

IRWIN, WHITE & JENNINGS

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BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
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 Mr. John Stevenson
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

and c/o Ms Anne-Marie Beaudoin
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22^e étage
Montréal, Québec H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed National Instrument 81-107

We are writing on behalf of Growth Works Ltd. (“**GrowthWorks**”), whose subsidiaries are the managers and investment managers to venture capital funds located across Canada, to provide comments on the proposed National Instrument 81-107 *Independent Review Committee for Investment Funds* (“**81-107**”).

We note that Senior Counsel to GrowthWorks met with representatives of the British Columbia Securities Commission on Monday September 19, 2005. During discussions with the Commission, GrowthWorks determined that it was appropriate to provide the regulators with this comment letter.

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While we understand the official comment period expired on August 25, 2005, we hope that our comments, being focused on a particular issue, will be considered.

Nature, Composition and Membership of Independent Review Committee

We understand that 81-107 has been drafted in an effort to improve upon governance practices of investment funds in Canada, and to therefore improve protection of investors in those investment funds. GrowthWorks supports the development of, and have in the past put in place systems to address, independent analysis of decisions that may involve or be perceived to involve a conflict of interest.

As you know, Part 3 of 81-107 sets out detailed provisions with respect to the formation, composition, standard of care and authority of the Independent Review Committee (“IRC”). As currently drafted, Part 3 requires the formation of an IRC which is separate and distinct from the Board of Directors of an investment fund, although there may be members of the IRC which are also members of the Board of Directors, so long as they meet the test of “independent” under section 1.5. We are writing to request that the regulators consider allowing a board of directors of a corporate investment fund to act as the IRC if that Board of Directors meets certain requirements.

Corporate Structure of GrowthWorks Funds

We note that venture capital funds managed by GrowthWorks are somewhat unique in the investment fund arena. All of the labour-sponsored investment funds managed by GrowthWorks are corporate entities. As such, they have separate and distinct boards of directors which are independent to GrowthWorks. In fact, boards of directors of investment funds managed by GrowthWorks have a majority of members that are not officers, directors or employees of GrowthWorks and that are selected by shareholders of the funds. In addition, in most instances, the majority of the members of the boards of directors of investment funds managed by GrowthWorks have no affiliation with GrowthWorks.

As in regular corporate situations, the boards of directors of GrowthWorks investment funds are charged with the responsibility to make decisions for the investment fund. These board members are subject to corporate obligations to exercise their duties in the best interests of the investment fund and its shareholders and to disclose conflicts of interest and abstain from voting in circumstances where they are affected by a conflict.

In fact, the boards of directors of GrowthWorks investment funds make many of the decisions for the investment funds that many other funds allow the Manager to make. For instance, all GrowthWorks managed funds have investment approval requirements that involve the board of directors or a sub-committee of the board of directors (traditionally the Investment Committee) for initial investments above \$500,000. This ensures that not just the Manager considers the merits of these investments.

GrowthWorks Management of Conflict of Interest Matters

In the past, where a GrowthWorks managed investment fund has dealt with a matter than gives rise to a perceived or actual conflict of interest, GrowthWorks has worked hard to ensure the proper care was taken to address that perceived or actual conflict of interest. In order to do this, GrowthWorks has looked to the practice of reporting issuers in establishing “special committees” where necessary, and the corporate practice of “disclose and abstain” as valid methods for revealing and addressing any perceived or actual conflicts of interest.

For instance, GrowthWorks has in the past used the following principles for dealing with a conflict of interest matter where there is a perceived or actual conflict of interest between the Manager and Fund:

- any GrowthWorks employee or anyone affiliate or associated with GrowthWorks on the Board of Directors of the investment fund must disclose their interest and abstain from voting on the conflict of interest matter;
- the Board of Directors, independent from the Manager, either:
 - considers and votes on the conflict of interest matter as a whole (other than those disclosing and abstaining);
 - forms and charges a sub-committee with the task of examining the conflict of interest matter in more detail and requires that sub-committee to report back to the board on the matter, especially where careful financial or other review was required; or
 - forms and charges a sub-committee with the task of examining the conflict of interest matter in more detail and implementing the proposed change; and
- the Board of Directors, or any sub-committee, may also engage outside professional advisors necessary to consider the conflict of interest matter, specifically financial and legal advisors.

Through these methods, GrowthWorks investment funds have addressed perceived or actual conflict of interest matters by using the existing Board of Directors of its investment funds.

Submissions

As discussed in the commentary in 81-107, a director of the investment fund may be independent as defined in 81-107. We submit that a member of the Board of Directors of the investment fund has the best knowledge base, the best experience and is best placed to consider any perceived or actual conflict of interest matter, so long as that director is independent to the Manager. We also submit that the burden of establishing an IRC, in addition to the existing Board of Directors, will result in considerable additional cost, including education of IRC members, set-up and legal review costs. In addition, ongoing costs will include per diem meeting charges and travel costs. We submit that not requiring an additional IRC, and allowing an existing Board of Directors to fulfill the requirements of 81-107, will result in significant cost savings.

We also submit that it is not necessary to have an independent IRC that is separate and distinct from a fund's Board of Directors given both the structural and practical realities of investment funds that are corporate entities. Independent members of an existing Board of Directors of an investment fund are best placed and best suited to act as the IRC for the purposes of 81-107.

We therefore submit that investments funds that are corporate entities should not be required to establish a separate and distinct IRC and should be permitted to use their existing Boards of Directors as the IRC for the purposes of 81-107 if the members of the Board of Directors who are not independent from the Manager disclose their interest and abstain from voting on any conflict of interest matter before the Board of Directors in accordance with corporate law requirements.

We appreciate your time in reviewing these comments. If you have any questions, or would like to discuss these comments further, please do not hesitate to contact me at 604-664-3727.

Kind Regards,

“Tamara Howarth”

Tamara L. Howarth

cc. Alex Irwin, Senior Counsel, GrowthWorks Capital Ltd.
Noreen Bent, British Columbia Securities Commission (by email)
Christopher Birchall, British Columbia Securities Commission (by email)