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December 29, 2005

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 investment fund with multiple classes or series of shares, all of which invest the majority of their assets in the same venture portfolio; 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, Québec, New
Brunswick, Newfoundland and Labrador, Nova Scotia, Yukon, Northwest
Territories and Nunavut (the Jurisdictions)

and

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

and

In the Matter of GrowthWorks Capital Ltd. (the Investment Manager) and
GrowthWorks Canadian Fund Ltd. (GWCF) (the Filers)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Investment Manager on behalf of GWCF for a decision under section 17.1 of National Instrument 81-106

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Investment Fund Continuous Disclosure (NI 81-106), that GWCF be exempt from the requirement in section 9.2 of NI 81-106 to prepare and file an annual information form (AIF) for the GWCF Historical Shares (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* and NI 81-106 have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:
1. GWCF is incorporated under the *Canada Business Corporations Act*;
 2. GWCF is a registered labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario); GWCF is also a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada); GWCF is an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan); GWCF's investment objectives and redemptions are affected by provisions under this legislation (the LSIF Legislation);
 3. GrowthWorks Management Ltd. is the manager of GWCF; the Investment Manager is the investment manager for GWCF;
 4. GWCF invests in small and medium sized businesses with the objective of obtaining long term capital appreciation; as GWCF is a labour-sponsored investment fund, its investment objectives and restrictions are governed by the LSIF Legislation;
 5. GWCF is an investment fund in the Jurisdictions for the purposes of NI 81-106; GWCF is deemed a mutual fund in all of the jurisdictions in which GWCF distributes its Class A shares;
 6. the authorized capital of GWCF is as follows:

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- (a) an unlimited number of Class A shares issuable in series, which are widely held, of which there are currently 13 series issued;
 - (b) 1,000 Class B Shares which are held by the sponsor of GWCF; 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 GWCF to provide a participating interest, termed an “incentive participation amount” based on realized gains and the cumulative performance of GWCF on venture investments made by GWCF;
7. GWCF currently offers 12 series of the Class A shares, under a prospectus dated December 5, 2005 (the Prospectus);
 8. GWCF intends to file annually a renewal prospectus to permit GWCF to continue to offer series of Class A shares;
 9. GWCF previously offered the WV Canadian - Commission I Class A shares (the GWCF Historical Shares) which have the same majority common venture portfolio as the currently offered series of Class A shares of GWCF; however, they differ in how they invest the much smaller non-venture portfolio;
 10. 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; 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; and
 11. the Prospectus contains substantially the same disclosure concerning the GWCF Historical Shares as would be required by NI 81-106 to be included in an AIF for the GWCF Historical Shares.

Decision

- ¶ 4 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 is that the Requested Relief is granted provided that:

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- (a) the Prospectus and all renewal prospectuses of GWCF contain all disclosure NI 81-106 requires to be included in an AIF for the GWCF Historical Shares;
- (b) no later than December 29, 2005, GWCF files on SEDAR a notice that includes the following information:
 - (i) that GWCF has received exemptive relief from the requirement to file an AIF for the GWCF Historical Shares; and
 - (ii) a direction to holders of GWCF Historical Shares that they should refer to the current prospectus of GWCF for information concerning the GWCF Historical Shares; and
- (c) if a holder of GWCF Historical Shares requests a copy of the AIF for the GWCF Historical Shares, GWCF sends, without charge, to the holder within ten calendar days after GWCF receives the request a copy of the most recent prospectus of GWCF, together with a clear and concise statement that indicates that the prospectus contains the information about the GWCF Historical Shares that would otherwise be disclosed in an AIF.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission