

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO
(the Jurisdiction)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
BMO INVESTMENTS INC.
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Initial Top Funds (as defined below), and any existing and future investment funds that are or will be managed by the Filer or an affiliate or associate of the Filer (the **Future Top Funds**, and together with the Initial Top Funds, the **Funds**, and individually, a **Fund**), for a decision under the securities legislation of the principal regulator (the **Legislation**) exempting each Fund from the following clauses of National Instrument 81-102 *Investment Funds* (**NI 81-102**):

- (a) 2.5(2)(a) and (a.1) to permit each Fund to purchase and/or hold securities of Underlying Funds, which are SICAV Funds and/or UCITS Funds (each as defined below) even though the Underlying Funds are not subject to NI 81-102; and
- (b) 2.5(2)(c) to permit each Fund to purchase and/or hold securities of Underlying Funds even though the Underlying Funds are not reporting issuers in any province or territory of Canada (collectively, the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (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 by the Funds in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 81-102 have the same meanings if used in this decision, unless otherwise defined. Additionally, the following terms have the following meanings:

Companies Act means the *Companies Act 2014* (Ireland) as amended, all enactments which are to be read as one with, or construed or read together with, or as one with, the *Companies Act 2014* (Ireland) and every statutory modification and re-enactment thereof for the time being in force.

CSSF means Commission de Surveillance du Secteur Financier.

EU Directives means *EU Council Directive 2009/65/EC of 13 July 2009 on the Coordination of Laws, Regulations and Administrative Provisions relating to UCITS*, as amended, including but not limited to, Commission Directive 2010/43/EC, Commission Directive 2010/44/EC, and Commission Directive 2014/91/EC.

Initial Top Funds means BMO Managed Balanced Portfolio, BMO Managed Conservative Portfolio, BMO Managed Equity Growth Portfolio, BMO Managed Growth Portfolio, BMO Managed Income Portfolio, BMO SelectTrust[®] Balanced Portfolio, BMO SelectTrust[®] Conservative Portfolio, BMO SelectTrust[®] Equity Growth Portfolio, BMO SelectTrust[®] Growth Portfolio, BMO SelectTrust[®] Income Portfolio and other investment funds managed by the Filer from time to time.

KIID means a Key Investor Information Document prepared by a UCITS Corporation for each of the Underlying Funds which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101 or an ETF facts document prepared under NI 41-101.

NI 41-101 means National Instrument 41-101 *General Prospectus Requirements*.

NI 81-101 means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

SICAV means Société d'Investissement à Capital Variable, an open-end company, governed by the laws of Luxembourg.

SICAV Funds means each of the existing sub-funds of an umbrella SICAV with UCITS status and other sub-funds of an umbrella SICAV with UCITS status established in the future.

UCITS means *Undertaking for Collective Investments in Transferable Securities* and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country in Europe.

UCITS Corporations means investment companies with variable capital, incorporated in Ireland pursuant to the Companies Act and the UCITS Regulations.

UCITS Funds means each of the existing sub-funds of the UCITS Corporations and other sub-funds of the UCITS Corporations established in the future under one of the UCITS Corporations.

UCITS Notices means the series of UCITS notices, memorandums, guidelines and letters issued by the Central Bank of Ireland or the CSSF, as the case may be.

UCITS Regulations means the regulations issued by European Union member states that implement the EU Directives.

Underlying Fund means a SICAV Fund or a UCITS Fund.

Underlying Fund Manager means the promoter, investment manager and distributor of an Underlying Fund.

Representations

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

The Filer

1. The Filer is a corporation amalgamated under the laws of Canada. The Filer is an indirect, wholly-owned subsidiary of Bank of Montreal. The Filer's head office is located in Toronto, Ontario.
2. The Filer is registered as an investment fund manager (**IFM**) in each of Ontario, Québec and Newfoundland and Labrador, and as a mutual fund dealer in each of the Jurisdictions.
3. The Filer or an affiliate acts or will act as the IFM of the Funds.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

5. Each Fund is, or will be, an investment fund organized and governed by the laws of Canada or a Jurisdiction.
6. Each Fund is, or will be, governed by the applicable provisions of NI 81-102, subject to any relief therefrom that have been, or may in the future be, granted by the securities regulatory authorities.
7. Each Fund is, or will be, a reporting issuer in one or more of the Jurisdictions.
8. The Initial Top Funds are not in default of applicable securities legislation in any Jurisdiction.
9. Each investment by a Fund in securities of an Underlying Fund will be made in accordance with the investment objectives of the Fund and will represent the business judgment of

responsible persons uninfluenced by considerations other than the best interests of the Fund.

10. Subject to compliance with NI 81-102, the investment objectives and strategies of each Fund would permit the Fund to invest in securities of the Underlying Funds.

The Underlying Funds

11. A Fund may, from time to time, invest up to 10% of its net asset value in securities of an Underlying Fund.
12. The UCITS Funds are sub-funds of a UCITS Corporation and are subject to the UCITS Regulations.
13. The SICAV Funds are sub-funds of an umbrella SICAV with UCITS status under the laws of Luxembourg and are subject to UCITS Regulations.
14. The Underlying Funds are conventional mutual funds subject to investment restrictions and practices that are substantially similar to those applicable to the Funds. The Underlying Funds are available for purchase by the public and are generally not considered hedge funds. Each of the Underlying Funds is considered to be an “investment fund” and a “mutual fund” within the meaning of applicable Canadian securities legislation.
15. The Underlying Funds qualify as UCITS and the securities of the Underlying Funds are distributed in accordance with the UCITS Regulations. Each UCITS Fund is regulated by the Central Bank of Ireland and each SICAV Fund is regulated by the CSSF.
16. The Underlying Funds are qualified for purchase by way of a prospectus, relating to the UCITS Corporations and the umbrella SICAVs, and an individual prospectus supplement pertaining to each sub-fund of the UCITS Corporations and the umbrella SICAVs, including each of the Underlying Funds. In addition to the prospectus and prospectus supplement, the UCITS Corporations and the umbrella SICAVs prepare a KIID for each of the Underlying Funds.
17. An Underlying Fund Manager serves as the promoter, investment manager and distributor of each sub-fund of the UCITS Corporations and the umbrella SICAVs. An Underlying Fund Manager, subject to the supervision of the directors of the UCITS Corporations or the umbrella SICAV, as the case may be, is responsible for the investment management, distribution and marketing of the Underlying Funds. The Underlying Fund Manager provides an investment program for the Underlying Funds and manages the investment of the Underlying Funds’ assets.
18. An Underlying Fund Manager, being subject to regulatory oversight by the Central Bank of Ireland or CSSF, is subject to substantially equivalent regulatory oversight as the Filer, which is principally regulated by the OSC. In discharging its duties, the Underlying Fund Manager must conduct its business with due skill, care and diligence.

19. The Underlying Funds are subject to the following regulatory requirements and restrictions pursuant to, and among others, the EU Directives, which are substantially similar to the requirements and restrictions set forth in NI 81-102:
- (a) Each Underlying Fund is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets.
 - (b) Each Underlying Fund is restricted to investing a maximum of 10% of its net assets in a single issuer.
 - (c) Each Underlying Fund is subject to investment restrictions designed to limit its holdings of illiquid securities to 10% or less of its net asset value.
 - (d) Each Underlying Fund is subject to investment restrictions designed to limit holdings of transferrable securities which are not listed on a stock exchange or regulated market to 10% or less of the Underlying Fund's net asset value.
 - (e) The rules governing the use of derivatives by the Underlying Funds are comparable to the rules regarding the use of derivatives under NI 81-102 with respect to the types of derivatives allowed to be used and counterparty concentration. For Funds that are not alternative funds, the differences between the two regimes relate to: (i) counterparty credit ratings; (ii) maximum exposure to options; and (iii) having to hold cash and collateral together with the market value of the derivatives equal to the underlying market exposure of the derivatives (on a mark-to-market basis) where the funds use derivatives for investment purposes.
 - (f) The rules governing securities lending by the Underlying Funds are comparable to the rules regarding securities lending under NI 81-102 including, the inability to pledge non-cash collateral and the right to immediately recall the securities loaned. The differences between NI 81-102 and the rules pertaining to the Underlying Funds relate to the following: (i) the type and amount of collateral; (ii) the person who may be appointed as agent for securities lending; (iii) the types of securities that may be purchased with collateral received; and (iv) the overall securities lending limits.
 - (g) Each Underlying Fund makes, or will make, its net asset value of its holdings available to the public at the close of business each day.
 - (h) Each Underlying Fund is required to prepare a prospectus and prospectus supplement that discloses material facts pertaining to each Underlying Fund. The prospectus, together with the corresponding prospectus supplement, provide disclosure that is similar to the disclosure required to be included in a simplified prospectus under NI 81-101 or in a prospectus under NI 41-101.
 - (i) Each Underlying Fund publishes a KIID which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101 or an ETF facts document under NI 41-101.

- (j) Each Underlying Fund is subject to continuous disclosure obligations which are similar to the disclosure obligations of the Funds under National Instrument 81-106 *Investment Funds Continuous Disclosure*.
- (k) The Underlying Fund Manager is subject to approval by the Central Bank of Ireland or the CSSF to permit it to manage and provide portfolio management advice to each Underlying Fund and is subject to an investment management agreement which sets out a duty of care and a standard of care requiring the Underlying Fund Manager to act in the best interest of each Underlying Fund and the shareholders of each Underlying Fund.
- (l) All activities of the Underlying Fund Manager must be conducted at all times in accordance with the UCITS Regulations, the UCITS Notices and the investment policy of each Underlying Fund and are at all times subject to the supervision of the board of directors of the UCITS Corporation.
- (m) The auditors of each Underlying Fund are required to prepare an audited set of accounts for each Underlying Fund at least annually.

Investment by Funds in the Underlying Funds

- 20. The investment objective and strategies of each Fund are, or will be, disclosed in each Fund's prospectus or simplified prospectus and any Fund that invests in an Underlying Fund will be permitted to do so in accordance with its investment objectives and strategies.
- 21. In particular, the investment strategies of each Fund stipulate, or will stipulate, that the Fund may invest a portion of its assets in other investment funds, domestic or foreign, which will permit each Fund to invest in an Underlying Fund.
- 22. The prospectus or simplified prospectus of each Fund provides, or will provide, all disclosure mandated for investment funds investing in other investment funds.
- 23. There will be no duplication of management fees or incentive fees as a result of an investment by a Fund in an Underlying Fund.
- 24. The amount of loss that could result from an investment by a Fund in an Underlying Fund will be limited to the amount invested by the Fund in such Underlying Fund.
- 25. No sales charges or redemption fees will be paid by a Fund relating to a subscription for, or redemption of, securities of an Underlying Fund.

Rationale for Investment in the Underlying Fund

- 26. The Filer believes that it is in the best interests of the Funds that they be permitted to invest in the Underlying Funds because such investment would provide an efficient and cost-effective way for the Funds to achieve diversification and obtain unique exposures to the markets in which the Underlying Funds invest.

27. The investment objectives and strategies of the Funds, which contemplate or will contemplate investment in global or international securities, permit or will permit the allocation of assets to global or international securities. As economic conditions change, the Funds may reallocate assets, including on the basis of asset class or geographic region. A Fund will invest in an Underlying Fund to gain exposure to certain unique strategies in global or international markets in circumstances where it would be in the best interests of the Fund to do so through an investment in an investment fund offered elsewhere rather than through investments in individual securities. For example, a Fund will invest in the Underlying Funds in circumstances where certain investment strategies preferred by the Funds are either not available or not cost effective to be implemented through investments in individual securities.
28. By investing in the Underlying Funds, the Funds will obtain the benefits of diversification, which would be more expensive and difficult to replicate using individual securities. This will reduce single issuer risk.
29. Investment by a Fund in an Underlying Fund meets, or will meet, the investment objectives of such Fund.
30. An investment by a Fund in securities of each Underlying Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.
31. Absent the Exemption Sought, the investment restriction in paragraphs 2.5(2)(a)(i) and 2.5(2)(a.1)(i) of NI 81-102 would prohibit a Fund that is a mutual fund or alternative mutual fund, respectively, from purchasing or holding securities of an Underlying Fund because the Underlying Fund is not subject to NI 81-102.
32. Absent the Exemption Sought, the investment restriction in paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of an Underlying Fund because the Underlying Fund is not a reporting issuer in the local jurisdiction.

Decision

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 Exemption Sought is granted provided that:

- (a) the Underlying Funds qualify as UCITS and are distributed in accordance with the UCITS Regulations, which subject the Underlying Funds to investment restrictions and practices that are substantially similar to those that govern the Funds;
- (b) the investment of the Funds in the Underlying Funds otherwise complies with section 2.5 of NI 81-102 when investing in the Underlying Funds, and the

prospectus will provide all applicable disclosure mandated for investment funds investing in other investment funds;

- (c) a Fund does not invest in an Underlying Fund if, immediately after the investment, more than 10% of its net assets, taken at market value at the time of the investment, would consist of investments in Underlying Funds; and
- (d) a Fund shall not acquire any additional securities of an Underlying Fund and shall dispose of any securities of an Underlying Fund then held in the event the regulatory regime applicable to the Underlying Funds is changed in any material way.

“Darren McKall”

Darren McKall, Manager
Investment Management
Ontario Securities Commission

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