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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; 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

Working Opportunity Fund (EVCC) Ltd. (WOF)

National Instrument 81-106 *Investment Fund Continuous Disclosure*

Background

- ¶ 1 GrowthWorks Capital Ltd. (GrowthWorks) applied on behalf of WOF 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 the Commercialization Historical Shares (as defined below).

Representations

- ¶ 2 WOF represented that:
1. WOF is incorporated under the *Company Act* (British Columbia) (now the *Business Corporations Act* (British Columbia));
 2. GrowthWorks is the manager of WOF;
 3. WOF is a prescribed labour-sponsored venture capital corporation under the *Income Tax Act* (Canada); WOF is also registered as an employee venture capital corporation under the *Employee Investment Act* (British Columbia);

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WOF's investment objectives and redemptions are affected by provisions under this legislation (the LSIF Legislation);

4. WOF invests in small and medium sized businesses with the objective of obtaining long term capital appreciation; as WOF is a labour-sponsored investment fund (LSIF), its eligible investments and investment restrictions are governed by the LSIF Legislation;
5. WOF is an investment fund in British Columbia for the purposes of NI 81-106; while WOF does not fall within the definition of a mutual fund under securities legislation in British Columbia, WOF's offering is analogous to an offering of shares or units by a mutual fund;
6. the authorized capital of WOF consists of:
 - (a) an unlimited number of Class A shares issuable in series; and
 - (b) an unlimited number of Class B shares issuable in series, of which one series, the "IPA Shares", are to be issued to the Manager for any future incentive participation amounts based on realized gains and the cumulative performance of WOF on venture investments made by WOF;
7. WOF currently offers seven series of its Class A shares under a simplified prospectus and AIF dated December 28, 2005 as amended on April 7, 2006 (the WOF Prospectus);
8. WOF previously offered the Commercialization Shares (Series 2) (the Commercialization Historical Shares); on December 28, 2005, WOF altered its share capital to add the Commercialization Shares (Series 2 – 2006); the Commercialization Shares (Series 2 – 2006) are substantially similar to the Commercialization Historical Shares; however, while the Commercialization Historical Shares and the Commercialization Shares (Series 2 – 2006) have the same investment strategies, they will not share the same venture and non-venture investments for the first three years of their issuance as a result of the following asset allocation rules:
 - (a) each year (until otherwise determined by the Board), a new series of Commercialization Shares will be offered and priced at \$10 per share until about March 1; the new series will typically continue to be offered for four to six months thereafter at its Pricing NAV per Share;
 - (b) the venture and non-venture investments made with the capital raised from the sale of the particular series will be allocated solely to that series during

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the period ending on or about March 1 of the third calendar year after the RSP season the series was first offered in (the Separate Pool End Date);

- (c) after the Separate Pool End Date for a series, the venture and non-venture investments previously specifically allocated to that series will be pooled with the assets of all other Commercialization Shares that have passed their Separate Pool End Dates and be allocated among all those series in proportion to their relative net asset values;
9. WOF expects to create a new series of Commercialization Shares each year until the earlier of December 7, 2008 and when the amount of capital raised from the sale of Commercialization Shares reaches \$10 million; these allocation rules are reflected in the determination of "Series Assets" for purposes of calculating Pricing NAV per Share for the Commercialization Shares;
10. the WOF Prospectus contains substantially the same disclosure concerning the Commercialization Historical Shares as would be required by NI 81-106 to be included in an AIF for the Commercialization Historical Shares.

Decision

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 17.1 of NI 81-106 that the Commercialization Historical Shares are exempt from the requirement in section 9.2 of NI 81-106 to file an AIF, provided that:
- (a) the Prospectus and all renewal simplified prospectuses and AIFs of WOF contain all disclosure required by NI 81-106 to be included in an AIF for the Commercialization Historical Shares;
 - (b) WOF files no later than April 30, 2006 on SEDAR a notice which:
 - (i) states that WOF has received exemptive relief from the requirement to file an AIF for the Commercialization Historical Shares; and
 - (ii) informs holders of Commercialization Historical Shares that they should refer to the current simplified prospectus and AIF of WOF for information concerning the Commercialization Historical Shares; and
 - (c) if a holder of Commercialization Historical Shares requests a copy of the AIF for the Commercialization Historical Shares, WOF sends, without charge, to the holder within ten calendar days after WOF receives the request a copy of the most recent simplified prospectus and AIF of WOF,

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together with a clear and concise statement that indicates that the simplified prospectus and AIF contain the information about the Commercialization Historical Shares that would otherwise be disclosed in an AIF.

¶ 4 April 27, 2006

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