

## **2004 BCSECCOM 504**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – 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 *Income Tax Act* (Canada) and the *Community Small Business Investment Funds Act* (Ontario)

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 123

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

**AND**

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

**AND**

### **IN THE MATTER OF THE VENGROWTH III INVESTMENT FUND INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from The VenGrowth III Investment Fund Inc. (the “Fund”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation that prohibits the Fund from knowingly making or holding an investment in a person or company which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (the “Conflict Provisions”) shall not apply to the Fund;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Saskatchewan Financial Services Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in *National Instrument 14-101, Definitions*;

AND WHEREAS the Fund has represented to the Decision Makers that:

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1. The Fund is a corporation incorporated under the *Canada Business Corporations Act* by articles of incorporation dated April 26, 2004;
2. The Fund is registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the “Ontario Act”). The Fund will not be applying for registration as a labour sponsored venture capital corporation, or similar entity, under the provincial legislation of the Jurisdictions;
3. The Fund has applied to be registered as a labour sponsored venture capital corporation under the *Income Tax Act* (Canada) (the “Tax Act”) and expects to be registered shortly;
4. The Fund is a mutual fund pursuant to the Legislation and will distribute securities in the Jurisdictions under a prospectus. The Fund has filed a preliminary prospectus in all of provinces of Canada;
5. The Fund will become a “reporting issuer” or equivalent in the provinces of Canada that have this concept when its prospectus is receipted in such provinces;
6. The Fund will invest in small and medium-sized eligible Canadian businesses with the objective of achieving long-term capital appreciation;
7. The authorized capital of the Fund consists of an unlimited number of Class A Shares, 25,000 Class B Shares and 10,000 Class C Shares, of which 100 Class B Shares and 100 Class C Shares are issued and outstanding as of the date hereof;
8. The Fund's securities are not listed on any exchange;
9. The Fund was formed and organized by the Association of Canadian Financial Officers, the sponsor of the Fund;
10. As a labour sponsored investment fund, the Fund's investment objectives and redemption restrictions will be governed by the Ontario Act and the Tax Act. It is recognized in the regulation to the *Securities Act* (Ontario) (the “Ontario Regulation”) that the rules that govern conventional mutual funds are inappropriate for labour sponsored investment funds, and so the Ontario Regulation relieves labour sponsored investment funds from many of the rules applicable to conventional mutual funds, including the Conflict Provisions;

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11. Since the Fund is filing a prospectus in each of the Jurisdictions, it must obtain relief similar to that provided by the Ontario Regulation in order to allow it to fulfill its mandate;
12. The Fund's investment mandate and the Ontario Act allow the Fund to make and hold investments in a person or company in which it is a “substantial security holder”, within the meaning of the Conflict Provisions; and
13. The directors of the Fund are of the opinion that it may be in the Fund's best interest to make and hold investments in issuers in which the Fund is a “substantial security holder”, as defined in the Legislation, and confirm that the making and holding of these investments will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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;

THE DECISION of the Decision Makers under the Legislation is that the Conflict Provisions shall not apply to the Fund provided that the investment is an eligible investment for the Fund under the Ontario Act and the Tax Act.

DATED at Regina, Saskatchewan, on August 17, 2004.

Barbara Shourounis  
Director