

IRWIN, WHITE & JENNINGS

BARRISTERS AND SOLICITORS

REPLY TO: **JILL W. MCFARLANE**
DIRECT LINE: (604) 664-3726

E MAIL: jill@iwjlaw.com
FAX: (604) 689-2806

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BY ELECTRONIC MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Commission des valeurs mobilières du Québec
Ontario Securities Commission
Autorité des marchés financiers Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o Patricia Leeson, Co-Chair of the CSA's
Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300-5th Avenue S.W.
Calgary, Alberta T2P 3C4
E-mail: patricia.leeson@seccom.ab.ca

c/o Anne-Marie Beaudion
Directrice des secretariats
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246 22^e étage
Montréal, Québec H4Z 1G3
E-mail: consultation-en-cours@autorite.qc.ca

c/o Heidi Franken, Co-Chair of the CSA's
Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
E-mail: hfranken@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: Proposed National Instrument 41-101 – General Prospectus Requirements

We are counsel to the following investment funds:

- (i) GrowthWorks Atlantic Venture Fund Ltd. (“GWAVF”),
- (ii) GrowthWorks Canadian Fund Ltd. (“GWCF”),

- (ii) GrowthWorks Commercialization Fund Ltd. (“GWComm”), and
- (iii) Working Opportunity Fund (EVCC) Ltd. (“WOF”),
(together the “GrowthWorks Funds”).

We are writing on behalf of ourselves and on behalf of the GrowthWorks Funds to provide comments on Proposed National Instrument 41-101 (“NI 41-101”). We and our clients appreciate the opportunity to provide input on this regulatory process.

BACKGROUND

Each of GWCF and GWComm is a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada). Each is also a labour-sponsored investment fund corporation registered under the *Community Small Business Investment Funds Act* (Ontario), and an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan). GWCF offers its securities in Ontario, Saskatchewan, Manitoba, Alberta, the Northwest Territories, Yukon and Nunavut, through appropriately registered dealers. GWComm offers its securities in Ontario, Saskatchewan and Alberta.

GWAVF 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*. GWAVF offers its securities in Nova Scotia, New Brunswick, PEI and Newfoundland and Labrador through appropriately registered dealers.

WOF is an employee venture capital corporation (“EVCC”) registered under the *Employee Investment Act* (British Columbia) and is a prescribed labour sponsored venture capital corporation under the *Income Tax Act* (Canada). WOF offers its securities only in British Columbia.

Each of the Funds is managed by an affiliate of Growth Works Ltd. (together the “GrowthWorks group of companies”). The GrowthWorks group of companies is the second largest independent manager of labour-sponsored investment funds (“LSIFs”) in Canada with approximately \$800 million in assets under management.

Each of GWCF, GWComm, GWAVF and WOF offers its securities on a continuous offering basis. Each of GWCF, GWComm and GWAVF is considered a “mutual fund” under applicable securities laws. While not technically a mutual fund under the *Securities Act* (British Columbia), WOF has obtained exemptive relief on the basis that it is substantially similar to a mutual fund and that its offering of securities is analogous to that of a mutual fund (see 2000BCSCCOM 269, 2001BCSCECCOM 847, 2003 BCSECCOM 234, 2005 BCSECCOM 107, 2006 BCSECCOM 232).

COMMENTS ON NI 41-101 AND 41-101F2

Our comments on proposed NI 41-101 are set out below. We have separated our comments into topics. We have also identified the relevant provisions of NI 41-101 and 41-101F2.

Why Maintain a Separate Prospectus Regime for Some Investment Funds?

In the notice and request for comments regarding NI 41-101 dated December 21, 2006 (the “Notice”), the Canadian Securities Administrators (the “CSA”) stated that the purpose of NI 41-101 is “to create a comprehensive, seamless and transparent set of national prospectus requirements for all issuers, including investment funds”. However, there is a specific acknowledgment of the carve out for conventional mutual funds that are subject to National Instrument 81-101 (“NI 81-101”).

We submit that all investment funds should be subject to the same prospectus regime and the more appropriate regime is NI 81-101. In the alternative, to the extent separate prospectus regimes and forms are deemed necessary by the CSA for different types of investment funds, we submit that the more appropriate regime for LSIFs is NI 81-101. WOF is an LSIF and has used, as a result of exemptive relief obtained from the British Columbia Securities Commissions, the simplified form of prospectus since 1992 (currently under NI 81-101 and previously under National Policy 36).

National Instrument 81-106 (“NI 81-106”) created a harmonized set of continuous disclosure and financial reporting requirements for all investment funds. The CSA’s stated purpose of harmonizing reporting obligations would allow for easier and better comparison by investors. We submit that a similar approach should be taken for the regulation of prospectus offerings by all investment funds in order to achieve the CSA’s stated goal of having prospectus disclosure that allows for better and easier comparison of investment funds.

We note that NI 41-101 has several sections that duplicate obligations under NI 81-102, including requirements with respect to advertising and custodians. We believe this added layer of regulation is unduly burdensome and, for this reason and along with the reasons set out below, we submit that NI 41-101 should not apply to investment funds.

We also note that the eligibility criteria for the short form prospectus regime under National Instrument 44-101 was expanded by the CSA in December 2005 to effectively allow all listed issuers to use the short form regime despite the fact that there are many differences among listed issuers with respect to tax treatment and types of offerings. The short form prospectus regime under NI 44-101 for issuers is analogous to the simplified prospectus regime under NI 81-101. We believe a similar expansive approach to the use of the simplified prospectus regime should be considered at this time.

In Ontario, LSIFs have historically been required to use Form 45 – *Information to be Included in Prospectus of a Labour Sponsored Investment Fund Corporation*. With respect to the application of

NI 41-101 to labour sponsored funds in particular, we believe it maintains a historic and somewhat artificial distinction between labour sponsored investment funds and mutual funds that are permitted to use NI 81-101 F1 and F2.

BC does not have a prescribed form of prospectus for labour sponsored funds. After its initial offering in 1992, WOF has consistently used the simplified form of prospectus for its offering documents rather than the long form prospectus. Because it is not technically a mutual fund under the *Securities Act* (British Columbia), WOF has had to seek and obtain various exemptions from the British Columbia Securities Commission to use the simplified form of prospectus.

Under 2000BSCECCOM 269, WOF is permitted to use the forms of simplified prospectus and annual information form under National Instrument 81-101 with such additions and amendments thereto as are appropriate to explain the unique nature and features of the offering. This relief is based upon the fact that WOF's offering of securities is analogous to that of a conventional mutual fund that uses 81-101F1 and F2 because WOF:

- invests in a portfolio of qualifying securities meeting its statutory and self-imposed investment criteria;
- is taxed as a mutual fund corporation;
- calculates and publishes the value of its offered securities based on the net underlying value of its assets and offers its securities continuously on the basis of that net underlying value;
- ultimately redeems its securities on essentially the same basis as a mutual fund;
- distributes its securities through dealers that distribute mutual funds; and
- complies in all material respects with NI 81-101.

We submit that offerings by other labour sponsored investment funds like GWCF, GWComm and GWAVF, share the above characteristics, and therefore their offerings are also analogous to those of conventional mutual funds that are permitted to use 81-101F1 and F2.

WOF has worked with the British Columbia Securities Commission to develop a form of prospectus and annual information for WOF in accordance with NI 81-101F1 and F2 that we believe provides investors and potential investors with full, true and plain disclosure in a format that makes it easier for advisers, investors, issuers and regulators to compare WOF to "like" investment funds – that being conventional mutual funds.

Accordingly, we submit that meaningful comparability among investment funds can really only be achieved if all investment funds are subject to the same prospectus regime and we believe the more appropriate prospectus regime is NI 81-101 rather than proposed NI 41-101. In the alternative, we submit that that LSIF offerings are more analogous to those of mutual funds that are permitted to use 81-101F1 and F2 rather than the other types of investment funds currently subject to proposed NI 41-101. As such, in a multiple prospectus regime system for investment funds, we submit the more appropriate regime for LSIFs is NI 81-101.

A Single Prospectus for Multiple Series Funds

We seek clarification from the CSA that investment funds that offer multiple series of shares under a single prospectus can continue to do so provided that separate disclosure is provided in response to particular items in 41-101F2 where the response would not be identical for all series. In particular, was it intended that if a single corporate entity offers multiple series in circumstances where it cannot be said that the series are referable to the exact same portfolio, then: (a) can the entity prepare a single prospectus provided that separate disclosure is provided in response to particular items in 41-101F2 where the response would not be identical for all series; or (b) would each series be required to prepare its own prospectus? If the intended result is (b), we submit that this will result in significant increases in cost and paper burden for a number of entities without a corresponding benefit for investors.

For example, each of WOF and GWCF are multiple series funds that have switch rights among their series. Each fund has currently has one prospectus. We submit this practice enhances investor understanding of their investment and avoids unnecessary and costly duplication of disclosure. Indeed, we believe this is the basis on which regulators have accepted WOF and GWCF current prospectuses (for copies of WOF's and GWCF's current prospectuses, please see www.sedar.com or www.growthworks.ca.)

WOF offers 6 different Venture Series Shares - Balanced Shares, Growth Shares, Income Shares, Financial Services Shares, Resource Shares and Diversified Shares - under a single "Part B – Fund-Specific Information" of its simplified prospectus. Investors may switch among the different series of Venture Series Shares. The only material difference among these series with respect to the offering thereof is the fact that the incidental, non-venture funds are invested differently. This results in there being separate disclosure about the non-venture component of each of these series but for all other matters, disclosure is combined.

GWCF offers Venture / Balanced Shares, Venture / Growth Shares, Venture / Income Shares, Venture / Financial Services Shares, Venture / Resource Shares and Venture / Diversified Shares under a single prospectus prepared under Form 45. Investors may switch among the different series of shares. Like WOF, the only material difference among these series with respect to the offering thereof is the fact that the incidental, non-venture funds are invested differently. Again, like WOF, this results in there being separate disclosure about the non-venture component of each of these series but for all other matters, disclosure is combined.

In the case of WOF and GWCF, because the incidental, non-venture component is invested differently for each series, it cannot be said that all series are referable to the same portfolio. If each series of WOF and GWCF was required to have its own prospectus, this would result in 13 separate prospectuses instead of the current 2. We strongly submit that this is unduly burdensome. Based on our review of 41-101F2, for these two funds we would expect there to be series-specific disclosure in

response to only two items in the form, namely item 5.2 “Investment Strategies” and item 8.1 “Risk Factors”. In addition, some series have relatively low net asset value (e.g. under \$2 million). Requiring a separate prospectus for these smaller series would not be economical and therefore, GrowthWorks may have to consider ceasing to offer such series. This would result in less choice in portfolio management tools for investors which we believe is not desirable.

As a result, we believe that Item 13 of the general instructions to 41-101F2 should be clarified to permit the current approach taken by multiple series funds like WOF and GWCF of having a single prospectus (or in the case of WOF, a single “Part B” of its simplified prospectus) in circumstances where all material differences between the series are disclosed.

Certificate of Investment Fund Manager – Section 5.10 of NI 41-101

Please clarify the required signatures for the certificate of the investment fund manager. Subsection 5.10(2)(b) suggests that two directors of the investment fund should be signing the certificate of the investment fund manager. Also, please clarify who should sign the certificate when the investment fund manager has only one director, which is the case for the managers of WOF, GWCF, GWComm and GWAVF. We submit that investment fund managers should not be required to increase the size of their boards simply to comply with the certificate requirements of NI 41-101 (particularly when the CEO and CFO of the fund manager are also signing).

Clarification Regarding Pro-Forma Filings – Section 9.2(b) of NI 41-101

Please confirm that a “pro forma filing” for investment funds which have a continuous offering is not considered a “preliminary prospectus” under NI 41-101. We seek this clarification because of the lead-in to section 9.2(b) which states “concurrent with the filing of a preliminary long form prospectus, the following: (i) **Blacklined Copy** – If the issuer is an investment fund, a copy of the *pro forma* prospectus (if applicable) blacklined to show changes and the text of deletion from the latest prospectus previously filed;”. We would expect a blacklined prospectus to be included in a pro forma prospectus filing but not in a preliminary prospectus filing.

Auditors Consent – Section 10.1 of NI 41-101

Please confirm whether an auditors consent must be filed at the time audited financials are filed on SEDAR and automatically incorporated by reference into an investment fund’s previously filed prospectus.

Restricted Securities – Section 12.1(2)(c) of NI 41-101

Please clarify in the instrument that if Part 9 of NI 41-101 does not apply to an investment fund by virtue of section 12.1(2)(c), then the disclosure requirements in Items 13.1 and 21.6 of Form 41-101F2 regarding restricted securities similarly do not apply to the investment fund.

Additional Legending Requirements – Section 13.2 of NI 41-101

Most LSIFs are subject to NI 81-102 legending requirements and restrictions on advertising. We submit the additional legending requirements in section 13.2 of NI 41-101 are duplicative in nature and unnecessary given the requirements of NI 81-102. Accordingly, we submit that investment funds subject to NI 81-102 should not be also be subject to the requirements of Section 13.2 of NI 41-101.

Ontario Exceptions

Please confirm that applicable cross-references to the Ontario legislation will be maintained in the final instrument in order to streamline compliance obligations.

Involvement of Underwriters – Item 1.11 of Form 41-101F2

We submit that the requirement in Item 1.11 of 41-101F2 to state in bold that underwriters have not performed any review of the prospectus or any independent due diligence of the contents of the prospectus is unnecessary given that securities laws require a registrant to be involved in all non-exempt purchases of securities. We note that no similar requirement exists in 81-101F1.

Table of 5% LSIF Investments – Item 5.4 of Form 41-101F2

Item 5.4 of the Form provides that an LSIF prospectus must include a table disclosing information with respect to each entity, 5% or more of whose securities of any class are beneficially owned directly or indirectly by the LSIF (the “5% Table”). We would suggest that this requirement be eliminated because more relevant information regarding an LSIF’s investments is contained in its Management Reports of Fund Performance (“MRFP”) which is incorporated by reference into the new prospectus form.

We think investors construe an LSIF’s 5% Table as a listing of the fund’s most significant investments. In many instances, this may not be the case. An LSIF investment in a particular entity may represent more than 5% of a given class of securities of an entity and yet contribute little or no value to the overall value of the fund. Conversely, an LSIF investment in another entity may represent less than 5% of a given class of securities of an entity and yet carry considerable value. The first investment would feature in the 5% Table while the second would not, conveying a misleading message as to the relative significance of the investments.

Under Item 5 of 81-106F1, each MRFP must disclose the top 25 positions held by the LSIF, expressed as a percentage of the net assets of the LSIF (the “Top 25 Table”). Again, we think investors will construe the Top 25 Table as a listing of the fund’s most significant investments. It may often be the case that investments that feature in the 5% Table will not feature in the Top 25 Table and *vice versa* given the different methods for determining what investments must be included

in each table. The Top 25 Table provides a much better approximation of an LSIF's most significant venture investments than the 5% Table. We submit that the 5% Table is more likely to cause confusion than add further meaningful disclosure for investors.

Use of "Pricing NAV"

LSIFs are allowed to include the unamortized balance of up-front sales commissions (in some jurisdictions, only commissions booked prior to December 31, 2003) in calculating their share prices for issuing and redeeming shares. This price is often referred to as "Pricing NAV". Accordingly, we request that NI 41-101 and 41-101F2 expressly provide for the use of "Pricing NAV per Share" in applicable jurisdictions provided that the investment fund include relevant disclosure concerning the difference between the Pricing NAV per Share and the net asset value per share calculated under GAAP.

Conclusion

We appreciate the opportunity to provide our comments and welcome the opportunity to discuss them further.

Best regards,

"Jill W. McFarlane"

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