

## 2002 BCSECCOM 48

ORDER UNDER SECTION 48 OF THE SECURITIES ACT, R.S.B.C. 1996, c. 418

BERGER LLC

AND

PERKINS, WOLF, MCDONNELL & COMPANY

### **Background**

[para 1]

Berger and Perkins (collectively, the U.S. Advisers) applied for an exemption from the adviser registration requirement in section 34(1)(c) of the Act with respect to investment counselling and portfolio management services (the Advice) provided to a client resident or otherwise located in British Columbia.

### **Representations**

[para 2]

The U.S. Advisers represent that:

1. Berger is a Nevada corporation with its head office located in Denver, Colorado;
2. Perkins is a Delaware corporation with its head office located in Chicago, Illinois;
3. the U.S. Advisers are both registered in the United States under the *Investment Advisors Act of 1940* as investment advisers;
4. the U.S. Advisers provide investment counselling and portfolio management services to individuals, mutual funds, and institutional investors resident in jurisdictions where the U.S. Advisers are registered or are otherwise qualified to provide such services;
5. the U.S. Advisers intend to offer the Advice to a certain family trust organized under the laws of British Columbia (the Trust) or to a company, trust or other entity controlled by the Trust (collectively, the Client);
6. in providing the Advice to the Client, Berger will serve as adviser and Perkins will serve as sub-adviser, under the terms of a written sub-advisory agreement;
7. in providing the Advice to the Client, the U.S. Advisers will be considered to be acting as advisers under the Act; without this order, the US Advisors would be required to be registered, or otherwise be exempt from registration, as advisers under section 34(1)(c) of the Act;
8. neither of the U.S. Advisers is registered as an adviser under section 34(1)(c) of the Act;

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9. there is no exemption in the Act from the requirement to register as an adviser that would permit the U.S. Advisers to provide the Advice;

10. the Client is a sophisticated entity, and is aware that:

(a) the U.S. Advisers are not registered to advise in British Columbia;

(b) the U.S. Advisers may not have the same proficiency requirements as persons registered under the Act; and

(c) it may not have the same protection it would otherwise have if the U.S. Advisers were registered in British Columbia;

11. the U.S. Advisers do not:

(a) maintain offices or employees in British Columbia;

(b) have any other clients resident in British Columbia; or

(c) intend to actively solicit clients within British Columbia without first obtaining appropriate registration under the Act.

### Order

[para 3]

Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the U.S. Advisers are exempt from the adviser registration requirements of section 34(1)(c) of the Act with respect to the Advice provided to the Client, provided that each of the U.S. Advisers maintains its individual registration as an investment advisor under the *Investment Advisor Act of 1940* in good standing.

[para 4]

DATED January 16, 2002.

Rosann L. Youck  
Acting Manager