

# 2003 BCSECCOM 431

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief from certain self-dealing prohibitions and reporting requirements in respect of investments by RSP funds in forward contracts and other specified derivatives with related counterparties, subject to certain conditions

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 123 and 130

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF ALTAMIRA RSP BIOTECHNOLOGY FUND ALTAMIRA RSP *E-BUSINESS* FUND ALTAMIRA RSP GLOBAL DIVERSIFIED FUND ALTAMIRA RSP HEALTH SCIENCES FUND ALTAMIRA RSP JAPANESE OPPORTUNITY FUND ALTAMIRA RSP SCIENCE AND TECHNOLOGY FUND**

## **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Altamira Investment Services Inc. (“Altamira”), as manager and trustee of the Altamira RSP Biotechnology Fund, Altamira RSP *e-business* Fund, Altamira RSP Global Diversified Fund, Altamira RSP Health Sciences Fund, Altamira RSP Japanese Opportunity Fund, Altamira RSP Science and Technology Fund and other mutual funds to be established and managed by Altamira (each an RSP Fund and collectively, the “RSP Funds”), having an investment objective or strategy that is linked to the returns or portfolio of another specified Altamira mutual fund (each an “Underlying Fund” and collectively, the “Underlying Funds”) while remaining 100% eligible for registered plans for a

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decision by each Decision Maker (collectively, the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions in the Legislation (the “Applicable Requirements”) shall not apply to Altamira or the RSP Funds, as the case may be, in respect of certain investments to be made by the RSP Funds in forward contracts and other derivative instruments (the “Derivatives”) of National Bank of Canada (“NBC”) and its affiliates:

- (i) the provision requiring the management company of a mutual fund to file a report relating to the purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies;
- (ii) the provision prohibiting a mutual fund from knowingly making and holding an investment in a person or company who is a substantial securityholder of the mutual fund, its management company or distribution company;
- (iii) the provision prohibiting a mutual fund from knowingly making and holding an investment in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company has a significant interest;
- (iv) the provision prohibiting a portfolio manager or, in British Columbia, the mutual fund, from knowingly causing an investment portfolio managed by it to invest in any issuer in which a “responsible person” (as that term is defined in the Legislation) is an officer or director, unless the specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase;
- (v) the provision in Quebec requiring a person acting under a management contract to disclose to and obtain consent of a client prior to buying certain securities.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS Altamira has represented to the Decision Makers as follows:

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1. Altamira is a corporation amalgamated under the laws of Canada with its registered office located in Ontario. Altamira is the manager and trustee, and Altamira Management Ltd. (“AML”), a wholly owned subsidiary of Altamira, which is registered as an adviser in each of the provinces and territories of Canada, is the investment manager of the existing RSP Funds.
2. The RSP Funds have previously obtained relief from certain provisions of National Instrument 81-102 (“NI 81-102”) and the Act and corresponding provisions in the Non-Principal Jurisdictions by way of relief granted under SEDAR projects 215372, dated January 10, 2000, and 308515, dated December 5, 2000, and MRRS Decision Documents dated January 10, 2000 and December 5, 2000 (the “Previous Decisions”).
3. The Previous Decisions do not permit the RSP Funds to enter into Derivatives with a related counterparty.
4. The RSP Funds are, or will be, open-end mutual funds established under the laws of Ontario. Units of the existing RSP Funds are qualified for distribution pursuant to a simplified prospectus in the Jurisdictions.
5. Each of the RSP Funds is, or will be, a reporting issuer under the securities laws of each of the provinces and territories of Canada. None of the existing RSP Funds is in default of securities legislation in the Jurisdictions.
6. The RSP Funds are proposing to enter into Derivatives with NBC or its affiliates (each, a “Related Counterparty” and collectively, the “Related Counterparties”).
7. The RSP Funds obtain, or will obtain, exposure to their corresponding Underlying Funds by entering into Derivatives to link the return of the particular RSP Fund to the return of the corresponding Underlying Fund or to the portfolio securities of the corresponding Underlying Fund. The RSP Funds make, or will make, disclosure of this fact in their simplified prospectus and will disclose the involvement of the Related Counterparty in the Derivatives, the review of the Derivatives by the independent auditors of the RSP Funds (“Independent Auditors”) as well as all applicable transaction costs in connection with the Derivative.
8. NBC is a bank listed in Schedule I to the *Bank Act* (Canada). NBC owns all of the outstanding shares of Altamira.

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9. There may be directors or officers of NBC and its affiliates that are also directors or officers of Altamira or AML.
10. In the event that a Related Counterparty does not have the approved credit rating required by NI 81-102, the obligations of the Related Counterparty will be unconditionally guaranteed by NBC, which does have an approved credit rating. The unconditional guarantee will be irrevocable and non-terminable with respect to the Derivatives.
11. A Related Counterparty is expected (but is not obligated) to hedge its obligations under the Derivatives by investing an amount equal to its exposure to an RSP Fund in securities of the applicable Underlying Fund.
12. The RSP Funds intend to enter into Derivatives with a Related Counterparty so long as the pricing terms of the Derivatives are comparable to those offered by the Related Counterparty to other third parties offering RSP funds of similar size to the RSP Funds.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Applicable Requirements shall not apply to the RSP Funds, Altamira or AML, as the case may be, in respect of investments by the RSP Funds in forward contracts or other specified derivatives of a Related Counterparty, that are made in compliance with the following conditions:

1. the pricing terms offered by the Related Counterparties to the RSP Funds under the forward contracts or other specified derivatives are at least as favourable as the terms committed by the Related Counterparties to other third parties offering RSP funds which are of similar size as the RSP Funds;
2. prior to the RSP Funds entering into a forward contract or other specified derivative transaction with a Related Counterparty, the Independent Auditors will review the pricing offered by the Related Counterparty to the RSP Funds against the pricing offered by the Related Counterparty to other fund groups offering RSP funds of similar size, to ensure the pricing is at least as favourable;

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3. the review by the Independent Auditors will be undertaken not less frequently than on a semi-annual basis and, in addition, on every renewal or pricing amendment to each forward contract or other specified derivative, during the term of such contract;
4. the RSP Funds' simplified prospectus discloses the Independent Auditors' role and their review of the Derivatives, as well as the involvement of the Related Counterparties; and
5. the RSP Funds will enter into Derivatives with the Related Counterparties only once confirmation of favourable pricing is received from the Independent Auditors.

DATED November 29, 2002

Robert L. Shirriff

Robert W. Korthals