

# 2008 BCSECCOM 501

## Headnote

Securities Act, s. 171 – An issuer wants a previous decision revoked - Securities laws have changed since the previous relief was granted

National Instrument 41-101 *General Prospectus Requirements*, s. 19.1 – Requirement for investment fund to file prospectus in form of 41-101F2 – An investment fund wants relief from the requirement in s. 3.1(2) to use the prescribed form of prospectus - Although technically not a mutual fund, the issuer has many features of a mutual fund; the issuer has been in continuous distribution for several years using a simplified prospectus and AIF that comply with NI 81-101 *Mutual Fund Prospectus Disclosure*; the issuer's simplified prospectus and AIF will disclose substantially the same information as would be disclosed under Form 41-101F2, subject to any exemption evidenced by issuance of a receipt for the prospectus

## Exemption Order

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

**Section 19.1 of National Instrument 41-101**

***General Prospectus Requirements***

**Section 171 of the *Securities Act*, R.S.B.C. 1996, c. 418**

## Background

¶ 1 The Issuer has applied for an order:

(a) under section 19.1 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101), exempting the Issuer from the requirement of section 3.1(2) of NI 41-101 that labour sponsored investment funds filing a prospectus must file the prospectus in the form of Form 41-101F2; and

(b) revoking the Revised Prospectus Order (defined below)

(together, the Requested Relief).

## Representations

¶ 2 The Issuer represents that:

1. it was incorporated under the laws of British Columbia on November 5, 1991, is a reporting issuer under the *Securities Act* (British Columbia) (the Act) and is not in default of any requirement of the Act or the *Securities Rules* under the Act (B.C. Reg. 194/97, as amended) (the Rules);

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2. it is a labour sponsored investment fund and is registered as an “employee venture capital corporation” under the Employee Investment Act, R.S.B.C. 1996, c. 112 (the EIA) which provides certain tax credits to eligible purchasers of Shares (as defined below);
3. it is a widely held venture capital investment fund that makes venture capital investments, conforming to the eligible investment criteria required by the EIA, in a variety of small and medium sized British Columbia businesses with the objective of achieving long-term capital appreciation in its portfolio of investments;
4. its authorized capital consists of an unlimited number of Class A shares (the Shares), issuable in series, of which the following series have been identified and authorized for issuance: Balanced Shares (series 1), Balanced Shares (series 2), Growth Shares (series 1), Growth Shares (series 2), Income Shares (series 2), Financial Services Shares (series 2), Resource Shares (series 2), Diversified Shares (series 2), GIC Shares (series 2), Commercialization Shares (series 2), Commercialization Shares (series 2-2006), Commercialization Shares (series 2-2007) and Commercialization Shares (series 2-2008); and an unlimited number of Class B shares, issuable in series of which 100 shares of the first series, the IPA Shares, have been issued to GrowthWorks Capital Ltd., the manager of the Issuer;
5. it commenced offering its securities to residents of British Columbia under a prospectus dated January 15, 1992 (the Prospectus);
6. the Superintendent of Brokers granted an order dated August 26, 1992, (the Original Prospectus Order) under section 59 of the *Securities Act*, S.B.C. 1985 c. 83 (the Predecessor Act), that section 42 of the Predecessor Act did not apply to trades of Shares provided that the Issuer filed an annual information form and simplified prospectus in compliance with National Policy 36 (NP 36) and obtained a receipt for the simplified prospectus;
7. the Executive Director granted an order (the Revised Prospectus Order) dated November 20, 2000, (2000 BCSECCOM 269), under section 76 of the Act, that section 61 of the Act did not apply to trades in Shares provided that the Issuer filed an annual information form and a simplified prospectus that complied with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), subject to such additions and amendments as were appropriate to explain the unique nature and features of the Issuer, and obtained a receipt for the simplified prospectus;

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8. after BC Policy 41-601 *Prospectus Filing Requirements* (BCP 41-601) and sections 95 and 97 of the Rules were introduced in July 2005, the Issuer continued to file annual information forms and simplified prospectuses in the forms required under NI 81-101, subject to such additions and amendments as were appropriate to explain the unique nature and features of the Issuer, and received receipts for such simplified prospectuses pursuant to a waiver (the Waiver) under section 3.3 of BCP 41-601 and sections 95 and 97 of the Rules;
9. after completing its initial offering under the Prospectus, the Issuer has continuously offered its shares as follows (collectively the Continuous Offering): common shares from 1992 to 1999; Balanced Class, Series 1 and Growth Class, Series 1 from 1999 to January 2004; Balanced Class, Series 2 and Growth Class Series 2 from February 2004 to present; Income Shares, Financial Services Shares, Resource Shares and Diversified Shares from December 2005 to present; Commercialization Shares from February 2005 to July 2005; Commercialization Shares Series 2 – 2006 from January 2006 to July 2006, Commercialization Shares Series 2 – 2007 from January 2007 to July 2007, Commercialization Shares Series 2 – 2008 from January 2008 to present and GIC Shares from January 2008 to present;
10. since 1992, the Continuous Offering has been under receipted annual information forms and simplified prospectuses in the forms required under NI 81-101 and its predecessor NP 36;
11. any individual who is a resident of British Columbia may purchase the Shares;
12. the pricing net asset value of the Issuer and the pricing net asset value per Share is calculated at the end of each valuation period determined by the Valuation Committee (currently weekly, but which may not be less than monthly) and is published after the end of each valuation period in two newspapers of general circulation in British Columbia;
13. the Shares are qualified investment for trusts governed by RRSPs and RRIFs;
14. except for a transfer to a trust governed by an RRSP or an RRIF, a purchaser and an RRSP or an RRIF under which the purchaser or his or her spouse is the annuitant may transfer the Shares only:
  - (a) after the eighth anniversary of the date of issue of the Shares; or
  - (b) after the shareholder dies or becomes bankrupt, disabled and permanently unfit for work, or suffers an involuntary loss of employment;

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15. a shareholder may require the Issuer to redeem his or her Shares at a price equal to the net asset value per Share at any time after eight years after the date of issue of the Shares or earlier if the shareholder dies, becomes bankrupt, becomes disabled and permanently unfit for work, or suffers an involuntary loss of employment;
16. although the Issuer is not a mutual fund as defined in the Act, it has many of the features of a conventional mutual fund in that it:
  - (a) invests its funds in a portfolio of qualifying securities meeting the Issuer's EIA statutory and self-imposed investment criteria;
  - (b) is taxed as a mutual fund corporation;
  - (c) calculates and publishes the value of its Shares based on the net underlying value of its assets, and sells and redeems such Shares during its Continuous Offering on the basis of the published net value thereof;
  - (d) sells its Shares under a simplified prospectus on a Continuous Offering basis;
  - (e) distributes the Shares in British Columbia through dealers that distribute conventional mutual funds;
  - (f) is able to comply in all material respects with NI 81-101; and
  - (g) complies with Part 15 of NI 81-102 *Mutual Funds*;and, as such, the Issuer's Continuous Offering is analogous to an offering of shares or units by a conventional mutual fund;
17. in addition to the exemptive relief obtained concerning the use of annual information forms and simplified prospectuses, the Issuer has obtained a significant amount of other exemptive relief on the basis that it is substantially similar to a conventional mutual fund and that its offering of securities is analogous to that of a conventional mutual fund;
18. except for the Requested Relief, the Issuer will comply in all material respects with NI 41-101; and
19. the annual information form and simplified prospectus the Issuer files will disclose substantially the same information as would be disclosed under Form

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41-101F2, subject to any exemption from the requirements of NI 41-101 evidenced by issuance of a receipt for the simplified prospectus.

### **Decision**

- ¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders that the Requested Relief is granted, provided that the Issuer:
- (a) files an annual information form and a simplified prospectus that comply with NI 81-101 and Forms 81-101F1 and F2, subject to such additions and amendments as are appropriate to explain the unique nature and features of the Issuer: and
  - (b) obtains a receipt for the simplified prospectus.

- ¶ 4 September 3, 2008

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