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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted to labour sponsored investment fund corporation to permit it to hold its investment in another labour sponsored investment fund in which the top fund is a substantial security holder – relief also granted to the bottom fund to invest in an issuer in which the top fund has a significant interest

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF WORKING VENTURES CANADIAN FUND INC. WORKING VENTURES OPPORTUNITY FUND INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, Alberta, British Columbia, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Working Ventures Canadian Fund Inc. (“WV Canadian Fund”) and Working Ventures Opportunity Fund Inc. (“WV Opportunity Fund”, formerly, Working Ventures II Technology Fund Inc.) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- i) the requirement contained in the Legislation prohibiting a mutual fund from knowingly holding an investment in a person or company in which the mutual fund, alone or together with one or more related funds, is a substantial security holder (the “Investment Restrictions”), shall not apply to WV Canadian Fund’s investment in WV Opportunity Fund; and
- ii) the requirement in the Legislation prohibiting a mutual fund from knowingly making and holding an investment in an issuer in

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which any person or company who is a substantial security holder of the mutual fund has a significant interest (the “Significant Interest Restrictions”), shall not apply to WV Opportunity Fund for the purpose of making or holding investments in issuers in which WV Canadian Fund has a significant interest;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is selected as the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS WV Canadian Fund and WV Opportunity Fund (collectively as the “Funds” and individually as the “Fund”) have represented to the Decision Makers that:

1. The Funds are labour-sponsored investment corporations (LSIFs) registered under the *Community Small Business Investment Funds Act* (Ontario) (the “Ontario LSIF Act”). Also, WV Canadian Fund is a LSIF registered under the *Income Tax Act* (Canada) (the “Income Tax Act”). Each Fund is a mutual fund under the Legislation.
2. Each of the Funds is a reporting issuer in each of the Jurisdictions and is not on any list of defaulting reporting issuers maintained by the Decision Makers.
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 (the “Sponsor”). The outstanding capital of WV Opportunity Fund consists of Class A Shares, which are widely held, 1,000 Class B Shares held by the Sponsor, and 1,500,000 Class C Shares, Series I, which are held by WV Canadian Fund (the “Seed Capital”).
4. A current prospectus dated January 20, 2003 (the “Prospectus”) qualifies the distribution of Class A Shares of the Funds in all provinces and territories except British Columbia.
5. WV Canadian Fund invests in small and medium-sized Canadian businesses, that qualify as eligible investments under the Income Tax Act, the Ontario LSIF Act and similar legislation or pursuant to certain commitments undertaken in other provinces, with the objective of achieving long-term capital appreciation. WV Opportunity Fund invests in small and medium-sized Canadian businesses that qualify as eligible investments for labour-sponsored

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investment funds under the Ontario LSIF Act, with the objective of achieving long-term capital appreciation.

6. GrowthWorks (WVIS) Ltd. (the “Manager”), formerly, Working Ventures Investment Services Inc., manages the ongoing business and administration of the Funds, including investment management and distribution of the Class A Shares of the Funds.
7. As disclosed in the Prospectus, the Funds may invest in more than 10% of the securities of any one issuer, however such investments are generally made for business reasons and not for the purpose of exercising control.
8. WV Canadian Fund invested in WV Opportunity Fund through the Seed Capital shortly after WV Opportunity Fund’s formation and prior to the issuance of any Class A Shares of the Fund. WV Canadian Fund’s investment in WV Opportunity Fund represents approximately 70% of the WV Opportunity Fund’s net asset value.
9. The arrangements between and in respect of each Fund are such as to avoid the duplication of management and administrative fees.
10. Shareholders of WV Canadian Fund receive the annual and, upon request, the semi-annual financial statements of WV Canadian Fund, and receive the annual and, upon request, the semi-annual financial statements, of WV Opportunity Fund in a combined report containing the financial statements of the Funds.
11. In Ontario, an eligible investment (as defined in section 204.8 of the Income Tax Act) of a labour-sponsored investment fund corporation is deemed not to be an investment by the fund in a person or company in which it is a substantial security holder.
12. As the Seed Capital is not an eligible investment under the Income Tax Act, the deeming provision described in paragraph 11 is not applicable. Therefore, WV Canadian Fund is a substantial securityholder of WV Opportunity Fund, as a result of the Seed Capital.
13. Based on the market conditions, disposing investments of WV Opportunity Fund to redeem the Seed Capital would be unduly detrimental to shareholders of the WV Opportunity Fund.
14. The Prospectus contains clear disclosure concerning the investment by WV Canadian Fund in WV Opportunity Fund, together with disclosure of the risk

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that if WV Canadian Fund were to redeem a material portion of its investment, the liquidity of WV Opportunity Fund could be affected.

15. The Manager is of the view that it is in the best interests of WV Canadian Fund to hold the Seed Capital, and that such investment represented the business judgement of responsible persons uninfluenced by considerations other than the best interests of WV Canadian Fund.
16. The Regulation to the *Securities Act* (Ontario) (the “Act”) recognizes that certain rules of the Ontario Securities Commission and certain restrictions contained in the Act that govern conventional mutual funds should not be applicable to LSIFs. In general, the Regulation to the Act relieves LSIFs from many rules and restrictions in the Act to allow for investment and practices of LSIFs that are allowed under the Ontario LSIF Act.
17. The Seed Capital is an eligible investment under the Ontario LSIF Act.
18. WV Canadian Fund can make investments other than eligible investments, subject to certain requirements. As the Seed Capital is less than 20% of the total net asset value of WV Canadian Fund, WV Canadian Fund remains a LSIF under the Income Tax Act, despite the fact that the Seed Capital is not an “eligible investment”.
19. WV Opportunity Fund has made one investment in an issuer in which WV Canadian Fund holds voting securities carrying more than 10% of voting rights attached to all outstanding voting securities of the issuer. Of the shares outstanding, WV Canadian Fund owns 15% and WV Opportunity Fund owns 3.14% of that issuer.
20. WV Opportunity Fund currently has approximately \$15 million of assets under management, and WV Canadian Fund has approximately \$265 million of assets under management. WV Opportunity Fund’s comparatively smaller size, makes it increasingly difficult for the WV Opportunity Fund to identify suitable eligible investments that meet the Fund’s investment objective and requirements under the Ontario LSIF Act.
21. The market conditions are such that disposing of the existing investment that is prohibited by the Significant Interest Restrictions would be unduly detrimental to shareholders of WV Opportunity Fund. WV Opportunity Fund has the objective of achieving long term capital appreciation. Investments of this nature generally require two to six years in order to mature and generate expected returns by investors. Disposing of the investment at this time would likely result in losses to WV Opportunity Fund.

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22. The Manager is of the view that it is in the best interests of WV Opportunity Fund to make and hold the existing and future investments in eligible businesses where WV Canadian Fund holds a significant interest and that such investments by WV Opportunity Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of WV Opportunity Fund.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of the Decision Makers (the “Decision”);

AND WHEREAS each of the Decision Makers under the Legislation is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that

- i) the Investment Restrictions contained in the Legislation shall not apply to the Seed Capital by WV Canadian Fund in WV Opportunity Fund, and
- ii) the Significant Interest Restrictions contained in the Legislation shall not apply to WV Opportunity Fund making and holding investments in issuers in which WV Canadian Fund has a significant interest,

provided that the Seed Capital is an eligible investment under the Ontario LSIF Act.

Dated March 26, 2003

Paul M. Moore

Robert W. Korthals