

September 21, 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.
(**BMOII**)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from BMOII on behalf of each investment fund subject to the provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of which BMOII or its affiliate (the **Filer**) is, or in the future will be, the manager (collectively, the **Funds**), 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 each Fund to invest up to 10 percent of its net asset value in securities of actively-managed investment funds formed under BMO UCITS ETF ICAV, an Irish collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds and authorized by the Central Bank of Ireland pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (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 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 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.

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, as implemented into Irish legislation by the Regulations.

FCA means the Financial Conduct Authority.

ISE means the Irish Stock Exchange.

KIID means a Key Investor Information Document prepared by the 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.

LSE means the London Stock Exchange.

Main Securities Market means the principal market on the ISE for Irish and overseas issuers.

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

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

UCITS means Undertaking for Collective Investment 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 of Europe.

UCITS Corporation means BMO UCITS ETF ICAV, an Irish collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds with registration number C139810 and authorized by the Central Bank of Ireland pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011.

UCITS Notices means the series of UCITS notices, memorandums, guidelines and letters issued by the Central Bank of Ireland.

UCITS Regulations means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, as amended, which transpose Council Directive 2009/65/EC, Commission Directive 2010/43/EC, Commission Directive 2010/44/EC, and Commission Directive 2014/91/EC into Irish law, and are effective from July 1, 2011.

Underlying Fund means, initially, each of BMO Enhanced Income Euro Equity UCITS ETF, BMO Enhanced Income UK Equity UCITS ETF, and BMO Enhanced Income USA Equity UCITS ETF, each of which is a sub-fund of the UCITS Corporation, and includes any other actively managed sub-funds of the UCITS Corporation that may exist in the future.

Underlying Fund Manager means F&C Management Limited (trading as BMO Global Asset Management (EMEA)), which serves as the promoter, investment manager and distributor to each sub-fund of the UCITS Corporation, including the Underlying Funds. The Underlying Fund Manager is an affiliate of the Filer.

Representations

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

The Filer and the Funds

1. BMOII is a corporation amalgamated under the federal laws of Canada with its head office in Toronto, Ontario.
2. BMOII is an indirect, wholly-owned subsidiary of Bank of Montreal.
3. BMOII is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador and as a mutual fund dealer in each of the Jurisdictions.
4. The Filer acts, or will act, as manager of each of the Funds.
5. Each Fund is, or will be, an investment fund established under the laws of a Jurisdiction of Canada and a reporting issuer under the laws of some or all of the Jurisdictions.
6. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.
7. The securities of each Fund are, or will be, qualified for distribution in some or all of the Jurisdictions under a prospectus or a simplified prospectus prepared in accordance with NI 41-101 or NI 81-101, as applicable.
8. Neither the Filer nor any of the existing Funds are in default of securities legislation in any of the Jurisdictions.

The Underlying Funds

9. Each Fund proposes, from time to time, to invest up to 10% of its net asset value in securities of an Underlying Fund.
10. The Underlying Funds are sub-funds of the UCITS Corporation and are subject to the UCITS Regulations. The UCITS Corporation was registered in Ireland pursuant to the Irish Collective Asset-management Vehicles Act 2015 on June 8, 2015 and is authorized

by the Central Bank of Ireland as a UCITS. The objective of the UCITS Corporation is the collective investment in transferable securities and/or other liquid financial assets of capital raised from the public, operating on the principle of risk spreading in accordance with the UCITS Regulations.

11. The investment objective and policy of each Underlying Fund, as disclosed in the most current prospectus supplement dated June 11, 2018, is as follows:
 - (a) *BMO Enhanced Income Euro Equity UCITS ETF*: The investment objective “is to provide an exposure to high quality, large-capitalisation European stocks, together with the potential for the generation of additional income through the use of derivatives.” The investment policy “is to combine (i) a broad-based, passive exposure to large-capitalisation European stocks with (ii) an actively-managed call option writing strategy, which is designed to earn extra income for” this Underlying Fund. BMO Enhanced Income Euro Equity UCITS ETF provides passive exposure to large-capitalisation European stocks by seeking to track the performance of the EuroStoxx 50 Index while also seeking to earn extra income through the use of an active options strategy.
 - (b) *BMO Enhanced Income UK Equity UCITS ETF*: The investment objective “is to provide an exposure to high quality, large-capitalisation UK stocks, together with the potential for the generation of additional income through the use of derivatives.”. The investment policy “is to combine (i) a broad-based, passive exposure to large-capitalisation UK stocks with (ii) an actively-managed call option writing strategy, which is designed to earn extra income for” this Underlying Fund. BMO Enhanced Income UK Equity UCITS ETF provides passive exposure to large-capitalisation UK stocks by seeking to track the performance of the FTSE 100 Total Return Index while also seeking to earn extra income through the use of an active options strategy.
 - (c) *BMO Enhanced Income USA Equity UCITS ETF*: The investment objective “is to provide an exposure to high quality, large-capitalisation US stocks, together with the potential for the generation of additional income through the use of derivatives.” The investment policy “is to combine (i) a broad-based, passive exposure to large-capitalisation US stocks with (ii) an actively-managed call option writing strategy, which is designed to earn extra income for” this Underlying Fund. BMO Enhanced Income USA Equity UCITS ETF provides passive exposure to large-capitalisation US stocks by seeking to track the performance of the S&P 500 Total Return Index while also seeking to earn extra income through the use of an active options strategy.
12. The call option writing strategy that the existing Underlying Funds use is subject to the following parameters under normal market circumstances: (i) it is expected that the Underlying Fund will write call options in respect of up to 60% of the value of the equity securities which it holds; (ii) the call options will be valid for up to three months; and (iii) the strike price of the call options will always be above the current market price at the inception of trade for the underlying index. Applying those parameters, the Underlying Fund Manager will select option investments based on its estimate of the levels of volatility in applicable equity markets, the valuations of the underlying applicable equity

securities and market risks. The Underlying Fund Manager will draw upon the resources of its internal team of analysts as well as external sources of market data to determine these estimates.

13. The Underlying Funds are 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.
14. 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 are distributed in certain European countries pursuant to the EU Directives. The Underlying Funds are qualified by way of a prospectus, relating to the UCITS Corporation, and an individual prospectus supplement pertaining to each sub-fund of the UCITS Corporation, including each of the Underlying Funds. In addition to the prospectus and prospectus supplement, the UCITS Corporation prepares a KIID for each of the Underlying Funds.
16. Each class of share currently issued by the existing Underlying Funds was admitted to the ISE’s official list and is trading on the Main Securities Market. Each class of share currently issued by the existing Underlying Funds was also admitted to the LSE’s official list and is trading on the LSE. The ISE listing was completed for the purpose of facilitating access to trading on the LSE, which is common practice in the industry. The FCA, 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.
17. The LSE is subject to substantially equivalent regulatory oversight to securities exchanges in Canada and the requirements to be complied with by the existing Underlying Funds in order to be admitted to trading on the LSE are consistent with the Toronto Stock Exchange listing requirements.
18. The Underlying Fund Manager serves as the promoter, investment manager and distributor to each sub-fund of the UCITS Corporation, including the Underlying Funds. The Underlying Fund Manager, subject to the supervision of the directors of the UCITS Corporation, is responsible for the investment management, distribution and marketing of the Underlying Funds. The Underlying Fund Manager provides an investment management program for the Underlying Funds and manages the investment of the Underlying Funds’ assets. The Underlying Fund Manager is also the distributor of the UCITS Corporation and has been appointed to provide distribution services to the sub-funds of the UCITS Corporation, including the Underlying Funds.
19. The Underlying Fund Manager, being subject to regulatory oversight by the FCA, is subject to substantially equivalent regulatory oversight as the Filer, which is primarily regulated by the Ontario Securities Commission. In discharging its duties, the Underlying Fund Manager must conduct its business with due skill, care and diligence.

20. The Filer, the Underlying Fund Manager, and other affiliates of the Filer, make up the asset management business of BMO Global Asset Management. The Underlying Fund Manager is a wholly-owned subsidiary of F&C Asset Management plc., which is the parent company of the F&C Group and is itself a wholly-owned subsidiary of BMO Global Asset Management (Europe) Limited, which in turn is wholly-owned by the Bank of Montreal. The Underlying Fund Manager is authorized by the FCA and its investment management business includes management of other Irish authorized collective investment schemes.
21. The following third parties are involved in providing services in respect of the Underlying Funds:
 - (a) State Street Fund Services (Ireland) Limited is the administrator and secretary of the UCITS Corporation. State Street Fund Services (Ireland) Limited provides administration services to it and the Underlying Funds. The administrator is a limited liability company incorporated in Ireland on March 23, 1992 and is a wholly-owned subsidiary of the State Street Corporation. The administrator is regulated by the FCA.
 - (b) Computershare Investor Services (Ireland) Limited is the registrar of the UCITS Corporation and is responsible for establishing, maintaining and updating the register of the Underlying Funds. In addition, Computershare Investor Services (Ireland) Limited provides Euroclear registrar and transfer agency services in respect of the shares of the Underlying Funds and provides paying agency and representation services in the United Kingdom by way of its associated company, Computershare Investor Services plc.
 - (c) State Street Custodial Services (Ireland) Limited is the depositary of all of the UCITS Corporation's assets. The principal activity of the depositary is to act as trustee/depositary of the assets of collective investment schemes. Some of the depositary's main functions are to ensure that the sale, issue, repurchase, redemption and cancellation of shares of the UCITS Corporation's sub-funds are carried out in accordance with applicable law. State Street Custodial Services (Ireland) Limited is regulated by the Central Bank of Ireland.
 - (d) KPMG serves as the auditors of the UCITS Corporation.
22. The Underlying Funds qualify as UCITS and the securities of the Underlying Funds are distributed in accordance with the UCITS Regulations. Each of the Underlying Funds is regulated by the Central Bank of Ireland and is subject to the following regulatory requirements and restrictions, 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 holds no more than 10% of its net asset value in securities of other investment funds, including other collective investment undertakings.
- (e) 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.
- (f) 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, issuer concentration, risk exposure in connection with mark to market value, the disclosure required in offering documents and the monitoring requirements, and with only a slight difference between the two regimes in connection with counterparty credit ratings (A-1 under NI 81-102 versus an effective rating requirement of A-2 for counterparties which are not regulated as credit institutions under the UCITS Regulations).
- (g) Each Underlying Fund does not currently engage in securities lending activities.
- (h) Each Underlying Fund makes its estimated net asset value available to the public at regular intervals throughout the day, and details of such estimated net asset value for each Underlying Fund is available on the website of the Underlying Fund Manager.
- (i) 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 and a prospectus under NI 41-101, although some information, such as annual returns, management expense ratios, trading expense ratios, and trading price and volume, is not included in the prospectus or prospectus supplement of an Underlying Fund.
- (j) 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.
- (k) 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 Fund Continuous Disclosure*.
- (l) Any change in the investment objective or material change to the investment policy of an Underlying Fund will only be effected following the written approval

of all shareholders of the Underlying Fund or a resolution of a majority of the voting shareholders of that Underlying Fund at a general meeting.

- (m) The Underlying Fund Manager is subject to approval by the FCA 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.
- (n) 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.
- (o) KPMG, as auditors of each Underlying Fund, is required to prepare an audited set of accounts for each Underlying Fund at least annually.

Investment by Funds in the Underlying Funds

- 23. 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.
- 24. 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.
- 25. The prospectus or simplified prospectus of each Fund provides, or will provide, all disclosure mandated for investment funds investing in other investment funds.
- 26. There will be no duplication of management fees or incentive fees as a result of an investment by a Fund in an Underlying Fund.
- 27. 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.
- 28. Trading in securities of the existing Underlying Funds will occur in the secondary market rather than by subscribing for or redeeming such securities directly from the Underlying Funds.
- 29. 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 existing Underlying Funds.
- 30. Securities of the existing Underlying Funds are typically only directly subscribed for or redeemed by an authorized participant and the Funds would not directly subscribe for

securities from the Underlying Funds. The Funds will purchase and sell securities of the Underlying Funds on the LSE.

31. Where a Fund purchases or sells securities of an Underlying Fund in the secondary market it will pay commissions to brokers in connection with the purchase or sale of securities of an Underlying Fund.
32. There are appropriate restrictions on sales fees and redemption charges for any purchase or sale of securities of an Underlying Fund.

Rationale for Investment in the Underlying Fund

33. A Fund is not permitted to invest in securities of an Underlying Fund unless the requirements of section 2.5(2) of NI 81-102 are satisfied.
34. Section 2.5 of NI 81-102 would permit the Funds to invest in the Underlying Funds but for the fact that each Underlying Fund is not subject to NI 81-102, does not offer securities under a simplified prospectus in accordance with NI 81-101 (in the case of Funds that are mutual funds), and is not a reporting issuer in any of the Jurisdictions.
35. Other than the paragraphs of section 2.5 of NI 81-102 from which the Funds seek relief, the Funds will otherwise comply fully with section 2.5 of NI 81-102 when investing in the Underlying Funds, and the simplified prospectus (for Funds that are mutual funds) or annual information form (for Funds that are non-redeemable investment funds) will provide all applicable disclosure mandated for investment funds investing in other investment funds.
36. 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.
37. 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 exchange-traded funds 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.
38. 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.

39. Investment by a Fund in an Underlying Fund meets, or will meet, the investment objectives of such Fund.
40. 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.
41. A Fund's investment in securities of the Underlying Fund is not for the purpose of distributing the Underlying Fund to the Canadian public. The investments by a Fund in an Underlying Fund are proposed not to allow the Underlying Fund to be indirectly distributed in Canada, but to allow a Fund to achieve its investment objective by investing, to a very limited extent, in a unique, suitable and professionally managed lower-cost mutual fund, where the investment style and approach is known to the manager of the Fund.
42. 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 Underlying Funds because the Underlying Funds are not subject to NI 81-102 and NI 81-101;
 - (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 Underlying Funds unless Underlying Funds are subject to 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 Underlying Funds unless the Underlying Funds are reporting issuers in the local jurisdiction;
 - (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 Underlying Funds unless the Underlying Funds are reporting issuers in the local jurisdiction;
 - (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 Underlying Funds because they are managed by the Filer or an affiliate or associate of the Filer.

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 simplified prospectus (for Funds that are mutual funds) or annual information form (for Funds that are non-redeemable investment funds) 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;
- (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;
- (e) 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 Underlying Funds;
- (f) 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 Underlying Funds.

“Darren McKall”

Darren McKall, Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

**SEDAR Project No. 2799533
Application No. 2018/0430**