

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, MANITOBA AND ONTARIO

AND

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

AND

IN THE MATTER OF
PERIGEE INVESTMENT COUNSEL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Manitoba and Ontario (the "Jurisdictions") has received an application (the "Application") from Perigee Investment Counsel Inc. (the "Registrant") for a decision (the "Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Registrant not be required to file an application to become a member of the Mutual Fund Dealers Association of Canada (the "MFDA") and to become a member of the MFDA.

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 it has been represented by the Registrant to the Decision Makers that:

1. the Registrant is registered as a dealer in the category of "mutual fund dealer" or its equivalent and as an adviser in the categories of "investment counsel" and "portfolio manager" or their equivalents in each of the Jurisdictions;
2. the Registrant is the manager and the portfolio adviser of a number of mutual funds that it or an affiliate have established, which are sold to the public either pursuant to a simplified prospectus or on an exempt basis, and it or an affiliate will be the manager of any other funds that it or an affiliate may establish in the future;
3. the Registrant's activities as a mutual fund dealer currently represent and will continue to represent activities that are incidental to the principal business activities of the Registrant and its affiliated companies;
4. the Registrant has agreed to the imposition of the terms and conditions on the Registrant's registration as a mutual fund dealer set out in the attached Schedule "A", which outlines the

activities the Registrant has agreed to adhere to in connection with its application for this Decision;

5. any person or company that is not currently a mutual fund client of the Registrant on the date of this Decision, will, before they are accepted as a mutual fund client of the Registrant, receive prominent written notice from the Registrant that:

The Registrant is not currently a member, and does not intend to become a member of the Mutual Fund Dealers Association; consequently, clients of the Registrant will not have available to them investor protection benefits that would otherwise derive from membership of the Registrant in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA;

6. upon the next general mailing to its mutual fund clients and in any event before October 31, 2002, the Registrant shall provide to all of its mutual fund clients the written notice referred to in paragraph 5, above;

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

IT IS THE DECISION of the Decision Makers pursuant to the Legislation that, effective May 23, 2001 in Ontario, effective July 1, 2001 in Manitoba and effective July 9, 2002 in British Columbia, the Registrant not be required to file an application to become a member of the MFDA and to become a member of the MFDA;

PROVIDED THAT the Registrant complies with the terms and conditions on its registration under the Legislation as a mutual fund dealer set out in the attached Schedule "A".

July 9, 2002.

"David M. Gilkes"

Schedule "A"

TERMS AND CONDITIONS OF REGISTRATION
OF
PERIGEE INVESTMENT COUNSEL INC.
AS A MUTUAL FUND DEALER

Definitions

1. For the purposes hereof, unless the context otherwise requires:

(a) "Act" means, in Ontario, the *Securities Act*, R.S.O. 1990, c.S5, as amended; in Manitoba, the *Securities Act*, R.S.M. 1988, c.S50, as amended; and, in British Columbia, the *Securities Act*, R.S.B.C. 1996, c. 418, as amended;

(b) "Adviser" means an adviser as defined in the Act;

(c) "Client Name Trade" means, for the Registrant, a trade to, or on behalf of, a person or company, in securities of a mutual fund, that is managed by the Registrant or an affiliate of the Registrant, where, immediately before the trade, the person or company is shown on the records of the mutual fund or of another mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:

(A) a purchase, by the person or company, through the Registrant, of securities of the mutual fund; or

(B) a redemption, by the person or company, through the Registrant, of securities of the mutual fund;

and where, the person or company:

(C) is a client of the Registrant that was not solicited by the Registrant; or

(D) was an existing client of the Registrant on the Effective Date;

(d) "Effective Date" means May 23, 2001;

(e) "Employee", for the Registrant, means:

(A) an employee of the Registrant;

(B) an employee of an affiliated entity of the Registrant; or

(C) an individual that is engaged to provide, on a *bona fide* basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and

attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;

(f) "Employee", for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:

(A) the Registrant or an affiliated entity of the Registrant; or

(B) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;

(g) "Executive", for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;

(h) "Executive", for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;

(i) "Exempt Trade", for the Registrant, means:

(i) in Ontario, Manitoba and British Columbia, a trade in securities of a mutual fund that is made between a person or company and an underwriter acting as purchaser or between or among underwriters;

(ii) in Ontario, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the registration requirements of the Act if the Registrant were not a "market intermediary" as such term is defined in section 204 of the Ontario Regulation;

(iii) in Manitoba and British Columbia, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the registration requirements of the Act; or

(iv) a trade in securities of a mutual fund for which the Registrant has received a discretionary exemption from the registration requirements of the Act;

(j) "Fund-on-Fund Trade", means a trade that consists of:

(i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;

(ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a person or company where the person or company, an affiliated entity of the person or company, or another person or company is, or will become, the counterparty in a specified derivative or swap with another mutual fund; or

(iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:

(A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or

(B) a person or company that acquired the securities where the person or company, an affiliated entity of the person or company, or another person or company is, or was, the counterparty in a specified derivative or swap with another mutual fund; and

where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;

(k) "In Furtherance Trade" means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of an other trade in securities of a mutual fund, where the other trade consists of:

(i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or

(ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund;

and where, in each case, the purchase or sale is made by or through an other registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

(l) "Managed Account" means, for the Registrant, an investment portfolio account of a client under which the Registrant, pursuant to a written agreement made between the Registrant and the client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the client's specific consent to the trade;

(m) "Managed Account Trade" means, for the Registrant, a trade to, or on behalf of a Managed Account of the Registrant, where the trade consists of a purchase or redemption, through the Registrant of securities of a mutual fund, that is made on behalf of the Managed Account;

where, in each case,

- (i) the Registrant is the portfolio adviser to the mutual fund;
- (ii) the mutual fund is managed by the Registrant or an affiliate of the Registrant; and
- (iii) either of:
 - (A) the mutual fund is prospectus-qualified in the jurisdiction where the trade occurs; or
 - (B) the trade is not subject to the registration and prospectus requirements of the Act;

(n) "Mutual Fund Instrument" means National Instrument 81-102 Mutual Funds, as amended;

(o) "Ontario Regulation" means R.R.O. 1990, Reg. 1015, as amended, made under the Ontario Act;

(p) "Permitted Client" means a person or company that is a client of the Registrant, and that is, or was at the time the person or company became a client of the Registrant:

- (i) an Executive or Employee of the Registrant;
- (ii) a Related Party of an Executive or Employee of the Registrant;
- (iii) a Service Provider or an affiliated entity of a Service Provider;
- (iv) an Executive or Employee of a Service Provider; or
- (v) a Related Party of an Executive or Employee of a Service Provider;

(q) "Permitted Client Trade" means, for the Registrant, a trade to a person who is a Permitted Client or who represents to the Registrant that he, she or it is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliate of the Registrant, and the trade consists

of a purchase or redemption, by the person, through the Registrant, of securities of the mutual fund;

(r) "Pooled Fund Rule" means, for the Registrant, a rule or other regulation that relates, in whole or in part, to the distribution of securities of a mutual fund and/or non-redeemable investment fund, other than pursuant to a prospectus for which a receipt has been obtained from the Director, made by the Registrant on or on behalf of a Managed Account, but does not include Ontario Rule 45-501 Exempt Distributions, BC Instrument 45-103 Capital Raising Distributions or BC Instrument 45-505 Alternative Reporting Requirements for Exempt Distributions of Securities of Eligible Pooled Funds;

(s) "Registered Plan" means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the Income Tax Act (Canada);

(t) "Registrant" means Perigee Investment Counsel Inc.;

(u) "Related Party", for a person, means an other person who is:

(i) the spouse of the person;

(ii) the issue of:

(A) the person,

(B) the spouse of the person, or

(C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;

(iii) the parent, grandparent or sibling of the person, or the spouse of any of them;

(iv) the issue of any person referred to in paragraph (iii) above; or

(v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;

(vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing;

(vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;

(v) "securities", for a mutual fund, means shares or units of the mutual fund;

(w) "Seed Capital Trade" means a trade in securities of a mutual fund made to a persons or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument; and

(x) "Service Provider" means:

(i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;

(ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or

(iii) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant.

2. For the purposes hereof, a person or company is considered to be an "affiliated entity" of an other person or company if the person or company would be an affiliated entity of that other person or company for the purposes of Ontario Securities Commission Rule 45-503 Trades To Employees, Executives and Consultants and British Columbia Instrument 45-507 Trades to Employees, Executives and Consultants.

3. For the purposes hereof:

(a) "issue" and "sibling" includes any person having such relationship through adoption, whether legally or in fact;

(b) "parent" and "grandparent" includes a parent or grandparent through adoption, whether legally or in fact;

(c) "registered dealer" means a person or company that is registered under the Act as a dealer in a category that permits the person or company to act as dealer for the subject trade; and

(d) "spouse", for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.

4. Any terms that are not specifically defined above shall, unless the context otherwise requires, have the meaning:

- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
- (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

Restricted Registration

Permitted Activities

5. The registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:

- (a) a Client Name Trade;
- (b) an Exempt Trade;
- (c) a Fund-on-Fund Trade;
- (d) an In Furtherance Trade;
- (e) a Managed Account Trade, provided that, at the time of the trade, the Registrant is registered under the Act as an adviser in the categories of "investment counsel" and "portfolio manager" or their equivalents;
- (f) a Permitted Client Trade; or
- (g) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (f), the trades are limited and incidental to the principal business of the Registrant, and provided also that paragraph (e) will cease to be in effect one year after the coming into force, subsequent to the date of this Decision, of any Pooled Fund Rule.

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - mutual fund dealer exempted from the legislative requirements that it file an application to become a member of the Mutual Fund Dealers Association of Canada (the "MFDA") and become a member of the MFDA - mutual fund dealer subject to certain terms and conditions of registration.

Applicable Statute

Securities Act, R.S.O. 1990, c. S.5, as am.

Applicable Ontario Rule

Rule 31-506 SRO Membership - Mutual Fund Dealers, ss. 2.1, 3.1 and 5.1.

Applicable Published Document

Letter sent to the Investment Funds Institute of Canada and the Investment Counsel Association of Canada, December 6, 2000, (2000) 23 OSCB 8467.