



July 15, 2013

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – 1996 Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered mutual fund dealer wants an exemption from the requirement to be a member of the MFDA - The dealer's principal business is managing the funds; selling mutual funds is incidental to the dealer's business; the dealer will not sell the funds directly to the public; the dealer has agreed to conditions of registration that restricts its selling of funds only to a limited category of investors such as past clients, unsolicited clients, employees, directors, officers, partners, relatives, and other funds; new clients of the dealer will receive notice from the dealer that it is not a member of the MFDA

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

In the Matter of
the Securities Legislation of
British Columbia and Ontario (the Jurisdictions)

and

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

and

In the Matter of
SEAMARK Asset Management Ltd. (the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) from the requirement under section 9.2 of NI 31-103



for mutual fund dealers to be a member of the Mutual Fund Dealers Association of Canada (MFDA) (the Exemption Sought);

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

- (a) the British Columbia Securities Commission (BCSC) is the principal regulator for this application;
- (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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 Filer is a subsidiary of Matrix Asset Management Inc. (Matrix), a reporting issuer. The common shares of Matrix are listed on The Toronto Stock Exchange. Growth Works Capital Ltd. (GrowthWorks) is also a subsidiary of Matrix.
 - 2. The head office of the Filer is currently located in Halifax, Nova Scotia, however it is anticipated that immediately upon the closing of the SEAMARK Sale (defined below), the head office of the Filer will be in Vancouver, British Columbia. Upon closing of the SEAMARK Sale, the BCSC will be the principal regulator for the Filer. Therefore, the BCSC has been chosen as the principal regulator for this application.
 - 3. The Filer is registered in the categories of:
 - (a) Portfolio Manager in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;
 - (b) Exempt Market Dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and



- (c) Investment Fund Manager in British Columbia, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador.
- 4. The Filer is not in default of securities legislation in any jurisdiction of Canada. The Nova Scotia Securities Commission (NSSC) has communicated to the Filer that it thinks that the Filer's working capital is currently below the level required under Part 12 of NI 31-103. The Filer has been engaged in discussions with the NSSC about addressing this working capital matter since May 2013.
- 5. As previously announced by Matrix, the Filer expects to complete the sale of substantially all of its existing assets (other than working capital) (the SEAMARK Sale) to 8532435 Canada Corp. (Newco). Upon the closing of the SEAMARK Sale, the working capital of the Filer is expected to be above the level required under Part 12 of NI 31-103.
- 6. GrowthWorks, the Filer's affiliate, is registered in the categories of:
 - (a) Portfolio Manager in British Columbia, Ontario, Saskatchewan, Manitoba and Nova Scotia;
 - (b) Mutual Fund Dealer in British Columbia, Ontario, Saskatchewan and Nova Scotia (exempt from membership in the MFDA);
 - (c) Exempt Market Dealer in British Columbia and Ontario; and
 - (d) Investment Fund Manager in British Columbia (pending Ontario, Newfoundland and Labrador and Quebec).
- 7. GrowthWorks was granted an exemption from the requirement to be a member of the MFDA provided it complies with the terms and conditions (GrowthWorks T&C) set out in:
 - (a) decision *Growth Works Capital Ltd.* dated July 30, 2003 of the Ontario Securities Commission (OSC);
 - (b) exemption order *Growth Works Capital Ltd.* dated January 11, 2005 of the NSSC;
 - (c) exemption order *Growth Works Capital Ltd.* dated August 9, 2006 of the Saskatchewan Securities Commission;
 - (d) exemption order 2007 BCSECCOM 353 *Growth Works Capital Ltd.* dated June 21, 2007 of the BCSC.



8. GrowthWorks' working capital is currently below the level required under Part 12 of NI 31-103. GrowthWorks has been engaged in discussions with the BCSC about addressing the working capital deficiency since May 2013.
9. Currently, GrowthWorks and its affiliates and related companies have two fund management operating divisions – (i) general investment fund management, which may include mutual funds, specialty funds, flow through investments and exempt market products (Matrix Funds Management Division) and (ii) venture capital management, which manages a number of regionally focused venture capital funds across Canada.
10. Under management contracts (collectively, the Management Contracts), the Matrix Funds Management Division provides management services to the Matrix group of investment funds (the Matrix Funds).
11. The Matrix Funds do not have a principal distributor. The Matrix Funds are marketed and distributed through registered dealers and brokers. While incidental to its principal business activities as manager of the Matrix Funds, GrowthWorks engages in certain "In Furtherance Trades" activities with respect to the Matrix Funds which activities are in accordance with the permitted activities of the GrowthWorks T&C.
12. It is proposed that GrowthWorks assign the Management Contracts to the Filer (the Transfers) to ensure that the investment fund manager for the Matrix Funds has sufficient working capital. As noted above, upon the closing of the SEAMARK Sale, the working capital of the Filer is expected to be above the level required under Part 12 of NI 31-103.
13. It is anticipated that the Transfers will be completed on or before July 16, 2013 to facilitate the renewal of the Matrix Funds' prospectus prior to the lapse date.
14. The Transfers would have no impact on the management and administration services undertaken or fees charged in respect of the Matrix Funds. All costs associated with the Transfers would be borne by GrowthWorks and/or the Filer (as applicable).
15. In connection with the Transfers, it is intended that the Filer's principal business activity with respect to the Matrix Funds will be managing or providing advising services to the Matrix Funds.
16. It is anticipated that the Filer will also engage in certain trading activities incidental to its principal business activities. Thus, the Filer submitted an application for registration as a mutual fund dealer on June 28, 2013 to the BCSC,



OSC and the securities regulatory authorities or regulators in all other provinces in Canada.

17. The Filer has agreed to the imposition of the terms and conditions on its registration as a mutual fund dealer set out in the Appendix, which terms and conditions are substantially the same as GrowthWorks T&C (revised to reflect the multi-jurisdictional nature of the decision).
18. The Filer will obtain and maintain its registration as a mutual fund dealer and will comply with applicable securities legislation and rules.
19. In connection with the SEAMARK Sale, it is expected that the Filer will change its name from SEAMARK Asset Management Ltd. to GrowthWorks Enterprises Ltd.
20. Before the Filer, in its capacity as a registered mutual fund dealer, accepts any person or company as a mutual fund client, the Filer will give the person or company the following written notice about its status as a non-member of the MFDA:

[Insert name of the Filer] is not currently a member, and does not intend to become a member, of the Mutual Fund Dealers Association of Canada (MFDA). Consequently, clients of [Insert name of the Filer] will not have available to them investor protection benefits that would otherwise be derived from [Insert name of the Filer]'s membership in the MFDA, including coverage under the investor protection plan for clients of members of the MFDA.

Decision

- ¶ 4 Each of the Decision Makers 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 Makers under the Legislation is that the Exemption Sought is granted provided that the Filer complies with the terms and conditions set out in the Appendix.

Mark Wang
Acting Director Capital Markets Regulation
British Columbia



APPENDIX

Terms and Conditions of Registration of SEAMARK Asset Management Ltd. as a Mutual Fund Dealer

Definitions

1. In this Appendix, unless the context otherwise requires:
 - (a) “Adviser” means an adviser as defined in the Legislation;
 - (b) “Client Name Trade” means, for the Registrant, a trade to, or on behalf of, a person or company, in securities of a mutual fund, that is managed by the Registrant or an affiliated entity of the Registrant, where, immediately before the trade, the person or company is shown on the records of the mutual fund or of another mutual fund managed by the Registrant or an affiliated entity of the Registrant as the holder of securities of such mutual fund, and the trade consists of:
 - (i) a purchase, by the person or company, through the Registrant, of securities of the mutual fund; or
 - (ii) a redemption, by the person or company, through the Registrant, of securities of the mutual fund;and where, the person or company:
 - (iii) is a client of the Registrant or an affiliated entity of the Registrant that was not solicited by the Registrant or an affiliated entity of the Registrant; or
 - (iv) was an existing client of the Registrant or an affiliated entity of the Registrant on the Effective Date;
 - (c) “Effective Date” means the date of the covering decision;
 - (d) “Employee”, for the Registrant, means:
 - (i) an employee of the Registrant;
 - (ii) an employee of an affiliated entity of the Registrant; or



- (iii) an individual that is engaged to provide, on a bona fide basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;
- (e) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
 - (i) the Registrant or an affiliated entity of the Registrant; or
 - (ii) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;
- (f) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;
- (g) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (h) “Exempt Trade”, for the Registrant, means a trade in securities of a mutual fund that the Registrant would be authorized to make as an exempt market dealer under the Legislation;
- (i) “Fund-on-Fund Trade”, for the Registrant, means a trade that consists of:
 - (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
 - (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a counterparty, an affiliated entity of the counterparty or another person or company, pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; or



- (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
 - (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
 - (B) a counterparty, affiliated entity or other person or company that acquired the securities pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; and

where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;

- (j) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of any other trade in securities of a mutual fund, where the other trade consists of:
 - (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund;

and where, in each case, the purchase or sale is made by or through another registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (k) “Legislation” means the securities legislation of each of British Columbia, Ontario, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador;
- (l) “Mutual Fund Instrument” means National Instrument 81-102 *Mutual Funds*, as amended;
- (m) “Permitted Client”, for the Registrant, means a person or company that is a client of the Registrant, and that is, or was at the time the person or company became a client of the Registrant:
 - (i) an Executive or Employee of the Registrant;



- (ii) a Related Party of an Executive or Employee of the Registrant;
 - (iii) a Service Provider of the Registrant or an affiliated entity of a Service Provider of the Registrant;
 - (iv) an Executive or Employee of a Service Provider of the Registrant;
or
 - (v) a Related Party of an Executive or Employee of a Service Provider of the Registrant;
- (n) “Permitted Client Trade” means, for the Registrant, a trade to a person who is a Permitted Client or who represents to the Registrant that he, she or it is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant, and the trade consists of a purchase or redemption, by the person, through the Registrant, of securities of the mutual fund;
- (o) “Registered Plan” means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the Income Tax Act (Canada);
- (p) “Registrant” means SEAMARK Asset Management Ltd. (expected to be renamed to GrowthWorks Enterprises Ltd.);
- (q) “Related Party”, for a person, means any other person who is:
 - (i) the spouse of the person;
 - (ii) the issue of:
 - (A) the person,
 - (B) the spouse of the person, or
 - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
 - (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
 - (iv) the issue of any person referred to in paragraph (iii) above;



- (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
 - (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing; or
 - (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
 - (r) “securities”, for a mutual fund, means shares or units of the mutual fund;
 - (s) “Seed Capital Trade” means a trade in securities of a mutual fund made to a person or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument;
 - (t) “Service Provider”, for the Registrant, means:
 - (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
 - (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (iii) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant.
2. In this Appendix, the term “affiliated entity” is interpreted in accordance with the Legislation.
3. In this Appendix:
- (a) “issue” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;
 - (b) “parent” and “grandparent” includes a parent or grandparent through adoption, whether legally or in fact;
 - (c) “registered dealer” means a person or company that is registered under the Legislation as a dealer in a category that permits the person or company to act as dealer for the subject trade; and



- (d) “spouse”, for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.
- 4. In this Appendix, any terms that are not specifically defined above, or defined in National Instrument 14-101 *Definitions*, shall, unless the context otherwise requires, have the meaning:
 - (a) specifically ascribed to such term in the Mutual Fund Instrument; or
 - (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Legislation.

Restricted Registration: Permitted Activities

- 5. The registration of the Registrant as a mutual fund dealer under the Legislation shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:
 - (a) a Client Name Trade;
 - (b) an Exempt Trade;
 - (c) a Fund-on-Fund Trade;
 - (d) an In Furtherance Trade;
 - (e) a Permitted Client Trade; or
 - (f) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (e), the trades are limited and incidental to the principal business of the Registrant.