

2006 BCSECCOM 140

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, which invest part of their assets in the same venture portfolio; 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

B.C. Advantage Funds (VCC) Ltd.

Section 17.1 of National Instrument 81-106

Background

- ¶ 1 B.C. Advantage Funds (VCC) Ltd. (Advantage) applied for an exemption under section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) from the requirement in section 9.2 of NI 81-106 to prepare and file an annual information form (AIF) for each of the B.C. Tech Fund (BCTF) and the Advantage Life Sciences Venture Fund (ALSVF and collectively with BCTF, the Closed Funds).

Representations

- ¶ 2 Advantage represents that:
1. it was incorporated on October 1, 2002 in British Columbia;
 2. it was registered as a venture capital corporation under the *Small Business Venture Capital Act* on December 12, 2002;
 3. it is a reporting issuer only in British Columbia; it is not a mutual fund as defined in the *Securities Act*;

2006 BCSECCOM 140

4. the securities of Advantage are not listed on any exchange;
5. its authorized capital consists of 19,000,000,000 common shares divided into 19 classes of common shares with each class having an authorized capital of 1,000,000,000 common shares;
6. Advantage currently operates the Closed Funds and Advantage Venture Fund (AVF) and no other investment funds;
7. AVF invests in early stage life science and technology companies;
8. BCTF invests primarily in early stage technology companies; in some cases, the portfolio companies included in BCTF overlap with those portfolio companies included in AVF;
9. on January 5, 2005, Advantage completed a plan of arrangement by which it acquired all of the issued and outstanding common shares of Qwest Emerging Biotech (VCC) Ltd. in exchange for shares of ALSVF; ALSVF invests primarily in early stage life sciences companies; in some cases, the portfolio companies included in ALSVF overlap with those portfolio companies included in AVF;
10. Advantage currently offers shares of AVF under a prospectus dated November 24, 2005 (the AVF Prospectus); however, BCTF and ALSVF are both currently closed to investors;
11. under section 1.3(1) of NI 81-106, each class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for the purposes of NI 81-106; section 9.2 of NI 81-106 requires an investment fund that does not have a current prospectus as at its financial year end to file an AIF; and
12. the AVF Prospectus contains substantially the same disclosure concerning the Closed Funds as would be required by NI 81-106 to be included in an AIF for the Closed Funds.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 17.1 of NI 81-106 that the Closed Funds are exempt from the requirement in s. 9.2 of NI 81-106 to file an AIF provided that:

2006 BCSECCOM 140

- (a) the AVF Prospectus and all renewal prospectuses of AVF contain all disclosure NI 81-106 requires to be included in an AIF for BCTF and ALSVF;
- (b) no later than March 30, 2006, Advantage files on SEDAR a notice that includes the following information:
 - (i) that Advantage has received exemptive from the requirement to file an AIF for BCTF and ALSVF; and
 - (ii) a direction to holders of shares of BCTF and ALSVF that they should refer to the current prospectus of AVF for information concerning the shares of BCTF and ALSVF; and
- (c) if a holder of shares of BCTF or ALSVF requests a copy of the AIF for those shares, Advantage sends, without charge, to the holder within ten calendar days after Advantage receives the request a copy of the most recent prospectus of AVF, together with a clear and concise statement that indicates that the prospectus contains the information about the shares of BCTF and ALSVF that would otherwise be disclosed in an AIF.

¶ 4 March 13, 2006

Noreen Bent
Manager, Legal Services, Corporate Finance
British Columbia Securities Commission