

2006 BCSECCOM 682

November 23, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - A fund wants relief from subsection 9.2 of NI 81-106 that requires a fund that does not have a current prospectus as at its financial year end to prepare an annual information form - The fund is a labour-sponsored or venture capital fund with multiple classes or series of shares; the information that NI 81-106 would require the fund to include in an AIF for a class or series that is no longer in distribution is included in the current prospectus for the classes or series that the fund is still distributing; the fund will post a notice on SEDAR about the exemption and will provide a copy of the current prospectus to any holder of the discontinued class or series who requests a copy

Applicable British Columbia Provisions

National Instrument 81-106, ss. 9.2 and 17.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories,
Yukon and Nunavut
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

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

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application from the Fund for a decision

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under section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), that the Fund be exempt from the requirement in sections 9.2 and 9.3 of NI 81-106 to prepare and file an annual information form (AIF) for the Merger Shares, the FOF Merger Shares and any Future Merger Shares (as defined below) for the financial year ended August 31, 2006 and all subsequent financial years (the Requested Relief).

Under the Mutual Reliance Review System (MMRS) for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator of this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker

Representations

¶ 2 This decision is based on the following facts represented by the Fund:

1. the Fund is incorporated under the Canada Business Corporation Act;
2. the Fund is a registered labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario); the Fund is also a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada); the Fund is an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan); the Fund's investment objectives and redemptions are affected by provisions under this legislation (together, the RVC Legislation);
3. GrowthWorks WV Management Ltd. is the manager of the Fund; the head office of the manager is in Toronto, Ontario;
4. the Fund invests in small and medium sized businesses with the objective of obtaining long term capital appreciation; as the Fund is a labour-sponsored investment fund that offers its shares under a prospectus to retail investors (also known as a retail venture capital fund or RVC), its investment objectives and restrictions are governed by the RVC Legislation;
5. the Fund is an investment fund in the Jurisdictions for the purposes of NI 81-106; the Fund is deemed to be a mutual fund in all of the Jurisdictions;
6. effective November 29, 2005, the Fund completed a merger (the Merger Transaction) involving the acquisition of assets of Capital Alliance Ventures

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Inc. (CAVI), Canadian Science and Technology Growth Fund Inc. (CSTGF) and GrowthWorks Opportunity Fund Ltd. (GWOFF);

7. pursuant to the terms of the Merger Transaction, the Fund created two new series of Class A shares in its capital which it issued to former shareholders of CSTGF and CAVI, named the “CSTGF series” and the “CAVI series”, respectively (the Merger Shares);
8. effective July 14, 2006, the Fund completed a merger (the FOF Merger Transaction) involving the acquisition of assets of First Ontario Labour Sponsored Investment Fund Ltd. (FOF); as part of the FOF Merger Transaction, the Fund created two new series of Class A shares in its capital which it issued to former shareholders of FOF, named the “FOF Traditional Shares” and the “FOF Growth Shares”, respectively (the FOF Merger Shares);
9. the authorized capital of the Fund is as follows:
 - (a) an unlimited number of Class A shares issuable in series, which are widely held, of which there are currently 17 series issued, including the four series comprising the Merger Shares and the FOF Merger Shares and the single series of GWCF Historical Shares referred to below;
 - (b) 1,000 Class B shares which are held by the sponsor of the Fund; and
 - (c) an unlimited number of Class C shares issuable in series of which there is one series issued designated as “IPA shares” which are issuable to the manager of the Fund to provide a participating interest, termed an “incentive participation amount” based on realized gains and the cumulative performance of the Fund on venture investments made by the Fund.
10. the Fund currently offers 12 series of the Class A shares, namely Venture/Balanced Commission I and II, Venture/Growth Commission I and II, Venture/Income Commission I and II, Venture/Financial Services Commission I and II, Venture/Resource Commission I and II and Venture/Diversified Commission I and II, under a prospectus dated December 5, 2005, as amended (the Current Prospectus);
11. on December 29, 2005, the Decision Makers issued a decision under the MRRS for Exemptive Relief in respect of certain shares (referred to in such decision as the GWCF Historical Shares), exempting such shares of the Fund from the requirement to file an annual information form in accordance with

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sections 9.2 and 9.3 of NI 81-106 under the terms and conditions set out in such decision;

12. the Merger Transaction and the FOF Merger Transaction were approved by applicable securities regulators pursuant to clause 5.5(1)(b)A of National Instrument 81-102 *Mutual Funds* (NI 81-102);
13. the Merger Shares and the FOF Merger Shares were issued pursuant to the terms of the Merger Transaction and the FOF Merger Transaction, respectively, not pursuant to the terms of the Current Prospectus or any other prospectus of the Fund, and were created and issued to reflect an allocation of risks and certain fees and charges associated with each of the Merger Transaction and the FOF Merger Transaction; shareholders of the Merged Funds and of FOF did, however, receive prospectus-level disclosure about the Fund and the Merger Shares or the FOF Merger Shares (as applicable) in the shareholder meeting materials provided to them in connection with the merger approval process;
14. the Merger Shares and the FOF Merger Shares share in the same majority common venture portfolio as the currently offered series of Class A shares of the Fund, and invest their non-venture funds in the same manner as existing series in the capital of the Fund, as follows:

<u>Name of Series of Merger Shares and FOF Merger Shares</u>	<u>Venture Portfolio</u>	<u>Non-Venture Portfolio Investment Focus</u>
CAVI series	Common to all series of shares	GWCF Historical Shares
CSTGF series	Common to all series of shares	GWCF Historical Shares
FOF Traditional series	Common to all series of shares	GWCF Historical Shares
FOF Growth series	Common to all series of shares	Venture/Growth Commission I Series shares

15. under section 1.3(1) of NI 81-106, each class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for the purposes of NI 81-106;

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section 9.2 of NI 81-106 requires an investment fund that does not have a current prospectus as at its financial year end to file an AIF;

16. the financial year end of the Fund is August 31; therefore, without the requested relief, the Fund would be required to file an AIF for the Merger Shares and the FOF Merger Shares by November 29, 2006 (which is 90 days after its most recently financial year end);
17. the Merger Shares and the FOF Merger Shares have rights and restrictions which are substantially similar to those of the other series of Class A shares of the Fund, although they do not currently have any other designated shares in the capital of the Fund that they may switch into;
18. the Current Prospectus contains substantially the same disclosure concerning the Merger Shares as required by the provisions of NI 81-106 in respect of an annual information form; in its final renewal long form prospectus to be filed in 2006, the Fund will include substantially the same disclosure concerning the FOF Merger Shares as is required by NI 81-106 through the filing of an annual information form;
19. the Fund has examined and continues to examine the portfolios of other venture capital funds to identify possible merger candidates, which may result in future mergers with other venture capital funds subject to obtaining the necessary regulatory and shareholder approvals; as part of any such future merger transactions, the Fund may issue new series of Class A shares (Future Merger Shares) to former shareholders of such other venture capital funds to reflect the allocation of risks and certain fees and charges associated with any such merger transaction; and
20. the Canadian Federation of Labour is the sponsor of the Fund.

Decision

¶ 3 Each of the Decision Makers is satisfied that the test contained in the legislation that provided the Decision Maker with the jurisdiction to make the decision has been met. The decision of the Decision Makers is that the Requested Relief is granted provided that:

- (a) the Fund continues to have a current prospectus;
- (b) in relation to the Merger Shares and the FOF Merger Shares:
 - (i) the Fund's prospectus contains, and any renewal prospectuses of the Fund contain, all disclosure required by NI 81-106 to be included in

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an annual information form for the Merger Shares and the FOF Merger Shares;

- (ii) the Fund files no later than November 29, 2006, and on an annual basis thereafter, on SEDAR a notice which includes the following:
 - (A) a statement that GWCF has received exemptive relief from the requirement to file an annual information form in respect of the Merger Shares and the FOF Merger Shares; and
 - (B) a direction to holders of Merger Shares and the FOF Merger Shares that they should refer to the then current prospectus of the Fund, as it may be amended from time to time, for information concerning the Merger Shares or the FOF Merger Shares, as the case may be;
 - (iii) if a holder of Merger Shares or FOF Merger Shares requests a copy of the annual information form for the Merger Shares or the FOF Merger Shares, the Fund sends, without charge, to the holder within 10 calendar days after the Fund receives the request, a copy of the most recent prospectus of the Fund, together with a clear and concise statement that indicates that the prospectus contains the information about the Merger Shares or the FOF Merger Shares, as the case may be, that would otherwise be disclosed in an annual information form;
 - (iv) the Fund files and delivers its annual financial statements and management reports of fund performance in accordance with securities laws requirements; and
 - (v) the Fund files and delivers notices as required under all other continuous disclosure requirements as set out in securities legislation and NI 81-106; and
- (c) in relation to any Future Merger Shares:
- (i) the Future Merger Shares are issued in accordance with the requirements of NI 81-102;
 - (ii) the Fund's then current prospectus contains, and any renewal prospectuses of the Fund contain, all disclosure required by NI 81-106 to be included in an annual information form for any such Future Merger Shares;

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- (iii) the Fund files no later than the filing deadline for any annual information form under NI 81-106 on SEDAR a notice which includes the following:
 - (A) a statement that the Fund has received exemptive relief from the requirement to file an annual information form in respect of the Future Merger Shares; and
 - (B) a direction to holders of Future Merger Shares that they should refer to the then current prospectus of the Fund, as it may be amended from time to time, for information concerning the Future Merger Shares;
- (iv) if a holder of Future Merger Shares requests a copy of the annual information form for the Future Merger Shares, the Fund sends, without charge, to the holder within 10 calendar days after the Fund receives the request, a copy of the most recent prospectus of the Fund, together with a clear and concise statement that indicates that the prospectus contains the information about the Future Merger Shares that would otherwise be disclosed in an annual information form;
- (v) the Fund files and delivers its annual financial statements and management reports of fund performance in accordance with securities laws requirements; and
- (vi) the Fund files and delivers notices as required under all other continuous disclosure requirements as set out in securities legislation and NI 81-106.

Martin Eady, CA
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British Columbia Securities Commission