

# IRWIN, WHITE & JENNINGS

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## **BY E-MAIL**

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Dear Sirs/Mesdames:

### **Re: Framework 81-406 – Point of sale disclosure for mutual funds and segregated funds**

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 Framework 81-406 Point of sale disclosure for mutual funds and segregated funds (“Framework 81-406”). We and our clients appreciate the opportunity to provide input on this important regulatory initiative.

## **BACKGROUND**

Each of GWAVF, GWCF and GWComm is registered as a labour-sponsored venture capital corporation (“LSVCC”) under the *Income Tax Act* (Canada). Each is also registered, prescribed or approved as a labour-sponsored venture capital corporation under LSVCC legislation in one or more Provinces. At present, GWAVF offers its securities in Nova Scotia, New Brunswick, PEI, Newfoundland and Labrador and Alberta, GWCF offers its securities in Ontario, Saskatchewan, Manitoba, Alberta, the Northwest Territories, Yukon and Nunavut and GWComm offers its

securities in Ontario, Saskatchewan and Alberta, in each case 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. The GrowthWorks group of companies is the second largest independent manager of retail venture capital funds (“RVCs”) in Canada with approximately \$800 million in assets under management.

Each of the GrowthWorks Funds offers its securities on a continuous offering basis. Each of GWAVF, GWCF and GWComm 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 2000 BCSCCOM 269, 2001 BCSECCOM 847, 2003 BCSECCOM 234, 2005 BCSECCOM 107, 2006 BCSECCOM 232 and BCSECCOM 501).

#### **COMMENTS ON FRAMEWORK 81-406**

Our comments on Framework 81-406 are set out below. We have separated our comments into sections that correspond to sections in the framework document.

#### **Application of Framework 81-406 to Mutual Funds Subject to National Instrument 41-101**

Framework 81-406 makes several references to a *simplified prospectus*. Please confirm that 81-406 would apply to all investment funds, including those that are required to file a long-form prospectus under National Instrument 41-101. If this is not the case, we believe this is an artificial distinction between certain types of investment funds. The principals underlying Framework 81-406 are: (i) providing investors with key information about a fund; (ii) providing the information in a simple, accessible and comparable format; and (iii) providing the information before investors make their decision to buy. In our view, these principals are equally important for investors in LSVCCs like the GrowthWorks Managed Funds as they are for investors in other mutual funds that use a simplified prospectus. Indeed, we would suggest that the offering structure of the GrowthWorks Managed Funds is as analogous to that of mutual funds currently using a simplified prospectus as the offering structure of segregated funds. In our view, the similarity is evidenced by BCSECCOM 501 which exempts WOF from the requirement under section 3.1(2) of NI 41-101 that a labour sponsored investment fund prospectus must be in the form of Form 41-101F2, and instead allows WOF to offer its securities under a simplified prospectus.

### **Delivery – Changes to current delivery requirements**

Framework 81-406 provides that existing prospectus delivery requirements will be amended to allow dealers to meet their delivery obligation for a simplified prospectus by delivering only the Fund Facts. Dealers would have to deliver the simplified prospectus to investors only on request. Please confirm that the same amendments would be made in respect of funds that file long-form prospectuses under National Instrument 41-101 *General Prospectus Requirements*.

### **Fund Facts - Content**

#### *Multiple Series referable to the same Investment Portfolio*

Framework 81-406 provides that a separate Fund Facts must be prepared in respect of each series of shares offered by a fund. Please confirm that funds will be permitted to file a single Fund Facts for multiple series of shares that differ only by the type or amount of adviser compensation payable, provided the differences in compensation can be clearly and concisely summarized in a single Fund Facts. GWCF offers series of shares that are identical in all respects except for the up-front commission and trailer fees payable to advisers and the early redemption fee or “DSC” payable when shares are redeemed. These series have the same investment objective, share in the same portfolio of assets and, except as noted, have the same fee and cost structure. For purposes of National Instrument 81-106, these series are treated as one and the same investment fund because each series is referable to the same portfolio of assets. As such, it would be appropriate and most efficient if one Fund Facts were prepared in these circumstances.

#### *Who is this fund for?*

The warning statement in the prototype Fund Facts states “Don’t buy this fund if you need a steady source of income from your investment”. Framework 81-406 notes that this statement is not intended for all funds. Is it intended that the most significant risks associated with the investment should be encapsulated within one warning statement? This will be very challenging given that mutual fund investments are generally subject to a range of risk factors. Will guidance be provided as to the length of the warning statement and the types of risks that the CSA expects to be addressed in the warning statement?

### **Investor Rights – Guiding principles**

Framework 81-106 states that investors should have recourse if the Fund Facts contains incomplete or inaccurate information. The disclosure standard for a prospectus is full, true and plain disclosure of all material facts related to an investment. Given the summary nature of the Fund Facts and the desire to limit the length of the Fund Facts to a maximum of two pages, it would seem inevitable that a fund’s Fund Facts will contain incomplete information when viewed in light of the disclosure contained in the fund’s prospectus. Please confirm how would the completeness of the information contained in a fund’s Fund Facts be measured? We would recommend that the Fund Facts contain a stronger statement as to the summary nature of the disclosure and the availability of a prospectus containing more detailed disclosure about the investment.

**Prototype form of Fund Facts – Mutual Fund**

The following statement appears under the heading “Year-by-year returns”: “There were three years when people who owned this fund lost some of the money they had at the start of the year”. Is this prescribed language or will it be left to funds to craft an appropriate statement describing the fund’s historical performance? In the case of XYZ Canadian Equity Fund, whether an investor lost money is entirely dependent on when he or she invested. An investor who invested early in 2001 enjoyed two years of significant growth that more than offset losses in 2003 and 2004. While these investors’ unrealized gains may have declined, over the period in question they did not lose any of the money they invested.

**Conclusion**

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

Kind regards,



John McLeod