

June 24, 2025

**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)**

**AND**

**IN THE MATTER OF  
BMO COVERED CALL SPREAD GOLD BULLION ETF FUND  
(the Existing Fund)**

**and all other existing and future mutual funds, including exchange-traded funds (ETFs), but  
excluding alternative mutual funds, managed by the Filer or an affiliate  
(together with the Existing Fund, the Funds)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Funds from the multi-tier fund-of-fund restriction in paragraph 2.5(2)(b) of National Instrument 81-102 *Investment Funds (NI 81-102)* to permit a three-tier structure where a Fund purchases and holds directly or indirectly securities of one or more other mutual funds, including conventional mutual funds and exchange-traded funds, but excluding alternative mutual funds, each of which is, or will be, subject to NI 81-102 and managed by the Filer or an affiliate of the Filer (each, a **Reference Fund**), which Reference Fund in turn holds directly or indirectly more than 10% of its net asset value (**NAV**) in securities of one or more other mutual funds, including conventional mutual funds, exchange-traded funds and alternative mutual funds, each of which is, or will be, subject to NI 81-102 and managed by the Filer or an affiliate of the Filer (each, a **Third Tier Fund**) (each, a **Three-Tier Structure**) (the **Requested Relief**).

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 in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. In addition to the defined terms used in this decision, capitalized terms used in this decision have the following meanings:

**Policies** means the Filer's the Fund of Fund Policy, Large Securityholders and Redemptions Policy and the Order Allocation and Aggregation Policy.

### **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 with its head office located in Toronto, Ontario.
2. The Filer is registered as a mutual fund dealer in each of the Jurisdictions, and as an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador. The Filer is also a member of the Canadian Investment Regulatory Organization.
3. The Filer or an affiliate is, or will be, the investment fund manager of each fund in a Three-Tier Structure. The Filer may appoint one or more portfolio managers or sub-advisors to provide the Filer with investment advice in respect of the investments of the funds in a Three-Tier Structure.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.

#### ***The Existing Fund***

5. The investment objective of the Existing Fund is to seek to provide long-term capital appreciation through exposure to the price of gold bullion, net of fees and expenses, by investing primarily, directly or indirectly, in long-term holdings of unencumbered gold bullion while mitigating some downside risk through the use of a covered call spread strategy.
6. If the Exemption Sought is granted, the Existing Fund will seek to achieve its investment objective by investing up to 100% of the Existing Fund's assets in securities of BMO Covered Call Spread Gold Bullion ETF (the **Existing Reference Fund**). The Existing Reference Fund currently invests primarily in BMO Gold Bullion ETF (the **Existing Third Tier Fund**) and, depending on market volatility and other factors, the Existing Third Tier Fund buys and sells call options on some or all of the underlying funds that it owns.

#### ***The Funds***

7. Each Fund, Reference Fund and Third Tier Fund is, or will be, an open-ended mutual fund or class of a mutual fund corporation organized and governed by the laws of a Jurisdiction or the laws of Canada. The securities of each Reference Fund and Third Tier Fund may be sold to investors other than the Funds.

8. Each Fund, Reference Fund and Third Tier Fund is, or will be, an investment fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, and offered by a prospectus filed and received in the Jurisdictions and, accordingly, a reporting issuer in the Jurisdictions.
9. No existing Fund, Reference Fund, or Third Tier Fund is in default of securities legislation in any Jurisdiction.

### ***Three-Tier Structure***

10. Each Reference Fund may invest, among other things, in one or more Third Tier Funds. In some circumstances, these investments in Third Tier Funds will exceed 10% of the Reference Fund's NAV.
11. Each Third Tier Fund in the Three-Tier Structure primarily invests, or will primarily invest, directly in a portfolio of securities and/or other assets. It may also invest up to 10% of its NAV in securities of other investment funds.
12. Each Three-Tier Structure is subject to the Policies. The purpose of the Policies is to seek the fair treatment for investors in all investment funds managed by the Filer that are involved in a fund of fund structure by allocating transaction costs fairly between funds. The Policies are designed to isolate the transaction costs associated with significant trades and to prevent the dilution of a fund's assets when these material transactions occur by taking steps to ensure that the applicable fund or funds bear(s) the appropriate economic impact of such transaction costs. The Filer also reviews and assesses the trade allocation policies of the portfolio manager and sub-advisor to ensure fair treatment of all clients in allocating investment opportunities.
13. To manage liquidity risk due to cross-ownership of funds within a Three-Tier Structure, the Filer will use a combination of risk management tools to address the significant investor risk, including (i) Independent Review Committee (or IRC) approved governance policies that have been adopted to protect all investors in the funds, (ii) internal portfolio manager notification requirements of significant cash outflows from the funds, (iii) ongoing liquidity monitoring of each fund's portfolio, and (iv) daily cash projection reporting for the funds. Each fund in a Three-Tier Structure will be managed as a stand-alone investment for purposes of the application of these risk management tools.
14. The investment strategies of each Fund in a Three-Tier Structure, as stated in the Fund's prospectus, state or will state (in the next regularly scheduled renewal, or amendment if earlier), that the Fund will invest in one or more Reference Funds and that each of these Reference Funds may invest more than 10% of its net assets in one or more Third Tier Funds.
15. For purposes of section 2.5 of NI 81-102, each Fund will be considered to be holding securities of each Reference Fund, whether the Fund holds the securities of each Reference Fund directly or indirectly through one or more specified derivatives. Accordingly, each Fund's investment in one or more of the Reference Funds will result in a Three-Tier Structure. This Three-Tier Structure is contrary to the multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 and does not fit within the exceptions to paragraph 2.5(2)(b) found in subsection 2.5(4) of NI 81-102. Except for paragraph 2.5(2)(b), a Fund's use of the Three-Tier Structure will be made in accordance with the provisions of section 2.5 of NI 81-102.
16. An investment by a Reference Fund in securities of its Third Tier Funds is, and will be, made in

accordance with the provisions of section 2.5 of NI 81-102.

17. There will be no duplication of fees between each tier of the Three-Tier Structure. In the case of an investment made into any Reference Fund or Third Tier Fund offered by the Filer or an affiliate of the Filer, such investment will be made either in a series in respect of which no management and administrative fees are charged or the Filer will waive such fees to eliminate any duplication between each tier of the Three-Tier Structure. No sales charges will be paid by a Fund relating to an investment into any Reference Fund or by any Reference Fund relating to an investment in any Third Tier Fund. The prospectus of each Fund and Reference Fund will disclose that fees and expenses will not be duplicated as a result of investments in underlying funds.
18. The prospectus of each Fund in a Three-Tier Structure will also disclose in the next regularly scheduled renewal, or amendment if earlier, that the accountability for portfolio management is (a) at the level of each Fund with respect to the selection of Reference Funds to be purchased by that Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by that Fund, (b) at the level of each Reference Fund with respect to the selection of Third Tier Funds to be purchased by that Reference Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by that Reference Fund and (c) at the level of each Third Tier Fund with respect to the purchase and sale of portfolio securities and other assets held by that Third Tier Fund.
19. Each Fund in a Three-Tier Structure will comply with the requirements under National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)* or its successor, if required, relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds.
20. The investment objectives of the underlying funds held by a Fund in a Three-Tier Structure will generally be independent of each other in order to minimize potential overlap between the securities held by the respective portfolios of the underlying funds. To address any potential duplication of securities between underlying funds, the Filer will, through its compliance testing, aggregate the portfolio holdings across all underlying funds in a Three-Tier Structure for purposes of determining compliance with the concentration, control and other threshold limits under NI 81-102.
21. The Three-Tier Structure avoids the need to manage multiple versions of the same investment mandate and allows for economies of scale, requiring less trading than would be the case if the Three-Tier Structure did not exist. A reduction in trading activities and associated trading costs would result in a reduced trading expense ratio (TER) for the Funds.
22. If the Exemption Sought was not granted in respect of the Existing Fund, for the Filer to achieve the desired exposure using a structure already permitted under NI 81-102, the Existing Fund would need to invest directly in the Existing Third Tier Fund and execute the covered call strategy of the Existing Reference Fund at both the Existing Fund and Existing Reference Fund levels.
23. It would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

## 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 Requested Relief is granted, provided that:

- (i) the Filer is the investment fund manager of each Fund, Reference Fund and Third Tier Fund in a Three-Tier Structure;
- (ii) the investment strategies of each Fund in a Three-Tier Structure, as stated in the Fund's prospectus (which, in the case of an existing Fund, means the Fund's prospectus or amendment next receipted after the Fund becomes part of a Three-Tier Structure), state that the Fund will invest in one or more Reference Funds and that each of these Reference Funds may invest more than 10% of its net assets in a class or series of securities of one or more Third Tier Funds;
- (iii) the proposed investment of each Fund in its Reference Fund(s) and of each Reference Fund in its Third Tier Fund(s) in a Three-Tier Structure is otherwise made in compliance with all other requirements of section 2.5 of NI 81-102, except to the extent that discretionary relief has been granted from any such requirement;
- (iv) there is no duplication of management fees or administrative fees between each tier of the Three-Tier Structure;
- (v) the Three-Tier Structure is implemented in a manner that seeks the fair treatment for investors in all of the investment funds managed by the Filer that are involved in a Three-Tier Structure by allocating portfolio transaction costs fairly among all of such investment funds;
- (vi) the Filer maintains investor protection policies and procedures that address liquidity and redemption risk due to cross-ownership of funds within a Three-Tier Structure, and each fund in a Three-Tier Structure is managed as a stand-alone investment for purposes of these policies and procedures;
- (vii) each Fund in a Three-Tier Structure complies with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds; and

- (viii) each Reference Fund and Third Tier Fund in a Three-Tier Structure is not an alternative mutual fund and does not rely on any discretionary relief permitting the fund to exceed the leverage exposure otherwise permitted under NI 81-102 through the use of borrowing, short selling and specified derivatives.

*“Darren McKall”*

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**ONTARIO SECURITIES COMMISSION**

**SEDAR Project # 6279817**  
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