

# **2002 BCSECCOM 779**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief from prohibitions against investing in the securities of a person who is a substantial security holder of the manager of mutual funds, subject to certain conditions - mutual fund tracks the performance of a target securities market index – manager is a wholly-owned subsidiary of a company whose securities are included in the target index

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(a) and 123

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, 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 PRECISION CANADIAN INDEX FUND**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the “Jurisdictions”) has received an application from Altamira Investment Services Inc. (“AISI”), in its capacity as manager of Altamira Precision Canadian Index Fund (the “Fund”), and Altamira Management Ltd. (“AML”), in its capacity as the portfolio adviser of the Fund (collectively, the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements (the “Restrictions”) contained in the Legislation shall not apply in respect of investments made by the Fund in securities of National Bank of Canada (“NBC”) or its affiliates or associates (collectively, “NBC Securities”):

1. The restrictions contained the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company who is a substantial securityholder of the mutual fund, its management company or distribution company.

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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, 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 the Filer has represented to the Decision Makers that:

1. AISI is a corporation amalgamated under the laws of Canada. AISI is the manager of the Fund.
2. AML, a corporation continued under the laws of Ontario, is a wholly-owned subsidiary of AISI and is registered as an investment counsel and portfolio manager.
3. The Fund is an open end mutual fund trust established under the laws of Ontario. The investment objective of the Fund is to seek long-term growth of capital by tracking the performance of the S&P/TSX 60 Index ( “the Target Index “).
4. The units of the Fund are offered by prospectus (the “Prospectus “) in each of the provinces and territories of Canada. The Fund is reporting issuer under the securities legislation of each Jurisdiction.
5. NBC, AISI, and the shareholders of AISI have entered into a purchase agreement, made as of June 11, 2002, pursuant to which NBC will acquire from the shareholders of AISI all of the outstanding shares of AISI (the “Transaction “).
6. Following satisfaction of all closing conditions and the receipt of all applicable regulatory approvals, the Transaction was completed on August 7, 2002.
7. The Target Index for the Fund is disclosed in its investment objectives in the Prospectus. AML is not required to invest in all of the stocks in the Target Index as the Fund may be managed using an “optimization technique “ whereby securities are selected for the portfolio so that industry weightings, market capitalization and certain fundamental characteristics match the Target Index or using a full replication strategy in which the Fund will generally hold the same investments and in the same proportion as the Target Index.

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8. The number of securities comprising the Target Index in which the Fund actually invests from time to time will vary depending upon the size and value of the assets of the Fund and the composition of the Target Index. The Fund will therefore be periodically rebalanced to reflect the Target Index as closely as possible.
9. The portfolio of the Fund is not actively managed, and is comprised of securities comprising, or derivatives giving exposure to, the Target Index. All purchases and sales of the portfolio of the Fund will be determined by the composition of the Target Index and the weighting of its constituent securities.
10. The securities which comprise the Target Index include NBC Securities. As the result of the tracking the Target Index, the Fund currently holds 20,300 NBC common shares representing approximately 1.28% of the assets of the Fund; in order to track the Target Index following completion of the Transaction, the Fund will have to continue to hold NBC common shares, and may need to acquire additional NBC Securities in the future.
11. All of the NBC Securities currently held by the Fund were purchased prior to the date of the Agreement and the Fund has not purchased NBC Securities since that date.
12. The deviation from the Restrictions will not be the result of any active decision of AML to increase the investment of the Fund in NBC Securities, but rather it would be an indirect consequence of carrying out the investment objective of the Fund, to match the performance of the Target Index.
13. AML will ensure that the Fund does not invest in NBC Securities in a proportion larger than that reflected in the Target Index.
14. The investments of the Fund in the Target Index represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

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

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THE DECISION of the Decision Makers under the Legislation is that the Restrictions do not apply to the investment or the holding of an investment by the Fund in NBC Securities;

PROVIDED THAT the portion of the Fund's assets invested in NBC Securities is determined in accordance with the Fund's investment objective of the tracking the performance of the Target Index and not pursuant to the discretion of AISI or AML.

DATED August 29, 2002.

Paul M. Moore

Robert L. Shirriff