

# 2004 BCSECCOM 78

## Settlement Agreement

**ALTURA Growth Fund (EVCC) Inc.  
ALTURA Management Inc.**

*Securities Act, RSBC 1996, c. 418*

- ¶ 1 The following settlement of issues has been reached between ALTURA Growth Fund Inc. (ALTURA Fund), ALTURA Management Inc., (ALTURA Management) and the Executive Director.

### **Agreed Statement of Facts**

- ¶ 2 As the basis for the undertakings referred to in this settlement, ALTURA Fund and ALTURA Management acknowledge the following facts as correct:
1. ALTURA Fund was incorporated under the laws of British Columbia on July 16, 2002.
  2. ALTURA Fund's head office is located in Vancouver and it is a reporting issuer in British Columbia.
  3. ALTURA Fund was registered by the Ministry of Competition, Science and Enterprise on November 18, 2002, as an Employee Venture Capital Corporation (EVCC) under the *Employee Investment Act*, R.S.B.C. 1996, c. 112 (EIA).
  4. ALTURA Fund was formed to create and manage a portfolio of investments in small and medium sized British Columbia businesses that meet EIA criteria.
  5. ALTURA Management is a company incorporated under the laws of Canada that manages the business and affairs of ALTURA Fund pursuant to a contract dated October 31, 2002 (the Management Contract).
  6. ALTURA Fund issued a prospectus (the Prospectus) dated December 6, 2002. The Prospectus offered units of ALTURA Fund for sale (the Units). Proceeds were to be a minimum of \$10,000,000 and a maximum of \$25,000,000 (the Offering). The Offering was set to close on March 31, 2003.

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7. The Units are not mutual funds as defined in the Act and therefore were not eligible to be sold by registered mutual fund dealers in British Columbia. ALTURA Fund applied to the Commission for an order to allow the Units to be sold through mutual fund dealers. On December 6, 2002, the Commission granted ALTURA Fund an Exemption Order (the Order) from the dealer registration requirement of section 34(1)(a) of the Act allowing the Units to be sold through mutual fund dealers.
8. The Order was granted by the Commission based partly on ALTURA Fund's representations that it would raise a minimum of \$10,000,000 from the Offering.
9. In mid-February of 2003, ALTURA Fund contacted staff of the Commission and indicated that it might not be able to sell enough Units in order to reach the minimum amount of the Offering. ALTURA Fund was told that under those circumstances an amendment to the Prospectus and a variation of the Order reflecting the elimination of the minimum would be required in order to close the Offering and close sales made through mutual fund dealers.
10. On February 21 2003, ALTURA Fund formally applied to the Commission to vary the Order to eliminate the \$10,000,000 minimum.
11. On February 27, 2003, ALTURA Fund's variation application was discussed before the Commission. The Commission declined ALTURA's application to vary the Order.
12. On February 27, 2003, ALTURA received a receipt for the Prospectus amendment that, among other things, eliminated the \$10,000,000 minimum and included a statement that ALTURA Fund did not expect to achieve sales of \$10,000,000.
13. On February 28, 2003, ALTURA Management, on behalf of ALTURA Fund, issued a press release (the Press Release) disclosing, among other things, that the Prospectus amendment had been receipted. The Press Release contained the following disclosure:

“We are pleased that the regulator (BCSC) has recognized that ALTURA as a continuous offering is viable for shareholders regardless of the initial offering size.”
14. The Press Release did not disclose the fact that individuals who purchased Units through mutual fund dealers might not be able to close their purchases.

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### **Breach**

15. The statement made by ALTURA Fund in the Press Release, as outlined in paragraph 13 herein, was in breach of Section 55 of the Act because ALTURA Fund represented to the public that the Commission had passed on the merits of the Units.

### **Mitigating Factors**

16. The Press Release was released precipitously and was not subject to ALTURA Fund's normal review procedures which require review of public disclosures by two senior members of management and external legal counsel.
17. ALTURA Management acknowledges that it caused the Press Release to be issued and that the Press Release contravened the Management Agreement and ALTURA Fund's normal review procedures for press releases.
18. The Prospectus amendment disclosed the risk to individuals who purchased through mutual fund dealers that they might not be able to close their purchases and contained a warning that the Commission had not expressed an opinion about the Units.
19. Throughout this matter, ALTURA Fund and ALTURA Management have cooperated fully with the Commission in an effort to resolve these issues, which were affected by the very tight time deadlines at the end of the RRSP season.

### **Undertakings**

- ¶ 3 ALTURA Fund and ALTURA Management undertake and agree as follows:
1. To comply fully with the Act, the Securities Rules, BC Reg. 194/97 and any applicable regulations, policies and guidelines, from the date of this agreement.
  2. To not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.
  3. To pay to the Commission, upon execution of this agreement the sum of \$20,000, \$10,000 of which represents the cost of the investigation.

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### Waiver

¶ 4 Each of ALTURA Fund and ALTURA Management waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this agreement.

¶ 5 January 23, 2004

ALTURA Growth Fund (EVCC) Inc.

¶ 6 “Bill Watchorn” )  
Authorized Signatory (ALTURA Fund)

“J. Bartman” )  
Witness Signature )  
J.A. Bartman )  
Witness Name (please print) )  
1120 – 200 Graham Avenue, Winnipeg MB )  
Address )  
Vice President & CFO )  
Occupation )

ALTURA Management Inc.

¶ 7 “Ken Bicknell” )  
Authorized Signatory (ALTURA Management)

“J. Bartman” )  
Witness Signature )  
J.A. Bartman )  
Witness Name (please print) )  
1120 – 200 Graham Avenue, Winnipeg MB )  
Address )  
Vice President & CFO )  
Occupation )

¶ 8 February 5, 2004

¶ 9 Brenda M. Leong  
Acting Executive Director