

July 13, 2018

**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.
(BMO)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from BMO on behalf of each of the investment funds (the **Funds**) for which BMO or an affiliate (the **Filer**) acts or may in the future act as manager that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**), for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) providing an exemption from paragraphs 2.5(2)(a), (a.1), (c), (c.1) and (e) of NI 81-102 to permit the Funds to invest in securities of existing and future investment funds affiliated to the Filer (the **BMO UCITS ETFs**) listed on the Irish Stock Exchange (**ISE**) and admitted to trading on the London Stock Exchange (**LSE**) that, but for the fact that they are listed on a stock exchange in Ireland and admitted to trading on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, would otherwise qualify as “index participation units” as defined in NI 81-102 (**IPU**) (the **Exemption Sought**).

BMO also requests that the Prior Decision (as defined below) be revoked and replaced with this decision (the **Revocation**).

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

- (a) the Ontario Securities Commission is the principal regulator for the 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (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.

Representations

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

Prior Decision

1. The Filer was previously granted exemptive relief pursuant to a decision dated April 15, 2016, *In the Matter of BMO Investments Inc.* (the **Prior Decision**) from the requirement in paragraphs 2.5(2)(a), (a.1), (c), (c.1) and (e) of NI 81-102 to permit the Funds to invest in securities of certain BMO UCITS ETFs that, but for the fact that they are listed on a stock exchange in Ireland and admitted to trading on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, would otherwise qualify as IPUUs.

The Filer and the Funds

2. BMO is a corporation incorporated under the laws of Canada with its head office in Toronto, Ontario.
3. BMO is an indirect, wholly-owned subsidiary of Bank of Montreal.
4. BMO is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador and as a mutual fund dealer in each of the Jurisdictions.
5. The Filer acts, or will act, as manager of each of the Funds.
6. Each Fund is, or will be, an investment fund under the laws of a Jurisdiction of Canada and a reporting issuer under the laws of some or all of the Jurisdictions.
7. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.
8. The securities of each Fund are, or will be, qualified for distribution in some or all of the Jurisdictions under a prospectus or simplified prospectus.
9. Neither the Filer nor any of the existing Funds are in default of securities legislation in any of the Jurisdictions.

The BMO UCITS ETFs

10. Each Fund proposes, from time to time, to invest up to 10% of its net asset value in securities of a single BMO UCITS ETF. At no time will a Fund invest more than 20% of its net asset value in securities issued by BMO UCITS ETFs in aggregate.
11. Each BMO UCITS ETF is a sub-fund of BMO UCITS ETF ICAV (the **BMO ICAV**), an Irish collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds with registration number C139810 and authorised by the Central Bank of Ireland pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the **UCITS Regulations**). Each BMO UCITS ETF is, or will be, subject to, and complies with, the UCITS Regulations.
12. Securities of each BMO UCITS ETF are listed on the ISE and admitted to trading on the LSE and each BMO UCITS ETF is an “investment fund” and a “mutual fund” within the meaning of applicable Canadian securities legislation. ISE listing was completed for the purpose of facilitating access to trading on the LSE, which is common practice in the industry.
13. The UK Financial Conduct Authority, in its role as the UK Listing Authority (**UKLA**), is the regulator for the LSE. The UKLA has the responsibility for overseeing the admission process to the LSE. The Central Bank of Ireland has regulatory oversight of the ISE.
14. The LSE is subject to substantially equivalent regulatory oversight to securities exchanges in Canada and the requirements to be complied with by the BMO UCITS ETFs in order to be admitted to trading on the LSE are consistent with the Toronto Stock Exchange listing requirements.
15. Each BMO UCITS ETF meets the definition of an “index mutual fund” under NI 81-102.
16. Securities of each BMO UCITS ETF would be IPU's within the meaning of NI 81-102, but for the fact that they are not traded on a stock exchange in Canada or the United States.
17. Each BMO UCITS ETF will either: (a) hold securities that are included in a specified widely-quoted market index in substantially the same proportion as those securities are reflected in that index; or (b) invest in a manner that causes the issuer to replicate the performance of that index.
18. F & C Management Limited (trading as BMO Global Asset Management (EMEA)), an affiliate of the Filer, is the promoter, investment manager and distributor of the BMO UCITS ETFs and has responsibility for the investment management, distribution and marketing of the BMO UCITS ETFs.
19. Affiliates of the Filer may be retained to act as investment advisors in respect of the BMO UCITS ETFs, which investment advisors remain subject to the oversight of F & C Management Limited (trading as BMO Global Asset Management (EMEA)).

20. F & C Management Limited, the investment manager and distributor of the BMO UCITS ETFs, being subject to regulatory oversight by the UK Financial Conduct Authority, is subject to substantially equivalent regulatory oversight to the Filer, the manager of the Funds, which is primarily regulated by the OSC.
21. The following third parties are involved in providing services in respect of the BMO UCITS ETFs:
 - (a) State Street Fund Services (Ireland) Limited is the administrator and secretary of the BMO ICAV (defined below) and provides administration services to the BMO ICAV;
 - (b) State Street Custodial Services (Ireland) Limited is the custodian of the BMO ICAV and provides safe custody for the BMO ICAV's assets;
 - (c) Matheson serve as legal counsel to the BMO ICAV;
 - (d) Computershare Investor Services (Ireland) Limited is the registrar of the BMO UCITS ETFs and provides Euroclear registrar and transfer agency services in respect of the BMO ICAV in respect of each BMO UCITS ETF and paying agency and representation services in the United Kingdom via its associated company, Computershare Investor Services plc;
 - (e) State Street Bank Europe Limited is the hedging provider and provides share class currency hedging transaction services in respect of the BMO UCITS ETFs; and
 - (f) KPMG is the auditor of the BMO UCITS ETFs.
22. Each BMO UCITS ETF is regulated by the Central Bank of Ireland (**CBI**) and is subject to the following regulatory requirements and restrictions:
 - (a) Each BMO UCITS ETF is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets.
 - (b) No BMO UCITS ETF is a "synthetic ETF", meaning that no BMO UCITS ETF will principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index.
 - (c) Each BMO UCITS ETF is subject to investment restrictions designed to limit its holdings of illiquid securities to 10% or less of its net asset value.
 - (d) Each BMO UCITS ETF holds no more than 10% of its net asset value in securities of other investment funds, including other collective investment undertakings.

- (e) A BMO UCITS ETF 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 BMO UCITS ETF's net asset value.
 - (f) To the extent a BMO UCITS ETF uses derivatives, any such use:
 - (1) would be subject to the oversight of, and require prior approval from, the CBI;
 - (2) would be subject to restrictions concerning the use of derivatives, including limits on counterparty risk and limits on increases to overall market risk resulting from the use of derivatives; and
 - (3) would have procedures in place relating to the use of derivatives and risk modelling of derivatives positions.
 - (g) No BMO UCITS ETF currently engages in securities lending activities.
 - (h) Each BMO UCITS ETF has a prospectus that discloses material facts and that is similar to the disclosure required to be included in a prospectus or simplified prospectus of a Fund.
 - (i) Each BMO UCITS ETF has a Key Investor Information Document (**KIID**) which contains disclosure similar to that required to be included in a fund facts document prepared under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**).
 - (j) Each BMO UCITS ETF is subject to continuous disclosure obligations which are similar to the disclosure obligations under National Instrument 81-106 *Investment Fund Continuous Disclosure*.
 - (k) Each BMO UCITS ETF is required to update information of material significance in the prospectus and to prepare unaudited semi-annual reports and audited annual reports.
 - (l) Each BMO UCITS ETF has an investment manager that is subject to approval by the CBI permitting it to manage and provide portfolio management advice to the BMO UCITS ETFs.
23. Each index tracked by each BMO UCITS ETF is, or will be, transparent, in that the methodology for the selection and weighting of the index components is publicly available.
24. Details of the components of each index tracked by each BMO UCITS ETF, such as issuer name, ISIN and weighting within the index are, or will be, publicly available and updated from time to time.

25. Each index tracked by each BMO UCITS ETF includes sufficient component securities so as to be broad-based and is distributed and referenced sufficiently so as to be broadly utilized.
26. Each BMO UCITS ETF makes, or will make, the net asset value of its holdings available to the public through at least one price information system associated with the LSE. Each BMO UCITS ETF makes, or will make, its indicative net asset value available to the public on the website of its manager.

Investment by Funds in BMO UCITS ETFs

27. The investment objective and strategies of each Fund will be disclosed in each Fund's prospectus or simplified prospectus.
28. The Funds will provide all disclosure mandated for investment funds investing in other investment funds.
29. There will be no duplication of management fees or incentive fees as a result of an investment in a BMO UCITS ETF.
30. The amount of loss that could result from an investment by a Fund in a BMO UCITS ETF will be limited to the amount invested by the Fund in such BMO UCITS ETF.
31. The majority of trading in securities of the BMO UCITS ETFs occurs in the secondary market rather than by subscribing or redeeming such securities directly from the BMO UCITS ETF.
32. As is the case with the purchase or sale of any other equity security made on an exchange, brokers are typically paid a commission in connection with trading in securities of exchange traded funds, such as the BMO UCITS ETFs.
33. Securities of the BMO UCITS ETFs are typically only directly subscribed or redeemed from a BMO UCITS ETF in large blocks and it is anticipated that many of the trades conducted by the Funds in BMO UCITS ETFs would not be the size necessary for a Fund to be eligible to directly subscribe for securities from the BMO UCITS ETF.
34. It is proposed that the Funds will purchase and sell securities of the BMO UCITS ETFs on the LSE.
35. Where a Fund purchases or sells securities of a BMO UCITS ETF in the secondary market it will pay commissions to brokers in connection with the purchase and sale of such securities.
36. There will be no duplication of fees payable by an investor in the Fund and the Filer will ensure that there are appropriate restrictions on sales fees and redemption charges for any purchase or sale of securities of a BMO UCITS ETF.

Rationale for Investment in BMO UCITS ETFs

37. A Fund is not permitted to invest in securities of a BMO UCITS ETF unless the requirements of subsection 2.5(2) of NI 81-102 are satisfied.
38. If the securities of a BMO UCITS ETF were IPUs within the meaning of NI 81-102, a Fund would be permitted by subsections 2.5(3), (4) and (5) of NI 81-102 to invest in securities of that BMO UCITS ETF.
39. Securities of each BMO UCITS ETF would be IPUs, but for the requirement in the definition of IPU that the securities be traded on a stock exchange in Canada or the United States.
40. The Filer considers that investments in a BMO UCITS ETF provide an efficient and cost effective way for the Funds to achieve diversification and obtain unique exposures to the markets in which such BMO UCITS ETFs invest.
41. The investment objectives and strategies of each Fund, 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 the BMO UCITS ETFs 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 exchange-traded funds rather than through investments in individual securities. For example, a Fund will invest in the BMO UCITS ETFs in circumstances where certain investment strategies preferred by the Fund are either not available or not cost effective to be implemented through investments in individual securities.
42. By investing in BMO UCITS ETFs, 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.
43. Investment by a Fund in a BMO UCITS ETF meets, or will meet, the investment objectives of such Fund.
44. An investment by a Fund in securities of each BMO UCITS ETF will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.
45. In the absence of the Exemption Sought:
 - (a) the investment restriction in paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of the BMO UCITS ETFs because the BMO UCITS ETFs are not subject to NI 81-102 and NI 81-101 and, because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely upon the IPU exemption set forth in paragraph 2.5(3)(a) of NI 81-102;

- (b) the investment restriction in paragraph 2.5(2)(a.1) of NI 81-102 would prohibit a Fund that is a non-redeemable investment fund from purchasing or holding securities of the BMO UCITS ETFs unless the BMO UCITS ETFs are subject to NI 81-102 and, because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely upon the IPU exemption set forth in paragraph 2.5(3)(a) of NI 81-102;
- (c) 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 the BMO UCITS ETFs unless the BMO UCITS ETFs are reporting issuers in the local jurisdiction and, because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(3)(a) of NI 81-102;
- (d) the investment restriction in paragraph 2.5(2)(c.1) of NI 81-102 would prohibit a Fund that is a non-redeemable investment fund from purchasing or holding securities of the BMO UCITS ETFs unless the BMO UCITS ETFs are reporting issuers in the local jurisdiction and, because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(3)(a) of NI 81-102; and
- (e) the investment restriction in paragraph 2.5(2)(e) of NI 81-102 would prohibit a Fund from paying sales fees or redemption fees in relation to its purchases or redemptions of securities of the BMO UCITS ETFs because they are managed by the Filer or an affiliate or associate of the Filer and, because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(5) of NI 81-102.

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:

1. the Revocation is granted; and
2. the Exemption Sought is granted provided that:
 - (a) the investment by a Fund in securities of the BMO UCITS ETFs is in accordance with the fundamental investment objectives of the Fund;
 - (b) none of the BMO UCITS ETFs are synthetic ETFs, meaning that they will not principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index;

- (c) the relief from paragraph 2.5(2)(e) of NI 81-102 only applies to brokerage fees payable in connection with the purchase or sale of securities of the BMO UCITS ETFs;
- (d) the prospectus of each Fund that is relying on the Exemption Sought discloses the fact that the Fund has obtained relief to invest in the BMO UCITS ETFs and, in the case of a Fund that is a mutual fund, the matters required to be disclosed under NI 81-101 in respect of fund of fund investments, provided that:
 - (i) any Fund that is a mutual fund and in existence as of the date of this decision makes the required disclosure no later than the next time the simplified prospectus of the Fund is renewed after the date of this decision, and
 - (ii) any Fund that is a non-redeemable investment fund and in existence as of the date of this decision makes the required disclosure no later than the next time the annual information form of the Fund is filed after the date of this decision;
- (e) the investment by a Fund in the BMO UCITS ETFs otherwise complies with section 2.5 of NI 81-102;
- (f) a Fund does not invest more than 10% of its net asset value in securities issued by a single BMO UCITS ETF and does not invest more than 20% of its net asset value in securities issued by BMO UCITS ETFs in aggregate;
- (g) a Fund shall not acquire any additional securities of a BMO UCITS ETF, and shall dispose of any securities of a BMO UCITS ETF then held, within six months, in the event the regulatory regime applicable to the BMO UCITS ETF is changed in any material way; and
- (h) the Exemption Sought will terminate six months after the coming into force of any amendments to paragraphs 2.5(a), (a.1), (c), (c.1) or (e) of NI 81-102 that further restrict or regulate a Fund's ability to invest in the BMO UCITS ETFs.

“Darren McKall”

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