

## **2003 BCSECCOM 55**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain self-dealing restrictions to permit a mutual fund to make investments in private companies where a responsible person of the mutual fund manager has been appointed a director or officer of the private company

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 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 MANAGEMENT LTD.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Altamira Management Ltd. (“AML”) for a decision (the “Decision”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:

1. the provision contained in the Legislation prohibiting a portfolio manager and, in British Columbia, a mutual fund, from knowingly causing an investment portfolio managed by it or in British Columbia, a mutual fund, to invest in any issuer in which a “responsible person” (as that term is defined in the Legislation) or an associate of a responsible person is an officer or director, unless that specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase, shall not apply to AML or the Funds listed in Schedule ‘A’ with respect to investments in private companies (the “Restrictions”);

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application.

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS it has been represented by AML to the Decision Makers that:

1. AML is a corporation continued under the laws of the Province of Ontario.
2. AML is registered under the Legislation as an adviser in the categories “investment counsel” and “portfolio manager”.
3. AML provides investment management services to the Altamira funds (collectively, the “Funds”).
4. Certain officers or directors of AML are, or may become, directors (the “Directors”) of private companies in which AML invests (the “Target Companies”) on behalf of certain of the Funds.
5. None of the existing directorships were held before the initial investment in the Target Company was made. Any future directorships will be instituted contemporaneously with the initial investment or as a “post” closing matter. To date, no subsequent investments by the Funds have been made in any of the existing Target Companies.
6. As of the date hereof, the Funds listed in Schedule ‘A’ hold investments in Target Companies.
7. The general purpose of a board seat is for AML to monitor and supervise its investment.
8. In each case, the Target Company is not, or will not be, a publicly traded company and therefore, supervision by AML is prudent and in the best interest of the investment portfolio.
9. Investments in Target Companies are, or will be, made at the start up or expansion stage of these companies and are venture capital in nature. The provision of a board seat is customary when other institutional investors such as venture capital companies make investments of this type. Typically, the larger

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shareholders of a Target Company will enter into a shareholders agreement that provides for, among other things, board representation.

10. Whether AML seeks board representation on a Target Company depends on several factors, including the number of directors and the composition of the board of directors prior to the investment, the amount of the investment and the post-closing ownership level on an aggregate basis.

11. Typically, AML seeks board representation in connection with an investment in a Target Company where AML is providing in excess of 30% of the capital in the round of financing, although there may be other deal specific issues that impact whether AML will seek board representation. In all cases, the investment restrictions set out in National Instrument 81-102 are complied with by AML with respect to Target Company investments.

12. The Directors are not, and will not be, entitled to hold securities in the Target Company personally or to be separately compensated by the Target Company, or otherwise, for acting as a director.

13. In no circumstances will a board seat on a Target Company be used for the purpose of attempting to acquire control of a Target Company or otherwise altering the passive nature of the investment.

14. As the Target Companies are not public companies they are not subject to the continuous disclosure obligations of applicable securities legislation and therefore AML would not otherwise have access to important and timely information regarding the Target Companies.

15. The board representation allows AML to monitor and supervise the investment in the Target Company more closely and in a manner that follows industry practice for these types of investments.

16. The board representation allows AML to ensure that management or the board of directors acts prudently and does not significantly change the nature of the Target Company's business without obtaining the consent of investors.

17. Once the Target Companies become reporting issuers or the equivalent, the Directors will resign on the basis that the Target Companies will be subject to continuous disclosure obligations of the applicable securities legislation.

18. AML has developed a policy (the "Policy") for board representation and private company investments that sets out the criteria and restrictions set out herein.

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19. AML will include full disclosure of the Policy in the simplified prospectus relating to the Funds.

20. Due to the large number of security holders of the Funds managed by AML, it is not practical to obtain the prior written consent of the security holders to an investment in a Target Company.

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

AND WHEREAS each of the Decision Makers is satisfied that the tests 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 pursuant to the Legislation is that the Restrictions shall not apply to AML, in its capacity as a portfolio manager to the Funds listed in Schedule ‘A’, or to the Funds listed in Schedule ‘A’, in relation to an investment in a Target Company by the Funds listed in Schedule ‘A’ provided that:

1. the Target Company is not a publicly traded company that is subject to the continuous disclosure requirements of the Legislation;
2. any Director does not have any direct or indirect beneficial interest in securities of a Target Company;
3. no Director is separately compensated by a Target Company, or otherwise, for acting as a director of the Target Company;
4. upon the Target Company becoming a reporting issuer or the equivalent under the Legislation, the Director of the Target Company shall resign as soon as practicable thereafter;
5. the simplified prospectus relating to a Fund that invests, or proposes to invest, in a Target Company shall include full disclosure of the Policy; and
6. if AML makes an initial investment (an “Initial Investment”) on behalf of a Fund in a Target Company and a responsible person or an associate of a responsible person is appointed as a Director to the board of the Target Company either contemporaneously or as a “post” closing matter (an “Initial Director Appointment”), or AML makes a subsequent investment (a “Subsequent

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Investment”) in a Target Company in which a responsible person or an associate of a responsible person is a Director, then:

- (a) AML shall file a report (the “Report”) on Sedar in respect of the Fund within 30 days after the end of the month in which an Initial Director Appointment occurs or within 30 days after the end of the month in which a Subsequent Investment occurs;
- (b) The Report shall contain the following information:
  - (i) name of the Fund;
  - (ii) name of the Target Company;
  - (iii) the amount of the Initial Investment or Subsequent Investment, whichever is applicable;
  - (iv) the number of shares purchased in the Target Company;
  - (v) the name of the Director; and
  - (vi) the position held by the Director with AML or an affiliate of AML.

Dated December 10, 2002.

Mary Theresa McLeod

Harold P. Hands

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### **Schedule “A”**

List of Altamira Funds which hold investments in Private Companies

1. AltaFund Investment Corp.
2. Altamira Canadian Value Fund.
3. Altamira e-business Fund.
4. Altamira Equity Fund.
5. Altamira Global Small Company Fund.
6. Altamira Health Sciences Fund.
7. Altamira Precious and Strategic Metal Fund.
8. Altamira Resource Fund.
9. Altamira Science & Technology Fund.
10. Altamira Select American Fund.
11. Altamira Special Growth Fund.
12. Altamira Growth & Income Fund.
13. Altamira Balance Fund.
14. Altamira High Yield Bond Fund.
15. Altamira U.S. Larger Company Fund.