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### Headnote

1996 Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered mutual fund dealer wants an exemption from the requirement to be a member of the MFDA. - The dealer's principal business is managing the funds; selling mutual funds is incidental to the dealer's business; the dealer will not sell the funds directly to the public; the dealer has agreed to conditions of registration that restricts its selling of funds only to a limited category of investors such as past clients, unsolicited clients, employees, directors, officers, partners, relatives, and other funds; new clients of the dealer will receive notice from the dealer that it is not a member of the MFDA.

### Applicable Legislative Provisions

*Securities Act*, RSBC 1996, c. 418, s. 48

*Securities Rules*, BC Reg 194/97 s. 6 (2)(c)(ii)A

### Exemption Order

#### Growth Works Capital Ltd.

#### Section 48 of the *Securities Act*, RSBC 1996, c. 418

### Background

- ¶ 1 Growth Works Capital Ltd. (the Applicant) has applied for an exemption from the requirement in section 6(2)(c)(ii)(A) of the *Securities Rules*, BC Reg. 194/197, to be a member of the Mutual Fund Dealers Association of Canada (the MFDA).

### Representations

- ¶ 2 The Applicant represents that:
1. it is a corporation incorporated under the laws of Canada and is registered in British Columbia and Manitoba as a portfolio manager, and in Ontario and Nova Scotia as an investment counsel/portfolio manager and mutual fund dealer;
  2. it applied for registration with the British Columbia Securities Commission as a mutual fund dealer on May 18, 2007;
  3. its principal business activity is managing or providing advising services to mutual funds and investment funds that it or its affiliates manage and whose

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investment mandate is primarily to make venture capital investments (the Funds);

4. after it obtains registration as a mutual fund dealer in British Columbia, it proposes to engage in certain trading activities that are incidental to its principal business activity in British Columbia;
5. it will not sell securities of the Funds directly to the public but will arrange for a selling group, comprised of registered dealers which will include investment dealers who are members of the Investment Dealers Association of Canada and/or mutual fund dealers who are members of the MFDA who will distribute and sell the securities of the Funds and arrange for the distribution and sale of the securities of the funds through investment dealers, brokers, mutual fund dealers, and others;
6. it will obtain and maintain its registration as a mutual fund dealer and will comply with applicable securities legislation and rules;
7. it has agreed to the imposition of the terms and conditions on its registration as a mutual fund dealer in British Columbia set out in the Appendix;
8. the requested relief has been previously granted in Ontario, Saskatchewan, Manitoba and Nova Scotia and no similar application has been filed in any other jurisdiction;
9. any person or company that becomes a client of the Applicant after the date of this decision will receive prominent written notice from the Applicant that:

*Growth Works Capital Ltd. (GWC) is not currently a member, and does not intend to become a member of the Mutual Fund Dealers Association (MFDA). Consequently, clients of GWC will not have available to them investor protection benefits that would otherwise be derived from GWC's membership in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA.*

10. upon the next general mailing to its mutual fund clients, the Applicant will provide to all of its mutual fund clients the written notice referred to in paragraph 9, above.

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### **Order**

- ¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders under Section 48 of the Act that the Applicant is exempt from the requirement to be a member of the MFDA, provided that the Applicant complies with the terms and conditions set out in the Appendix.

- ¶ 4 June 21, 2007

Sandra Jakab  
Acting Director  
Capital Markets Regulation

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## Appendix

### Terms and Conditions of Registration of Growth Works Capital Ltd. as a Mutual Fund Dealer

#### Definitions

1. For the purposes hereof, unless the context otherwise requires:

- (a) “Act” means in British Columbia, the *Securities Act*, R.S.B.C. 1996, c.418, as amended;
- (b) “Adviser” means an Adviser as defined in subsection 1(1) of the Act;
- (c) “Client Name Trade” means, for the Registrant, a trade to, or on behalf of, a person or company, in securities of a mutual fund or investment fund, that is managed by the Registrant or an affiliate of the Registrant, where, immediately before the trade, the person or company is shown on the records of the mutual fund or investment fund or of another mutual fund or investment fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund or investment fund, and the trade consists of:
  - (i) a purchase, by the person or company, through the Registrant, of securities of the mutual fund or investment fund; or
  - (ii) a redemption, by the person or company, through the Registrant, of securities of the mutual fund or investment fund;

and where, the person or company:

- (iii) is a client of the Registrant or an affiliate of the Registrant that was not solicited by the Registrant or an affiliate of the Registrant; or
  - (iv) was an existing client of the Registrant or an affiliate of the registrant on the Effective Date;
- (d) “Commission” means the British Columbia Securities Commission;
  - (e) “Effective Date” means the date of the covering order;
  - (f) “Employee”, for the Registrant, means:

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- (i) an employee of the Registrant;
  - (ii) an employee of an affiliated entity of the Registrant; or
  - (iii) an individual that is engaged to provide, on a *bona fide* basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;
- (g) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
- (i) the Registrant or an affiliated entity of the Registrant; or
  - (ii) a mutual fund or investment fund managed by the Registrant or an affiliated entity of the Registrant;
- (h) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;
- (i) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (j) “Exempt Trade”, for the Registrant, means:
- (i) a trade in securities of a mutual fund or investment fund that is made between a person or company and an underwriter acting as purchaser or between or among underwriters;
  - (ii) a trade in securities of a mutual fund or investment fund for which the Registrant would have available to it an exemption from the registration requirements of the Act; or

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- (iii) a trade in a securities of a mutual fund or investment fund for which the Registrant has received a discretionary exemption from the registration requirements of the Act;
- (k) “Fund-on-Fund Trade”, for the Registrant, means a trade that consists of:
  - (i) a purchase, through the Registrant, of securities of a mutual fund or investment fund that is made by another mutual fund or investment fund;
  - (ii) a purchase, through the Registrant, of securities of a mutual fund or investment fund that is made by a counterparty, an affiliated entity of the counterparty or another person or company, pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund or investment fund; or
  - (iii) a sale, through the Registrant, of securities of a mutual fund or investment fund that is made by another mutual fund or investment fund where the party purchasing the securities is:
    - (A) a mutual fund or investment fund managed by the Registrant or an affiliated entity of the Registrant; or
    - (B) a counterparty, affiliated entity or other person or company that acquired the securities pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund or investment fund;

and where, in each case, at least one of the referenced mutual funds or investment funds is a mutual fund or investment fund that is managed by either the Registrant or an affiliated entity of the Registrant;

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- (l) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of any other trade in securities of a mutual fund or investment fund, where the other trade consists of:
- (i) a purchase or sale of securities of a mutual fund or investment fund that is managed by the Registrant or an affiliated entity of the Registrant; or
  - (ii) a purchase or sale of securities of a mutual fund or investment fund where the Registrant acts as the principal distributor of the mutual fund or investment fund;

and where, in each case, the purchase or sale is made by or through another registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (m) “Mutual Fund Instrument” means National Instrument 81-102 Mutual Funds, as amended;
- (n) “Permitted Client”, for the Registrant, means a person or company that is a client of the Registrant or an affiliate of the Registrant, and that is, or was at the time the person or company became a client of the Registrant or an affiliate of the Registrant:
- (i) an Executive or Employee of the Registrant or an affiliate of the Registrant;
  - (ii) a Related Party of an Executive or Employee of the Registrant or an affiliate of the Registrant;
  - (iii) a Service Provider of the Registrant or an affiliate of the Registrant, or an affiliated entity of a Service Provider of the Registrant or an affiliate of the Registrant;
  - (iv) an Executive or Employee of a Service Provider of the Registrant or an affiliate of the Registrant; or
  - (v) a Related Party of an Executive or Employee of a Service Provider of the Registrant or an affiliate of the Registrant;

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- (o) “Permitted Client Trade” means, for the Registrant, a trade to a person who is a Permitted Client or who represents to the Registrant that he, she or it is a person included in the definition of Permitted Client, in securities of a mutual fund or investment fund that is managed by the Registrant or an affiliate of the Registrant, and the trade consists of a purchase or redemption, by the person, through the Registrant, of securities of the mutual fund or investment fund;
- (p) “Registered Plan” means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the Income Tax Act (Canada);
- (q) “Registrant” means Growth Works Capital Ltd.;
- (r) “Related Party”, for a person, means any other person who is:
  - (i) the spouse of the person;
  - (ii) the issue of:
    - (A) the person,
    - (B) the spouse of the person, or
    - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
  - (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
  - (iv) the issue of any person referred to in paragraph (iii) above;
  - (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
  - (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing; or
  - (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;



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- (s) “securities”, for a mutual fund or investment fund, means shares or units of the mutual fund or investment fund;
  - (t) “Seed Capital Trade” means a trade in securities of a mutual fund or investment fund made to a person or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument;
  - (u) “Service Provider”, for the Registrant, means:
    - (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
    - (ii) an Adviser to a mutual fund or investment fund that is managed by the Registrant or an affiliated entity of the Registrant; or
    - (iii) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund or investment fund that is managed by the Registrant or an affiliated entity of the Registrant; and
  - (v) “subsidiary” means an issuer that is controlled by another issuer.
2. For the purposes hereof, a person or company is considered to be an “affiliated entity” of another person or company if one of them is a subsidiary of the other or each of them is controlled by the same person.
3. For the purposes hereof, a company is controlled by a person if:
- (a) voting securities of the company are held, other than by way of security only, by or for the benefit of that person, and
  - (b) the voting rights attached to those voting securities are entitled, if exercised, to elect a majority of the directors of the company.
4. For the purposes hereof:
- (a) “issue”, “niece”, “nephew” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;
  - (b) “parent” and “grandparent” includes a parent or grandparent through adoption, whether legally or in fact;

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- (c) “registered dealer” means a person or company that is registered under the Act as a dealer in a category that permits the person or company to act as dealer for the subject trade; and
  - (d) “spouse”, for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.
5. Any terms that are not specifically defined above shall, unless the context otherwise requires, have the meaning:
- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
  - (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

### **Restricted Registration: Permitted Activities**

6. The registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant in securities of a mutual fund or investment fund where the trade consists of:
- (a) a Client Name Trade;
  - (b) an Exempt Trade;
  - (c) a Fund-on-Fund Trade;
  - (d) an In Furtherance Trade;
  - (e) a Permitted Client Trade; or
  - (f) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (e), the trades are limited and incidental to the principal business of the Registrant.