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Headnote

Temporary relief to allow mutual fund dealers to trade 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 dealers or registered to trade on behalf of mutual fund dealers may trade Class A shares (Shares) of Altura being offered under a prospectus dated December 6, 2003 (the Prospectus), as amended by prospectus amendment dated February 27, 2003 (the Prospectus Amendment).

Representations

- ¶ 2 Altura represents that:
1. it was registered by the Ministry of Competition, Science and Enterprise as an employee venture capital corporation (EVCC) under the *Employee Investment Act*, R.S.B.C. 1996, c. 112 (the EIA);
 2. 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;
 3. its manager is ALTURA Management Inc., an affiliate of ENSIS Management Inc., which manages ENSIS Growth Fund Inc. in Manitoba;
 4. 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;

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5. the manager has and will maintain personnel with the necessary business experience and qualifications to competently manage venture capital investments;
6. the Prospectus set a minimum offering of \$10 million;
7. the Prospectus Amendment deleted the \$10 million minimum offering, together with other amendments;
8. the EIA restricts purchasers of the Shares to residents of British Columbia and their related RRSPs;
9. 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;
10. 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);
11. the EIA provides a comprehensive regulatory regime for EVCCs analogous to the principles behind 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;
12. Altura will comply with Part 15 of NI 81-102 and with National Instrument 81-105 *Mutual Fund Sales Practices*, excluding sections 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;
13. Altura is not a mutual fund because purchasers cannot redeem their Shares on demand;
14. Altura has put in place arrangements to ensure that a maximum of 10% of its initial proceeds will be used to satisfy start-up costs;
15. Altura will invest not more than 25% of its net asset value in any single venture investment, until Altura's net asset value reaches \$10 million;
16. once Altura's net asset value reaches \$10 million, Altura will invest not more than 10% of its net asset value in any single venture investment;
17. the cut-off date for sales during the 2003 RRSP selling season was March 3, 2003;

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18. distribution of Altura's Shares during the 2003 RRSP selling season was limited to 57 mutual fund restricted registrants at 11 firms, substantially all of whom have previously sold EVCCs;
19. Altura intends to close its initial public offering on March 31, 2003;
20. as at March 28, 2003 Altura has confirmed orders for its offering of \$3.127 million, of which not more than \$750,000 had been subscribed for through mutual fund dealers;
21. for any additional orders, Altura will obtain a letter of indemnity from the selling mutual fund dealer confirming that the subscription documentation and purchase funds were received by March 3, 2003;
22. without this relief, persons registered under the Act as mutual fund dealers or mutual fund salespersons could not trade the Shares;
23. without this relief, any purchasers who subscribed through mutual fund dealers will lose their 2002 LSF tax credits and some could lose their 2002 RRSP deductions;

Order

- ¶ 3 Because it would not be prejudicial to the public interest, the Commission orders under section 48 of the Act that the Dealer Registration Requirement does not apply to trades in the Shares of Altura by persons who are registered as mutual fund dealers or registered to trade on behalf of mutual fund dealers under the Act for subscriptions received by those persons by March 3, 2003 in order to effect the closing of Altura's initial public offering on March 31, 2003.

- ¶ 4 March 31, 2003

Brent W. Aitken
Vice Chair