

## Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to a LSVCC from the requirement to prepare, file and deliver the interim and annual management reports of fund performance, to prepare and file an annual information form and to prepare and file an independent valuation report in National Instrument 81-106 Investment Fund Continuous Disclosure for the winding up of the LSVCC with certain conditions including a sunset clause, calculation of Management Expense Ratio included in the interim and annual financial statements. Not a precedent because based on specific facts.

## Applicable Legislative Provisions

NI 81-106 Investment Fund Continuous Disclosure - Parts 4, 5, 8 and 9

Dated: August 9, 2018

In the Matter of  
the Securities Legislation  
of Nova Scotia  
(the Jurisdiction)

and

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

and

In the Matter of  
GrowthWorks Atlantic Venture Fund Ltd.  
(the Filer)

Decision

## Background

The principal regulator in the Jurisdiction has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) exempting the Filer from the requirements that:

- (a) the Filer prepare, file and deliver to its shareholders interim and annual management reports of fund performance (MRFP), including the requirements under Parts 4 and 5 of National Instrument 81-106, Investment Fund Continuous Disclosure (NI 81-106) with respect to interim and annual MRFP (Financial Reporting Requirements);

- (b) the Filer prepare and file an annual information form (AIF) pursuant to Part 9 of NI 81-106 (AIF Requirement); and
- (c) the Filer prepare and file an independent valuation relating to the value of venture investments or the net assets of the Filer as a precondition to rely on the exemption from the requirement to disclose individual current values for venture investments pursuant to Part 8 of NI 81-106 (Independent Valuation Requirement)

(collectively, the Exemptive Relief Sought).

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

- (a) the Nova Scotia Securities Commission (Principal Regulator) 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, New Brunswick, Prince Edward Island and Newfoundland and Labrador (collectively with Nova Scotia, the Jurisdictions).

### **Interpretation**

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

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the *Canada Business Corporations Act* (CBCA) on November 16, 2004.
2. GrowthWorks Atlantic Ltd. (Manager) was incorporated under the CBCA on August 19, 2004.
3. The registered and head offices of the Filer and the Manager are located in Halifax, Nova Scotia.
4. The Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions and, to its knowledge, is not in default of the securities legislation in any of the Jurisdictions.
5. The Filer is registered as a labour-sponsored venture-capital corporation under the *Income Tax Act* (Canada), the *Equity Tax Credit Act* (Nova Scotia) and the *Labour-Sponsored Venture Capital Tax Credit Act* (Newfoundland and Labrador) and is a prescribed registered labour-sponsored venture capital corporation under the *New Brunswick Income Tax Act* (collectively, LSVCC Legislation).

6. The Filer is authorized to issue an unlimited number of Class A shares, issuable in series (Class A Shares), an unlimited number of Class B shares (Class B Shares) and an unlimited number of Class C shares (IPA Shares).
7. The Class A Shares are voting, entitled to discretionary dividends, redeemable by the holder at the net asset value per Class A Share less any redemption fee and the holders are entitled to elect 5 of the 13 members of the board of directors of the Filer (Board).
8. The Class B Shares are voting, not entitled to dividends, and entitled to elect 8 of the 13 members of the Board, and are issuable only to the sponsor of the Filer.
9. The IPA Shares are non-voting, issuable only to the Manager and entitled to receive dividends based on the realized gains and income from each of the Filer's Venture Investments (as hereinafter defined) calculated in relation to the fair market value of the investments as of August 1, 2015, subject to certain conditions.
10. The Filer has authorized two series of Class A Shares: the Balanced Series of Class A Shares (Balanced Series Shares) and the GIC Series of Class A Shares (GIC Series Shares).
11. As of the date of the Application:
  - (a) an aggregate of 3,011,650 Balanced Series Shares and 184,557 GIC Series Shares are issued and outstanding (for a total of 3,196,207);
  - (b) an aggregate of 1,000 Class B Shares are issued and outstanding and held by the sponsors of the Filer: the New Brunswick Federation of Labour, the Newfoundland and Labrador Federation of Labour, the Nova Scotia Federation of Labour, the Prince Edward Island Federation of Labour and the Canadian Federation of Labour; and
  - (c) an aggregate of 100 IPA Shares are issued and outstanding and held by the Manager.
12. The purpose of the Class B Shares is to satisfy requirements under the LSVCC Legislation and the Filer does not expect to issue or redeem any Class B Shares in the normal course of the Filer's operations in the future.
13. In accordance with the LSVCC Legislation, the Filer's portfolio assets consist mainly of venture investments in small and medium sized businesses in the Atlantic Provinces (Venture Investments) and limited liquid non-venture investments for working capital purposes.
14. In 2014, the Filer suspended sales and weekly redemptions and the Filer does not expect to offer any additional Class A Shares for sale in the future and, accordingly, expects that it will receive cash only from the sale or maturity of its Venture Investments and Non-Venture Investments.

15. In 2015, the Board designated the SRC to consider, in conjunction with the Filer and the Manager, the options available to the Filer to restructure its operations in the best interests of the Filer's shareholders.
16. On November 20, 2015, the Board announced that it had accepted the unanimous recommendation of the SRC and approved, subject to shareholder ratification and any necessary regulatory approval, the Pro Rata Redemption Plan to distribute available cash generated from an orderly realization of value from dispositions of the Filer's Venture Investments.
17. The Filer received shareholder approval of the Pro Rata Redemption Plan on February 16, 2016 and, as set out below in representation 20, it received regulatory approval of the Pro Rata Redemption Plan on December 24, 2015. The SRC recommended that the Filer adopt the Pro Rata Redemption Plan for a number of reasons with an overarching focus on maximizing potential returns to shareholders and ensuring fairness among all shareholders. In accepting the unanimous recommendation of the SRC to adopt the Pro Rata Redemption Plan, the Board determined that the manner in which the Filer distributes available cash to shareholders should be changed from distributions by way of redemptions on a "first redemption request in, first paid out" basis to distributions by way of redemptions to all shareholders on a pro rata basis.
18. With the aim of securing cost savings for the benefit of the Filer's shareholders, the Filer applied to the Principal Regulator for certain exemptive relief from the Securities Rules in 2015.
19. In particular, by order dated August 21, 2015 (August 2015 Order), the Principal Regulator granted the Filer relief from the following requirements:
  - a. That the portfolio assets of the Filer be held under the custodianship of one custodian that satisfies the requirements of Part 6 of NI 81-102;
  - b. That the Filer calculate its net asset value on a weekly basis in accordance with the requirements of part 14 of NI 81-106; and
  - c. That the Filer comply with the disclosure requirements for a change in the auditors of the Filer contained in Subsection 5.3.1(b) and (c) of NI 81-102(collectively, the August 2015 Granted Relief).
20. Further, by order dated December 24, 2015 (December 2015 Order), the Principal Regulator granted the Filer relief from the following requirements:
  - a. That the Filer not pay, or enter into arrangements that would require it to pay, a fee that is determined by the performance of the Filer, except as permitted under Section 7.1 of NI 81-102; and

- b. That the Filer obtain the approval of the securities regulatory authority or regulator before suspending (other than under Section 10.6 of NI 81-102) the rights of securityholders to request that the Filer redeem their securities, in accordance with Section 5.5(1)(d) of NI 81-102

(collectively, the December 2015 Granted Relief).

21. In consultation with the Strategic Review Committee (SRC) and the Principal Regulator, the Filer developed a plan to restructure the Filer's operations (Restructuring Plan), which included the reduction of its operational costs through the August 2015 Granted Relief and the December 2015 Granted Relief and other cost reduction measures.
22. Since obtaining the August 2015 Granted Relief, the Filer has continued to implement its Restructuring Plan and is currently seeking to further maximize the potential value of its portfolio and distribute cash to shareholders as part of an orderly realization of value.
23. It is contemplated by the Restructuring Plan that the Board will resolve to wind-up the Filer on or about December 31, 2019 consistent with its objective to maximize shareholder value. The Filer expects to wind up the Filer after an orderly realization of the Filer's portfolio value.
24. Pursuant to the Financial Reporting Requirements, the Filer must prepare, file and deliver to its shareholders annual and interim financial reports and corresponding annual and interim MRFP for each interim and annual period.
25. Due to the composition of the Filer's portfolio assets, comprised primarily of only a few Venture Investments and liquid non-venture investments for working capital purposes, the Filer does not expect a significant number of changes in its financial position throughout each year.
26. As part of the Restructuring Plan, the Filer does not intend to make any further Venture Investments.
27. The Filer will continue to prepare, file and deliver to its shareholders interim and annual financial statements for the Filer in accordance with NI 81-106.
28. The Filer will include disclosure of its management expense ratio calculated in accordance with Part 15 of NI 81-106 in its interim and annual financial statements.
29. If there is a material change in the business or affairs of the Filer, the Filer will comply with the material change reporting requirements under applicable laws, including pursuant to NI 81-106.
30. With the adoption of the Pro Rata Redemption Plan, the disclosure otherwise required but for the Exemptive Relief Sought does not provide information that could assist in a decision to hold shares of the Filer. The Exemptive Relief Sought is appropriate in the circumstances and will not impact shareholders' investment decisions regarding the Filer.

31. The following additional reasons support the Exemptive Relief Sought:
- a. Given the limited range of business activities to be conducted by the Filer and the fact that the Filer does not expect a significant number of changes in its business activity and financial position from year to year, the provision by the Filer of interim and annual MRFP and an AIF will not be of significant benefit to the shareholders of the Filer.
  - b. If the Filer were to prepare an AIF, there would be little, if any, updates to provide shareholders of the Filer on a year to year basis from the information presented in the last AIF filed by the Filer dated November 27, 2017, and any applicable changes will be disclosed in accordance with the material change reporting requirements.
  - c. Given the fact that the Filer is currently operating to realize its greatest value in an orderly fashion and not making any new investments, preparing independent valuations to comply with the Independent Valuation Requirement will not be of significant benefit to the shareholders of the Filer.
  - d. As the Filer's operating expenses are generally constant and predictable throughout the year and from year to year, providing interim and annual MRFPs would offer little additional insight to shareholders regarding the Filer's financial results and position.

### **Decision**

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

The decision of the principal regulator under the Legislation is that the Exemptive Relief Sought is granted provided that:

- (a) the Filer continues to prepare, file and deliver to its shareholders interim and annual financial statements in accordance with NI 81-106;
- (b) the interim and annual financial statements of the Filer will include disclosure on the Filer's management expense ratio calculated in accordance with Part 15 of NI 81-106;
- (c) if there is a material change in the business or affairs of the Filer, the Filer will comply with the material change reporting requirements under applicable laws, including pursuant to NI 81-106;
- (d) the Filer will not make any investments in any securities of companies or persons not currently in the Filer's portfolio;
- (e) the Filer will not file a future prospectus; and

(f) this decision terminates on January 31, 2020.

*“Abel Lazarus”*

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Abel H. Lazarus  
Director, Corporate Finance  
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