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Headnote

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

Exemption Order

Working Opportunity Fund (EVCC) Ltd. (the Fund)

Section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*

Background

- ¶ 1 GrowthWorks Capital Ltd. (GrowthWorks) applied on behalf of the Fund for an exemption under section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) 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 06 Commercialization Shares (as defined below) and all Future Commercialization Shares (as defined below) for the financial year ended December 31, 2006 and all future financial years of the Fund (the Requested Relief).

Representations

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

The Fund

1. the Fund is incorporated under the *Business Corporations Act* (British Columbia);
2. the Fund is a prescribed labour sponsored venture capital corporation under the *Income Tax Act* (Canada); the Fund is also registered as an employee venture capital corporation under the *Employee Investment Act* (British Columbia); the Fund's investment objectives and redemptions are affected by provisions under this legislation (together, the RVC Legislation);
3. GrowthWorks is the manager of the Fund;

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4. the Fund is an investment fund in British Columbia for the purposes of NI 81-106; while the Fund does not fall within the definition of a mutual fund, under securities legislation in British Columbia, the Fund's share offering under a simplified prospectus and AIF is analogous to an offering of shares or units by a mutual fund;
5. 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;
6. 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 10 series issued, namely, the Commercialization Shares (series 2) (05 Commercialization Shares), the 06 Commercialization Shares (series 2 – 2006) (06 Commercialization Shares), the Balanced Shares (series 1 and 2) (Balanced Shares), the Growth Shares (series 1 and 2) (Growth Shares), the Income Shares (series 2) (Income Shares), Financial Services Shares (series 2) (FS Shares), the Diversified Shares (series 2) (Diversified Shares), and the Resource Shares (series 2) (Resource Shares); and
 - (b) an unlimited number of Class B shares which are held by GrowthWorks representing a carried interest in the investments made by the Fund for the benefit of GrowthWorks;

AIF Requirements

7. the Fund's simplified prospectus and AIF dated February 16, 2005 qualified three series of Class A shares, namely Balanced Shares (series 2), Growth Shares (series 2), and the 05 Commercialization Shares;
8. the Fund's simplified prospectus and AIF dated December 28, 2005 qualified seven series of Class A shares for sale to the public: the Balanced Shares, the Growth Shares, Income Shares, FS Shares, Resource Shares, Diversified Shares, and 06 Commercialization Shares;
9. the Fund is a labour sponsored investment fund and, therefore, is subject to the provisions of NI 81-106; under the provisions of sections 9.2 and 9.3 of NI 81-106, the Fund is required to file an annual information form on or before

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March 31, 2007 with respect to those “investment funds” (as defined in NI 81-106) that are no longer offered under a current prospectus as of the financial year end of the Fund;

10. since the 06 Commercialization Shares were not offered under the Fund’s renewal simplified prospectus dated December 22, 2006 (Current Prospectus), the Fund does not have a current simplified prospectus or annual information form for the 06 Commercialization Shares as of the Fund’s year end of December 31, 2006; the Fund anticipates that it will create and offer future commercialization shares (Future Commercialization Shares) under future renewal simplified prospectuses (Future Prospectuses); in the absence of exemptive relief, the Fund would be required to file an annual information form in respect of the 06 Commercialization Shares and the Future Commercialization Shares for the 2006 financial year and for each future financial year;

Future Series of Shares

11. the Fund anticipates that, subject to obtaining all necessary regulatory approvals, it will offer the Future Commercialization Shares on a similar basis as the 06 Commercialization Shares;
12. the key distinction between the various “commercialization series” of shares offered by the Fund is that, for a period of three years, assets are and will be allocated to each such series separately in accordance with the Fund’s rules on allocation of assets among series as set out in the Current Prospectus, and as will be set out in Future Prospectuses; the Fund implements these asset allocation rules to enable the specific dividend policy associated with a particular series of “commercialization shares” to be more easily administered, to avoid dilution for earlier investors and to pool participation in commercialization venture investments to gain the benefits of diversification;
13. thus, each year (until determined otherwise by the Fund’s board of directors), the Fund will offer a new “commercialization series” of shares, and the venture and non-venture investments made with the capital raised from the sale of such series of shares will be allocated solely to that series during the period ending on March 1st of the third calendar year after the RSP season that such series was first offered in (Separate Pool End Date);
14. then, once the Separate Pool End Date has passed for a given series of Future Commercialization Shares, the venture and non-venture investments previously solely allocated to that particular series will be pooled with the assets of all other “commercialization series” of shares that have passed their

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Separate Pool End Dates and will be allocated among those series in proportion to their relative net asset values; as a result, while separate series of Future Commercialization Shares have separate asset pools for an initial three year period, all such series of shares will eventually share in the same asset pool; and

15. Future Prospectuses and AIFs of the Fund will include substantially the same disclosure concerning the 06 Commercialization Shares and concerning any Future Commercialization Shares as is required by NI 81-106 through the filing of an AIF.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that the Requested Relief is granted provided that:

1. the Fund continues to have a current prospectus;
2. the Fund's prospectus contains, and the Future Prospectuses of the Fund contain, all disclosure required by NI 81-106 to be included in an AIF for the 06 Commercialization Shares and the Future Commercialization Shares;
3. the Fund files no later than March 31, 2007, and on an annual basis thereafter, on SEDAR a notice which includes the following:
 - (a) a statement that the Fund has received exemptive relief from the requirement to file an AIF in respect of the 06 Commercialization Shares and any Future Commercialization Shares; and
 - (b) a direction to holders of 06 Commercialization Shares and any Future Commercialization 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 06 Commercialization Shares and any Future Commercialization Shares, as the case may be;
4. if a holder of 06 Commercialization Shares or of Future Commercialization Shares requests a copy of the AIF for the 06 Commercialization Shares or the Future Commercialization Shares, as the case may be, the Fund sends, without charge, to the holder within ten 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 06 Commercialization Shares or the Future Commercialization Shares, as the case may be, that would otherwise be disclosed in an AIF;

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5. the Fund files and delivers its annual financial statements and management reports of fund performance in accordance with securities laws requirements; and
6. the Fund files and delivers notices as required under all other continuous disclosure requirements as set out in applicable securities legislation and NI 81-106.

¶ 4 January 15, 2007

Noreen Bent
Manager, Corporate Finance
British Columbia Securities Commission