voting rights attached to all outstanding voting securities of the issuer; of the shares outstanding, WV Canadian Fund owns 15% and WV Opportunity Fund owns 3.14%;
11. other than the Seed Capital Investment, neither Fund currently holds any other investment in an issuer in which it alone, or together with the other Fund, holds voting securities carrying more than 20% of the issuer’s voting rights;
12. the Regulation to the *Securities Act* (Ontario) recognizes that the rules that govern conventional mutual funds are inappropriate for labour-sponsored investment funds, and so the Regulation relieves labour-sponsored investment funds from many of the rules applicable to conventional mutual funds including the Substantial Security Holder Restrictions;
13. the Prospectus provides full, true and plain disclosure of the risk factors associated with the ownership of Class A Shares, including that WV Opportunity Fund will generally take positions in portfolio companies which are larger than positions other mutual funds would ordinarily take, thereby increasing the potential risk to WV Opportunity Fund;
14. the market conditions are such that the requirement to dispose of the existing investment would be unduly detrimental to shareholders of the WV Opportunity Fund;
15. the Manager is of the view that it is in the best interests of the WV Opportunity Fund to make and hold Eligible Investments in which WV Opportunity Fund, alone or together with WV Canadian Fund or other related funds, is a substantial security holder, and that such investments by the WV Opportunity Fund will represent the business judgment of responsible persons

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uninfluenced by considerations other than the best interests of the WV Opportunity Fund;

- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 6 AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Substantial Security Holder Restrictions shall not apply to WV Opportunity Fund, provided that the investment is an Eligible Investment.
- ¶ 8 January 30, 2003

Brenda Leong  
Director