

# 2011 BCSECCOM 385

July 14, 2011

## Headnote

1996 Securities Act s. 48 – Exemption order by commission or executive director - exemption from s.34(c) requirement to be registered as an investment fund manager – a person wants relief from the requirement to register as an investment fund manager in BC – a person has contracted with a related registered investment fund manager to conduct substantially all of the activities that require the person to register as an investment fund manager; the related entity meets all of the requirements prescribed by National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* as if it was the sole direct investment fund manager of all the investment funds it acts as the investment fund manager for; the related entity and the person share common directors and officers

## Applicable Legislative Provisions

1996 Securities Act s. 48 – Exemption order by commission or executive director  
1996 Securities Act s.34(c) – Investment fund manager registration requirement

## Exemption Order

**Growth Works Capital Ltd., Growthworks WV Management Ltd. and  
Growthworks Atlantic Ltd.**

**Section 48 of the *Securities Act*, R.S.B.C. 1996, c.18**

## Background

- ¶ 1 Growth Works Capital Ltd., GrowthWorks WV Management Ltd. and GrowthWorks Atlantic Ltd. (the Filer) have applied to the Commission for an exemption pursuant to section 48 of the Securities Act (British Columbia) (the Act) from the requirement (the Registration Requirement) for each of GrowthWorks WV Management Ltd. (GWWV) and GrowthWorks Atlantic Ltd. (GWA) to be registered as investment fund managers in section 34(c) of the Act (the Requested Relief). The Requested Relief is sought by Growth Works Capital Ltd. (GrowthWorks Capital), GWWV and GWA on the basis that substantially all of the activities that trigger the Registration Requirement are delegated to and performed by GrowthWorks Capital, a related party whose mind and management is the same as GWWV and GWA that meets the Registration Requirement;

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### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 Definitions 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. GrowthWorks Capital, GWWV and GWA (GrowthWorks) are indirect wholly-owned subsidiaries of Matrix Asset Management Inc. (Matrix), a reporting issuer in each jurisdiction of Canada. The common shares of Matrix are listed on The Toronto Stock Exchange.
  2. The head office of GrowthWorks is located in British Columbia.
  3. GrowthWorks is not in default of securities legislation in any jurisdiction of Canada.
  4. GrowthWorks and its affiliated and related companies have two operating divisions – (i) general investment fund management, which may include mutual funds, specialty funds, flow through investments and exempt market products and (ii) venture capital management, which manages a number of regionally focused venture capital funds across Canada (Venture Capital Management Division).
  5. The GrowthWorks' Venture Capital Management Division is the largest retail venture capital manager in Canada. The following table sets out the existing GrowthWorks venture capital funds, the type of fund, the managers and the investment fund manager/service provider to each fund:

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<b>GrowthWorks Funds</b>	<b>Type of Fund</b>	<b>GrowthWorks Manager or General Partner</b>	<b>Investment Fund Manager/Service Provider</b>
<i>Non Exempted GrowthWorks Funds</i>			
Working Opportunity Fund (EVCC) Ltd. (WOF)	Labour sponsored or venture capital fund	Growth Works Capital	GrowthWorks Capital
GrowthWorks Canadian Fund Ltd. (Canadian Fund)	Labour sponsored or venture capital fund	GWWV	GrowthWorks Capital
GrowthWorks Commercialization Fund Ltd. (Commercialization Fund)	Labour sponsored or venture capital fund	GWWV	GrowthWorks Capital
GrowthWorks Atlantic Venture Fund Ltd. (Atlantic Fund)	Labour sponsored or venture capital fund	GWA	GrowthWorks Capital
<i>Exempted GrowthWorks Funds</i>			
ACF Equity Atlantic Inc. (ACF)	Corporate VC Fund	GWA	GWA
Ensis Investment Limited Partnership (Ensis)	VC Limited Partnership	EM Capital Inc. (Ensis GP)	ENSIS Management Inc.
GrowthWorks Access Fund Limited Partnership (Access Fund)	VC Limited Partnership	GrowthWorks Access GP Ltd. (Access GP)	GrowthWorks Capital

6. GrowthWorks Capital has been the investment fund manager of WOF since 1999. WOF is a labour sponsored or venture capital fund under National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).
7. GWWV has been an investment fund manager of Canadian Fund since 2003 and Commercialization Fund since its launch in 2005. GrowthWorks Capital has provided investment fund manager services on behalf of GWWV to Canadian Fund since 2003 and to Commercialization Fund since 2005.
8. GWA has been an investment fund manager of Atlantic Fund since its launch in 2005. GrowthWorks Capital's registered investment advisors have been providing investment advice for Atlantic Fund since its launch in 2005.
9. Canadian Fund, Commercialization Fund and Atlantic Fund (together the Funds) are all (i) retail venture capital funds, (ii) labour sponsored or venture capital funds under NI 81-106 and (iii)

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investment funds under securities legislation. Each of the Funds are subject to National Instrument 81-102 *Mutual Funds* (NI 81-102) as well as other mutual fund regulation, including National Instrument 81-105 *Mutual Fund Sales Practices* and NI 81-106.

10. Each of the Funds has entered into a management agreement with GWWV and GWA, as applicable, under which GWWV or GWA provides or arranges for the provision of day-to-day management (including investment management) and administration services (including sales and marketing) (any of which are Management Services) as follows:
  - (a) Day-to-day management services include:
    - managing the daily operations of the particular Fund;
    - selecting all service providers to the Fund and monitoring compliance with all agreements entered into by the Fund, and
    - ensuring compliance with all relevant securities laws.
  - (b) Investment management services include:
    - identifying investment opportunities which meet objectives and investment strategies
    - analyzing and evaluating proposed investments
    - structuring and negotiating proposed investments
    - preparing and making recommendations for investments to the investment committees or the board of directors of a particular Fund in accordance with the investment approval procedures adopted by the Fund
    - monitoring portfolio investments, which may include actively participating on portfolio companies' boards of directors and evaluating financial and other key performance indicators
    - regularly reporting to the board of directors of a Fund on the investment portfolio
    - recommending the appropriate timing, terms and methods of acquiring investments, and
    - dealing with portfolio dispositions.
  - (c) Administrative services include:
    - developing and implementing marketing, communications, distribution and capital retention strategies

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- calculating NAV and NAV per share in accordance with policies and procedures approved by the board and the audit and valuation committee of each board
  - share registrar and transfer agency services and share transaction processing
  - preparing shareholder reporting information (including financial statements)
  - liaising with trust company staff in respect of self-directed RRSP programs
  - acting as, or arranging for another person to act as, the Fund's principal distributor and paying the sales commissions associated with the sale of shares
  - arranging for all necessary filings under applicable securities legislation and other legislation
  - providing administrative and support services to the board, board committees and the other administrative groups for the Fund, and
  - providing office premises and information technology systems including shareholder database, transaction processing and accounting.
11. Under the provisions of management agreements between each of Canadian Fund and Commercialization Fund and GWWV, and between Atlantic Fund and GWA, GWWV and GWA are permitted to delegate any part of their duties and powers related to the Management Services as they consider necessary or appropriate, including to affiliates and related companies.
12. For efficiency of administration, each of GWWV and GWA has written agreements (Investment Fund Manager Agreements) with GrowthWorks Capital under which GrowthWorks Capital conducts substantially all of the activities that trigger the Registration Requirement, including providing or arranging for the provision of the Management Services (the Delegated Investment Fund Manager Services). Neither GWWV nor GWA conduct activities which would trigger the Registration Requirement, other than being the named Fund manager under the Funds' management agreements, engaging GrowthWorks Capital to provide the Delegated Investment Fund Manager Services and overseeing investment fund manager activities.

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13. Under the Investment Fund Manager Agreements, GrowthWorks Capital indemnifies each of GWWV, GWA and the Funds for all liabilities arising out of its acting as an investment fund manager of the Funds, including carrying out the Delegated Investment Fund Manager Services.
14. GrowthWorks Capital or its personnel provide all portfolio management services for GrowthWorks managed funds. For efficiency of administration, GrowthWorks Capital directly or through its officers or personnel provides or arranges for the provision of substantially all of the Management Services to the GrowthWorks managed funds, including the Delegated Investment Fund Manager Services provided for the Funds pursuant to the Investment Fund Manager Agreements with GWWV and GWA.
15. The officers and directors of GWWV are identical to those of GrowthWorks Capital. The officers and directors of GWA are also officers and directors of GWWV and GrowthWorks Capital. As a result, there are common directing minds between GrowthWorks Capital and each of GWWV and GWA.
16. GrowthWorks Capital is registered in the categories of:
  - Portfolio Manager in British Columbia, Ontario, Saskatchewan, Manitoba and Nova Scotia;
  - Mutual Fund Dealer in British Columbia, Ontario, Saskatchewan and Nova Scotia (exempt from membership in the Mutual Fund Dealers Association of Canada);
  - Exempt Market Dealer in British Columbia and Ontario;
  - and
  - Investment Fund Manager in British Columbia.
17. GrowthWorks Capital maintains bonding or insurance in the amounts required by National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) based upon all assets under management by GrowthWorks, including the assets of the Funds. This bonding or insurance covers liabilities arising from investment fund manager activities conducted by GrowthWorks Capital for the Funds, including the Delegated Investment Fund Manager Services and any investment fund manager activities conducted by GWWV and GWA for the Funds.
18. GrowthWorks Capital will maintain excess working capital sufficient for that of an investment fund manager under NI 31-103.

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19. GrowthWorks Capital has the necessary financial and human resources to perform the Delegated Investment Fund Manager Services. In addition, GrowthWorks Capital has adopted appropriate internal controls and systems. GrowthWorks Capital has an effective compliance system, including supervision and monitoring.
20. Each of ACF, Ensis and Access Fund (the Exempted GrowthWorks Funds) are not investment funds. As a result, each of GWA, EMI and Access GP are not required to register as investment fund managers by virtue of their management of these investment portfolios.
21. Without the Requested Relief, each of GWWV and GWA would be required to register under the Act as investment fund managers.
22. Notwithstanding the granting of the Requested Relief, GWWV will continue to be an investment fund manager of Canadian Fund and Commercialization Fund and GWA will continue to be an investment fund manager of Atlantic Fund, responsible for overseeing the investment fund manager activities, including the Delegated Investment Fund Manager Activities, conducted by GrowthWorks Capital.

### **Decision**

¶ 4 Considering that it is not prejudicial to the public interest, the Commission orders that the Requested Relief is granted under section 48 of the Act provided that:

- (a) GrowthWorks Capital is registered as an investment fund manager;
- (b) GrowthWorks Capital has the same directors and substantially the same senior officers as GWWV and GWA;
- (c) GrowthWorks Capital conducts substantially all of the investment fund manager activities for the Funds, including the Delegated Investment Fund Manager Services.
- (d) GrowthWorks Capital indemnifies each of GWWV, GWA and the Funds for all liabilities arising out of its acting as an investment fund manager of the Funds, including carrying out the Delegated Investment Fund Manager Services;

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- (e) GrowthWorks Capital meets the requirements under NI 31-103 in respect of GrowthWorks Capital acting as the investment fund manager of the Funds, including as follows in (f) through (i);
- (f) GrowthWorks Capital will maintain insurance or bonding in the amounts required by NI 31-103 based upon all assets under management by GrowthWorks, including the assets of the Funds;
- (g) the bonding or insurance maintained by GrowthWorks Capital will cover liabilities arising from investment fund manager activities conducted by GrowthWorks Capital for the Funds, including the Delegated Investment Fund Manager Services, and any investment fund manager activities conducted by GWWV and GWA for the Funds;
- (h) GrowthWorks Capital will maintain excess working capital required under NI 31-103 for the category of investment fund manager; and
- (i) at the times required under NI 31-103 GrowthWorks Capital will prepare and deliver annual financial statements, interim financial information for the quarter, and a Form 31-103 F1 *Calculation of Excess Working Capital* for itself and net asset value adjustment confirmations (if applicable) for the Funds.

Brent W. Aitken  
Vice Chair  
British Columbia Securities Commission