

IRWIN, WHITE & JENNINGS

BARRISTERS AND SOLICITORS

REPLY TO: TAMARA L. HOWARTH
DIRECT LINE: (604) 664-3727

E MAIL: tamara@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
Autorité des marchés financiers
New Brunswick Securities Commission
Ontario Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
19th Floor, Box 55.
Toronto, Ontario, M5H 3S8
E-mail: jstevenson@osc.gov.on.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

Dear Sirs/Mesdames:

Re: Proposed National Instrument 31-103 – Registration Requirements

We are counsel to the following investment funds (except Ensis) and investment fund managers:

GrowthWorks Managed Fund	Associated GrowthWorks Manager or GP
GrowthWorks Atlantic Venture Fund Ltd. (“GWAVF”)	GrowthWorks Atlantic Ltd.
GrowthWorks Canadian Fund Ltd. (“GWCF”)	GrowthWorks WV Management Ltd.
GrowthWorks Commercialization Fund Ltd. (“GWComm”)	GrowthWorks WV Management Ltd.
Ensis Growth Fund Inc. (“Ensis”)	ENSIS Management Inc. (“EMI”)
Working Opportunity Fund (EVCC) Ltd. (“WOF”)	Growth Works Capital Ltd. (“GWC”)
GrowthWorks Access Fund Limited Partnership (“Access Fund”)	GrowthWorks Access GP Ltd. (“Access GP”)
Pacific Venture Fund Limited Partnership (“PVF”)	GrowthWorks General Partner Ltd. (“PVF GP”)

(together the “GrowthWorks Managed Funds”, and the “GrowthWorks Managers”).

We are writing on behalf of ourselves and on behalf of the GrowthWorks Managed Funds and the GrowthWorks Managers to provide comments on Proposed National Instrument 31-103 – *Registration Requirements* (“NI 31-103”). We provided initial comments on NI 31-103 in June 2007 and appreciate your consideration of and responses to our comments. We and our clients appreciate this further opportunity to provide input. In this submission, we have gone into more detail in hopes of illustrating key concerns and potential solutions more clearly.

Background

The GrowthWorks Manager group of companies is the largest independent manager of labour-sponsored investment funds (“LSIFs”) in Canada with approximately \$850 million in assets under management. It manages a number of regionally focused venture funds across Canada. Government legislation and/or policy often drives the regional focus and organization of these investment funds.

GrowthWorks Managed Fund	Regional Focus
GrowthWorks Atlantic Venture Fund Ltd. (“GWAVF”)	Atlantic Canada
GrowthWorks Canadian Fund Ltd. (“GWCF”)	Ontario and Saskatchewan
GrowthWorks Commercialization Fund Ltd. (“GWComm”)	Ontario and Saskatchewan
Ensis Growth Fund Inc. (“Ensis”)	Manitoba
Working Opportunity Fund (EVCC) Ltd. (“WOF”)	British Columbia
GrowthWorks Access Fund Limited Partnership (“Access Fund”)	Primarily British Columbia
Pacific Venture Fund Limited Partnership (“PVF”)	Primarily British Columbia

GrowthWorks Managed Funds

Each of GWAVF, GWCF, GWComm, WOF and Ensis is an LSIF and offers its securities by prospectus on a continuous offering basis. And each of GWAVF, GWCF, GWComm, and ENSIS 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 BCSCECCOM 232).]

Access Fund and PVF are both limited partnerships which have raised capital under exempt offerings. Access Fund invests primarily in private early stage technology and life sciences companies. PVF is an institutional fund that provides later stage financing for small and medium-sized companies.

GrowthWorks Managers – An Affiliated Group Already Strongly Engaged with the Regulatory System

To provide efficiency and avoid costly duplication, the GrowthWorks Managers (all subsidiaries of GrowthWorks Ltd.) have designed one entity, GWC, to be the “registrant” entity and provider of “registrant services” among the affiliated group. The Management Agreements with the GrowthWorks

Managed Funds permit the manager to provide or arrange for the provision of services to the GrowthWorks Managed Funds. Each GrowthWorks Manager arranges for GWC to provide portfolio management advice for the fund it manages. GWC also acts as “principal distributor” for WOF, GWCF, GWComm and GWAVF.

GWC is currently already registered as:

- * an investment counsel and/or portfolio manager under securities laws in the provinces of British Columbia, Saskatchewan, Manitoba, Ontario and Nova Scotia; and
- * a mutual fund dealer under securities laws in the provinces of British Columbia, Saskatchewan, Ontario and Nova Scotia for limited purposes associated with acting as “principal distributor” (and is exempt from being a member of the Mutual Fund Dealers Association of Canada).

GWC has been a registrant since 1999. Its CEO has a securities registration record which spans almost 30 years. GWC’s assistant compliance officer is a securities lawyer with over 20 years experience in securities regulatory matters. GWC has undergone two normal course compliance reviews by the BC Securities Commission over the past 6 years and has a demonstrated record of compliance. The senior managers of GWC are for the most part common to all of the GrowthWorks Managers. Those senior managers are all registered and most have been registered for many years.

The GrowthWorks Managers group of companies and their senior managers are already strongly engaged with the securities regulatory system in Canada.

Comments on NI 31-103

We have reviewed the revised proposed NI 31-103 together with its accompanying policies and forms. In addition, we have reviewed the summary of comments received and responses of the CSA.

We and our clients continue to have grave concerns about the proposals for registration of fund managers. From a cost benefit point of view, we find very little in the way of benefit for corporate groups already well engaged in the securities regulatory system and very significant additional costs. Costs which will ultimately be born by investors.

Our comments in this round focus on:

- Detailing further the important distinction between fund managers which are part of a corporate/management group already registered within the securities regulatory system and fund management groups which are “outside” of the system.
- Quantifying some of the additional costs associated with NI 31-103 in its current form.
- Outlining in more detail a proposal that would avoid duplicative and disproportionate costs for corporate groups already within the securities regulatory system.
- Requests for clarification on a few matters.

An Important Distinction – Fund Managers Outside of the Securities Regulatory System versus those Already Functionally within the System

With respect to the proposal to require registration of fund managers, we believe there are two distinct groups of fund managers to consider:

1. Firstly, groups who are outside of the securities regulatory system. An example of this would be a fund manager of a closed-end fund listed on the TSE, which has engaged an independent, external investment manager. The fund manager and the investment manager do not have common management and conduct their businesses out of separate offices in different cities. None of the fund manager's senior management are registered in any category under securities legislation.
2. Secondly, groups which are already substantially within the securities regulatory system because they have existing registrations (such as ICPM and/or dealer registrations) and have their senior management individually registered. Further, this group conducts business as a "corporate group", with all entities having substantially common management and sharing common offices, facilities and staff. At a functional, operational level, this group has:
 - (a) a designated compliance officer and written securities compliance policies and procedures,
 - (b) monitors capital and solvency on an ongoing basis and reports to securities regulators,
 - (c) all individuals in key management roles have had their backgrounds reviewed by regulatory authorities in connection with their individual registrations and filings. In many cases, this also involves demonstrating that certain coursework and registrant supervised work experience have been attained, and
 - (d) typically, after a number of years of operating within the regulatory environment, a "compliance ethic and culture".

In the case of the first group, these players are outside of the system.

In the case of the second group, the players are already functionally within the system, often have been in the system for a long time, and typically have a demonstrated record of compliance. We believe there is a reasonably large complement of players within the industry that fit this description.

We believe the main thrust of the fund manager registration provisions of NI 31-103 is to bring the first group players into the regulatory system. That would attain identifiable new benefits, such as:

- bringing the characteristics listed in 2. (a) – (d) above to those organizations, and
- if wrongdoing occurs, the offenders can be taken out of the business by removal of their registration and/or application of other penalties at the disposal of regulatory authorities.

In the case of the second group, those benefits are essentially already in place. They will not be newly obtained, yet significant additional costs may be incurred by way of additional, duplicative registrations.

The degree of added cost burden and duplication will be strongly affected by the number of fund manager entities that may exist within a corporate group. There are a host of reasons associated for having separate fund managers within a corporate group. They include acquisition history, risk management, tax structuring, capital management, and regional focus. As a result, the reality is that many industry players have a number of separate fund managers within their corporate groups.

Cost Concerns for Groups Already within the System

What degree of additional cost burden can we expect from additional fund manager registrations driven by NI 31-103 in its current form ? What degree of duplication and added cost will industry players organized as a corporate group face under NI 31-103 in its current form ?

In our previous comments, we used the term “substantial”. To better quantify (and illustrate the depth of our concern), we have prepared a detailed cost estimate based upon a real world situation. As outlined in the “Background” section of this comment letter, the GrowthWorks Managers operate as a corporate group, with common senior management. The following table estimates the additional costs that would arise for GrowthWorks as a result of implementing the fund manager registration requirements of NI 31-103 as currently written.

Regulatory Requirement	Current Regime Est. Cost ¹	Proposed NI 31-103 Est. Cost ¹	Added Cost Est. Cost ¹
<i>Registration Process / Fees</i>			
Initial Registration Cost	Nil (already completed for existing registrations)	5 new registrations. Costs are approx. \$1,500 - \$2,000 filing fees per entity in each jurisdiction and approx. \$3,500 per entity for preparation costs.	+ \$24,500 – 27,000 (one-time)
Annual Registration (renewal) Cost – filing/prescribed fees	1 entity, GWC Approx. \$15,500 in filing/partic. fees (firm + individuals)	5 new registrations. 5 X \$5,000 av. addt’I fees (firm + individuals)	+ \$25,000 (annual)
Annual Registration & Other Regulatory Filings – professional fees cost (legal)	1 entity, GWC Approx. \$15,000 for various filings in various jurisdictions	5 new registrations. 5 X \$3,000 av. additional prof. fees cost per entity = \$15,000 - assistance with various forms - answering questions - advising compliance officers	+ \$15,000 (annual)
<i>Annual Financial</i>			

Regulatory Requirement	Current Regime Est. Cost ¹	Proposed NI 31-103 Est. Cost ¹	Added Cost Est. Cost ¹
Audited Financial Statements	\$130,000 for <u>one</u> existing registrant with multiple registrations	5 new registrations. 5 new sets of audited financial statements. Estimate approx. \$50,000 per registered entity.	+ \$250,000 (annual)
Minimum Working Capital Reqs	GWC: \$125,000 minimum capital 10% cost of risk capital ² = \$12,500 ann. Cost	GWC: \$175,000 (increase of \$50,000) 5 New Fund Mgrs: \$100,000 per entity. Total: \$675,000 at 10% cost of risk capital ² = \$67,500 ann. cost	+ \$50,000 (annual)
<i>Quarterly Financial Records</i>			
Quarterly Financial Statements (Income Statement, Statement of Cash Flow, Balance Sheet)	1 set for GWC	5 additional sets of statements <u>60%</u> of approx. cost of one additional controller level employee: (\$85,000 salary, + 12% benefits, + 5% office space etc. = \$100,000 total)	+ \$60,000 (annual)
Quarterly Report of Working Capital	1 set for GWC	5 additional reports <u>20%</u> of approx. cost of one additional controller level employee: (\$85,000 salary, + 12% benefits, + 5% office space etc. = \$100,000 total)	+ \$20,000 (annual)
<i>Other Financial Records / Reqs</i>			
Monthly Working Capital Reports	1 report for GWC	5 additional reports <u>20%</u> of approx. cost of one additional controller level employee: (\$85,000 salary, + 12% benefits, + 5% office space etc. = \$100,000 total)	+ \$20,000 (annual)
Insurance & Bonding	Varies with jurisdiction. Currently GWC	GWC: min \$3,400,000 (increase of \$3,100,000) Additional est. cost	\$120,000

Regulatory Requirement	Current Regime Est. Cost ¹	Proposed NI 31-103 Est. Cost ¹	Added Cost Est. Cost ¹
	maintains \$500,000 in coverage	= \$20,000 5 new entities: with addt'l coverage ranging from \$200,000 to \$3,500,000 per entity. Additional est. cost = \$100,000	(annual)
TOTAL Added costs:		\$24,500 – 27,000 one-time + \$560,000 annually \$5 – 6 million over 10 years	

¹ The above costs are estimates of various costs associated with the proposals contained in NI 31-103. The list is not exhaustive. Additional costs may be involved. All figures are approximate.

² A cost of 10%/yr. to access capital by a relatively small, private company was chosen as one that a reasonable investor would require given the illiquidity and risks involved.

As shown, the added costs in this real world example are large indeed. Many are driven by the 5 new registrations NI 31-103 in its current form would require. Because the GrowthWorks Managers corporate group already has ICPM and MFD registrations, a common senior management group that have been registered for many years, and has a demonstrated record of compliance, it is difficult to see new benefits in any way proportionate with these added costs.

We also note that in general the complexity and costs of the securities regulatory regime has escalated substantially over the past number of years. Against this backdrop, we believe that further regulation should be undertaken only if strongly supported by a rigorous cost / benefit analysis. Investors, who will ultimately bear the cost of added regulation, will expect this.

Better Aligning the Costs/Benefits - Exemption for Corporate Group Players Already in the System

As we have tried to establish above, for corporate groups that are already substantially in the system, the cost / benefit of the fund manager provisions of NI 31-103 are duplicative and are disproportionate on a cost / benefit basis.

To maintain the thrust of the instrument to bring players outside of the system into the system, yet recognize the substantive differences which exist for players who are already in the system and are organized as a corporate group with common senior management, we submit that the instrument should provide exemptive relief. The CSA response indicated the CSA agreed that in this situation the additional registrations may not be required. However, the CSA indicated that it did not wish to include an exemption in the proposed NI 31-103 because of a belief that cases may have similar but not identical facts and therefore more appropriately dealt with on a case-by-case basis.

We believe that an exemption should be included in NI 31-103, given the above expanded analysis. The two distinct groups of fund managers we have discussed are different in substance. We believe there are

many groups in a similar situation. We submit it would be appropriate for the instrument to recognize this qualitative difference. While exemptive relief may be sought by registrants and investment fund managers on a case by case basis, these applications can be costly and take considerable time.

For your consideration, we have set out below a draft form of exemption aimed at investment fund manager groups in the second category we have earlier described. We respectfully request that the CSA reconsider including an exemption for that group in NI 31-103.

Investment Fund Managers Operating within Groups

The investment fund manager registration requirement does not apply to an investment fund manager that:

- (a) has an affiliate that is registered both as an adviser and investment fund manager (the “Registrant”);
- (b) has common directors and/or senior officers with the Registrant;
- (c) has a contractual arrangement with the Registrant for the provision of advising and specified investment fund manager services to the investment fund;
- (d) has advised an investment fund for which it acts as investment fund manager that it has engaged the Registrant for the provision of advising and specified investment fund manager services; and
- (e) has confirmed that the Registrant meets the solvency, insurance and bonding requirements set out in NI 31-103 that the investment fund manager would have to meet if it was registered.

Transition Issues

We seek clarification in NI-31-103 or the Companion Policy on transitional provisions for current registrants.

Individuals

Based on our review of section 4.16 of NI 31-103, which provides that if an individual is registered in a category referred to in Division 4 on the date NI 31-103 comes into force, the individual is exempt from that section and current conditions of registration and existing exemptions to proficiency will remain in effect. That is, if an individual has been registered in a category by the grant of a condition of registration or an exemption, those will remain “effective” under NI 31-103.

However, under the response to comments (Item 19 – Existing Exemptive Relief) it indicates that the CSA members will look at exemptive relief on a “case by case” basis. In addition, Part 10 of the CSA Notice, indicates that “During the transition period registrants will need to comply with existing requirements until such time as they are in compliance with the new requirements.”

We respectfully request that the CSA confirm that the current conditions of registration and existing exemptive relief granted to individuals to proficiency requirements will remain in effect under NI 31-103.

Firms

Part 10 of NI 31-103 provides for deemed registration of firms in the new categories and also sets out specific transition periods for compliance with the new requirements of NI 31-103. We note that our client GWC, has existing conditions of registration together with exemptive relief relating to an exemption from membership in the Mutual Fund Dealers Association. Under the response to comments (Item 19 – Existing Exemptive Relief), it indicates that CSA members will look at exemptive relief on a “case by case” basis. We believe that it would be unduly prejudicial and costly for existing registrants to have to obtain new exemptive relief or make new submissions on the validity of existing relief to continue operation of their current business activities. We respectfully request that the CSA confirm that the current conditions of registration and exemptions will remain in effect under NI 31-103.

Incidental Dealing Activities

The Companion Policy describes the factors that are relevant in determining whether a person or company is “trading” or “advising”. In the explanation of how the business trigger factors apply in common situations, the Companion Policy sets out examples of advising activities that are incidental to the primary business of a firm and therefore may not be subject to the registration requirement (see section 1.4.5 of the Companion Policy – “*Incidental Activities*”).

In the day to day operations of an investment fund manager, there are various activities incidental to its business that under current securities laws, have required registration in the dealer category. Our clients have experienced different jurisdictional approaches to whether certain activities qualified as “dealer” activities and therefore dealer registration. Some jurisdictions have required registration for the following activities that can be considered incidental to the business of an investment fund manager:

- (1) *Client trades*: a purchase or redemption of securities by a shareholder of a managed fund made through the investment fund manager where the shareholder was not solicited by the investment fund manager or is an existing client of the investment fund manager.
- (2) *Exempt trades*: a trade in securities of a managed fund that is between a person and an underwriter acting as purchaser or a trade in securities of a managed fund for which the investment fund manager would have available to it an exemption from the advising registration requirement available under securities laws.
- (3) *Fund on Fund trades*: a trade between funds where at least one of the funds is a fund managed by the investment fund manager.
- (4) *In Furtherance trades*: a trade by the investment fund manager that consists of any act, advertisement or solicitation in furtherance of any other trade of a managed fund or a trade where the investment fund manager acts as principal distributor to a managed fund where in each case the purchase or sale is made through a registered dealer.
- (5) *Permitted Client trades*: a trade to a executive, employee, service provider or a related party of the investment fund manager in securities of a managed fund.

- (6) *Seed Capital trades:* a trade in securities of a managed fund to the investment fund manger, portfolio advisor, or promoter of a managed fund or its partners, directors, officer or security holders.

We would suggest that these day to day activities are incidental to the business of an investment fund manager and there is no business purpose in the activity itself and that registration in the dealer category should not be required. We respectfully request that the CSA confirm whether this would also be their view, and consider whether adding further guidance in the Companion Policy would be of value to investment fund managers.

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

Kind regards,

“Tamara L. Howarth”

Tamara L. Howarth

