

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Viewpoint Investment Partners Corporation, 2017 ABASC 93 Date: 20170529

Viewpoint Investment Partners Corporation (the **Filer**),
and
Viewpoint Global Fund Trust (the **Top Fund**)
and
Viewpoint Global Fund L.P. (the **Underlying Fund**)

Background

1. The Alberta Securities Commission (the **Commission**) has received an application from the Filer for an order under section 213 of the *Securities Act* (Alberta) (the **Act**). This application is for a decision from the Commission:
 - (a) exempting the Top Fund from the restriction in section 185(2)(b) of the Act that prohibits a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more “related mutual funds”, is a “substantial security holder” (each term having the meaning ascribed in section 185(3) of the Act); and
 - (b) exempting the Top Fund, its management company and its distribution company from the restriction in section 185(3) of the Act that prohibits any of them from holding an investment described in paragraph (a) above,(together, the **Requested Relief**).

Interpretation

2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this decision unless otherwise defined.

Representations

3. This decision is based on the following facts represented to the Commission by the Filer:

Filer

- (a) The Filer is a corporation incorporated under the laws of Alberta with its head office in Calgary, Alberta.
- (b) The Filer is registered as an investment fund manager, portfolio manager and exempt market dealer in Alberta and Ontario and an investment fund manager and exempt market dealer in British Columbia.

- (c) The Filer is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation in any jurisdiction of Canada.
- (d) The Filer is the general partner and investment fund manager of the Underlying Fund. The Filer assists in the marketing of securities of the Underlying Fund, and acts as a distributor of securities of the Underlying Fund not otherwise sold through another registered dealer.
- (e) The Filer, pursuant to an investment management agreement between it and the Top Fund, acts as the investment fund manager of the Top Fund. The Filer assists in the marketing of securities of the Top Fund, and acts as a distributor of securities of the Top Fund not otherwise sold through another registered dealer.

Top Fund

- (f) The Top Fund is a private investment trust established under the laws of Alberta.
- (g) The Top Fund is a mutual fund under the Act and may in the future be classified as a mutual fund trust under the *Income Tax Act* (Canada).
- (h) Subject to obtaining the Requested Relief, units of the Top Fund are anticipated to be distributed pursuant to exemptions from the prospectus requirement under National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).
- (i) The Top Fund was formed for the purpose of providing unitholders with capital appreciation over the long term, which is to be achieved solely by investing the Top Fund's assets in limited partnership units (**LP Units**) of the Underlying Fund.
- (j) The Top Fund is not anticipated at any future time to be the sole or majority holder of the LP Units. However, the Top Fund is or may from time to time be a "substantial security holder" (as defined in section 184(1)(c) of the Act) of the Underlying Fund.
- (k) The Top Fund is not a reporting issuer in any jurisdiction and is not in default of securities legislation of any jurisdiction of Canada.

Underlying Fund

- (l) The Underlying Fund is a limited partnership established under the laws of Alberta. The general partner of the Underlying Fund is the Filer. Securities of the Underlying Fund are expected to be distributed pursuant to exemptions from the prospectus requirement under NI 45-106 to investors in Canada (including the Top Fund) and certain foreign jurisdictions.
- (m) The investment objective of the Underlying Fund is to provide unitholders with capital appreciation over the long term.

- (n) The portfolio of the Underlying Fund will consist primarily of publicly traded and liquid securities. While the Underlying Fund is not, and will not be, restricted from purchasing and holding illiquid assets, the Filer manages or will manage the portfolio of the Underlying Fund to ensure there is sufficient liquidity to provide for redemptions of securities by its limited partners.
- (o) The Underlying Fund is not a reporting issuer in any jurisdiction and is not in default of securities legislation in any jurisdiction of Canada.

Fund-on-Fund Structure

- (p) The Top Fund's investment objective is to allow investors in the Top Fund to obtain exposure to the investment portfolio of the Underlying Fund and its investment strategy through direct investments by the Top Fund in LP Units of the Underlying Fund (the **Fund-on-Fund Structure**). Due to the nature of the Fund-on-Fund Structure, the net asset value of the Top Fund is directly tied to the net asset value of the Underlying Fund.
- (q) The primary purpose of the Fund-on-Fund Structure is to permit the Filer to manage a single portfolio of assets in a single investment vehicle, the Underlying Fund, on a more efficient basis while accepting investments from varying types of Canadian investors and from investors in foreign jurisdictions, through one or more investment vehicles that are designed to address the specific tax, securities and other legislation of each jurisdiction or type of investor. Unlike the Underlying Fund, which is a limited partnership, the Top Fund was formed as a trust for the purpose of accessing a different base of investors, including for example registered retirement savings plans, and other investors that may not want to invest directly in a limited partnership.
- (r) In implementing the Fund-on-Fund Structure, the Filer will ensure that:
 - (i) the arrangements between, or in respect of, the Top Fund and the Underlying Fund avoid duplication of management fees or incentive fees;
 - (ii) investors in the Top Fund receive a subscription agreement, including the trust indenture for the Top Fund, together with clear and prominent disclosure that:
 - A. the Top Fund will invest solely in LP Units of the Underlying Fund,
 - B. the Filer is the investment fund manager of the Top Fund and the, general partner and investment fund manager of the Underlying Fund, and

- C. investors will receive monthly net asset value (NAV) information and calculations of individual returns.

(collectively the **Prescribed Disclosure**);

- (iii) no material sales or redemption fees are payable by the Top Fund in relation to the purchase or redemption of LP Units of the Underlying Fund; and
- (iv) the Top Fund does not, and will not, vote the LP Units of the Underlying Fund held by the Top Fund at any meeting of holders of such securities except that the Top Fund may, if the Filer so chooses, arrange for all of the LP Units of the Underlying Fund the Top Fund holds to be voted by the beneficial holders of LP Units of the Top Fund to the extent that the matter being voted on would have required approval of such beneficial holders had it occurred at the Top Fund level.

Requested Relief

- (s) Section 185(2)(b) of the Act prohibits a mutual fund from knowingly making an "investment" in a person or company in which the mutual fund, alone or together with one or more related mutual funds is a substantial security holder. Section 185(3) of the Act prohibits a mutual fund, its management company and distribution company from knowingly holding certain investments, including an "investment" referred to in section 185(2)(b) of the Act.
- (t) The amounts invested from time to time in the Underlying Fund by the Top Fund, may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, the Top Fund is or could become a substantial security holder of an Underlying Fund.
- (u) In the absence of the Requested Relief, the Top Fund would be precluded from purchasing and holding securities of the Underlying Fund due to the investment restrictions contained in section 185 of the Act.

Decision

4. The Commission, considering that it would not be prejudicial to the public interest, orders that the Requested Relief is granted, provided that:
- (a) securities of the Top Fund are distributed in compliance with applicable securities legislation and pursuant to exemptions in NI 45-106 from the prospectus requirement;
- (b) prior to investing, each investor in the Top Fund will receive together with a subscription agreement and trust indenture for the Top Fund, the Prescribed Disclosure;

- (c) at no time will the Underlying Fund hold more than 10% of its net assets in securities of another investment fund, excluding securities of a “money market fund” or that are “index participation units” issued by an investment fund, each such term as defined in National Instrument 81-102 *Investment Funds*;
- (d) the Top Fund invests solely in securities of the Underlying Fund and each investment by the Top Fund in the Underlying Fund is compatible with the investment objective of the Top Fund;
- (e) no management fees or incentive fees are payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund for the same service;
- (f) no sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of securities of the Underlying Fund;
- (g) the Top Fund has not and will not vote the securities of the Underlying Fund held by the Top Fund at any meeting of holders of such securities except that the Top Fund may, if the Filer as its adviser so chooses, arrange for all of the securities of an Underlying Fund it holds to be voted by the beneficial holders of securities of the Top Fund; and
- (h) an investment in the Underlying Fund by the Top Fund will be effected at an objective price.

“original signed by”

Tom Graham, CA
Director, Corporate Finance
Alberta Securities Commission