

2002 BCSECCOM 1046

Headnote – Relief to allow mutual fund dealers to sell shares of an employee venture capital corporation qualified by prospectus

Exemption Order

ALTURA Growth Fund (EVCC) Inc.

Section 48 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Altura has applied for an exemption from the dealer registration requirement in section 34(1)(a) of the Act (the Dealer Registration Requirement) in order that persons registered as mutual fund dealers or registered to trade on behalf of mutual fund dealers may trade Class A shares (Shares) of Altura being offered under a prospectus;

Representations

- ¶ 2 Altura represents that:
1. it was incorporated under the laws of British Columbia on July 16, 2002;
 2. its head office is located in Vancouver, British Columbia;
 3. it is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97;
 4. it 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 (the EIA);
 5. it was formed to create and manage a portfolio of investments in small and medium-sized British Columbia businesses that meet EIA criteria, with the objective of maximizing return with an acceptable level of risk;

2002 BCSECCOM 1046

6. its manager is ALTURA Management Inc., an affiliate of ENSIS Management Inc., which manages ENSIS Growth Fund Inc. in Manitoba;
7. ENSIS Growth Fund Inc. is registered as a labour-sponsored investment fund under *The Labour Sponsored Venture Capital Corporation Act* (Manitoba) and is the equivalent of an EVCC under the EIA;
8. the manager has and will maintain personnel with the necessary business experience and qualifications to competently manage venture capital investments;
9. Altura will initially offer, by prospectus, its Shares to residents of British Columbia to raise a minimum of \$10,000,000 to a maximum of \$25,000,000 (the Offering);
10. in connection with the Offering, Altura has filed a preliminary prospectus dated November 6, 2002 and will file, and obtain a receipt for, a (final) prospectus;
11. after completion of the Offering, Altura intends to conduct a continuous offering of the Shares for which they will file, and obtain a receipt for, a prospectus amendment or a (final) prospectus (the Continuous Offering);
12. the EIA restricts purchasers of the Shares to residents of British Columbia and their related RRSPs;
13. an eligible investor who purchases up to \$5,000 of Shares per year may receive federal and provincial tax credits and for any investment between \$5,000 and \$13,333, the eligible investor may only receive provincial tax credits;
14. except for transfers between RRSPs and RRIFs and their beneficiaries, the Shares cannot be redeemed or transferred for eight years, except under hardship conditions prescribed by the *Income Tax Act* (Canada);
15. shareholders may only redeem their Shares at a price equal to the net asset value per Share after eight years;
16. the net asset value of Altura and the net asset value per Share will be calculated weekly, on the last day contributions may be made to a RRSP, and on the last day of Altura's fiscal year, and will be published weekly in newspapers of general circulation in British Columbia;

2002 BCSECCOM 1046

17. the EIA provides a comprehensive regulatory regime for EVCCs analogous to the principles underlying the regulation of mutual funds under National Instrument 81-102 *Mutual Funds*, but customized for the activities of EVCCs including investing in illiquid securities of early and growth stage companies, providing managerial and business advice to those companies and offering provincial tax credits to investors;
18. Altura will comply with Part 15 of NI 81-102 and with National Instrument 81-105 *Mutual Fund Sales Practices*, excluding section 2.1 of NI 81-105 because Altura pays commissions and distribution costs associated with the distribution of its Shares, as permitted under the EIA;
19. Altura is not a mutual fund because purchasers cannot redeem their Shares on demand;
20. the characteristics of the Shares are sufficiently similar to mutual funds to place them within the competency of mutual fund dealers to determine the suitability of the Shares as an investment for their clients;
21. without this relief, persons registered under the Act as mutual fund dealers or mutual fund salespersons could not trade the Shares;

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the Dealer Registration Requirement does not apply to trades in the Shares of Altura under the Offering and the Continuous Offering by persons who are registered as mutual fund dealers or registered to trade on behalf of mutual fund dealers under the Act.
- ¶ 4 December 6, 2002.

L.E. Evans, C.A.
Director