

December 21, 2023

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**)

Decision

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer and any affiliate acting as manager for existing and future investment funds that are or will be managed by the Filer or an affiliate of the Filer (each a **Fund** or collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption from the restriction in subsection 2.15(3) of National Instrument 81-102 *Investment Funds (NI 81-102)*, that prohibits a manager of an investment fund from appointing an agent (the **Agent**) that is not a custodian or a sub-custodian of the investment fund to act on behalf of the investment fund to administer securities lending, repurchase and reverse repurchase transactions (the **Transactions**) entered into by the investment fund, in order to allow the Filer or any affiliate of the Filer to appoint Securities Finance Trust Company (**eSecLending**) to administer some or all of the Transactions entered into by some or all of the Funds (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 Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan, Northwest Territories, Nunavut and Yukon (together with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102 have the same meaning if used in this decision, unless otherwise defined.

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. The Filer is an indirect, wholly-owned subsidiary of Bank of Montreal. The head office of the Filer is located in Toronto, Ontario.
2. The Filer 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.
3. The Filer or an affiliate of the Filer is, or will be, the investment fund manager of the Funds.
4. BMO Asset Management Inc. (**BMOAM**) is the portfolio manager of one or more of the Funds.
5. BMOAM is registered as a portfolio manager and an exempt market dealer in each of the Jurisdictions, as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, as a commodity trading manager in Ontario, and as a derivatives portfolio manager in Quebec.
6. The Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

7. Each Fund is, or will be, an investment fund organized and governed by the laws of Canada or a Jurisdiction.
8. Each Fund is, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or will in the future be, granted by securities regulatory authorities.
9. Each Fund is, or will be, a reporting issuer in one or more Jurisdictions.
10. Each existing Fund is not in default of applicable securities legislation in any Jurisdiction.
11. The Funds engage, or may engage, in the Transactions as permitted under sections 2.12, 2.13 and 2.14 of NI 81-102.
12. In compliance with subsection 2.15(3) of NI 81-102, the current Agent of the Funds is also a custodian or a sub-custodian of the Funds.

The Proposed Agent

13. The Filer or an affiliate of the Filer, on behalf of the Funds, proposes to appoint eSecLending as an Agent for some or all of the Funds to administer some or all of the Transactions pursuant to a securities lending agency agreement (the **Agreement**).
14. eSecLending is a securities lending agent and non-depository trust company organized under the laws of the State of Vermont in the United States of America. It is regulated as an independent trust company by the Banking Division of the Department of Financial Regulation of the State of Vermont. eSecLending is independent from the Filer and its affiliates.
15. eSecLending was founded in 2000 and is one of the largest independent global securities lending agents serving asset management firms, pension plans and other institutional investors in the U.S., Europe and Asia Pacific. As at September 30, 2023, eSecLending services client assets under management of over USD \$6.5 trillion.
16. eSecLending maintains offices in Burlington, Vermont, Boston, Massachusetts, and London, England. eSecLending has over 100 employees dedicated solely to securities lending activities and engages in 37 approved lending markets. eSecLending's core business is managing securities lending programs.
17. eSecLending satisfies the requirements set out in subsection 6.3(2) of NI 81-102 to qualify as a sub-custodian, other than in paragraph (c), which requires it to have equity, as reported in its most recent audited financial statements, of not less than the equivalent of \$100,000,000.

Necessity for the Exemption Sought

18. Under subsection 2.15(3) of NI 81-102, the Filer must appoint a custodian or a sub-custodian of the Funds to act as Agent on behalf of the Funds in administering the Transactions.
19. eSecLending was formed as an alternative to the traditional custody model and does not currently offer custodial services. As a result, it cannot be appointed as a custodian or a sub-custodian of the Funds.
20. Therefore, absent the Exemption Sought, the Filer or any affiliate of the Filer would be prohibited by subsection 2.15(3) of NI 81-102 from appointing eSecLending as Agent on behalf of the Funds in administering the Transactions.

Generally

21. The Filer has a fiduciary duty to the Funds to obtain the best possible service providers for the Funds, and in the opinion of the Filer, eSecLending is currently the best qualified service provider to act as Agent for the Funds in the Transactions.

22. eSecLending is qualified to act as the Funds' Agent for the Transactions and has extensive experience in managing securities lending programs.
23. The Filer's research suggests that if the Funds were permitted to engage eSecLending as Agent for the Transactions, and if BMOAM provided its securities lending expertise to assist eSecLending, the Funds' returns from securities lending arrangements would increase, as the Filer believes that significant revenues would be generated, which would benefit the securityholders of the Funds.
24. The Filer expects that by appointing eSecLending as Agent, the Funds will be able to improve their revenue generated from securities lending activities for the following reasons:
 - (a) eSecLending creates bespoke securities lending programs that are designed to enhance returns for investment funds based solely on the characteristics of the relevant investment fund and its lendable securities, whereas custodial lending programs typically pool securities across investment funds which often leads to lower utilization and lending returns.
 - (b) eSecLending also provides market and transaction level detail in its reporting to allow investment funds to better evaluate and optimize lending activities, whereas the Funds' existing custodial Agent does not provide similar information to evaluate program performance.
25. The use of Agents that are not a custodian or a sub-custodian of an investment fund is a well established practice in the U.S. and Europe.
26. From an operations and record-keeping perspective there is no increased risk for the Funds if eSecLending is appointed as Agent. If eSecLending were appointed, the Transactions would continue to be processed through accounts held in the Funds' name at the Funds' custodian, and eSecLending as the Agent would be provided with authority over the Funds' accounts to instruct the custodian with respect to the movement of the Funds' assets, and the custodian would continue to maintain records of all activity. The custodian would retain possession of the Funds assets, including any collateral delivered from borrowers, in the same manner as if it were acting as Agent.
27. The Funds' current custodian has experience working with eSecLending, and would continue to act as the custodian of the Funds' assets if the Exemption Sought is granted.
28. The Filer will update each existing Fund's prospectus at the next renewal to include disclosure regarding the appointment of eSecLending as the Funds' Agent to engage in the Transactions.
29. The Agreement will require eSecLending to comply with NI 81-102 in respect of its securities lending activities on behalf of the Funds, including the requirement to comply with the standard of care set out in subsection 2.15(5) of NI 81-102.

30. The indemnity to be provided by eSecLending to the Funds in the Agreement will be substantively the same as the indemnity provided by the current Agent 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 Exemption Sought is granted.

“Darren McKall”

Darren McKall
Manager, Investment Funds and Structured Products Branch

ONTARIO SECURITIES COMMISSION

SEDAR# 6039368
Application # 2023/0534