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January 27, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - A BC registered dealer wants an exemption from the delivery requirements for conflict of interest statements and other conflict of interest disclosure - Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and rules - A registered adviser wants an exemption from the delivery requirements for conflict of interest statements and conflict of interest disclosure - The clients are provided with alternative conflict of interest disclosure; the required form of disclosure would not provide any new information

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a) and (c) and 48
Securities Rules, B.C. Reg. 194/97, ss. 77, 79, 81, 82

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Ontario, Nova Scotia
and Newfoundland and Labrador (the Jurisdictions)

and

In the Matter of
the Mutual Reliance System for Exemptive Relief Applications (MRRS)

and

In the Matter of Mclean Budden Limited (Mclean Budden)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from McLean Budden for a decision under the securities legislation of the Jurisdictions (the Legislation) that the following conflict of interest provisions contained in the Legislation do not apply to McLean Budden (collectively, the Requested Relief) in connection with distributing units of mutual funds managed by McLean Budden (the Funds):

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- (i) the requirement that a registrant prepare a conflict of interest Statement of Policies (or equivalent) in the required form, revise the conflict statement in the event of any significant change in the information, file the statement with the applicable Decision Makers and provide its customers and clients with copies of the statements (the Conflict Statement Requirement);
- (ii) the requirement that a registrant send or deliver to its clients a written confirmation of a securities transaction that contains certain disclosure if the security was a security of a related issuer, or in the course of a distribution, a security of a connected issuer, of the registrant (the Trade Confirmation Requirement);
- (iii) the requirement that a registrant make certain disclosure to its client and obtain the requisite specific and informed written consent of its client if a registrant acts as an adviser, exercising discretionary authority with respect to the investment portfolio or account of its client, to purchase or sell securities of a related issuer, or in the course of a distribution, securities of a connected issuer of the registrant (the Discretionary Management Disclosure Requirement); and
- (iv) the requirement that a registrant make certain disclosure to its client if the registrant acts as an adviser in respect of securities of a related issuer, or in the course of a distribution, securities of a connected issuer (the Adviser Disclosure Requirement).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application;
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and National Instrument 33-105 *Underwriting Conflicts* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by McLean Budden to the Decision Makers:

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1. McLean Budden is a corporation incorporated under the laws of Canada. The head office of McLean Budden is located in Ontario.
2. McLean Budden is registered in Ontario as an adviser in the categories of investment counsel and portfolio manager and in equivalent categories in each of the Jurisdictions. In addition, McLean Budden is registered in Ontario as a limited market dealer.
3. McLean Budden is the manager, portfolio adviser and promoter of the Funds and may in the future be the manager, portfolio adviser and promoter of additional mutual funds (collectively, the Funds).
4. Each of the Funds is or will be an open-ended mutual fund trust established under the laws of Ontario and the phrase “McLean Budden” or the acronym “MB” is or will be part of the name of each Fund.
5. As part of its portfolio management operations, McLean Budden provides discretionary portfolio management services to investment portfolio accounts of clients pursuant to discretionary management agreements.
6. McLean Budden manages its clients’ assets on a discretionary basis via investments in the Funds, but also utilizes segregated, separate portfolios of securities for clients.
7. Under a discretionary management agreement, McLean Budden’s discretionary account clients specifically authorize McLean Budden to invest in the Funds.
8. All clients receive written specific disclosure of the relationship between McLean Budden and the Funds.
9. For the segregated, separate client portfolios it manages, McLean Budden may act as an adviser in respect of securities of McLean Budden or a related issuer of McLean Budden, or in the course of a distribution, in respect of securities of a connected issuer of McLean Budden, where McLean Budden obtained the prior written consent of the client to exercise discretionary authority in respect of these securities and McLean Budden has otherwise complied with the Conflict Statement Requirement, the Trade Confirmation Requirement, the Discretionary Management Disclosure Requirement and the Adviser Disclosure Requirement.

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10. Currently, McLean Budden does not act as an adviser, dealer or underwriter in respect of securities of McLean Budden or of a related issuer of McLean Budden, or in the course of a distribution, in respect of securities of connected issuers of McLean Budden other than:
 - (i) in connection with the distribution of units of the Funds; and
 - (ii) in connection with investments by the Funds in securities of related issuers or connected issuers of McLean Budden pursuant to regulatory relief previously obtained by McLean Budden and the Funds in the Jurisdictions dated February 28, 2003 (the Investment Restriction Exemption).
11. Each of the Funds may be offered on a continuous basis and will be acquired by investors either under a prospectus filed by the Fund or on a private placement basis.

The Decision

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (i) McLean Budden obtains the client's specific and informed consent to purchase or sell the units of the Funds;
- (ii) the Funds' investments in related issuers and connected issuers of McLean Budden comply with the Investment Restriction Exemption;
- (iii) no later than twelve months after the date on which McLean Budden begins to rely on this Decision and annually thereafter, McLean Budden delivers to clients an annual statement of portfolio which discloses the securities of related issuers and connected issuers of McLean Budden that are: (a) held directly by the client at any time during the preceding twelve month period, or (b) held by the client indirectly through the Funds as at the date of the statement; and
- (iv) McLean Budden advises its clients no less frequently than annually that a prospectus or offering memorandum, as applicable, is

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available in respect of the Funds and clients may obtain a copy on request or online through the Mclean Budden website.

This Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with providing portfolio management services in a manner that conflicts with or makes inapplicable any provision of this Decision.

Suresh Thakrar
Commissioner
Ontario Securities Commission

H. Lorne Morphy, Q.C.
Commissioner
Ontario Securities Commission