

Kathryn M. Fuller
T 416.367.6731
kfuller@blg.com

Chelsea Papadatos
T 416.367.6719
cpapadatos@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000
F 416.367.6749
blg.com



May 1, 2025

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 Paragraph 2.5(2)(b) 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**). On behalf of the Filer, we hereby apply for a decision exempting BMO Covered Call Gold Bullion ETF Fund (the **Existing Fund**) and all other existing and future mutual funds, including conventional mutual funds, exchange-traded funds and alternative mutual funds, managed by the Filer or an affiliate (together with the **Existing Fund**, the **Funds**), from the multi-tier fund-of-fund restriction in paragraph 2.5(2)(b) of 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, 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**).

B. PASSPORT APPLICATION

In accordance with Part 4 of MI 11-102 and section 3.6 of NP 11-203, the Ontario Securities Commission 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(1)

of MI 11-102 is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

C. DEFINITIONS

Unless expressly defined herein, terms in this Application have the respective meanings given to them in NI 81-102, National Instrument 14-101 *Definitions* or MI 11-102.

Clone Fund Exception means the exception in paragraph 2.5(4)(a) of NI 81-102 that permits a multi-tier fund of fund structure where the Reference Fund is a clone fund.

CSA means the Canadian Securities Administrators

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

D. REPRESENTATIONS

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 Funds

5. 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.
6. 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 receipted in the Jurisdictions and, accordingly, a reporting issuer in the Jurisdictions.
7. No existing Fund, Reference Fund, or Third Tier Fund is in default of securities legislation in any Jurisdiction.

Three-Tier Structure

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. There will be no duplication of fees between each tier of the Three-Tier Structure. 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.

16. 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.
17. 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.
18. 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

E. SUBMISSIONS

19. Amendments were made to NI 81-102 effective as of December 31, 2003 to permit mutual funds to invest in other mutual funds. As part of that amendment process, the CSA commented that multi-layered fund of fund structures can reduce transparency for investors and regulators. The CSA stated that regulators are concerned about these structures for a number of reasons, including the inherent complexity of the structure, which can make it difficult for investors to understand how these funds operate, the diluted accountability for portfolio management services, reduced transparency with respect to fees, investments and investment practices and the potential for abuse.
20. Notwithstanding the concerns expressed by the CSA, section 2.5 of NI 81-102 contains certain exceptions to the prohibition on multiple layering, including the Clone Fund Exception. The CSA has concluded that a tiered fund structure where the clone fund (the middle fund) tracks the performance of another mutual fund should be permitted because this type of structure is more transparent to investors.
21. Several conclusions can be drawn from the Clone Fund Exception. First, the CSA does not believe that the clone fund structure is overly complex, despite any potential use of

derivatives by the clone fund. Second, the CSA does not believe that accountability for portfolio management services is diluted as a result of the tiered structure. Third, the structure is transparent enough with respect to the investment portfolio and the fees charged to investors. Finally, there is minimal potential for abuse.

22. Based on the policy rationale behind the Clone fund Exception, exemptive relief has been granted to permit certain three-tier fund structures that do not technically comply with section 2.5(2)(b) of NI 81-102.
23. The Filer submits that the Three-Tier Structure is similar to, and no more complex than, the multi-tier structure currently permitted under section 2.5(4)(a) of NI 81-102 and similar existing exemptive relief, and that the same considerations apply.
24. Addressing the CSA's stated concerns, the Filer believes that the use of multi-tier investments is a common and well understood investment strategy and the Three-Tier Structure is not inherently complex and can be easily explained to, and understood by, investors. In this regard, the prospectus disclosure described above, the disclosure in the annual and interim management reports of fund performance and the required quarterly disclosure of portfolio holdings that apply to each of the investment funds in the proposed Three-Tier Structure further address any concern regarding investor understanding.
25. The Filer is of the view that the Three-Tier Structure will not result in any diluted accountability for portfolio management services, and the prospectus disclosure will make it clear where the portfolio management responsibility resides at each level in the applicable structure.
26. The disclosure for the Funds will be transparent with respect to the fees charged to the Funds as a result of a Three-Tier Structure, as well as in respect of the investments and the investment practices of the Funds and the Reference Funds. In that regard, the prospectus of each Fund and Reference Fund will disclose that fees and expenses for the same service will not be duplicated as a result of investments in underlying funds.
27. The Filer believes that the Three-Tier Structure has no more potential for abuse than the multi-tier structures currently permitted under NI 81-102. In addition to the mitigating factors noted above, all of the investment funds involved in a Three-Tier Structure will be governed by NI 81-102 and the other applicable instruments that govern retail mutual funds, including NI 81-106 and National Instrument 81-107 *Independent Review Committees for Investment Funds*.
28. In connection with the Three-Tier Structure and in addition to the above submissions, the Filer has determined that there are a number of reasons that support a Three-Tier Structure that allows each Fund to achieve its investment objective by investing some of its assets in securities of one or more Reference Funds rather than investing directly in the same securities and in the same proportions in which each Reference Fund invests. These reasons are:
 - (a) a Three-Tier Structure avoids the need to manage multiple versions of the same investment mandate. As discussed more fully below, this results in improved trade execution, a fully invested portfolio, optimized operational portfolio structure and

a reduction in operational risk;

- (b) the pooling of assets under a Three-Tier Structure, which would otherwise be managed independently, allows for economies of scale and optimizes the portfolio manager's or sub-adviser's ability to manage a single investment fund. From a scale perspective, any ongoing purchases and redemptions at an investor level in a Fund will represent a smaller percentage of the total net assets of any applicable Reference Fund or Third Tier Fund, which will therefore require less trading than would be the case if the Three-Tier Structure did not exist and, instead, there were multiple smaller funds. This reduction in trading activities, in turn, could potentially improve tax efficiency for Fund investors;
- (c) having to manage the portfolios of only the Reference Funds or Third Tier Funds allows for the creation of an optimized portfolio for the Funds. As it can be difficult to replicate exactly the underlying investment funds in a Three-Tier Structure, having to manage individual portfolios could result in differently performing investment products. In the Three-Tier Structure, the Funds will experience portfolio performance that is consistent with the performance of the applicable underlying investment fund(s);
- (d) the reduction of both operational risk and trading costs, and the increase of trade efficiencies, as the Three-Tier Structure removes the need to replicate trading across multiple portfolios. In the Three-Tier Structure, any adjustment made by a Fund to each of its Reference Funds is made by simply acquiring or redeeming securities of a Reference Fund in the ordinary course. Any adjustment made by a Reference Fund to each of its Third Tier Funds is made by simply acquiring or redeeming securities of a Third Tier Fund in the ordinary course, which automatically result in a corresponding indirect adjustment to the Fund's exposure to that Third Tier Fund;
- (e) it is more efficient and less costly for each Fund if exposure to a Third Tier Fund occurs at the Third Tier Fund level. For example, the reduction of the number of investment funds that need to purchase or sell the same securities removes duplicative administrative costs, such as custody, pricing and bookkeeping charges, each of which is partially assessed on a transactional basis;
- (f) in the fixed income market, the trading of large blocks of fixed income securities generally results in improved execution. While the Manager has procedures to execute block trades for its investment funds in order to improve execution quality, the Three-Tier Structure reduces the operational risk associated with these block trades and increases the efficiency of trading in this fixed income market. In addition, the pooling of assets under the Three-Fund Structure provides access to more fixed income securities, because the applicable Reference Fund and Third Tier Fund can satisfy the large minimum denomination sizes that exist in the fixed income market. Since many fixed income securities have these minimum trade denomination sizes, investment funds with smaller asset bases may not be able to acquire these securities; and

- (g) the Three-Tier Structure reduces the need for large seed capital investments from either the Filer or, in the case of exchange-traded Funds, the designated broker, as the Three-Tier Structure allows each Fund to be fully invested immediately.
29. In respect of the Three-Tier Structure, an investment by each Fund in one or more Reference Funds and by each Reference Fund in one or more Third Tier Funds represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund or the Reference Fund.
30. For the reasons provided above, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

Similar Decisions

31. Similar relief to the Requested Relief has been granted in the past. Please see: *In the Matter of CIBC Asset Management Inc (December 13, 2023)*, and *In the Matter of Fidelity Investments Canada Limited (October 20, 2020)*.

F. CONCLUSION

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

- (a) a verification statement executed by the Filer;
- (b) a draft decision document in respect of the Requested Relief; 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* (NP 11-203) and Multilateral Instrument 11-102 *Passport System* (MI 11-102) for Exemptive Relief from Paragraph 2.5(2)(b) of National Instrument 81-102 *Investment Funds* (NI 81-102) pursuant to Section 19.1 of NI 81-102 (the Application)

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 May 1, 2025.

BMO INVESTMENTS INC.

By: *(signed) "William Bamber"*

William Bamber
Head, Investment Fund Manager
Line of Business