

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

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

B E T W E E N :

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

**AND IN THE MATTER OF A PLAN
OF COMPROMISE OR ARRANGEMENT OF
GROWTHWORKS CANADIAN FUND LTD.**

**TWENTY-EIGHTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

November 27, 2021

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1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order was granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. The Initial Order, among other things, granted a stay of proceedings against the Fund, which was most recently extended until March 31, 2022. The Initial Order also appointed FTI Consulting Canada Inc., as monitor of the Fund (the “**Monitor**”).

3. The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

BACKGROUND

4. The Fund is a labour sponsored venture capital fund that held a diversified portfolio (the “**Portfolio**”) consisting primarily of investments made in small and medium-sized Canadian businesses (each a “**Portfolio Company**”).

5. At the commencement of these CCAA Proceedings, the Portfolio consisted of investments in 71 companies. These investments comprised minority equity and debt holdings in early to mid-stage private software, technology and biotech companies.

6. As the Portfolio principally consisted of investments in private companies, these investments were not immediately saleable. Generally, forced divestments prior to viable exit opportunities result in significantly reduced sale proceeds, assuming a divestment is possible at all. Accordingly, additional time was required by the Fund to identify and transact appropriate exit opportunities. For the past eight years the Fund, with the Monitor’s oversight, has conducted an orderly divestiture of the Portfolio. The divestitures have been dependent on, among other things: (i) favourable M&A and IPO market conditions; or (ii) the Portfolio Companies achieving value enhancing milestones, such as a regulatory approval of innovative devices.

7. In addition to divesting the Portfolio's investments during appropriate market conditions, during the pendency of these CCAA Proceedings the Fund has:

- (a) paid off its sole senior secured creditor, Roseway Capital L.P. ("**Roseway**"). An excess of \$27 million was owed to Roseway at the outset of the CCAA Proceedings;
- (b) terminated its management agreement (the "**Management Agreement**") with GrowthWorks WV Management Ltd (the "**Former Manager**") as a result of certain defaults by the Former Manager. The Former Manager had managed the Fund's day-to-day operations, including the Portfolio;
- (c) completed a trial of the Former Manager's \$18 million claim against the Fund relating to the termination of the Management Agreement as well as the Fund's corresponding counter-claim, resulting in a costs award payable to the Fund by the Former Manager;
- (d) engaged Crimson Capital Inc. as investment advisor to manage the Portfolio, including its orderly divestiture;
- (e) settled a \$650 million claim by Allen Vanguard and a related unquantified claim filed by certain offeree shareholders, for a sum that was less than the amount held in escrow against such claims;
- (f) engaged a financial advisor, CCC Investment Banking ("**CCC**"), to conduct a sale process, which began in 2013 (the "**Sale Process**"). The Sale Process did not result in any satisfactory bids. CCC was thereafter retained by the board of

directors of the Fund in 2018 and 2019 in order to conduct market checks as to the value of the entire Portfolio (the “**Market Checks**”). The Market Checks were implemented in order to consider whether there were alternatives to continuing the orderly liquidation of the Portfolio that remained. No acceptable proposals were put forward as a result of the Market Checks;

- (g) obtained an Order of the Court requiring that Newbury Equity Partners II L.P. (“**Newbury**”) pay to the Fund approximately \$1 million on account of Newbury’s obligations to the Fund under a Share Purchase Agreement; and
- (h) resolved a dispute with one of its Portfolio Companies, BluePrint Software Systems Inc. (“**Blueprint**”), concerning the entitlement of the Fund to maintain its non-diluted percentage of ownership in Blueprint.

PURPOSE OF THIS REPORT

8. The purpose of this Twenty-Eighth Report of the Monitor is to provide an update to the Court and provide the Monitor’s comments on, *inter alia*:

- (a) the status of the Portfolio;
- (b) the Fund’s request for an Order (the “**Post-Filing Claims Procedure Order**”, a copy of which is attached at Tab 3 of the Motion Record of the Fund) establishing a claims procedure for the identification and quantification of certain post-filing claims against the Fund, or its directors and that have arisen after the CCAA filing on October 1, 2013 (the “**Filing Date**”); and
- (c) next steps for the Fund in these CCAA Proceedings.

TERMS OF REFERENCE

9. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor, where appropriate the Fund's books and records and discussions with various parties and the Fund's investment and other advisors.

10. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

12. Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the affidavit of Ian Ross, sworn November 17, 2021 and filed (the "**Fund Affidavit**").

13. This report should be read in conjunction with the Fund Affidavit as certain information contained in the Fund Affidavit has not been included herein in order to avoid unnecessary duplication.

STATUS OF THE PORTFOLIO

The Portfolio

14. At the commencement of the CCAA Proceedings, the Portfolio consisted of investments in 71 early to mid-stage private software, technology and biotech companies. To date the Fund has divested its interest in all but 13 remaining Portfolio Companies, 5 of which have been identified as having nominal value.

15. By avoiding a fire sale of the Portfolio, the Fund generated considerable returns and maximized stakeholder recoveries. Since the commencement of these CCAA Proceedings, the Fund has recovered approximately \$57 million dollars from well-timed divestitures.

16. Notwithstanding the benefit of methodically divesting the Portfolio under favourable market conditions, the Fund and the Monitor have been and remain cognizant of the need to efficiently realize on the Fund's investments in a timely manner in order to satisfy the Fund's obligations and facilitate a distribution to stakeholders. The Fund throughout these CCAA Proceedings, with the assistance of CCC as its financial advisor, and in consultation with the Monitor, has evaluated potential alternatives to continuing an orderly disposition of the remaining Portfolio. These alternatives included conducting two limited Market Checks to gauge interest in a sale of the Portfolio as a whole. However, no acceptable offers were received.

17. The Monitor has communicated with certain equity holders who have expressed frustration as to the length of these CCAA Proceedings relative to the expenses incurred as well as the timing of a distribution. In response, the Monitor has reiterated that the main obstacle to realizing on the Portfolio has been the nature of its investments, which are primarily illiquid shares in privately held companies. Further, the Fund's investment advisor is currently working on several transactions which the Fund believes will, if successful, result in material recovery to equity holders.

18. As set out in the Confidential Appendix to the Fund Affidavit, the Fund estimates that a continued and orderly disposition of its remaining investments in the next 12 months may generate additional total gross proceeds of up to \$28.7 million, significantly increasing the funds available for distribution to shareholders. At this time, there is currently approximately

\$5 million available for distribution (subject to any claims which may be identified in the Post-Filing Claims Process set out below).

CLAIMS PROCESS

19. On January 9, 2014, the Court issued a claims procedure order (the “**Claims Procedure Order**”) establishing a claims procedure to identify, determine and resolve pre-filing claims of creditors of the Fund and its directors and officers (the “**Pre-Filing Claims Process**”).

20. All of the material claims that were filed in the Pre-Filing Claims Process have been resolved as a result of the efforts undertaken by the Fund and the Monitor over the course of these CCAA Proceedings. In particular, the Fund spent much of these proceedings in protracted litigation with the Former Manager, which concluded in August 2019.

21. The pre-filing claims remaining to be reviewed and adjudicated consist of equity claims and claims filed by individuals. However, prior to making distributions to equity holders, all unsecured claims must be resolved, including any Post-Filing Claims (as defined in the Post-Filing Claims Procedure Order). Accordingly, the Fund seeks approval of the Post-Filing Claims Procedure Order establishing a claims process to solicit Post-Filing Claims, if any, against the Fund and its directors and officers (the “**Post-Filing Claims Process**”).

22. The proposed Post-Filing Claims Procedure Order provides for the following:

- (a) the solicitation of all Post-Filing Claims, which includes: (i) claims against the Fund that arose after the Filing Date; (ii) claims against the directors and officers of the Fund that arose after the Filing Date, including any liability that the director and officers are liable for in their capacity as directors and officers of

the Fund or in their capacity as a director or officer of a Portfolio Company (“**Post-Filing D&O Claim**”); and (iii) indemnity claims of the directors and officers as against the Fund as a result of the filing of a Post-Filing D&O Claim (“**Post-Filing D&O Indemnity Claim**”);

- (b) providing notice of the Post-Filing Claims Process by: (i) publishing a notice for at least one business day in The Globe and Mail (National Edition); (ii) serving the Post-Filing Claims Package on the CCAA service list; and (iii) sending the Post-Filing Claims Package to known potential Post-Filing Claimants based on the books and records of the Fund (as defined in the Post-Filing Claims Procedure Order);
- (c) proofs of Post-Filing Fund Claims and Post-Filing D&O Claims must be submitted by the Post-Filing Claims Bar Date, being no later than 5:00 p.m. (Eastern Time) on January 21, 2022 (as defined in the Post-Filing Claims Procedure Order);
- (d) directors and officers with Post-Filing D&O Indemnity Claims must submit their proof of Post-Filing D&O Indemnity Claim by the Post-Filing D&O Indemnity Claims Bar Date, being no later than 5:00 p.m. (Eastern Time) on the day which is fifteen (15) business days following the date of receipt of the Post-Filing D&O Claim against the director and officer giving rise to such indemnity claim;
- (e) any person that does not file an applicable proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim in accordance with the Post-Filing Claims Procedure Order is forever barred from making or enforcing such Post-Filing

Claim against the Fund or its directors and officers;

- (f) the Monitor will review all proofs of Post-Filing Claims and resolve or settle any Post-Filing Claim or revise or disallow the amount of any Post-Filing Claim in accordance with the Post-Filing Claims Procedure Order; and
- (g) in the event that a dispute in respect to a Post-Filing Claim is not settled within a time period or in a manner satisfactory to the Monitor in consultation with the Fund and the applicable Post-Filing Claimant, the Monitor, in consultation with the Fund, shall either: (i) send the dispute to a claims officer; or (ii) on notice to the disputing Post-Filing Claimant, schedule an appointment with the Court for the purpose of scheduling a motion to seek determination by the Court of the disputed Post-Filing Claim.

23. The Monitor is of the view that the terms of the Post-Filing Claims Procedure Order, including the timelines set out therein for submission of proofs of Post-Filing Claims and proofs of Post-Filing D&O Indemnity Claims, are fair and reasonable. The solicitation and determination of Post-Filing Claims against the Fund and its directors and officers is required in order for the Fund to be in a position to make distributions to equity holders.

NEXT STEPS IN THE CCAA PROCEEDINGS

24. As set out above, the Fund, with the assistance of the Monitor, will continue to pursue an orderly liquidation of the remainder of the Portfolio. The Fund and the Monitor will complete the review and adjudication of the few nominal individual claims filed in the Pre-Filing Claims Process and will implement the Post-Filing Claims Process.

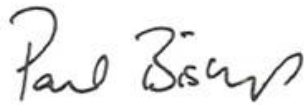
25. Thereafter, the Fund expects to work with the Monitor to develop and implement a process to distribute proceeds from the disposition of the Portfolio to any unpaid creditors, and, thereafter, to equity holders.”

The Monitor respectfully submits to the Court this Twenty-Eighth Report.

Dated this 27th day of November 2021.

FTI Consulting Canada Inc.

In its capacity as Monitor of GrowthWorks Canadian Fund Ltd. and not in its personal or corporate capacity

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive, flowing style.

Paul Bishop
Senior Managing Director

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