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COR#04/096

Headnote

Relief from registration and prospectus requirements to permit employees and relatives of employees of a mutual fund manager to invest in units of mutual funds
– previous order revoked

Exemption Order

**North Growth Management Ltd., North Growth U.S. Equity Fund,
North Growth Canadian Money Market Fund, and
North Growth Canadian Equity Fund**

Sections 48, 76 and 171 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 On June 7, 2000, the British Columbia Securities Commission made an order (the initial order) under sections 48 and 76 of the Act, exempting certain trades of units (Units) of the North Growth U.S. Equity Fund and the North Growth Canadian Money Market Fund (the existing Funds) from the requirements of sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements). The initial order permitted the existing Funds to issue securities to certain persons who are related to employees or officers of the existing Funds. North Growth Management Ltd. (North Growth), as manager of the existing Funds, wishes to update the initial order to add North Growth Canadian Equity Fund and other mutual funds that may be established in the future to the list of funds, to change the definition of eligible family members in the relief and to update certain provisions of the initial order.

Representations

- ¶ 2 North Growth represents that:
1. North Growth is a company under the laws of British Columbia and is registered under the Act as a portfolio manager;
 2. North Growth is, or will be, the manager and promoter of the existing Funds, North Growth Canadian Equity Fund and any future mutual funds (collectively, the Funds);

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3. each of the Funds is or will be a “mutual fund in British Columbia” and none of the Funds is or will be a reporting issuer in British Columbia;
4. the Units are or will be distributed under registration and prospectus exemptions under the Act;
5. North Growth wishes to enable certain of its employees and officers (the North Growth Professionals) to purchase Units from time to time;
6. under the terms of the trust indentures establishing each Fund, North Growth has been or will be appointed the fund manager of each Fund;
7. the North Growth Professionals will participate in the management of the business and affairs of the Funds on behalf of North Growth;
8. North Growth wishes to cause Units to be issued to any person who is:
 - (a) a North Growth Professional;
 - (b) the spouse of a North Growth Professional, or a parent, grandparent, brother, sister, child or grandchild of a North Growth Professional or his or her spouse (an Eligible Family Member);
 - (c) a corporation wholly-owned by persons described in paragraphs (a) and (b) (an Eligible Holding Company); or
 - (d) a trust or estate of which all the beneficiaries or a majority of the trustees are individual persons described in paragraphs (a) and (b)(an Eligible Trust);(collectively, the Permitted Subscribers);
9. under the terms of the trust indentures forming each Fund, Units may only be transferred or assigned in circumstances involving the death or dissolution of a holder of Units and may only be redeemed by each Fund;
10. Units of the North Growth US Equity Fund and the North Growth Canadian Equity Fund may also be transferred at the sole discretion of the Manager when the Manager is satisfied that the transfer complies with all securities and other applicable laws, the transfer is made to an “affiliate” (as defined by the *Securities Act* (BC)) of a corporation, or the transfer is made by an individual to a spouse, parent, grandparent, brother, sister or child of the holder of Units

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or a trustee acting for the benefit of such an individual, and the holder of the Units is irrevocably transferring all the Units held by it;

11. on dissolution or winding-up of a Fund, the net proceeds from the liquidation of the assets of the Fund will be distributed to Unitholders;
12. no North Growth Professional will be induced to subscribe for Units by expectation of employment or continued employment and none of the North Growth Professional's Eligible Family members, Eligible Holding Companies or Eligible Trusts will be induced to subscribe for Units by expectation of employment or continued employment of the North Growth Professional;
13. a North Growth Professional is, and any future North Growth Professional will be, a highly skilled individual with experience and expertise in investment banking, money management, venture capital investing and/or banking who at the time of investments in Units will be spending a significant amount of time and devoting significant attention to the business and affairs of the Funds and will have a relationship with the Funds at the time of investment in Units that will permit the North Growth Professional to be knowledgeable in respect of the business and affairs of the investments that will be made by the Fund; as a result, a North Growth Professional will be capable of evaluating the merits and risks of an investment in the Funds;
14. the decision to invest in Units by any of the North Growth Professional, Eligible Family Members, Eligible Holding Companies or Eligible Trusts will be made by the North Growth Professional that is or is related to that subscriber;
15. if a North Growth Professional that has subscribed for Units of a Fund ceases to be employed by North Growth, the Fund will not issue additional Units to the former North Growth Professional or the Eligible Family Members, Eligible Holding Companies or Eligible Trusts that are related to the North Growth Professional;
16. each Unitholder will be provided with unaudited semi-annual and audited annual financial statements of the Fund, within 60 days of the Fund's semi-annual period and 140 days of the Fund's financial year-end, respectively;

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Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders:

- (a) under sections 48 and 76 of the Act, that trades in Units by the Funds to Permitted Subscribers are exempt from the requirements of sections 34(1)(a) and 61 of the Act, provided that:
 - (i) before the trades, the Funds deliver a copy of this order to each Permitted Subscriber; and
 - (ii) each of the Funds files a Form 45-103F4 at the time of the first distribution of Units to the Permitted Subscribers and at least once a year after that and, in addition, if the number of Units of a Fund distributed in one month exceeds 1% of the total number of Units of that Fund outstanding at the beginning of that month, that Fund must file, in respect of the Units of that Fund distributed in that month, a Form 45-103F4 on or before the 10th day after the end of the month; and
 - (iii) under section 76 of the Act, that any trade in Units acquired under this order by a Permitted Subscriber is deemed to be a distribution; and
- (b) under section 171 of the Act that the initial order is revoked

¶ 4 June 10, 2004

Brent W. Aitken
Vice Chair