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Headnote

Temporary relief from adviser registration requirement for experienced manager to provide investment management services to a venture capital corporation, provided manager becomes registered within specific time period

Exemption Order

PenderFund Capital Management Ltd.

Section 48 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 PenderFund Capital Management Ltd. (the Manager) has applied for an exemption from the adviser registration requirement of section 34(1)(c) of the Act in order to provide management services to Pender Growth Fund (VCC) Inc. (the Fund) under a management agreement dated May 1, 2003;

Representations

- ¶ 2 The Manager represents that:
1. it was incorporated under the *Company Act* (British Columbia) on November 18, 2002;
 2. its head office is located in Vancouver, British Columbia;
 3. the Fund was incorporated under the laws of British Columbia on March 7, 1994;
 4. the Fund became a reporting issuer in British Columbia on October 25, 1999;
 5. the Fund was registered by the Ministry of Competition, Science and Enterprise on July 8, 1994 as a venture capital corporation under the *Small Business Venture Capital Act* (SBVCA);

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6. the Fund was formed to create and manage a portfolio of investments in small and medium-sized public and private British Columbia businesses that meet SBVCA criteria, with the objective of maximizing return with an acceptable level of risk;
7. most of the Fund's investments are mid to long term investments involving a one to five year investment horizon in both illiquid securities of non-public companies, and more liquid public company securities;
8. the Fund has retained the Manager under the management agreement to provide management advice and services under the supervision and governance of the Fund's Board of Directors;
9. the Manager is a subsidiary of Devon Ventures Corporation, a reporting issuer in British Columbia and a public company traded on the TSX Venture Exchange;
10. Devon is a merchant bank with expertise in investing in publicly traded securities;
11. the Manager is responsible for identifying investment opportunities that meet the Fund's objectives and investment strategies, analyzing proposed investments, preparing and making recommendations about investments to the Fund's Board of Directors and structuring and negotiating investments approved by the Fund's Board of Directors;
12. the Manager monitors the Fund's investments, which includes evaluating financial and other key performance indicators and making recommendations as to the timing, terms and methods of realizing on the Fund's investments;
13. the Manager provides value added management services in the form of board participation, business expertise and managerial expertise to the companies the Fund invests in;
14. the Manager has and will maintain personnel with the necessary business experience and qualifications to competently manage both private and public venture capital investments;
15. the Fund will offer its shares to residents of British Columbia by prospectus;

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16. in providing its services to the Fund under the management agreement, the Manager may be considered to be acting as an adviser under the Act and without this order, could be required to be registered, or otherwise exempt from registration, as an adviser under the Act;
17. there are no exemptions from the adviser registration requirement that the Manager can rely on to act as an adviser under the management agreement to the Fund.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Commission orders under section 48 of the Act that the Manager is exempt from the adviser registration requirement when performing and carrying out its duties under the management agreement until March 31, 2004, provided the Manager applies for registration on or before December 31, 2003.
- ¶ 4 October 9, 2003

Joyce C. Maykut, Q.C.
Vice Chair