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April 12, 2024

**VIA SEDAR+**

Ontario Securities Commission  
P.O. Box 55, Suite 1900  
20 Queen Street West  
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

**Re: BMO Investments Inc.**

**Passport Application made under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203) and Multilateral Instrument 11-102 *Passport System* (MI 11-102)**

**for Exemptive Relief from Clauses 2.5(2)(a), 2.5(2)(a.1) and 2.5(2)(c) of National Instrument 81-102 *Investment Funds* (NI 81-102) pursuant to Section 19.1 of NI 81-102 (the Application)**

**A. INTRODUCTION**

We are counsel to BMO Investments Inc. (the **Filer**). We are applying on behalf of the Filer for a decision seeking discretionary relief pursuant to section 19.1 of NI 81-102 from clauses 2.5(2)(a), 2.5(2)(a.1) and 2.5(2)(c) of NI 81-102 to permit 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**) to invest up to 10 percent of their net assets, taken at market value at the time of the investment, in aggregate, in securities of investment funds formed under the laws of a foreign jurisdiction (the **Exemption Sought**).

In accordance with Part 4 of MI 11-102 and section 3.6 of NP 11-203, the Ontario Securities Commission (**OSC**) has been chosen as the principal regulator for the purposes of this application, as the head office of the Filer is in Toronto, Ontario.

Pursuant to subparagraph 5.2(1)(a)(v) of NP 11-203, notice is hereby given that subsection 4.7(2) of MI 11-102 is intended to be relied upon in each of the other provinces and territories of Canada (collectively, with Ontario, the **Jurisdictions**).

## **B. DEFINITIONS**

Unless expressly defined herein, terms in this application have the respective meanings given to them in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102 and National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)*.

In addition, in this application 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<sup>®</sup> Balanced Portfolio, BMO SelectTrust<sup>®</sup> Conservative Portfolio, BMO SelectTrust<sup>®</sup> Equity Growth Portfolio, BMO SelectTrust<sup>®</sup> Growth Portfolio, BMO SelectTrust<sup>®</sup> 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.

## **C. REPRESENTATIONS**

### ***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.

### **D. SUBMISSIONS**

33. The Filer believes that it is in the best interests of the Funds for investments to be made in the Underlying Funds in order to obtain or increase exposure to geographic regions, asset classes, sectors, durations and/or investment styles not otherwise available to the Funds amongst each other.

34. Due to the limited market in Canada for equity and fixed income funds with a narrower or more specific investment mandate, along with the considerable costs and time involved in launching mutual funds, it would not be viable to launch Canadian equivalents of many of the Underlying Funds.
35. The Filer's ability to access the niche asset classes available through the Underlying Funds gives it a better opportunity to enhance return and manage risk.
36. The Underlying Funds are mutual funds whose investment objectives and strategies make them suitable investment options for the Funds.
37. The Underlying Funds are subject to a regulatory regime, administration, operations, and investment restrictions and practices, that are substantially equivalent to those that govern the Funds. The Underlying Funds have investment objectives that would classify them as "conventional" mutual funds if they were established in Canada in compliance with NI 81-102.
38. No investment by a Fund in an Underlying Fund will expose the Fund to the loss of anything greater than its original investment. Each Fund will invest no more than 10% of its net assets in securities of an Underlying Fund. As a result, an investment in an Underlying Fund should be seen as no different than an investment in an illiquid asset or physical commodity that is permitted under NI 81-102, where the Fund's exposure to such investment has been permitted, provided such exposure is limited to 10% of net asset value.
39. The Funds otherwise comply fully with section 2.5 of NI 81-102 in investing in the Underlying Funds and provide all disclosure mandated for mutual funds investing in other mutual funds.
40. The Jurisdictions have recognized that it may be important to a Canadian mutual fund that it be granted the ability to invest in a foreign mutual fund so long as the foreign mutual fund is subject to substantially similar laws and the investment is necessary to allow the Canadian mutual fund to achieve its investment objective.

### ***Similar Decisions***

41. Similar relief to the Exemption Sought has been granted in the past. Please see, among others, *In the Matter of CI Investments Inc. and its Affiliates* (September 26, 2023), *In the Matter of Invesco Canada Ltd.* (May 13, 2022), *In the Matter of Franklin Templeton Investments Corp.* (April 21, 2022), and *In the Matter of HSBC Global Asset Management (Canada) Limited* (December 20, 2021).

### **E. CONCLUSION**

In support of the Application, we have included the following:

- (a) a verification statement executed by the Filer;
- (b) a draft decision document granting the Exemption Sought; and

(c) the applicable filing fees.

Should you have any questions or require any further information, please do not hesitate to contact us.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

(signed) "*Borden Ladner Gervais LLP*"

**VERIFICATION STATEMENT**

**TO: ONTARIO SECURITIES COMMISSION**

**RE: BMO INVESTMENTS INC.**

**Passport Application made under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* and Multilateral Instrument 11-102 *Passport System***

**for Exemptive Relief from Clauses 2.5(2)(a), 2.5(2)(a.1) and 2.5(2)(c) of National Instrument 81-102 *Investment Funds* (NI 81-102) pursuant to Section 19.1 of NI 81-102**

The undersigned hereby authorizes the making and filing of the attached application by Borden Ladner Gervais LLP and confirms the truth of the facts contained herein.

DATED this 12<sup>th</sup> day of April, 2024.

**BMO INVESTMENTS INC.**

By: (signed) "Sadiq Adatia"

Chief Investment Officer Canada,  
BMO Global Asset Management