

Date: December 24, 2015

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 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 National Instrument 81-102, *Investment Funds* (NI 81-102) (Performance Fee Requirements); and
- (b) 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 (Redemption Suspension Requirements),

(collectively, 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.

### **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 the Jurisdiction, Alberta, New Brunswick, Prince Edward Island and Newfoundland and Labrador (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 (NAV) 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 IPA Dividends (as hereinafter defined), 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 3,265,843 Balanced Series Shares and 186,052 GIC Series Shares are issued and outstanding (for a total of 3,451,895);
    - (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. As a labour-sponsored venture-capital corporation, the Filer's investment objectives and restrictions are governed by the LSVCC Legislation.
  13. Under LSVCC Legislation, the Filer is required to invest the majority (typically between 60 and 80%) of the capital it has raised in eligible small and medium sized businesses (Venture Investments).
  14. The Filer's portfolio assets consist of Venture Investments in the Atlantic Provinces and cash and non-venture investments comprised of guaranteed investment certificates and debt instruments, high yield investments and bank securities, as applicable to the particular series of Class A Shares.
  15. On January 7, 2005, the Principal Regulator issued a decision document (SEDAR Project #712321) under the Mutual Reliance Review System granting exemptive relief to the Filer in respect of, among others, the Performance Fee Requirements and the Redemption Suspension Requirements (2005 MRRS Decision).
  16. The Board designated a strategic review committee (SRC) to consider, in conjunction with the Filer and the Manager, the options available to the Filer and to conduct a full

review of strategic options aimed at realizing on the potential value of the Venture Investments and providing liquidity to the Filer's shareholders.

17. Following the review conducted by the SRC in conjunction with the Filer and the Manager, the Filer has developed a plan in respect of the Filer's operations (the Plan), which includes the reduction of its operational costs through certain cost reduction measures.

***Performance Fees***

18. As part of the Plan, the Filer and the Manager entered into an amended and restated management agreement effective August 1, 2015 (the Management Agreement).
19. Pursuant to the Management Agreement, the Filer has agreed to submit amended terms and conditions for the IPA Shares (IPA Share Amendments) in the form attached to the Management Agreement to the Filer's shareholders for approval at the Filer's next meeting of shareholders.
20. Under the IPA Share Amendments, the Manager will continue to be entitled to earn dividends (IPA Dividends) equal to up to 25% of the realized gains and income on each of the Filer's Venture Investments as described in the 2005 MRRS Decision, except that:
  - (a) the realized gains and income of a particular Venture Investment will be determined in relation to the fair market value of the Venture Investment as of August 1, 2015, rather than the total cost of the Venture Investment and all extraordinary expenses incurred in connection with the Venture Investment since the Filer's initial investment in the Venture Investment;
  - (b) 75% of the IPA Dividends (Quarterly Dividends) will be payable as of the end of each fiscal quarter of the Filer and 25% of the IPA Dividends (Escrowed Dividends) will accrue and be placed into a trust account for the benefit of the Manager, to be paid only upon the liquidation, dissolution or winding up of the Filer, whether voluntary or involuntary, or any other distribution of the assets of the Filer among its shareholders for the purpose of winding-up its affairs (a Dissolution Event);
  - (c) the conditions outlined in paragraph 14 of the 2005 MRRS Decision will no longer apply and have been replaced with the following conditions:
    - (i) the Manager will be entitled to received Quarterly Dividends attributable to a particular Venture Investment only if the aggregate fair market value of all Venture Investments as of the end of the applicable fiscal quarter is greater than the aggregate fair market value of all Venture Investments as of August 1, 2015; and
    - (ii) the Manager will be entitled to receive the Escrowed Dividends attributable to a particular Venture Investment only if the fair market value

of all Venture Investments as of the date of the Dissolution Event is greater than the aggregate fair market value of all Venture Investments as of August 1, 2015;

- (d) when calculating the fair market value of Venture Investments for purposes of the conditions described in (c)(i) and (ii) above, the fair market value of a Venture Investment which was sold or otherwise disposed of prior to the end of the applicable quarter is deemed to be the actual proceeds the Filer received from the investment's disposition and the fair market value as of August 1, 2015 of any Venture Investment acquired after August 1, 2015 is deemed to be the book value of that investment on the date of acquisition;
- (e) the Escrowed Dividends will be reduced by an amount equal to 25% of the realized losses on each Venture Investment, being the amount by which the total cash received from dispositions of the Venture Investment and all fees, royalties, interest, dividends and other distributions received in respect of such Venture Investment is less than the fair market value of such Venture Investment as of August 1, 2015; and
- (f) if the Manager is terminated as a manager or investment manager of the Filer for reasons of a material breach of the Management Agreement that has not been remedied, the Manager will not be entitled to receive the IPA Dividends that would be payable assuming all Venture Investments were sold at that time that would otherwise be payable.

(the Amended Dividend Arrangement)

- 21. The Filer intends to submit the IPA Share Amendments to the shareholders of the Filer for approval at its annual and special meeting of shareholders to be held on February 16, 2016 (the AGM).
- 22. Notwithstanding whether the IPA Share Amendments are approved by shareholders at the AGM, under the Management Agreement, the Filer and the Manager may elect, by mutual agreement, to the redemption by the Filer of all of the outstanding IPA Shares held by the Manager, following which the Manager will be entitled to receive an incentive fee the terms of which are structured to substantially mirror the Amended Dividend Arrangement (Incentive Fee Arrangement and together with the Amended Dividend Arrangement, the Amended Incentive Arrangements).
- 23. Pursuant to the Performance Fee Requirements, the Filer must 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.
- 24. The 2005 MRRS Decision granted the Filer exemptive relief from the Performance Fee Requirements to permit the payment of the IPA Dividends pursuant to the current terms and conditions of the IPA Shares, without giving effect to the IPA Share Amendments.

25. If the Exemptive Relief Sought in respect of the Performance Fee Requirements is not granted, the Filer will not be permitted under Section 7.1 of NI 81-102 or the 2005 MRRS Decision to pay the Amended Incentive Arrangements.
26. The Filer's information circular for the AGM and its subsequent annual information forms will:
  - (a) fully disclose that the Manager considers the Amended Incentive Arrangements to be appropriate given the disclosed investment objectives and strategies of the Filer;
  - (b) provide an explanation of why the Amended Incentive Arrangements are appropriate for the Filer; and
  - (c) provide an explanation of how the Amended Incentive Arrangements will be calculated in respect of partial dispositions of an investment.
27. The Amended Incentive Arrangements are not determined in relation to a benchmark and are not based on the total return of the Filer.
28. The Amended Incentive Arrangements are appropriate in light of the nature of venture capital investing and are consistent with incentive participation arrangements commonly use in the venture capital industry.

### ***Redemptions***

29. On November 20, 2014, the Filer announced that it had suspended until further notice weekly redemption of its Class A Shares, specifically the Balanced Series Shares and the GIC Series Shares. At and since that time, the redemption requests that the Filer had received satisfied the conditions set out in the 2005 MRRS Decision with respect to the Redemption Suspension Requirements.
30. Representatives of the Board, the Manager and legal counsel met with Mr. Kevin Redden, Director, Corporate Finance of the Principal Regulator, in early November, 2015, and outlined the key aspects of a draft pro rata redemption plan (the Pro Rata Redemption Plan).
31. On November 20, 2015, the Filer announced that it had adopted, subject to shareholder ratification and any necessary regulatory approvals, a Pro Rata Redemption Plan to distribute available cash generated from an orderly realization of value from dispositions in the Filer's portfolio of Venture Investments.
32. The Filer intends to seek shareholder ratification of the Pro Rata Redemption Plan at the AGM.
33. The Pro Rata Redemption Plan is aimed at achieving the following key objectives:

- (a) allow time to realize the potential value of the Filer's portfolio of Venture Investments by providing for an orderly realization through dispositions of Venture Investments;
  - (b) provide a meaningful level of liquidity to shareholders by distributing the majority of proceeds from dispositions of Venture Investments;
  - (c) ensure fairness by having all shareholders share in realizations of liquidity from Venture Investments;
  - (d) maximize potential returns to shareholders by seeking to minimize potential negative tax consequences, particular with respect to repayment of tax credits on redemptions of non-mature Class A Shares (being those held for less than eight years); and
  - (e) maintain capital for defensive follow-on investing in portfolio companies.
34. Under the Pro Rata Redemption Plan, the Board will determine, from time to time, the amount of available funds to process redemptions taking into consideration:
- (a) proceeds on dispositions of Venture Investments not previously distributed;
  - (b) potential defensive follow-on investments to preserve the Filer's rights and preferences; and
  - (c) projected liabilities and anticipated operating expenses of the Filer for the next 18 months.
35. Once the Board determines an amount of available funds for redemptions, the Filer will allocate (each such allocation, a Pro Rata Allocation) available funds to the Balanced Series Shares and the GIC Series Shares based on the series' respective allocation of the Filer's portfolio of Venture Investments in accordance with the Filer's allocation rules as described in paragraph 36 below.
36. Within a series of Class A Shares, the Filer will allocate to each shareholder a proportional amount of available funds based on the number of shares of that series held by the shareholder as a percentage of the total shares outstanding of the series. The allocated funds will be used as follows:
- (a) to redeem, to the extent possible, mature Class A Shares (being those shares with an original issue date of at least eight years prior to redemption) held by the shareholder at a price equal to NAV per share at the time of redemption; and
  - (b) for any remaining balance of the shareholder's allocated funds under the Pro Rata Allocation, converting non-mature Class A Shares held by the shareholder into Class A Shares of a new series (Conversion Shares) which will be redeemed after they become mature at a redemption price substantially equal to that of mature

Class A Shares redeemed as described in (a) above pursuant to the Pro Rata Allocation.

37. With each Pro Rata Allocation, a new series of Conversion Shares will be created resulting in a separate series of Class A Shares for each Pro Rata Allocation.
38. The goal of separating out the funds allocated to a shareholder's non-mature Class A Shares through the conversion into Conversion Shares is to allow shareholders sufficient time for their shares to mature in order to not have to repay tax credits which may arise if they were subject to mandatory redemption before the eight-year hold period of the non-mature shares expires. The original issue date of the Class A Shares prior to conversion will carry over to the Conversion Shares
39. The funds allocated to Conversion Shares at their distribution date will become the assets attributable to that series of Conversion Shares to be used to process redemptions of such shares as they become mature. Shareholders will also have the option to redeem Conversion Shares while they are non-mature provided the shareholder repays applicable tax credits. This way, all redemptions of Conversion Shares issued pursuant to a particular Pro Rata Allocation will occur at substantially the same NAV per share to that of mature Class A Shares redeemed as described in paragraph 36(a).
40. The CBCA contains certain requirements with respect to how to trigger redemption rights and securities laws have certain rules that require mutual funds to redeem all securities at the NAV per security calculated at the time of redemption. The redemption of mature shares, the conversion of non-mature Class A Shares and the subsequent redemptions of Conversion Shares pursuant to the Pro Rata Redemption Plan will comply with these requirements.
41. As part of ratification of the Pro Rata Redemption Plan, shareholders will be asked to approve amendments to the rights attached to the Class A Shares, as a class, that will allow for distinctions between series of Class A Shares (specifically the Balanced Series and the GIC Series) that do not hold a specified percentage of assets in cash or cash equivalents and series of Conversion Shares that will only hold cash and equivalent reserves (as defined in the *Income Tax Act* (Canada). The specified percentage of assets is expected to be 90% and is referred to as the Reserves Threshold.
42. As such, shareholders will be asked to approve amendments to the rights attached to the Class A Shares, as a class, to add the following provisions:
  - (a) the Filer will be entitled to decline to complete a redemption request for Class A Shares if the Class A Share is of a series that does not meet the Reserves Threshold, which will allow the Filer to decline to process a shareholder request for redemption of Balanced Series Shares and GIC Series Shares as these series are not expected to meet the Reserves Threshold;



- (b) the Filer will not be entitled to decline to process redemption requests for Class A Shares if the Class A Shares are of a series that meets the Reserves Threshold which will allow shareholders to redeem Conversion Shares at their option; and
  - (c) the Filer will be able to direct a redemption of a Class A Share when there is a Pro Rata Allocation as follows:
    - (i) in the case of a series that does not meet the Reserves Threshold that number of a holder's mature Class A Shares as determined in accordance with the Pro Rata Redemption Plan, which will allow for the redemption of mature Balanced Series Shares and GIC Series Shares to the largest extent possible; and
    - (ii) in the case of a series that meets the Reserves Threshold, on a date determined by the Filer after the Class A Shares are mature, allowing for the redemption of Conversion Shares once they mature which is intended to be implemented on a semi-annual basis; and
  - (d) the Filer will be able to convert, on a one to one ratio, that number of a holder's non-mature Class A Shares (including a fraction) of a series that does not meet the Reserves Threshold, as determined by the Filer in accordance with the Pro Rata Redemption Plan, into a new series of Conversion Shares, which will allow for the conversion of non-mature Balanced Series Shares and GIC Series Shares into Conversion Shares to the extent a shareholder has any remaining balance of allocated funds when there is a Pro Rata Allocation.
43. The Filer will process redemption requests on a weekly basis for holders of Conversion Shares who request redemption of Conversion Shares (whether or not the requesting shareholder's Conversion Shares are mature), in accordance with the Filer's customary process for weekly redemptions in place prior to suspending redemptions.
44. NAV per share for the Balanced Series Shares and GIC Series Shares will continue to be calculated in accordance with the Filer's valuation rules and allocation rules and will reflect increases and decreases in the value of the investment portfolio and operating expenses.
45. In the case of a series of Conversion Shares, it is expected that all but a nominal fraction of assets attributable to the series will be invested in cash or equivalent reserves (as defined in the *Income Tax Act* (Canada)) so as to maintain liquidity to process redemptions of Conversion Shares and the Filer expects that any returns received on these reserves would be modest and would be offset by any series-specific nominal liabilities (expected only to be minimal, if any, incremental costs of audited financial statements and back office administration). Series of Conversion Shares will be allocated a nominal interest in the Filer's venture portfolio.
46. The overall NAV of a series of Conversion Shares is expected to remain largely constant, such that shareholders holding non-mature Conversion Shares will receive on their future

redemption a NAV per share that is substantially equal to the NAV per share received for the redemption of mature Class A Shares subject to the same Pro Rata Allocation.

47. As the Filer is a single legal entity with multiple issued classes of shares (some of which are divided into series), assets and liabilities are allocated in the records of the Filer among the series of Class A Shares in accordance with the particular investment policies and expenses and charges applicable to the series. As such, income, dividends, capital gains, losses and expenses of the Filer are assessed as a whole and then allocated across all outstanding series of each class of shares of the Filer according to its policies to ensure fairness to the individual shareholders.
48. The funds allocated to a series of Conversion Shares on a distribution date of such shares will be the redemption funds allocated to that series and only series-specific nominal liabilities (as noted in paragraph 45 above, expected only to be minimal, if any, incremental costs of audited financial statements and back office administration) will be allocated to such series.
49. In this way, a series of Conversion Shares will be isolated or “ring fenced” from other liabilities of the Filer under the Filer’s allocation rules; however, as previously disclosed in the Filer’s continuous disclosure documents, if any series of a class of shares of the Filer cannot meet the obligations attributed to that series, the assets associated with the other series or classes may be required to be used to pay for those obligations. Notwithstanding this risk, the Filer believes that it is not likely that the liabilities of a class or series will exceed the assets of that class or series.
50. The materials for the AGM will state that shareholders may wish to consider the risk outlined in paragraph 49 in determining whether to request redemption of non-mature Conversion Shares and repay applicable tax credits. Furthermore, the amendments to the terms and conditions of the Class A Shares to implement the Pro Rata Redemption Plan will include a provision that the Filer may direct a redemption of shares if circumstances arise which the Filer considers to be of significant harm or disadvantage to the shareholders or the Filer thereby providing additional protection for holders of Conversion Shares.
51. The Manager has agreed to waive early redemption fees on the redemption of Class A Shares under the Pro Rata Redemption Plan.
52. The conversion of non-mature Class A Shares into Conversion Shares will be a “qualifying exchange” under applicable LSVCC Legislation, meaning no tax credits are required to be repaid, as (a) the only consideration received will be the Conversion Shares and (b) the rights in respect of all series of Class A Shares, including series of Conversion Shares, will be identical except for the non-venture portion invested in reserves (as defined under applicable LSVCC Legislation) that is attributable to each series.

53. Conversion Shares issued will be exempt from the prospectus requirements under applicable securities laws pursuant to Section 2.42 of National Instrument 45-106, *Prospectus Exemptions*.
54. If ratified by shareholders, the Pro Rata Redemption Plan will be administered with the Board's current expectation that it will likely require a time period of 3 to 5 years to maximize the potential value of the existing portfolio and distribute cash to shareholders as part of an orderly realization of value. During that time, it is expected that the Board will consider the next steps for the Filer which may include triggering certain phase out rules under applicable LSVCC Legislation, termination of the Filer and/or a secondary sale of any remaining portfolio investments.
55. In conjunction with the Pro Rata Redemption Plan, the Filer intends to provide limited priority for processing redemptions in the very restricted circumstances of hardship dispositions such as death, terminal illness, disability, permanently unfit for work and mandatory de-registration of registered accounts provided that there are funds available to do so. The amount of funds made available for processing these types of hardship dispositions will be limited and determined with reference to the amount of other funds available for distribution under the Pro Rata Redemption Plan.
56. Until the AGM, redemption requests by the Filer will continue to be placed in a queue for processing in the order they are received; however, if shareholders approve the Pro Rata Redemption Plan, the Filer does not expect to process redemptions associated with requests received since suspending redemptions in November, 2014, so long as the Pro Rata Redemption Plan remains in effect
57. Pursuant to the Redemption Suspension Requirements, the Filer must 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.
58. The 2005 MRRS Decision granted the Filer exemptive relief from the Redemption Suspension Requirements to permit the Filer to suspend redemptions if the Filer had received redemption requests having an aggregate price exceeding certain NAV thresholds outlined in 2005 MRRS Decision.
59. While the Filer currently meets the conditions under the 2005 MRRS Decision to decline a redemption request, in the future, those conditions may not exist, and if the Exemptive Relief Sought in respect of the Redemption Suspension Requirements is not granted, the Filer would not be permitted under Section 5.5(1)(d) of NI 81-102 or the 2005 MRRS Decision to decline a redemption request in accordance with the terms of the Pro Rata Redemption Plan.
60. As announced on November 20, 2014, liquidity pressures on the Filer increased as exit opportunities regarding select Venture Investments were delayed.

61. The SRC's review was commenced in light of a range of factors, including the Filer's cash position, actual and projected levels and timing of divestment activity, the prospects for generating exit values in excess of carrying values and the prospects for the Filer resuming weekly redemption processing and future capital raising.
62. The SRC reached its recommendation for the Filer to adopt the Pro Rata Redemption Plan after careful consideration of various relevant factors, with an overarching focus on maximizing potential returns to shareholders and ensuring fairness among all shareholders of the Filer.
63. In accepting the unanimous recommendation of the SRC, 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.
64. The current distribution method of providing cash by way of redemptions on a "first redemption request in, first paid out" basis has significant risk of having some shareholders receive liquidity to the exclusion of others. This risk arises because of the fixed number of potential exit opportunities for the Filer's Venture Investments and, as exits are realized, the Filer's portfolio of Venture Investments and the number of possible future exits decreases.
65. Accordingly, a system of redemptions on a first in basis has the real risk of having some shareholders being left with little or no liquidity while continuing to bear the on-going operating costs, which is amplified in a system where individual shareholders have to request redemption and some shareholders are not proactive for a variety of reasons, some of which are not within their control.
66. The Board, in accepting the SRC recommendation, believes that distributions by way of pro rata redemptions ensure all Filer shareholders are treated fairly.
67. The Board intends to distribute available funds from dispositions of Venture Investments while maintaining funds for defensive follow-on investments to preserve the Filer's rights and preferences and for projected liabilities and anticipated operating expenses.
68. Venture-backed companies often require follow-on investments to continue on their growth trajectories and additional rounds of financing may have punitive consequences for investors who do not continue to invest in the company. As such, defensive follow-on investments are important to preserve and potentially add value in any venture portfolio, and in the Board's view, the need to defend the Filer's position in promising companies is even more important given that the number of investee companies in its venture portfolio is not expanding. The Board will take into account the amount of future potential defensive follow-on investments to preserve the Filer's rights and preferences in determining funds available for distribution under the Pro Rata Redemption Plan, as stated above in paragraph 67.

69. The Board will review dispositions regularly to determine when the Filer has available funds for distribution under the Pro Rata Redemption Plan.
70. The amount and timing of available funds for pro rata redemptions under the Pro Rata Redemption Plan will depend on the timing and realizations of dispositions of the Filer's Venture Investments. The Manager believes and the Board concurs with the view that the overall potential of the Filer's venture portfolio to provide value and meaningful liquidity through exit transactions remains strong and believes many of the portfolio companies are continuing to grow and mature, improving the prospects for cash-generating exits.
71. The timing of exit transactions is largely beyond the control of the Filer because it depends heavily on the merger and acquisitions and secondary investment markets and the Filer has minority positions in its investee companies. As such, no assurance can be given as to the timing or amount of funds that will be available for distribution to shareholders under the proposed Pro Rata Redemption Plan or otherwise.
72. While circumstances may change, given the stage of development of the Filer's portfolio companies and potential exit opportunities, the Filer does not anticipate that funds will be available for distribution under the Pro Rata Redemption Plan for the next several quarters.
73. The Filer will seek shareholder ratification of the Pro Rata Redemption Plan at the AGM.
74. The Filer's information circular for the AGM and its subsequent annual information forms will disclose the terms of the Pro Rata Redemption Plan and the additional conditions for the restrictions on redemption.

### **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 Performance Fee Requirements:
  - (i) the Filer seeks shareholder approval for the IPA Share Amendments at the AGM;
  - (ii) the Filer's information circular for the AGM and subsequent annual information forms contain the disclosure in paragraph 26 above;
  - (iii) the amount of dividends or fees paid or accrued pursuant to the Amended Incentive Arrangements, as applicable, is included in the calculation of the management expense ratio in accordance with Part 16 of NI 81-102;

- (iv) the amount of dividends or fees paid or accrued pursuant to the Amended Incentive Arrangements, as applicable, is presented as a separate line item in the Filer's financial statements with adequate financial statement note disclosure; and
- (v) the financial statement note disclosure includes:
  - (A) a description of the Amended Incentive Arrangements;
  - (B) a description of how the amount of dividends or fees paid or accrued pursuant to the Amended Incentive Arrangements, as applicable, is calculated in general terms and how it is accounted for; and
  - (C) the amount of dividends or fees paid or accrued pursuant to the Amended Incentive Arrangements, as applicable, as a percentage of the average NAV of the Filer for the financial year; and
- (b) in respect of the Exemptive Relief Sought with respect to the Redemption Suspension Requirements:
  - (i) the Filer seeks shareholder ratification of the Pro Rata Redemption Plan and approval for the amendments to the rights attached to the Class A Shares described in paragraphs 41 and 42 at the AGM;
  - (ii) the Filer's information circular for the AGM and subsequent annual information forms contain the disclosure in paragraphs 50 and 74; and
  - (iii) the Filer processes redemptions pursuant to the terms of the Pro Rata Redemption Plan and in accordance with the procedures described in paragraphs 34 to 37, 39, 43, 44, 48, 51 and 55.



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