

# 2005 BCSECCOM 31

January 10, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 123 – Relief from self dealing restrictions in ss. 121 and 122 of the Act – A labour sponsored investment fund and its manager want relief from sections 121(2)(b) and 121(3) of the Act so that the fund can invest and hold more than 20% of the votes attached to securities of an issuer – the relief applies only to investments that are eligible investments for the labour sponsored investment fund under its governing legislation and the Tax Act; the decision to make and hold these investments will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the fund

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 121(3) and 123

In the Matter of the Securities Legislation of Alberta, British Columbia and  
Saskatchewan (the Jurisdictions)

and

In the Matter of the Mutual Reliance Review System for Exemptive Relief  
Applications

and

In the Matter of Growthworks Commercialization Fund Ltd. (the Filer)

## MRRS Decision Document

## Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an order that the Filer be exempt from the provisions of the Legislation that prohibit the Filer from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more mutual funds, is a substantial security holder (the Substantial Securityholder Provisions).

## 2005 BCSECCOM 31

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 Definitions and National Instrument 81-102 Mutual Funds have the same meaning in this decision unless they are defined in this decision.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation incorporated under the Canada Business Corporations Act;
  - 2. the Filer is registered as a labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the Ontario LSIF Act) and has applied to be registered as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) (the Income Tax Act) and to be an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan) (the Saskatchewan LSIF Act);
  - 3. the Filer has given notice to the Ministry of Finance (Ontario) of its intention to issue shares as a research oriented investment fund (a ROIF) in 2005; the Filer anticipates investing primarily in early stage research oriented companies;
  - 4. the Filer will invest in small - and medium-sized Canadian businesses with the objective of achieving long term capital appreciation;
  - 5. the Filer is a mutual fund under the Legislation and securities legislation in Ontario; the Filer will distribute its Class A Shares (the Class A Shares) in the Jurisdictions and Ontario under a prospectus;
  - 6. the Filer will become a reporting issuer or equivalent in the Jurisdictions and Ontario when its final prospectus is receipted in the Jurisdictions and Ontario;

## 2005 BCSECCOM 31

7. the authorized capital of the Fund consists of an unlimited number of Class A shares issuable in series, an unlimited number of Class B Shares (the Class B Shares), an unlimited number of Class C shares (the Class C Shares) issuable in series, and an unlimited number of Class D shares issuable in series, of which all of the Class B Shares are held by the sponsor of the Fund and the series of Class C Shares designated the IPA Shares will be held by Growthworks WV Management Ltd. (the Manager);
8. the Manager holds the Class C Shares in connection with the payment of its “incentive participation amount” on the disposition of venture investments;
9. the Filer’s securities are not listed on any exchange;
10. the Canadian Federation of Labour, the sponsor of the Filer, formed and organized the Filer;
11. as a labour sponsored investment fund, the Filer’s investment objectives and redemption restrictions will be governed by the Ontario LSIF Act and the Income Tax Act; as an approved fund under the Saskatchewan LSIF Act, the Filer’s investments will be subject to certain directives and conditions (the Saskatchewan LSIF Approved Conditions);
12. the regulation to the Securities Act (Ontario) (the Ontario Regulation) recognizes that the rules that govern conventional mutual funds are inappropriate for labour sponsored funds, and so the Ontario Regulation grants relief to labour sponsored investment funds from many of the rules applicable to conventional mutual funds;
13. since the Filer has filed a prospectus in each of the Jurisdictions and Ontario, it must obtain relief similar to that provided by the Ontario Regulation in order to allow it to fulfill its mandate;
14. the Filer’s investment mandate and the Ontario LSIF Act, Saskatchewan LSIF Approved Conditions and Income Tax Act allow the Filer to make investments that, absent relief, would not be permitted under the Substantial Securityholder Provisions;
15. it may be in the best interests of the Filer to make and hold investments in issuers in which the Filer is a substantial securityholder as defined in the Legislation, and the Filer confirms that the making and holding of these investments will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Filer.

## 2005 BCSECCOM 31

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
- ¶ 5 The decision of the Decision Makers under the Legislation is that the Substantial Securityholder Provisions will not apply to the Filer provided that the investment is an eligible investment of the Filer under the Ontario LSIF Act, Income Tax Act and Saskatchewan LSIF Approved Conditions, as applicable.

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British Columbia Securities Commission