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## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief for a labour-sponsored venture capital corporation and mutual fund so that it can make certain payments to participating dealers in connection with a distribution to the public of its securities, subject to conditions

## Applicable British Columbia Provisions

National Instrument 81-105 – *Mutual Fund Sales Practices* – ss. 2.1, 9.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA,  
MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA,  
PRINCE EDWARD ISLAND, SASKATCHEWAN AND ONTARIO

AND

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

AND

IN THE MATTER OF NATIONAL INSTRUMENT 81-105 *MUTUAL FUND SALES PRACTICES*

AND

IN THE MATTER OF VENTURELINK FINANCIAL SERVICES INNOVATION FUND INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Saskatchewan and Ontario (the “Jurisdictions”) has received an application from VentureLink Financial Services Innovation Fund Inc. (the “Fund”) for a decision pursuant to section 9.1 of National Instrument 81-105 (“NI 81-105”) that the prohibition contained in section 2.1 of NI 81-105 against the making of certain payments by the Fund to participating dealers shall not apply to the Fund;

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

AND WHEREAS the Ontario Securities Commission issued a decision document on December 4, 2001 (the “December 4th Decision”);

AND WHEREAS counsel for the Fund requested changes to be made to the December 4th Decision after it was issued;

AND WHEREAS the Fund and Skylon Funds Management Inc. (the “Manager”), the manager of the Fund, have represented to the Decision Makers as follows:

1. The Fund is a corporation incorporated under the Canada Business Corporations Act. It is registered as a labour-sponsored venture capital corporation under the Income Tax Act (Canada) and the Equity Tax Credit Act (Nova Scotia) and is registered as a labour sponsored investment fund corporation under the Community Small Business Investments Fund Act (Ontario).

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2. The Fund is a mutual fund as defined in the legislation of each of the Jurisdictions. The Fund has filed a preliminary prospectus dated September 27, 2001 (the "Preliminary Prospectus") in each of the Jurisdictions in connection with the proposed offering to the public of Class A Shares, Series I and Class A Shares, Series II in the capital of the Fund (collectively, the "Class A Shares").

3. The authorized capital of the Fund consists of an unlimited number of Class A Shares of which none are currently issued and outstanding as of the date hereof and an unlimited number of Class B Shares in the capital of the Fund, of which 100 shares are issued and outstanding as of the date hereof.

4. The Manager and the United Steelworkers of America, TCU National Local 1976 (the "Sponsor") formed and organized the Fund.

5. The Fund proposes to pay directly to participating dealers certain costs associated with the distribution of its Class A Shares. These costs are:

- (i) with respect to the distribution of both series of Class A Shares,
  - a. the fee of the Agent, National Bank Financial Inc., for the public offering of its Class A Shares, on a best effort basis, equal to 0.50% of the aggregate gross proceeds of the offering as described in the final prospectus as well as the Agent's out-of-pocket expenses incurred on or before March 1, 2002 for advisory services rendered to the Fund (collectively, the "Corporate Finance Fee"),
  - b. a sales commission of 6% of the selling price for each Class A Share, Series I or Series II subscribed for (the "6% Sales Commission"), and

- (ii) with respect to the holding by investors of Class A Shares, Series I, a commission of 4% of the selling price of each Series I share held, in lieu of service fees payable before the eighth anniversary of the date of issue of such Series I shares (the "4% Trailing Commission").

6. The Fund may also pay for the reimbursement of co-operative marketing expenses (the "Co-op Expenses") incurred by certain dealers in promoting sales of the Class A Shares, pursuant to co-operative marketing agreements the Fund may enter into with such dealers.

7. All of the costs associated with the distribution of Class A Shares, including among other things, the Corporate Finance Fee, the 6% Commission and the 4% Trailing Commission (together, the "Sales Commissions"), and the Co-op Expenses (collectively, the "Distribution Costs") are fully disclosed in the Preliminary Prospectus. The fact that the Fund intends to pay these costs out of the assets of the Fund is also disclosed in the Preliminary Prospectus.

8. For accounting purposes, the Fund will

- (i) defer and amortize the amount paid or payable in respect of the 6% Sales Commission to retained earnings on a straight line basis over eight years,
- (ii) defer and amortize the amount paid or payable in respect of the 4% Trailing Commission and the Corporate Finance Fee to income on a straight line basis over eight years, and
- (iii) expense the Co-op Expenses in the fiscal period when incurred and will not defer and amortize any Co-op Expenses.

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9. Gross investment amounts will be contributed to the Fund in respect of each subscription. This is to ensure that the entire subscription amount contributed by the investor is counted for the purpose of the applicable federal and provincial tax credits in connection with the purchase of Class A Shares.

10. Due to the structure of the Fund, the most tax efficient way for the Distribution Costs to be financed is for the Fund to pay them directly.

11. The Manager, or its affiliate is the only member of the organization of the Fund, other than the Fund, available to pay the Distribution Costs. The Manager does not have sufficient resources to pay the Distribution Costs, and unless the requested discretionary relief is granted, would be obliged to finance these costs through borrowings.

12. Any loans obtained by the Manager to finance the Distribution Costs would result in the Manager increasing the management fee chargeable to the Fund, by an amount equal to the borrowing costs incurred by the Manager plus an amount required to compensate the Manager for any risks associated with fluctuations in the net asset value of the Fund and, therefore, fluctuations in the Manager's fee. Requiring compliance with section 2.1 of NI 81-105 would cause the expenses of the Fund to increase above those contemplated in the Preliminary Prospectus.

13. Requiring the Manager to pay the Distribution Costs while granting an exemption to other labour funds permitting such funds to pay similar Distribution Costs directly, would put the Fund at a permanent and serious competitive disadvantage with its competitors.

14. The Fund undertakes to comply with all other provisions of NI 81-105. In particular, the Fund undertakes that all Distribution Costs paid by it will be compensation permitted to be paid to participating dealers under NI 81-105.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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:

THE DECISION of the Decision Makers under subsection 9.1(1) of NI 81-105 is that the Fund shall be exempt from section 2.1 of NI 81-105 to permit the Fund to pay the Distribution Costs, provided that:

(a) the Distribution Costs are otherwise permitted by, and paid in accordance with, NI 81-105;

(b) the Distribution Costs are accounted for in the Fund's financial statements in the manner described in paragraph 8 above;

(c) the summary section (the "Summary Section") of the final prospectus of the Fund has full, true and plain disclosure describing the commission structure of Class A Shares, Series I as a 10% initial sales commission, plus service fees after eight years. The Summary Section must be placed within the first 10 pages of the final prospectus.

(d) the final prospectus includes full, true and plain disclosure explaining the services and value that the participating dealers would provide to investors in return for the service fees payable to them;

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(e) the Summary Section of the final prospectus includes full, true and plain disclosure explaining to investors that

(i) they pay the Sales Commissions indirectly, as the Fund pays these Sales Commissions using investors' subscription proceeds, and

(ii) a portion of the net asset value of the Fund is comprised of a deferred commission, rather than an investment asset; and

(f) this Decision shall cease to be operative with respect to a Decision Maker on the date that a rule replacing or amending section 2.1 of NI 81-105 comes into force.

THIS DECISION DOCUMENT contains the changes to the December 4th Decision and hereby supersedes the December 4th Decision.

DATED this 17th day of December, 2001.

Paul M. Moore

H. Lorne Morphy