

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

**MOTION RECORD OF THE APPLICANT
(Stay Extension Motion, returnable May 2, 2014)**

April 29, 2014

McCarthy Tétrault LLP
Barristers and Solicitors
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Kevin McElcheran LSUC# 22119H
Tel.: (416) 601-7730
Fax: (416) 868-0673

Heather Meredith LSCU# 48354R
Tel.: (416) 601-8342
Fax: (416) 868-0673

Lawyers for Growthworks Canadian Fund
Ltd.

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TAB 1

Court File No. CV-13-10279-00CL

**ONTARIO
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GROWTHWORKS CANADIAN FUND LTD.

**NOTICE OF MOTION
(Stay Extension - Returnable May 2, 2014)**

GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") will make a motion before the Honourable Mr. Justice D. M. Brown of the Ontario Superior Court of Justice (Commercial List) on May 2, 2014 at 9:30 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

THE MOTION IS FOR:

1. An Order, substantially in the form attached to the Motion Record at Tab 3:
 - (a) abridging the time for service of the Notice of Motion such that the motion is properly returnable May 2, 2014 and dispensing with further service thereof; and
 - (b) extending the Stay Period (the "**Stay Period**") as defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013, as amended and restated on October 29, 2013 (the "**Initial Order**"), to May 16, 2014.
2. Granting such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background:

1. The Fund is a labour-sponsored venture capital fund with investments in illiquid securities consisting primarily of minority equity interests in private companies.
2. On October 1, 2013, the Court granted the Initial Order, which was amended and restated on October 29, 2013.
3. The Initial Order included a stay of proceedings as against the Fund. The Stay Period (defined in the Initial Order) has been extended and currently expires on May 9, 2014.
4. The Fund has been in discussions with Roseway Capital S.a.r.l ("**Roseway**") for Roseway to manage the Fund's investment assets going forward. The Fund and Roseway are presently working towards a definitive agreement (the "**Investment Advisor Agreement**") and will return for court approval of that agreement when it is completed in the next week or so.
5. The Fund seeks a further extension of the Stay Period to May 16, 2014 to formalize the Investment Advisor Agreement.
6. The Fund has acted in good faith and with due diligence since the granting of the Initial Order.
7. The CCAA stay is necessary and appropriate. The Fund and its stakeholders will benefit from sufficient time and the protection of the CCAA stay to continue negotiations with Roseway in relation to the Investment Advisor Agreement and to attempt to implement the next stage of its restructuring plan.

8. The Fund has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period.

9. The Fund also relies upon the following:

- (a) Section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. Affidavit of C. Ian Ross, sworn April 29, 2014;
- 2. The 8th Report of the Monitor, to be filed; and
- 3. Such further and other materials as counsel may advise and this Court may permit.

April 29, 2014

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Kevin McElcheran LSUC#: 22119H
Tel: (416) 601-7730
Fax: (416) 868-0673

Heather L. Meredith LSUC#: 48354R
Tel: (416) 601-8342
Fax: (416) 868-0673

Lawyers for the Applicant

TO: SERVICE LIST

<p>OSLER, HOSKIN & HARCOURT LLP Barristers and Solicitors P.O. Box 50, 100 King Street West 1 First Canadian Place Toronto, ON M5X 1B8</p> <p>Marc Wasserman Email: mwasserman@osler.com Tel: (416) 862-4908 Fax: (416) 862-6666</p> <p>Caitlin Fell Email: cfell@osler.com Tel: 416.862.6690 Fax: (416) 862-6666</p>	<p>Counsel for Monitor</p>
<p>FTI Consulting Canada Inc. TD Waterhouse Tower 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, Ontario Canada M5K 1G8</p> <p>Paul Bishop Email: paul.bishop@fticonsulting.com Tel: 416 649 8100 Fax: 416 649 8101</p> <p>Jodi Porepa Email: jodi.porepa@fticonsulting.com Tel: 416.649.8070 Fax: 416.649.8101</p>	<p>Monitor</p>

<p>NORTON ROSE FULBRIGHT CANADA LLP Suite 3800 Royal Bank Plaza, South Tower 200 Bay Street P.O. Box 84 Toronto, Ontario M5J 2Z4</p> <p>Tony Reyes Email: tony.reyes@nortonrosefulbright.com Tel: 416.216.4825 Fax: 416.216.3930</p> <p>Alexander Schmitt Email: Alexander.Schmitt@nortonrosefulbright.com Tel: 416.216.2419 Fax: 416.216.3930</p>	<p>Counsel for Roseway Capital S.a.r.l</p>
<p>FASKEN MARTINEAU DuMOULIN LLP 333 Bay Street, Suite 2400 Bay Adelaide Centre, Box 20 Toronto, ON M5H 2T6</p> <p>Aubrey E. Kauffman Email: akauffman@fasken.com Tel.: (416) 868 3538 Fax: (416) 364-7813</p> <p>Brad Moore Email: bmoore@fasken.com Tel.: (416) 865-4550 Fax: (416) 364-7813</p>	<p>Lawyers for Matrix Asset Management Inc., GrowthWorks Capital Ltd. and GrowthWorks WV Management Ltd.</p>
<p>DELOITTE RESTRUCTURING INC. 2300 – 360 Main Street Winnipeg, MB R3C 3Z3</p> <p>John R. Fritz Email: jofritz@deloitte.ca Tel: (204)942-0051 Fax: (204)947-2689</p>	<p>Deloitte Restructuring Inc. In its capacity as Monitor of The Puratone Corporation, Niverville Swine Breeders Ltd., and Pembina Valley Pigs Ltd.</p>

<p>LENCZNER SLAGHT 130 Adelaide St W Suite 2600 Toronto, ON M5H 3P5</p> <p>Ronald G. Slaght Email: rslaght@litigate.com Tel: 416-865-2929</p> <p>Eli Lederman Email: elederman@litigate.com Tel: 416-865-3555</p> <p>Ian MacLeod Email: imacleod@litigate.com Tel: 416-865-2895</p> <p>Fax: 416-865-9010</p>	<p>Counsel for Allen-Vanguard Corporation (Court File No. 08-CV-43544)</p>
<p>CAVANAGH LLP 1111 Prince of Wales Drive, Suite 401 Ottawa ON K2C 3T2 Fax: 613-569-8668</p> <p>Thomas G. Conway Email: tconway@cavanagh.ca Tel: 613-780-2011</p> <p>Christopher J. Hutchison Email: chutchison@cavanagh.ca Tel: 613-780-2013</p> <p>Calina N. Ritchie Email: critchie@cavanagh.ca Tel: 613-780-2014</p> <p>BENNETT JONES LLP 3400 One First Canadian Place, P.O. Box 130 Toronto, ON M5X 1A4</p> <p>Jeffrey S. Leon Email: leonj@bennettjones.com</p> <p>Derek J. Bell Email: belld@bennettjones.com</p> <p>Tel.: (416) 863-1200 Fax: (416) 863-1716</p>	<p>Counsel for RICHARD L'ABBÉ, 1062455 ONTARIO INC., AND SCHRODER VENTURE MANAGERS (CANADA) LIMITED, et al, the Defendants including Growthworks in the Allen-Vanguard action (File Court No. 08-CV-43544)</p>

<p>ONTARIO SECURITIES COMMISSION Mostafa Asadi Legal Counsel, Investment Funds Branch Ontario Securities Commission 20 Queen Street West, 19th Floor Toronto, Ontario M5H 3S8 Email: masadi@osc.gov.on.ca Tel: (416) 593-8171</p>	<p>Counsel for Ontario Securities Commission</p>
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE MAY 2, 2014)**

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Kevin McElcheran LSUC#: 22119H
Tel: (416) 601-7730
Fax: (416) 868-0673

Heather L. Meredith LSUC#: 48354R
Tel: (416) 601-8342
Fax: (416) 868-0673

Lawyers for the Applicant

133186630

TAB 2

Court File No. CV-13-10279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

**AFFIDAVIT OF C. IAN ROSS,
SWORN April 29, 2014
(Stay Extension Motion)**

I, C. Ian Ross, of the Town of The Blue Mountains, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the "**Fund**"), the applicant in these proceedings. I am a director of the Fund and interim chief executive officer of the Fund, in which role I am responsible for the daily operations of the Fund, acting under the oversight of a special committee of the Fund's Board of Directors. As such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true.

2. I have sworn a series of affidavits in these *Companies Creditors' Arrangement Act* ("**CCAA**") proceedings, including an affidavit on September 30, 2013 in support of the initial application of the Fund pursuant to the CCAA, which I shall refer to herein as my "**Initial Affidavit**". Capitalized terms contained but not defined herein, have the meanings provided in my Initial Affidavit.

3. I swear this affidavit in support of a motion for an order extending the Stay Period as defined in paragraph 14 of the Initial Order (defined below) (the “**Stay Period**”) to May 16, 2014 and for no other or improper purpose.

BACKGROUND AND CCAA PROCEEDINGS

4. The Fund is a labour-sponsored venture capital fund with a diversified portfolio of investments in small and medium-sized Canadian businesses (as defined in my Initial Affidavit, the “**Portfolio Companies**”).

5. The Fund’s investments in the Portfolio Companies are held in illiquid securities consisting primarily of minority equity interests in private companies. The Fund’s ability to divest of its relatively illiquid investments at a profit is largely dependent on favourable market conditions to provide opportunities for the Fund to exit profitably, typically at the stage of an initial public offering or merger or acquisition involving a Portfolio Company. Such opportunities have been limited as a result of the 2008 financial crisis and other market constraints.

6. A forced sale of the Fund’s investment assets, prior to an appropriate exit opportunity arising, generally results in depressed values and portfolio losses.

7. In the face of the above and other challenges described in my Initial Affidavit, including a \$20 million secured payment obligation coming due to Roseway Capital S.a.r.l. (“**Roseway**”), the Fund sought and received Court protection pursuant to the CCAA in the form of an initial order of the Honourable Justice Newbould dated October 1, 2013, which was amended and restated on October 29, 2013 by the Honourable Justice Mesbur (as amended and restated, the “**Initial Order**”).

8. At the most recent extension hearing in these CCAA proceedings, on April 8, 2014, the Stay Period was extended to and including May 9, 2014 by order of the Honourable Justice D. M. Brown to permit the Fund to continue discussions with Roseway concerning ongoing management of the assets of the Fund.

STATUS OF INVESTMENT ADVISOR AGREEMENT WITH ROSEWAY

9. As stated in my March 31st affidavit in these proceedings, after receipt of the proposals at the Phase 2 bid deadline of the Sale and Investor Solicitation Process conducted by the Fund, the Fund, its advisors and the Monitor met with Roseway and its advisors to consider an alternative restructuring plan to maximize the value of the Fund's assets for the benefit of all of its stakeholders in cooperation with Roseway as the Fund's secured creditor.

10. To this end, the Fund and Roseway have been engaged in discussions regarding the basis upon which Roseway could manage the Fund's investment assets going forward.

11. Those discussions led to a term sheet between the Fund and Roseway (the "**Term Sheet**"). The key elements of the Term Sheet were stated in my March 31st affidavit and continue to be as follows:

- (a) Roseway would act as the portfolio manager of the Fund, managing the investment assets of the Fund (consisting of securities of the Portfolio Companies) (the "**Portfolio**") for a 4 year term;
- (b) in its capacity as the Fund's portfolio manager, Roseway would perform the following services, among other things:

- (i) make all portfolio investment decisions concerning the Portfolio, on a fully discretionary basis;
 - (ii) make all appropriate arrangements to implement the sale of the Fund's portfolio assets in the ordinary course and otherwise in accordance with its existing proceedings under the CCAA;
 - (iii) issue appropriate instructions to facilitate delivery and settlement of Portfolio transactions;
 - (iv) maintain necessary records relating to the Portfolio transactions and prepare quarterly written reports to the Fund;
- (c) Roseway would be entitled to an annual base fee and, for the period after all of the Fund's obligations to Roseway have been paid in full, an incentive fee equal to a percentage of the aggregate proceeds of disposition of the remaining Portfolio assets; and
- (d) The proposed agreement between the Fund and Roseway would be subject to Court approval.

12. The Fund and Roseway have continued to work toward a definitive management agreement (the "**Investment Advisor Agreement**", which was previously referred to as the Roseway Management Agreement in my March 31st affidavit). Drafts have been exchanged and I believe that only a few issues remain to be resolved before a definitive agreement acceptable to the Fund and to Roseway can be concluded and recommended for approval.

13. I am hopeful that the Investment Advisor Agreement will be settled within the next few days and it had been our plan to seek court approval at our next extension

hearing prior to the May 9th expiry of the current stay of proceedings. However, when our counsel attempted to secure court time, I am advised that, because of a judicial conference, no court time with Justice D. M. Brown, who is seized of this matter, was available during the week of May 5.

14. On learning that no court time was available, I instructed counsel to arrange a 9:30 appointment to obtain a very short stay extension to May 16, 2014. This would permit the Fund to (i) finalize the Investment Advisor Agreement; (ii) prepare court material for the approval of such agreement and for a 6 month stay extension to permit Roseway to assume its role as the Fund's investment advisor and, in that capacity, seek to effect dispositions of the Fund's portfolio assets, implement the next stage of the restructuring; and (iii) give all parties appropriate notice of the motion for approval and stay extension.

STAY EXTENSION

15. The Initial Order included a stay of proceedings as against the Fund until and including October 31, 2013, or such later date as the Court may order.

16. The Stay Period has been extended on several occasions and presently expires on May 9, 2014.

17. The Fund seeks a further extension of the Stay Period to May 16, 2014 to (i) conclude its current discussions with Roseway; (ii) settle the final terms of the Investment Advisor Agreement; and (iii) seek a longer term extension to implement the next phase of its restructuring plan.

18. The Applicant has acted in good faith and with due diligence since the granting of the Initial Order, including, among other things, updating and working with Roseway toward completing the Investment Advisor Agreement.

19. For the reasons stated above, the requested extension of the Stay Period is necessary and appropriate in the circumstances.

20. I believe that the Fund and its stakeholders would benefit from having sufficient time and the protection of a CCAA stay to enable these steps to be taken.

21. The cash flow projection that I understand will be attached to the Monitor's Eighth Report shows that the Applicant has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period.


RELIEF REQUESTED

22. Accordingly, this affidavit is sworn in support of a motion by the Fund for an order pursuant to the CCAA, among other things:

- (a) abridging the time for service of the Notice of Motion and dispensing with further service thereof;
- (b) extending the Stay Period to May 16, 2014; and
- (c) granting such further and other relief as Counsel may request and this Honourable Court may deem just.

SWORN BEFORE ME at the)
 City of Toronto, in the Province)
 of Ontario, this 29th day of April,)
 2014.)
 _____)
 Commissioner for taking)
 affidavits)

K. McEhleran



 C. IAN ROSS

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL
LIST

Proceeding commenced at Toronto

AFFIDAVIT OF C. IAN ROSS
(Re: Stay Extension)
(sworn April 29, 2014)

MCCARTHY TÉTRAULT LLP
Barristers and Solicitors
Suite 5300, Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6

Kevin McElcheran
Tel: (416) 601-7730
Fax: (416) 868-0673
Law Society No. 22119H

Heather L. Meredith
Tel: (416) 601-8342
Fax: (416) 868-0673
Law Society No. 48354R

Lawyers for the Applicant
132234354

TAB 3

Court File No.: CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) FRIDAY, THE 2ND

)

JUSTICE D.M. BROWN) DAY OF MAY, 2014

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

STAY EXTENSION ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the “**Applicant**”) for an order extending the stay period defined in paragraph 14 of the initial order of the Honourable Justice Newbould made October 1, 2013 in these proceedings, as amended and restated on October 29, 2013 (the “**Stay Period**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, including the Notice of Motion and the affidavit of C. Ian Ross sworn on April 29, 2014 (the “**Motion Record**”), the Eighth Report (the “**Eight Report**”) of FTI Consulting Canada Inc., in its capacity as monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, the Monitor, [Allen-Vanguard Corporation, the Offeree Shareholders (as defined in the Seventh Report) and Roseway Capital S.a.r.l.], no one appearing for any other party although duly served as appears from the affidavit of service.

SERVICE

1. THIS COURT ORDERS that the time for service of the Motion Record and the Eighth Report is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including May 16, 2014.
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE
OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.

Court File No. CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

STAY EXTENSION ORDER

MCCARTHY TÉTRAULT LLP
Barristers and Solicitors
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Kevin McElcheran LSUC# 22119H
Tel.: (416) 601-7730
Fax: (416) 868-0673

Heather Meredith LSUC# 48354R
Tel.: (416) 601-8242
Fax: (416) 868-0673

Lawyers for GrowthWorks Canadian
Fund Ltd.

#13396349

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McCarthy Tétrault LLP
Barristers and Solicitors
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Kevin McElcheran LSUC# 22119H
Tel.: (416) 601-7730
Fax: (416) 868-0673

Heather Meredith LSUC# 48354R
Tel.: (416) 601-8242
Fax: (416) 868-0673

Lawyers for Growthworks Canadian Fund
Ltd.

#13397793