

## Headnote

NP 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Exemptive relief granted to mutual fund no longer in distribution from certain prospectus disclosure requirements in National Instrument 81-102 *Mutual Funds* and National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with custodian requirements and NAV

## Applicable Legislative Provisions

National Instrument 81-102 *Mutual Funds*, Part 6

National Instrument 81-106 *Investment Fund Continuous Disclosure* – Part 14

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 portfolio assets of the Filer be held under the custodianship of one custodian that satisfies the requirements of Part 6 of National Instrument 81-102, *Investment Funds* (NI 81-102) (Custodian Requirements); and
- (b) the Filer calculate its net asset value on a weekly basis in accordance with the requirements of Part 14 of National Instrument 81-106, *Investment Fund Continuous Disclosure* (NI 81-106) (NAV Calculation Requirements).

(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. (the Manager), the manager of the Filer, 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 (the 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 hereof:
  - (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. The Filer's portfolio assets consist mainly of venture investments in small and medium sized businesses in the Atlantic Provinces (the Venture Investments) and limited liquid non-venture investments for working capital purposes (the Non-Venture Investments).
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, 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 and obtained certain exemptive relief from the Securities Rules in 2015.
19. In particular, by order dated August 21, 2015 (the 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 (the 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 SRC and the Principal Regulator, the Filer developed a plan to restructure the Filer's operations (the 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. The August 2015 Granted Relief was subject to a sunset provision under which the August 2015 Granted Relief expired on June 30, 2018.
24. In addition, in July 2018, the Filer applied to the Principal Regulator for additional exemptive relief from the Securities Rules (the July 2018 Application) to further decrease its operational costs.
25. In the July 2018 Application, the Filer requested exemptive relief from the following requirements:
  - a. the Filer prepare, file and deliver to its shareholders interim and annual management reports of Filer performance (MRFP), including the requirements under Parts 4 and 5 of NI 81-106 with respect to interim and annual MRFP;
  - b. the Filer prepare and file an annual information form pursuant to Part 9 of NI 81-106; 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.
26. 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.
27. 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.
28. As part of the Restructuring Plan, the Filer does not intend to make any further Venture Investments. Accordingly, the Filer expects that it will receive cash only on the sale or maturity of its Venture Investments and Non-Venture Investments.
29. As of the date hereof, the custodian for the portfolio assets of the Filer is RBC Investor Services Trust.

***Custodianship of Portfolio Assets***

30. Pursuant to the Custodian Requirements, the Filer's portfolio assets must be held by a custodian that satisfies the requirements of Part 6 of NI 81-102.
31. The August 2015 Granted Relief exempted the Filer from the Custodian Requirements.
32. The August 2015 Granted Relief was subject to a sunset provision under which the August 2015 Granted Relief expired on June 30, 2018.
33. If the Exemptive Relief Sought is granted, the Filer's practices and procedures relating to Venture Investments will include the following consistent with the August 2015 Order:
  - (a) all security certificates representing Venture Investments are and will be registered in the Filer's name;
  - (b) any request to a private company for transfers of certificates will require certain authorizing documentation, including the signatures of executive officers of the Manager on behalf of the Filer on an instrument of transfer;
  - (c) any request to a private company for changes of any kind to a certificate (such as a replacement or splitting of a certificate) will require signatures of executive officers of the Manager on behalf of the Filer; and
  - (d) security certificates representing Venture Investments will be held off-site with the private company's corporate records, which are typically located at the offices of the private company's legal counsel, or with the Filer's legal counsel.
34. A record of the Venture Investments is typically held by the private company's records office in the company's securities register, and can be used to verify the existence, date of issuance and amount of the Venture Investment.
35. Any changes to a security certificate representing a Venture Investment, including a transfer, will typically require a resolution of the board of directors of the private company and the private company's legal counsel would typically be responsible for processing any such changes.
36. The Filer will typically be aware of any requested changes to a security certificate representing a Venture Investment, as an investment manager of the Filer may be a director of the private company or the Filer's approval may be required to complete the requested change.
37. In the event that a security certificate representing a Venture Investment is lost or stolen, it can be replaced by the Filer by complying with the procedures established by the private company for the replacement of lost or stolen certificates.

38. There is typically no liquid market for Venture Investment securities, so they cannot be readily sold if lost or stolen.
39. If the Exemptive Relief Sought is granted, the Filer's practices and procedures relating to Non-Venture Investments will include the following consistent with the August 2015 Order:
  - (a) Non-Venture Investments are and will be registered in the Fund's name when issued and held by the Filer's broker;
  - (b) the Filer will receive account statements from its broker, which will be reviewed by the Filer for accuracy against the Filer's financial records and for changes against previous statements;
  - (c) the Filer's broker will require the following documents and forms to be completed to deposit, transfer or withdraw Non-Venture Investments:
    - (i) the original security certificate (in the case of a deposit only);
    - (ii) a power of attorney to transfer authorizing the brokerage firm to receive, transfer or issue the certificate and which must be signed by certain executive officers of the Manager on behalf of the Filer and guaranteed in accordance with applicable policies of the third party broker; and
    - (iii) a duly signed and authorized certificate from the Filer certifying that the Manager is authorized to act for, in the name of and on behalf of the Filer;
  - (d) any request for changes of any kind to a certificate (such as a replacement or splitting of a certificate) will require signatures of executive officers of the Manager on behalf of the Filer; and
  - (e) any sale of Non-Venture Investments will require written authority from certain executive officers of the Manager on behalf of the Filer.
41. Any changes to a security certificate representing a Non-Venture Investment will involve a review of the requested action by the company's transfer agent and the agent will typically require documents and forms, including affidavits, powers of attorney and/or certified copies of resolutions, requiring signatures of executive officers of the Manager on behalf of the Filer.
42. Non-Venture Investments held in deposit at a brokerage firm will also be subject to the safekeeping controls of that brokerage firm, which includes custodial services and related controls, and in the event that a brokerage firm loses or damages a certificate representing a Non-Venture Investment, the brokerage firm will be responsible for any resulting liability.

43. In the event that a lost, stolen or destroyed certificate representing a Non-Venture Investment needs to be replaced, this can be done by the company's transfer agent, with supporting documentation and fees from the Filer.
44. The Filer's internal policies and procedures manual includes a section, a copy of which has previously been provided to the Principal Regulator, covering the safekeeping of cash and portfolio investments.
45. The Filer will not offer any additional Class A Shares for sale in the future and, accordingly, expects that it will receive cash only on the sale or maturity of its Venture Investments and Non-Venture Investments.

#### ***Net Asset Value Calculations***

46. Pursuant to the NAV Calculation Requirements, the Filer must calculate its net asset value on a not less than weekly basis.
47. The August 2015 Granted Relief exempted the Filer from the NAV Calculation Requirements.
48. At an annual and special meeting of the shareholders of the Filer held on February 16, 2016, shareholders of the Filer approved a decrease in the frequency of the calculation of the Filer's net asset value per security in accordance with the August 2015 Granted Relief.
49. The August 2015 Granted Relief was subject to a sunset provision under which the August 2015 Granted Relief expired on June 30, 2018.
50. Due to the composition of the Filer's portfolio assets, comprised primarily of Venture Investments, the Filer does not expect any significant changes in its net asset value in each quarter.
51. As part of the Restructuring Plan, the Filer does not intend to make any further Venture Investments or Non-Venture Investments in the future. Accordingly, as stated above, the Filer expects that it will receive cash only on the sale or maturity of its Venture Investments and Non-Venture Investments.
52. The costs of compliance with the NAV Calculation Requirements is burdensome and would be detrimental to the Restructuring Plan.

#### **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) in respect of the Exemptive Relief Sought with respect to the Custodian Requirements:
  - (i) the Filer will maintain internal controls for its Venture Investments and Non-Venture Investments at least as onerous as those described in representations 33 and 39, respectively, for the term of the relief; and
  - (ii) the Filer will not hold any original security certificates representing its investments on its own premises;
- (b) in respect of the Exemptive Relief Sought with respect to the NAV Calculation Requirements:
  - (i) the Filer will not make any investments in any securities of companies or persons not currently in the Filer's portfolio;
  - (ii) the Filer calculates its net asset value not less than quarterly;
  - (iii) the Filer completes an additional calculation of its net asset value within five business days if at any time there is an increase or decrease in its most recently calculated net asset value of 10% or more; and
  - (iv) the Filer makes the most recent calculation of its net asset value available to the public on its website, through the Globe Investor website and upon request by any shareholder to the Filer; and
- (c) this decision terminates on January 31, 2020.

*“Abel Lazarus”*

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Director, Corporate Finance  
Nova Scotia Securities Commission