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Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – 1996 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 requirements to be a member of the Mutual Fund Dealers Association of Canada — The dealer’s principal business is investment and wealth management services; selling mutual funds is incidental to the dealer’s business; 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.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

Securities Rules, B.C. Reg.194/97 s. 6

September 12, 2008

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
Ridgewood Capital Asset Management Inc.
(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, among other things, as a mutual fund dealer in the Jurisdictions, for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirement of having to become a

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member of the Mutual Fund Dealers Association of Canada (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (i) the Ontario Securities Commission is the principal regulator for this application; and
- (ii) 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 meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is incorporated under the *Canada Business Corporations Act* and has applied to become registered, pursuant to the National Registration System, as an adviser in the categories of investment counsel and portfolio manager, and as a mutual fund dealer, or the equivalent, in each of the Jurisdictions. The Filer has also applied to become registered as a limited market dealer in Ontario.
2. On July 2, 2008, the Filer and Mulvihill Capital Management Inc. (**MCM**), which is generally registered in the same capacities as the Filer has applied for, announced that they had entered into an agreement (the **Purchase Agreement**) for the Filer to acquire the assets in MCM's institutional and wealth management divisions.
3. The Filer is a newly-formed corporation controlled by John H. Simpson and Paul Meyer, who are currently the Senior Vice President and Vice President, Equities, respectively, of MCM. In addition, to Mr. Simpson and Mr. Meyer, 11 other employees at MCM, who provide investment counselling and portfolio management services to the clients of MCM, will join Ridgewood. All of the senior members of Ridgewood will be shareholders of the company.
4. Upon completion of the transaction contemplated in the Purchase Agreement, and subject to any required approvals, the Filer will become the manager of the Mulvihill mutual and pooled funds. In addition, the Filer will become the primary advisor to each fund, except the Mulvihill Total Return Fund, which

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will continue to be advised by MCM. The individuals who are responsible for the day-to-day management of the portfolio of each fund will remain the same.

5. The Filer will also take over MCM's separately managed, wealth and institutional management accounts. Each such client of MCM has been advised of the pending change and asked to give their consent to the transfer of their account from MCM to the Filer.
6. The Filer will operate as a separate company and its primary business will be to provide investment counselling and portfolio management services to its clients, who are currently clients of MCM and serviced by the personnel who will be part of the Filer.
7. As part of the services it provides to its separately managed accounts, the Filer wants to be registered as a mutual fund dealer so it can sell securities of the Mulvihill funds to (i) such clients and/or (ii) employees, or family members of employees, of the Filer.
8. The Filer's activities as a mutual fund dealer will be secondary and incidental to its primary business of discretionary investment management.
9. 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 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.
10. 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.

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The decision of the Decision Makers under the Legislation is that 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.

“Donna Leitch”
Assistant Manager, Registrant Regulation
Ontario Securities Commission

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Appendix A

Terms and Conditions on the Registration of Ridgewood Capital Asset Management Inc. 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;
 - (C) and where, the person or company:
 - (D) is a client of the Filer that was not solicited by the Filer; or
 - (E) was an existing client of the Filer on the Effective Date;
 - (c) “Effective Date” means August 29, 2008;
 - (d) “Employee”, for the Filer, means:
 - (A) an employee of the Filer;
 - (B) an employee of an affiliated entity of the Filer; or

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- (C) 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:
 - (A) the Filer or an affiliated entity of the Filer; or
 - (B) 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 exemption from the dealer registration requirement under the Legislation; or

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- (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) “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;
- (j) “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:
 - (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;

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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;

- (k) “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;
- (l) “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;
- (m) “Mutual Fund Instrument” means National Instrument 81-102 *Mutual Funds*, as amended;
- (n) “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;
- (o) “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:
 - (A) an Executive or Employee of the Filer;
 - (B) a Related Party of an Executive or Employee of the Filer;

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- (C) a Service Provider or an affiliated entity of a Service Provider;
 - (D) an Executive or Employee of a Service Provider; or
 - (E) a Related Party of an Executive or Employee of a Service Provider;
- (p) “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;
- (q) “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*;
- (r) “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);
- (s) “Filer” means Ridgewood Capital Asset Management Inc.;
- (t) “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

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- (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.
- 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.

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- (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
 - (iv) it is a subsidiary entity of a person or company that is that other's subsidiary entity.
4. In this Appendix A:
 - (a) “issue” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;

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- (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 the categories of “investment counsel” and “portfolio manager” or their equivalent;
 - (f) a Permitted Client Trade; or
 - (g) a Seed Capital Trade.

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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.