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Headnote

Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered mutual fund dealer wants an exemption from the requirement to be a member of the MFDA. - The dealer's principal business is investment and wealth management services; selling mutual funds is incidental to the dealer's business; the dealer will not sell the funds directly to the public; the dealer has agreed to conditions of registration that restricts its selling of funds only to a limited category of investors such as current clients, new clients who establish fully-managed accounts and new clients who invest a minimum of \$150,000; new clients of the dealer will receive notice from the dealer that it is not a member of the MFDA

August 13, 2009

**In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan,
Manitoba, Ontario, New Brunswick and Nova Scotia (the Jurisdictions)**

and

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

and

In the Matter of McLean Budden Limited (the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer, which is in the process of becoming registered as a mutual fund dealer in the Jurisdictions, for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirements in the Legislation to become a member of the Mutual Fund Dealers Association of Canada (the **MFDA**) (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the Ontario Securities Commission is the principal regulator for the Application; and

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- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meanings if used in this decision, unless otherwise defined.

Representations

The decision is based on the following facts represented by the Filer:

1. The Filer is incorporated under the laws of Canada and has its head office in Toronto, Ontario.
2. The Filer is registered as an adviser in the category of investment counsel and portfolio manager or the equivalent in Ontario and each of the Jurisdictions and following the introduction of proposed National Instrument 31-103 *Registration Requirements (NI 31-103)* expects to be registered as an investment fund manager in Ontario.
3. The Filer is registered as a dealer in the category of limited market dealer in Ontario.
4. The Filer has applied to be registered as a dealer in the category of mutual fund dealer in each of the Jurisdictions.
5. McLean Budden Funds Inc. (**MBFI**) is a wholly-owned subsidiary of the Filer.
6. MBFI is incorporated under the laws of Ontario and is registered as a dealer in the category of mutual fund dealer (or the equivalent) in each of the Jurisdictions. MBFI is a member of the MFDA.
7. The Filer is the investment fund manager and portfolio manager of the McLean Budden Mutual Funds and the VMD–McLean Budden LifePlan Mutual Funds (collectively, the **MB Mutual Funds**), each of which is a reporting issuer subject to National Instrument 81-102 *Mutual Funds (NI 81-102)* and all other laws, regulations and rules applicable to mutual funds that are subject to NI 81-102, and of the MB Pooled Funds, each of which is not a reporting issuer subject to NI 81-102. The Filer is also the portfolio manager of managed accounts.
8. RBC Dexia Investor Services Trust is the trustee of the MB Mutual Funds.

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9. The assets under management in the MB Mutual Funds allocated to accounts at MBFI are approximately \$85 million, while the Filer's total assets under management are approximately \$30.6 billion.
10. The MB Mutual Funds were established for distribution to clients who did not have a managed account with the Filer and/or did not qualify as purchasers of the MB Pooled Funds.
11. The MB Mutual Funds are distributed by MBFI and by dealers other than MBFI. However, the MB Mutual Funds are the only mutual funds distributed by MBFI.
12. It was expected that through MBFI the assets under management in the MB Mutual Funds would be significantly increased. However, the Filer has decided that MBFI is not an appropriate vehicle through which to increase the Filer's assets under management and that the costs associated with maintaining the mutual fund dealer registration and MFDA membership of MBFI are not warranted.
13. Accordingly, the Filer has determined to surrender the registration of MBFI as a mutual fund dealer and to resign as a member of the MFDA.
14. In connection with the change in status of MBFI, the Filer and MBFI are proposing the following:
 - (a) Existing Accounts
 - (i) The accounts of existing clients of MBFI (the **Existing Accounts**) will be transferred to the Filer and will be managed by representatives of the Filer who are registered as a representative or associate representative of the Filer.
 - (ii) Trades in the Existing Accounts will be limited to the purchase and redemption of units of the MB Mutual Funds.
 - (iii) There will be no cash balances held in the Existing Accounts.
 - (iv) The Existing Accounts will be under the supervision of the designated compliance officer of the Filer.

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- (v) The existing procedures with respect to the operation of the Existing Accounts, including the transmission of trading instructions, record keeping and reporting will be unchanged.
- (vi) Existing clients will be advised in a written notice (the **Notice**) of the transfer of the Existing Accounts to the Filer and the arrangements with respect thereto. The Notice will also advise existing clients of the option to move Existing Accounts to another dealer and of the process to implement this option.
- (vii) The transfer of Existing Accounts to another dealer will take place in accordance with the rules of the MFDA regarding the transfer of accounts.

(b) New Accounts

- (i) New clients who contact the Filer and wish to acquire MB Mutual Funds only will be referred to other registered dealers through whom they can acquire units. They will not receive any investment advice from the Filer.
 - (ii) New clients who wish to grant the Filer discretionary authority with respect to their portfolios and to authorize the Filer to purchase MB Mutual Funds in their account will be required to open a managed account (the **New Accounts**) with the Filer.
 - (iii) In the Jurisdictions other than Ontario, the Filer may rely on an exemption from the dealer registration requirement for the distribution of units of the MB Mutual Funds to New Accounts.
 - (iv) In Ontario, the Filer will rely on its limited market dealer registration with respect to the distribution of units of the MB Mutual Funds to New Accounts of clients that are accredited investors and on its mutual fund dealer registration with respect to the distribution of units of the MB Mutual Funds to New Accounts of clients that are not accredited investors.
15. The Filer's activities as a mutual fund dealer will be secondary and incidental to its primary business of investment fund management and portfolio management, including discretionary investment management.
16. The Filer has agreed to the imposition of the terms and conditions on the Filer's registration as a mutual fund dealer as set out in Appendix A. Except

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as permitted by the terms and conditions set out in Appendix A, the Filer will not sell any mutual funds to the public nor solicit any purchases of mutual funds from the public.

17. Before the Filer makes a trade with any client pursuant to its registration in a Jurisdiction as a mutual fund dealer, the Filer will provide to the client prominent written notice that:

The Filer is not currently a member, and does not intend to become a member, of the Mutual Fund Dealers Association of Canada (the MFDA); consequently, clients of the Filer will not have available to them investor protection benefits that would otherwise derive from membership of the Filer in the MFDA, including coverage under the MFDA Investor Protection Corporation (being the investor protection plan for clients of members of the MFDA).

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided the Filer complies with the terms and conditions on its registration as a mutual fund dealer as set out in Appendix A.

August 13, 2009.

Erez Blumberger
Manager, Registrant Regulation

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Appendix A

Terms and Conditions on the Registration of

McLean Budden Limited

as a Mutual Fund Dealer under the Legislation

Interpretation

1. In this Appendix A, except as otherwise defined below or unless the context otherwise requires, defined terms contained in National Instrument 14-101 Definitions have the same meaning in this Appendix A.
2. In this Appendix A,
 - (a) "Adviser" means an adviser as defined in the Legislation;
 - (b) "Client Name Trade" means, for the Filer, a trade to, or on behalf of, a person or company, in securities of a mutual fund, that is managed by the Filer or an affiliate of the Filer, where, immediately before the trade, the person or company is shown on the records of the mutual fund or of an other mutual fund managed by the Filer or an affiliate of the Filer as the holder of securities of such mutual fund, and the trade consists of:
 - (A) a purchase, by the person or company, through the Filer, of securities of the mutual fund; or
 - (B) a redemption, by the person or company, through the Filer, of securities of the mutual fund;and where the person or company,
 - (C) is a client of the Filer that was not solicited by the Filer; or
 - (D) was an existing client of the Filer on the Effective Date;
 - (c) "Effective Date" means August __, 2009;
 - (d) "Employee", for the Filer, means:
 - (i) an employee of the Filer;

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- (ii) an employee of an affiliated entity of the Filer; or
 - (iii) an individual that is engaged to provide, on a bona fide basis, consulting, technical, management or other services to the Filer or to an affiliated entity of the Filer, under a written contract between the Filer or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Filer, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Filer or an affiliated entity of the Filer;
- (e) "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 Filer, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
- (i) the Filer or an affiliated entity of the Filer; or
 - (ii) a mutual fund managed by the Filer or an affiliated entity of the Filer;
- (f) "Executive", for the Filer, means a director, officer or partner of the Filer or of an affiliated entity of the Filer;
- (g) "Executive", for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (h) "Exempt Trade", for the Filer, means:
- (i) for each Jurisdiction, 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) for Ontario, a trade in securities of a mutual fund for which the Filer would have available to it an exemption from the dealer registration requirement under the Legislation if the Filer were not a "market intermediary" as such term is defined in section 204 of the Ontario Regulation;
 - (iii) for each Jurisdiction other than Ontario, a trade in securities of a mutual fund for which the Filer would have available to it an

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exemption from the dealer registration requirement under the Legislation; or

- (iv) for each Jurisdiction, a trade in securities of a mutual fund for which the Filer has received a discretionary exemption from the dealer registration requirement under the Legislation;
- (i) "Filer" means McLean Budden Limited;
- (j) "Fund-on-Fund Trade" means a trade that consists of:
 - (i) a purchase, through the Filer, of securities of a mutual fund that is made by another mutual fund;
 - (ii) a purchase, through the Filer, 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 an other 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 Filer, 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 Filer or an affiliated entity of the Filer; or
 - (B) a person or company that acquired the securities where the person or company, an affiliated entity of the person or company, or an other 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 Filer or an affiliated entity of the Filer;

- (k) "In Furtherance Trade" means, for the Filer, a trade by the Filer 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:

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- (i) a purchase or sale of securities of a mutual fund that is managed by the Filer or an affiliated entity of the Filer; or
- (ii) a purchase or sale of securities of a mutual fund where the Filer 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 Filer is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (l) "Managed Account" means, for the Filer, an investment portfolio account of a client under which the Filer, pursuant to a written agreement made between the Filer 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 Filer, a trade to, or on behalf of, a Managed Account of the Filer, where the trade consists of a purchase or redemption, through the Filer of securities of a mutual fund, that is made on behalf of the Managed Account, where, in each case:
 - (i) the Filer is the portfolio adviser to the mutual fund;
 - (ii) the mutual fund is managed by the Filer or an affiliate of the Filer; and
 - (iii) either of:
 - (A) the mutual fund is prospectus-qualified in the Jurisdiction; or
 - (B) the trade is not subject to either the prospectus requirement or the dealer registration requirement under the Legislation of the Jurisdiction;
- (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 *Securities Act*, R.S.O. 1990, c. S.5, as amended;

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- (p) "Permitted Client" means a person or company that is a client of the Filer, and that is, or was at the time the person or company became a client of the Filer:
- (i) an Executive or Employee of the Filer;
 - (ii) a Related Party of an Executive or Employee of the Filer;
 - (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 Filer, a trade to a person, who is a Permitted Client or who represents to the Filer that he or she is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Filer or an affiliate of the Filer, and the trade consists of a purchase or redemption, by the person, through the Filer, of securities of the mutual fund;
- (r) "Pooled Fund Rule" means, for the Filer, and for a Jurisdiction, a rule or other regulation under the Legislation of the Jurisdiction 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 under the Legislation, made by the Filer to or on behalf of a Managed Account, but does not include National Instrument 45-106 Prospectus and Registration Exemptions 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) "Related Party", for a person, means another person who is:
- (i) the spouse of the person;
 - (ii) the issue of:

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- (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;
- (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; or
- (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
- (u) "securities", for a mutual fund, means shares or units of the mutual fund;
- (v) "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
- (w) "Service Provider" means:
 - (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Filer or an affiliated entity of the Filer;
 - (ii) an Adviser to a mutual fund that is managed by the Filer or an affiliated entity of the Filer; 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 Filer or an affiliated entity of the Filer.

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3.

- (1) In this Appendix A, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.
- (2) In this Appendix A, a person or company is considered to be controlled by a person or company if
 - (a) in the case of a person or company
 - (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company; and
 - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
 - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
 - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Appendix A, a person or company is considered to be a subsidiary entity of another person or company if
 - (a) it is controlled by
 - (i) that other; or
 - (ii) that other and one or more persons or companies, each of which is controlled by that other; or
 - (iii) two or more persons or companies, each of which is controlled by that other; or
 - (b) it is a subsidiary entity of a person or company that is that other's subsidiary entity.

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4. In this Appendix A:
 - (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 Legislation of the Jurisdiction 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.

5. In this Appendix A, any terms that are not otherwise defined in National Instrument 14-101 Definitions or 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 Legislation of the Jurisdiction.

Restricted Registration: Permitted Activities

6. The registration of the Filer as a mutual fund dealer under the Legislation of the Jurisdictions shall be for the purposes only of trading by the Filer 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, at the time of the trade, the Filer is registered under the Legislation of the Jurisdictions as an adviser in

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the categories of "investment counsel" and "portfolio manager" or their equivalent;

(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 Filer, and provided also that paragraph (e) will cease to be in effect one year after the coming into force, subsequent to the Effective Date, of any Pooled Fund Rule.