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December 22, 2011

Headnote

Multilateral Instrument 11-102 – *Passport System* – Securities Act s. 48 Adviser – Exemption from s. 34(b) requirement to be registered as an adviser – A person who resides outside of BC wants to advise BC residents – The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 34(b) and 48

In the Matter of
the Securities Legislation of
British Columbia (the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
McLean Budden Limited (MBL or the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) that the adviser registration requirement contained in the Legislation (the Adviser Registration Requirement) does not apply to portfolio managers from time to time (the Sub-Advisers) who may or may not be affiliated with or a related party of MBL and who will act as sub-adviser to MBL for the benefit of MBL and MBL's clients (the MBL Clients) (the Requested Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,

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- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (the Non-principal Jurisdictions and together with British Columbia, the Filing Jurisdictions).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
 - 1. MBL is
 - (a) a corporation established under the laws of Canada;
 - (b) registered as a portfolio manager and mutual fund dealer in each province and territory of Canada;
 - (c) registered as an investment fund manager with the Ontario Securities Commission; and
 - (d) not in default under the securities legislation of any jurisdiction.
 - 2. MBL's primary business is the portfolio management of assets for pension funds, mutual funds and other institutional clients. It also acts as an investment fund manager and portfolio manager for certain foundations, private clients and separately managed accounts.
 - 3. MBL is not a member of the Mutual Fund Dealers Association of Canada (the MFDA) having been granted relief from the requirement for a mutual fund dealer to be a member of the MFDA by the applicable securities regulatory authorities in 2009.
 - 4. While the Ontario Securities Commission is ordinarily the principal regulator for MBL, exemptive relief is not required in Ontario due to the application of OSC Rule 35-502 *Non-Resident Advisers* (OSC Rule 35-502). The jurisdiction with which MBL has the most significant connection outside of Ontario is Québec, however relief is not needed there either due to the application of the general registration exemption

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order - Decision # 2009-PDG-0191. Therefore, the British Columbia Securities Commission has been chosen as the principal regulator for this application on the basis that relief is not needed in Ontario or Québec, and British Columbia is the jurisdiction with which MBL has the most significant connection outside of Ontario and Québec and in which relief is needed.

5. MBL intends to use, from time to time, the Sub-Advisers to provide portfolio management services to MBL in respect of the MBL Clients who are resident in the Filing Jurisdictions in which MBL is registered as an adviser in the category of portfolio manager.
6. Each Sub-Adviser will, at the time of providing portfolio management services to MBL in respect of the MBL clients, be registered, or otherwise qualified under applicable laws in the jurisdiction where its head office is located, to provide portfolio management services.
7. The Sub-Advisers will be either residents of a jurisdiction in Canada or of a non-Canadian jurisdiction.
8. Some of the Sub-Advisers may be either affiliates or related parties of the Filer.
9. Each MBL Client in respect of which a Sub-Adviser will act as a sub-adviser, has, or will enter into, a written investment management agreement (an IMA) with MBL which:
 - (a) provides MBL with discretionary authority to purchase and sell securities on behalf of the MBL Client; and
 - (b) authorizes MBL to delegate its discretionary authority over all or a portion of the MBL Client's assets to the Sub-Adviser.
10. MBL agrees under each IMA that it enters into to be responsible for any loss arising out of the failure of a Sub-Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of MBL and the MBL Client for whose benefit the investment advice is, or portfolio management services are, to be provided; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

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and acknowledges that it cannot be relieved by the MBL Clients from this responsibility (collectively, the Assumed Obligations).

11. MBL delivers, or arranges to be delivered, to MBL Clients all applicable reports and statements required under the Legislation.
12. MBL will enter into one or more agreements with each Sub-Adviser which will set out the obligations and duties of each party in connection with portfolio management services provided to each MBL Client and under which the Sub-Adviser agrees to act as a sub-adviser to MBL for the benefit of the MBL Clients.
13. Each Sub-Adviser in providing portfolio management services with respect to the assets of MBL Clients would be considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Requested Relief, would be subject to the Adviser Registration Requirement unless otherwise exempt.
14. Except with respect to the advising activities permitted under the international adviser exemption set out in section 8.26 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, there are no exemptions from the Adviser Registration Requirement that a Sub-Adviser may rely on to provide portfolio management services to the MBL Clients.
15. The Sub-Advisers who are not otherwise registered as an adviser in Ontario will not be required to register as an adviser under the *Securities Act* (Ontario) as they are able to rely on the exemption from registration in section 7.3 of OSC Rule 35-502.
16. The Sub-Advisers who are not otherwise registered as an adviser in Québec will not be required to register as an adviser under the *Securities Act* (Québec) as they are able to rely on a general registration exemption order (Decision # 2009-PDG-0191) for an exemption from adviser registration.
17. If there is any direct contact between a Sub-Adviser and a MBL Client in connection with the provision of investment counselling or portfolio management services, an advising representative of MBL, duly registered in the Filing Jurisdiction where the MBL Client is resident, will be present either in person or by telephone.

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Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted in respect of the Sub-Advisers provided that:

- (a) MBL is registered in good standing under the Legislation in a category that permits it to provide portfolio management services;
- (b) the obligations and duties of each Sub-Adviser are set out in a written agreement entered into by MBL and each Sub-Adviser;
- (c) MBL contractually agrees with the MBL Clients to be responsible for the Assumed Obligations and MBL is not relieved by the MBL Clients from the Assumed Obligations;
- (d) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide portfolio management services under the applicable laws of the jurisdiction where its head office is located;
- (e) each Sub-Adviser, if resident in a jurisdiction of Canada, is registered as an adviser in such jurisdiction;
- (f) each Sub-Adviser will not have any direct contact with a MBL Client in connection with the provision of portfolio management services unless an advising representative of MBL, duly registered in the Filing Jurisdiction where the MBL Client is resident, is present either in person or by telephone; and
- (g) for each Filing Jurisdiction, this decision will terminate 90 days after the coming into force of any rule, regulation, blanket order or ruling under the securities legislation of the Filing Jurisdiction that provides an equivalent exemption to the Sub-Advisers.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia Securities Commission