

Date: Aug. 21, 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 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);
- (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); and
- (c) the Filer comply with the disclosure requirements for a change in the auditors of the Filer contained in Subsections 5.3.1(b) and (c) of NI 81-102 (Change of Auditor 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 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 equal to 25% of realized gains and income from each of the Filer's Venture Investments (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. 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 of cash, venture investments in small and medium sized businesses in the Atlantic Provinces (Venture Investments) and non-venture investments comprised of guaranteed investment certificates (GICs) and debt instruments, high yield investments and bank securities, as applicable to the particular series of Class A Shares (Non-Venture Investments).
14. The Filer uses its portfolio cash assets to make investments in Venture Investments and Non-Venture Investments and pay the Filer's operating expenses as described in the prospectus of the Filer dated December 6, 2013.
15. The Filer typically invests with the expectation that it will not realize on an individual Venture Investment until the underlying portfolio company is either sold or becomes publicly traded and, as such, the Venture Investments the Filer makes are, in many cases, illiquid and are viewed by the Filer as long-term investments.
16. Available funds invested in Non-Venture Investments are invested so as to reflect each series' designated investment focus for the funds.
17. The Filer's portfolio assets are primarily comprised of illiquid Venture Investments (as of the date of the Application, approximately 97% of the portfolio assets attributable to the Balanced Series Shares and 3% of the portfolio assets attributable to the GIC Series Shares) and, in the case of the GIC Series Shares, GICs.
18. As of the date of the Application, the custodian for the portfolio assets of the Filer is RBC Investor Services Trust.

19. 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 on the sale or maturity of its Venture Investments and Non-Venture Investments or through limited debt financing, as may be determined by the Board to be in the best interests of the Filer's shareholders.
20. Pursuant to the CBCA, the Filer is not permitted to redeem Class A Shares if there are reasonable grounds for believing that (a) the Filer is, or would after the payment be, unable to pay its liabilities as they become due, or (b) the realizable value of the Filer's assets would after the payment be less than the aggregate of its liabilities and the stated capital of all classes.
21. On November 20, 2014, the Board determined that there were reasonable grounds for believing that, if Class A Shares were redeemed, the realizable value of the Filer's assets would be less than the aggregate of its liabilities and the stated capital of all classes after the redemption payment was made and, accordingly, the Filer ceased sales and the processing of weekly redemptions of Class A Shares.
22. As of August 12, 2015, the Filer has received requests for the redemption of an aggregate of 350,426 Class A Shares which have not been processed.
23. The Board designated a strategic review committee (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.
24. The Filer has developed a plan to restructure the Filer's operations (Restructuring Plan), which includes the reduction of its operational costs through the Exemptive Relief Sought and other cost reduction measures.
25. Effective July 16, 2015, KPMG LLP, Chartered Accountants, have resigned as auditors of the Filer.
26. If the Exemptive Relief Sought is not granted, the aggregate costs of continuing compliance with the Custodian Requirements and the NAV Calculation Requirements would be approximately 3.4% of the ongoing operational costs of the Filer following implementation of the Restructuring Plan and the Filer will not be able to appoint successor auditors without providing 60 days' prior written notice to shareholders and incurring the associated costs of providing such notice.
27. The reductions in the Filer's operational costs that will be achieved as a result of the Exemptive Relief Sought are integral to the Restructuring Plan.

Custodianship of Portfolio Assets

28. 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.

29. If the Exemptive Relief Sought is granted, the Filer's practices and procedures relating to Venture Investments will include the following:
 - (a) at the time of purchase, 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. There is typically no liquid market for Venture Investment securities, so they cannot be readily sold if lost or stolen.
35. If the Exemptive Relief Sought is granted, the Filer's practices and procedures relating to Non-Venture Investments will include the following:
 - (a) Non-Venture Investments are and will be registered in the Filer'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.
36. 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.
37. 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.
38. 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.
39. The Filer's internal policies and procedures manual includes a section, a copy of which has been provided to the Principal Regulator, covering the safekeeping of cash and portfolio investments.
40. 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 on the sale or maturity of its Venture

Investments and Non-Venture Investments or through limited debt financing, as may be determined by the Board to be in the best interests of the Filer's shareholders.

41. The Exemptive Relief Sought in respect of the Custodian Requirements will reduce the expenses of the Filer, which will provide support for the proposed Restructuring Plan.

Net Asset Value Calculations

42. Pursuant to the NAV Calculation Requirements, the Filer must calculate its net asset value on a not less than weekly basis.
43. The Filer will calculate its net asset value on a not less than quarterly basis and will complete 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.
44. The Filer will make the most recent calculation of its net asset value made as described in representation 43 above available to the public on its website, through the Globe Investor website and upon request by any shareholder to the Filer.
45. The Filer will provide a notice to shareholders with its proxy materials for its next meeting of shareholders specifying how the Filer will make the most recent calculation of its net asset value available as described in representation 44 above.
46. Due to the composition of the Filer's portfolio assets, comprised primarily of Venture Investments and GICs, the Filer does not expect a significant number of changes in its net asset value in each quarter.
47. As part of the Restructuring Plan, the Filer does not intend to make any further Venture Investments or Non-Venture Investments in the future, except that the Filer may make follow-on Venture Investments in current investee private companies in order to maintain its pro rata ownership of such companies and associated rights, provided that:
 - (a) each follow-on Venture Investment must be approved by the investment committee of the board of directors of the Filer;
 - (b) any such follow-on Venture Investment must be made from cash received by the Filer other than from dispositions of Filer portfolio assets;
 - (c) any such follow-on Venture Investment will not exceed the Filer's pro rata ownership interest in the investee company; and
 - (d) the name of the investee company, the amount of the follow-on Venture Investment and the classification of funds used by the Filer for such follow-on Venture Investment are publicly disclosed on the Filer's website.

48. The costs of continuing compliance with the NAV Calculation Requirements is burdensome and will be detrimental to the proposed Restructuring Plan.
49. The Filer will seek the approval of shareholders of the Filer for the Exemptive Relief Sought from the NAV Calculation Requirements in accordance with Section 5.1 of NI 81-102 at its next meeting of shareholders and will cease relying on such Exemptive Relief Sought if shareholder approval is not obtained.

Change of Auditors

50. Pursuant to the Change of Auditor Requirements, the Filer must not change its auditors unless:
 - (a) the Filer's prospectus discloses that, although the approval of securityholders will not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change; and
 - (b) the written notice to securityholders referred to in (a) above is sent 60 days before the effective date of the change.
51. The Filer's most recent prospectus does not contain the disclosure required by Subsection 5.3.1(b) of NI 81-102 and the Filer does not intend to file a prospectus as it has ceased public distribution.
52. Notwithstanding the disclosure in the Filer's most recent prospectus that shareholder approval will be required for any change of auditors, there is no requirement under applicable laws for shareholder approval for a change of auditors effected by the resignation of the current auditors and the appointment of successor auditors.
53. If the Exemptive Relief Sought in respect of the Change of Auditor Requirements is not granted, the Filer is unable to comply with the requirements in Subsection 5.3.1(b) of NI 81-102 in order to appoint successor auditors.
54. The proposed appointment of Hay & Watson, Chartered Accountants, as successor auditors of the Filer will significantly reduce the costs associated with its annual audit (by approximately 30%); however, the costs of sending written notice to its shareholders of a change of its auditors would negate a portion of these cost-savings for the 2015 fiscal year.
55. The Filer will comply with the requirements for the approval of the Filer's independent review committee of the change of auditors in accordance with Subsection 5.3.1(a) of NI 81-102.
56. The Filer will comply with the requirements of Part 13 of NI 81-106 for the change of auditors, including the filing of the required reporting package.

57. The Filer will issue a news release upon the appointment of its successor auditors and concurrently post on the Filer's website and file on SEDAR a notice of the change.
58. The Filer will include disclosure regarding the Exemptive Relief Sought in respect of the Change of Auditor Requirements in each of its annual information forms filed under NI 81-106 following the grant of the Exemptive Relief Sought.

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 29 and 35, respectively, for the term of the relief;
 - (ii) the Filer's internal policies and procedures manual includes a section covering the safekeeping of cash and portfolio investments substantially in the form reviewed by the Principal Regulator; and
 - (iii) 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 calculates its net asset value not less than quarterly;
 - (ii) 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;
 - (iii) the Filer shall not make any follow-on Venture Investments in current investee private companies unless:
 - (A) the follow-on Venture Investment is approved by the investment committee of the board of directors of the Filer;
 - (B) the follow-on Venture Investment is made from cash received by the Filer other than from dispositions of the Filer's portfolio assets;

- (C) the follow-on Venture Investment will not exceed the Filer's pro rata ownership interest in the investee company; and
 - (D) the name of the investee company, the amount of the follow-on Venture Investment and the classification of funds used by the Filer for such follow-on Venture Investment are publicly disclosed on the Filer's website; 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;
 - (v) the Filer provides a notice to shareholders with its proxy materials for its next meeting of shareholders specifying how the Filer will make the most recent calculation of its net asset value available; and
 - (vi) the Filer seeks the approval of its shareholders for the Exemptive Relief Sought from the NAV Calculation Requirements in accordance with Section 5.1 of NI 81-102 at its next meeting of shareholders;
- (c) in respect of the Exemptive Relief Sought with respect to the Change of Auditor Requirements:
- (i) the Filer complies with the requirements for the approval of the Filer's independent review committee of the change of auditors in accordance with Subsection 5.3.1(a) of NI 81-102;
 - (ii) the Filer complies with the requirements of Part 13 of NI 81-106 for the change of auditors, including the filing of the required reporting package;
 - (iii) the Filer issues a news release upon the appointment of its successor auditors and concurrently posts on the Filer's website and files on SEDAR a notice of the change; and
 - (iv) the Filer includes disclosure regarding the Exemptive Relief Sought in respect of the Change of Auditor Requirements in each of its annual information forms filed under NI 81-106 following the date of this decision; and
- (d) this decision terminates:
- (i) in respect of the Exemptive Relief Sought with respect to the Custodian Requirements and the Change of Auditor Requirements, on June 30, 2018; and
 - (ii) in respect of the Exemptive Relief Sought with respect to the NAV Calculation Requirements, on the earlier of (A) June 30, 2018 and (B) the closing of the next

meeting of the shareholders of the Filer if the shareholders do not approve at the meeting such Exemptive Relief Sought in accordance with Section 5.1 of NI 81-102.



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