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November 10, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-102, s. 19.1 *Mutual Funds* - A mutual fund seeks approval to suspend redemptions of its securities under Section 5.5(1)(d) of NI 81-102 - The fund will not resume distributions during the suspension period; the approval is for at most six months; the fund's independent review committee has or will approve suspending the redemptions for up to six months; the fund will also suspend redemptions in Ontario; the fund will not make any new illiquid investments, except follow-on investments; the fund has filed or will file a material change report and has issued or will issue a press release announcing the suspension and the rationale for the suspension; the fund's board of directors will assess strategic options for managing the fund's liquidity

Applicable Legislative Provisions

National Instrument 81-102 *Mutual Funds* s. 5.5(1)(d)

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
GrowthWorks WV Management Ltd.
(the Filer)

and

In the Matter of
GrowthWorks Canadian Fund Ltd.
(the Fund)

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Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for approval under paragraph 5.5(1)(d) of National Instrument 81-102 *Mutual Funds* (NI 81-102) for the Fund to suspend the rights of securityholders of Class A Shares (as defined below) to request redemption of their securities (the Approval Sought). The Filer has applied for the Approval Sought to remain in effect until April 16, 2012.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut, and Yukon Territory (Passport Jurisdictions).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and National Instrument 81-102 *Mutual Funds* have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Fund is a corporation incorporated under the *Canada Business Corporations Act* by articles of incorporation dated February 29, 1988;
 - 2. the Fund is a registered labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario), a registered labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) and *The Labour-Sponsored Venture Capital Corporations Act* (Manitoba) and an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan); the Fund's investing activities are governed by these statutes (collectively, the LSIF Legislation); the Fund is not in default of the LSIF Legislation;

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3. the Fund is a reporting issuer under applicable securities legislation of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction; the Fund's current prospectus is dated November 17, 2010, as amended by amendment no. 1 dated December 17, 2010, and was filed in Alberta, Saskatchewan, Manitoba, Ontario, Northwest Territories, Nunavut and Yukon Territory; the Fund last filed a prospectus in the Jurisdiction in January 2002;
4. the Filer, the manager of the Fund, is a corporation incorporated under the *Canada Business Corporations Act* by articles of incorporation dated October 24, 2002; the head office of the Filer is in Vancouver, British Columbia;
5. the head office of the Fund is in Toronto;
6. the authorized capital of the Fund consists of:
 - (a) an unlimited number of Class A shares (Class A Shares) issuable in series, of which there are currently 23 series created and 19 series outstanding;
 - (b) an unlimited number of Class B shares (Class B Shares), of which 1,000 Class B Shares are outstanding, all of which are held by the Canadian Federation of Labour, the sponsor of the Fund; and
 - (c) an unlimited number of Class C shares (Class C Shares) issuable in series, of which there is one issued series designated as "IPA shares" and 100 of such shares are outstanding, all of which are held by the Filer to provide for a "participating" or "carried" interest in the venture investments of the Fund;
7. no Class B Shares or Class C Shares will be redeemed during the period in which the Approval Sought is in effect;
8. under legislation in effect in Ontario, regulatory approval is not required in order for the Fund to cease redemptions of the Class A Shares in Ontario;
9. the British Columbia Securities Commission is the principal regulator for this application since the head office of the Filer is in British Columbia;
10. the Fund ceased distributions to the public on September 30, 2011 and will not resume distributions of Class A shares during the period in which the Approval Sought is in effect;

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11. none of the Class A Shares, Class B Shares or Class C Shares are listed on an exchange;
12. as of October 7, 2011, the Fund has invested a total of \$598,461,891 (being the fair value of Fund's assets when the Filer was acquired by GrowthWorks Ltd. in November 2002, the fair value at closing of assets acquired by the Fund in merger transactions and the cost of the Fund's new and follow-on investments since November 2002) in small and medium sized Canadian businesses since it commenced distribution in 1991;
13. the investment objective of the Fund is to invest in small and medium sized businesses with the objective of obtaining long term capital appreciation and must make "eligible investments" in "eligible businesses" as prescribed under the LSIF Legislation;
14. the Fund's venture investment activity is currently focused on divesting holdings in its venture portfolio and providing follow-on financing to existing portfolio companies that require additional capital and the Filer believes have the greatest potential for exits at higher values; while the Approval Sought is in effect, the Fund will only make new venture investments in companies in which the Fund already holds an investment (or legal successors of those companies) where the Fund believes the investments are in the best interests of the Fund;
15. the net asset value of the Fund was \$201,332,137 on October 7, 2011;
16. the Fund has made investments in 209 portfolio companies since November 2002 (when the Filer was acquired by GrowthWorks Ltd.); the Fund currently holds investments in approximately 62 companies; those investments now have an average age of over 8 years;
17. a majority of the Fund's portfolio companies are issuers which are not reporting issuers and in respect of which no secondary market exists for trading of the issuer's securities or are thinly traded reporting issuers; as at October 7, 2011, approximately 80.4% of the Fund's assets (by total value) is attributable to securities of private issuers, approximately 4.2% is attributable to securities of reporting issuers and approximately 15.4% is primarily attributable to divestment and other receivables, cash and short term investments;

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18. purchasers of Class A Shares of the Fund were eligible for a federal tax credit equal to 15% of the purchase price subject to a maximum credit of \$750 upon an investment of \$5,000;
19. purchasers resident in Saskatchewan and Manitoba were eligible to receive a provincial tax credit equal to 20% and 15% of the purchase price, respectively, subject to a maximum credit of \$1,000 and \$1,800, respectively; purchasers resident in Ontario were historically eligible for an Ontario tax credit (the Ontario Credit) equal to 15% or 10% of the purchase price, subject to a maximum credit of \$750 upon an investment of \$5,000;
20. on September 30, 2005, the Ontario Government announced its intention to phase out the Ontario Credit by March 2012;
21. during the first eight years from issuance, the Class A Shares of the Fund may only be redeemed without repayment of the federal and provincial tax credits described above (a Tax Recapture Event) in very specific circumstances as set out in LSIF Legislation;
22. since inception, few investors have redeemed Class A Shares when the investor would have been subject to a Tax Recapture Event;
23. the Class A Shares of the Fund first became redeemable without a Tax Recapture Event in 1999, eight years after the Fund's began distributing Class A shares;
24. the Filer estimates that the Fund currently has approximately \$97.8 million of Class A Shares eligible for redemption on or before March 31, 2012 without a Tax Recapture Event or payment of a redemption fee (the CMDF redemption fee) for the same or higher amount as the Tax Recapture Event and that an additional approximately \$22.8 million of Class A Shares will become eligible for redemption between March 31, 2012 and March 31, 2013 without a Tax Recapture Event or payment of the CMDF redemption fee;
25. the Fund has redeemed Class A Shares having an aggregate value of \$41.02 million from August 31, 2010 to August 31, 2011, representing 15.21% of the net asset value of the Fund as at the August 31, 2010 year end of the Fund;
26. the Fund currently has outstanding Class A Shares redeemable at a total net asset value of approximately \$83.3 million without the holders of such shares incurring a Tax Recapture Event or a CMDF redemption fee, and payment of

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all these redemptions, if requested, would deplete all of the Fund's cash and cash equivalents on hand and require the Fund to pursue sales of illiquid investments, potentially at substantially discounted prices, if a purchaser could be found;

27. the Fund's Articles provide that, in any fiscal year, the Fund is not required to redeem Class A Shares having an aggregate redemption price greater than 20% of the net asset value of the Fund as at the last day of the preceding financial year; this redemption limit was described in the prospectuses under which the Class A Shares were distributed;
28. the Filer will continue to manage the Fund in the best interests of the investors and the Fund;
29. the Filer will continue to diligently monitor and review both the progress of the Fund's investee companies and overall market conditions and the Board of Directors of the Fund will continue to assess strategic options for managing the Fund's liquidity and maximizing value for shareholders of the Fund; the Fund's objective is to resume weekly redemptions of Class A Shares within 24 to 36 months;
30. the Fund will cease redemptions in Ontario at the same time it ceases redemptions in British Columbia and the Passport Jurisdictions; the Approval Sought will allow the Fund to treat all investors resident in each jurisdiction in the same manner;
31. 63.8% of the Fund's Class A Shares are held by Ontario residents, 18.9% are held by Manitoba residents and 17.3% are held by residents of other jurisdictions including British Columbia; and
32. the Fund's independent review committee has reviewed the Filer's proposals regarding suspension of redemptions and subsequent operation of the Fund and has made a positive recommendation that suspension of redemptions and subsequent operation of the Fund achieves a fair and reasonable result for the Fund.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

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The decision of the principal regulator under the Legislation is that the Approval Sought is granted, provided that the Fund:

- (a) contemporaneously cease redemptions of Class A Shares in Ontario;
- (b) does not resume distributions of Class A Shares during the period in which the Approval Sought is in effect;
- (c) does not redeem Class A Shares during the period in which the Approval Sought is in effect, except in cases where (i) the holder of Class A Shares, or the annuitant under a trust that holds Class A Shares, becomes disabled and permanently unfit for work or becomes terminally ill, or (ii) the holder of Class A Shares acquired such Class A Shares from another person as a consequence of the death of such other person or the death of an annuitant under a trust that held such Class A Shares;
- (d) does not make any new or additional illiquid investments during the period in which the Approval Sought is in effect, except for venture investments in companies in which the Fund already holds an investment (or legal successors of those companies) where the Fund believes the investments are in the best interests of the Fund;
- (e) complies with its continuous disclosure obligations under National Instrument 81-106 *Investment Fund Continuous Disclosure* during the period in which the Approval Sought is in effect;
- (f) files or has filed a material change report to reflect the suspension of redemptions of the Class A Shares; and
- (g) promptly issues a press release announcing the suspension of the redemptions of Class A Shares and the reasons underlying this decision.

This decision terminates on the earlier of (i) the date on which the Fund resumes regular redemptions of Class A Shares in accordance with its prospectus in all jurisdictions, and (ii) the date on which the Fund is granted a further decision from the Jurisdiction with respect to redemptions of its Class A Shares, which shall be no later than April 16, 2012.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission