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Headnote

Labour-sponsored fund granted relief from prohibition against a mutual fund being a substantial security holder, provided that the investment is permitted by the fund's governing legislation

Exemption Order

Working Ventures Canadian Fund Inc.

Section 123 of the Securities Act, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Working Ventures Canadian Fund Inc. (WV Canadian Fund) applied for an order that section 121(2)(b) of the Act does not apply to certain investments made by WV Canadian Fund.

Representations

- ¶ 2 WV Canadian Fund represents that:
1. WV Canadian Fund is a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada) (the Tax Act) and Working Ventures Opportunity Fund Inc. (formerly Working Ventures II Technology Fund Inc.) (WV Opportunity Fund) is a labour-sponsored investment corporation registered under the *Community Small Business Investment Funds Act* (Ontario) (the Ontario Act).
 2. Each of WV Canadian Fund and WV Opportunity Fund is a mutual fund under the Act;
 3. the outstanding capital of WV Canadian Fund consists of Class A Shares, which are widely held, and 1,000 Class B Shares, which are held by the Canadian Federation of Labour;
 4. a *pro forma* prospectus dated December 11, 2002 was filed with the securities regulatory authorities in all provinces and territories of Canada, except British Columbia, qualifying the Class A Shares of WV Canadian Fund and WV Opportunity Fund for distribution in all provinces and territories except British Columbia (the Prospectus);

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5. WV Canadian Fund makes investments in small- and medium-sized Canadian businesses, that qualify as eligible investments (the Eligible Investments) under the Tax Act and the Ontario Act, with the objective of achieving long-term capital appreciation;
6. WV Opportunity Fund makes investments in small- and medium-sized Canadian technology companies in Ontario that qualify as eligible investments for labour-sponsored investment funds under the Ontario Act, with the objective of achieving long-term capital appreciation;
7. GrowthWorks (WVIS) Ltd. (formerly Working Ventures Investment Services Inc.) (the Manager) manages the ongoing business and administration of both WV Canadian Fund and WV Opportunity Fund, including investment management and distribution of the Class A Shares;
8. as disclosed in the Prospectus, WV Canadian Fund may invest in more than 10% of the securities of any one issuer; however, these investments are generally made for business reasons and not for the purpose of exercising control;
9. in order for WV Canadian Fund to meet its investment objective and strategy, WV Canadian Fund must be able to acquire significant positions in businesses in which it invests, frequently in excess of 20% of the outstanding voting securities of the business;
10. the Prospectus provides full, true and plain disclosure of the investment objective and strategy of WV Canadian Fund and the risk factors associated with the ownership of Class A Shares, including that WV Canadian Fund will generally take positions in portfolio companies which are larger than positions other mutual funds would ordinarily take, thereby increasing the potential risk to WV Canadian Fund;
11. WV Canadian Fund may, on occasion, invest in accordance with its investment objective and strategy in businesses in which WV Opportunity Fund is also an investor;
12. under section 120(2)(c) of the Act, a person is a substantial security holder of an issuer if that person owns voting securities carrying more than 20% of the voting rights attached to all outstanding voting securities of the issuer;
13. section 121(2)(b) of the Act prohibits a mutual fund from knowingly making or holding an investment in a person in which the mutual fund, alone or

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together with one or more related mutual funds, is a substantial security holder;

14. in the absence of the exemption provided by this order, WV Canadian Fund would be precluded from making an Eligible Investment in an issuer in which WV Canadian Fund, alone or with WV Opportunity Fund, is a substantial security holder; and
15. the Manager is of the view that it is in the best interests of the WV Canadian Fund to make and hold Eligible Investments in which WV Canadian Fund, alone or together with WV Opportunity Fund or other related funds, is a substantial security holder, and that these investments by the WV Canadian Fund will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the WV Canadian Fund.

Order

- ¶ 3 Because it is not prejudicial to the public interest and the class of investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of WV Canadian Fund, the Commission orders under section 123 of the Act that section 121(2)(b) of the Act does not apply to an investment by WV Canadian Fund in an issuer in which WV Canadian Fund, either alone or with WV Opportunity Fund, is a substantial security holder, provided that the investment is an Eligible Investment.

January 30, 2003

Brenda Leong
Director