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December 30, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A labour sponsored investment fund wants relief from the provision in s. 2.1 of the Instrument that prohibits a mutual fund from making certain payments to participating dealers. - The applicant is registered as a labour sponsored investment fund in Ontario and has applied to be registered as a labour sponsored venture capital corporation under the Income Tax Act (Canada). The prospectus will contain full disclosure about how investors indirectly support the payment of sales commissions; the distribution costs are permitted by and paid in accordance with the Instrument; the applicant would be disadvantaged if the relief were not granted because other labour sponsored investment funds have obtained the relief.

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*, s. 9.1

**In the Matter of
the Securities Legislation of
Alberta, British Columbia, Ontario 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

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 a decision pursuant to Section 9.1 of National Instrument 81-105 *Mutual Funds Sales Practices* (NI 81-105), that the prohibition in section 2.1 of NI 81-105 against the making of certain payments by the Filer to participating dealers, shall not apply to the Filer.

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Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

Interpretation

Defined terms contained in National Instrument 14-101 Definitions and National Instrument 81-105 Mutual Funds have the same meaning in this decision unless they are defined in this decision.

Representations

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 by articles of incorporation dated May 13, 2004.
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 intends to apply 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. As such, it is anticipated that the Filer will primarily invest in early stage research oriented companies in Canada.
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 pursuant to the Legislation. The Filer will distribute its Class A shares (the Class A Shares) in the Jurisdictions under a prospectus.
6. The Filer will become a reporting issuer or equivalent in the Jurisdictions when its final prospectus is receipted in the Jurisdictions.
7. At the time of filing the final prospectus, the authorized capital of the Filer will consist of an unlimited number of Class A shares issuable in series, 1,000 Class B shares and an unlimited number of Class C shares (the IPA Shares), of

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which all of the Class B shares are held by the sponsor of the Filer and all of the Class C shares designated IPA Shares will be held by the Manager of the Filer.

8. The Filer's securities are not listed on any exchange.
9. The Canadian Federation of Labour, the sponsor of the Filer, formed and organized the Filer.
10. It is proposed that the following distribution costs (the Distribution Costs) on Class A Shares be paid as follows:
 - (a) the Manager will pay to registered dealers a sales commission of 6% of the purchase price per Class A Share purchased;
 - (b) the Filer will pay to registered dealers a quarterly service fee of 0.5% per annum of the average net asset value of the Class A Shares held by the clients of the dealers (the Service Fee);
 - (c) the Filer will reimburse 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 arrangements entered into with such dealers from time to time.
11. As other labour sponsored investment funds have been granted this relief, requiring alternative arrangements to pay the Service Fee and the Co-op Expenses would put the Filer at a permanent and serious competitive disadvantage with its competitors.
12. An alternative commission arrangement is not practical, since it would reduce the net amount invested and thereby affect the tax credit being received by an investor. This would defeat one of the key features of the LSIF investment vehicle.
13. The prospectus of the Filer will disclose the payment by the Filer or the Manager of the Distribution Costs.
14. The Filer undertakes to comply with all other provisions of NI 81-105. In particular, the Filer undertakes that all Distribution Costs paid by it will be compensation permitted to be paid to participating dealers under NI 81-105.

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Decision

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 section 9.1 of NI 81-105 is that the Filer shall be exempt from the prohibition in section 2.1 of NI 81-105 in order to permit the Filer to pay the Service Fee and the Co-op Expenses provided that:

1. the Service Fee and the Co-op Expenses are otherwise permitted by, and paid in accordance with NI 81-105;
2. the Filer will in its Financial Statements expense the Service Fee and Co-Op Expenses in the fiscal period when incurred, unless any securities laws applicable to the Filer from time to time specifically require treatments other than as described;
3. the summary section of the prospectus of the Filer (the Summary Section) has full, true and plain disclosure explaining to investors that they indirectly support the payment of the sales commission as the Manager pays the sales commissions when a purchaser purchases his or her Class A Shares but the Manager is compensated by the Filer for the payment of sales commissions (and the provision of various other services) through the fees paid in respect of general and investment management services, funding services, marketing dealer support and ancillary services described in the Summary Section. The Summary Section must be placed within the first 10 pages of the prospectus;
4. the Filer shall include in the Summary Section a summary table of fees and expenses payable by the Filer in the following format:

Summary of Fees, Charges and Other Expenses Payable by the Fund

Type and Amount of Fee

Description

5. the summary table shall also include the annual management expense ratio of the Filer for each of the last five completed financial years of the Filer with a brief description of the method of calculating the management expense ratio and the annual returns of the Filer for each of the last five completed financial years of the Filer; and

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

Paul M. Moore
Vice Chair
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission