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VIA E-MAIL

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RE: RESPONSE TO REQUEST FOR COMMENTS – PROPOSED NATIONAL INSTRUMENT 31-103

BMO Investments Inc. ("BMOII") welcomes the opportunity to provide this submission in response to your request for comment on the second draft of proposed National Instrument 31-103 ("NI 31-103").

BMOII commends the Canadian Securities Administrators ("CSA") for revisiting many of the provisions in the first draft that industry participants and members of the public expressed concerns with and for which viable alternatives were proposed. The comments expressed below are intended to address ongoing concerns and opportunities where we believe further consideration by the CSA is warranted.

Exempt Market Dealer Registration Category

BMOII strongly supports the Exempt Market Dealer ("EMD") registration category and applauds the CSA for bringing market participants under the registration umbrella who would otherwise not be captured, thereby enhancing investor protection. BMOII wishes to address some specific concerns that we have with the proposed scope of the EMD registration category and its effect on members of the Mutual Fund Dealers Association ("MFDA").

NI 31-103 would require that mutual fund dealers register as EMDs in order to distribute exempt securities. Because of the deeper level of oversight that SROs provide, MFDA members should be permitted to continue selling exempt securities without the need to assume an additional, less rigorously regulated, EMD category. We note the CSA's initial rejection of this proposal on the basis that "the sale of mutual funds is different in substance from the sale of other products," however we also note that the MFDA presently provides its members with rigorous regulatory oversight relating to due diligence, training and sales conduct requirements specific to the sale of all investment products, including exempt securities. We firmly support this approach and are committed to selling all products within our catalogue in line with applicable MFDA standards. Requiring that MFDA members also be registered as EMDs provides no additional benefit to investors, and in fact takes away some of the controls that would otherwise be extended to investors if the dealer was selling exempt securities to them as an MFDA member rather than as an EMD. Moreover, the CSA has acknowledged that "the proficiency requirements for a dealing representative of an exempt market dealer are essentially the same as those required of a dealing representative for an MFDA member". Therefore, investors will not benefit from an EMD's vastly different or more applicable proficiency, whereas as an MFDA member the dealer is subject to detailed "Know Your Product" education and training guidelines.

We note the logistical challenges that would result for MFDA members who are also registered as EMDs. Allowing MFDA members to distribute exempt securities under their SRO membership will ensure their clients receive consistent and seamless service and protection no matter what product the investor purchases. Compartmentalizing the dealer's obligations into "MFDA" versus "EMD" will create a bifurcated process for the dealer's clients, particularly clients who buy both a mutual fund and an exempt security from the dealer and maintain their holdings in the same account. For example, the investor would be subject to different complaint handling standards, suitability standards and relationship disclosure within the same dealer account. Complaint handling in particular would be blurred to the detriment of the client; would the MFDA have jurisdiction over if the "mutual fund" aspects of a complaint and the CSA (or no regulator, in the case of a permitted client) have jurisdiction over the "exempt securities" aspects of the complaint? How does it serve the investor for a complaint to be carved up in this manner?

If EMD registration were to be required for MFDA members, then it would be appropriate for the CSA and MFDA to work together to determine where the jurisdictional boundaries will be drawn so that dually-registered dealers are not subject to duplicative audits or overlapping requirements.

We strongly believe that EMDs should not be permitted to sell National Instrument 81-102 ("81-102") mutual funds, even to accredited investors, unless they become members of the MFDA. We are concerned about EMDs selling 81-102 mutual funds for two key reasons: first, investor protection is compromised for investors who purchase funds from an EMD rather than from an MFDA member, as the EMD channel is less rigorous than the MFDA channel; and second, we are concerned that if there is a proliferation of EMDs distributing mutual funds, then there will be an exodus of high net worth clients from MFDA dealers to the more lightly regulated EMDs.

Finally, we remain concerned that there remains no unified definition of "security" in NI 31-103. As a result, registrants must still look to the securities legislation in each province and territory in order to define these terms. If the ultimate goal of the reform project is to harmonize and streamline registration regimes across Canada, this objective could likely be frustrated by the lack of such fundamental features as a uniform definition and treatment of securities and exempt securities. For example, NI 31-103 states that mutual fund dealers are only permitted to trade in securities of mutual funds, which creates confusion for mutual fund dealers who offer guaranteed investment certificates and principal protected notes in those jurisdictions that continue to define such products as securities. While we are pleased to see the inclusion of an exemption from the dealer registration requirement for trades of certain types of debt products, we remain unclear as to whether this will allow mutual fund dealers to continue offering solutions to their clients that include, and continue servicing their clients who hold, GICs and principal protected notes.

Frequency of Account Statements

We support issuing client account statements on a quarterly basis, but are concerned about the proposal to issue monthly statements to clients who request them. While BMOII is committed to providing timely, current and accurate reporting to our clients, we firmly believe that off-cycle mailings in individual cases are neither necessary nor practical. We recognize that some investors desire the convenience of more immediate and environmentally responsible access to up-to-date information about their holdings and as such BMOII, as well as many other industry participants, provides convenient and secure 24-hour on-line access to account information, with fund holdings, prices and transactional history on a daily basis. BMOII also maintains two call centres where clients can speak to an investment representative to obtain up-to-date account and transactional information, in addition to being able speak with an investment professional at any BMO Bank of Montreal branch. Clients can also access BMOII's secure automated touch-tone service that allows them to request account information by fax.

We believe that a more appropriate approach would be give firms the option of providing non-paper-based means of up-to-date account access such as through a secure online environment, call centre or automated voice response service. This way, clients will have access to current information at their convenience, and will not be tied to arbitrary paper-based delivery dates.

As a retail distributor BMOII wishes to continue to set modest account minimums for our investors on a low-cost basis, which increases access to mutual fund investing for Canadians. In order to keep our account minimums low, we strive to keep our costs low. Adding an additional layer of cost to dealer activities without evidence of a corresponding need does not serve investors and passes on additional costs to them for additional active disclosure that can be provided by more cost-effective and environmentally-friendly means. Moreover, dealers with a large volume of retail clients could face significant technological hurdles in finding a suitable registry system to record and implement individual delivery dates. Dealers may be forced to raise their account minimums in order to offset the increasing costs of servicing an account, which in turn may create a barrier to access for investors.

KYC and Suitability

Section 5.3(2) of the Instrument requires that part of establishing the identity of a corporate client involves identifying any individual who is a beneficial owner, directly or indirectly, of more than 10% of the client. We understand that there may be some overlap with what forthcoming anti-money laundering legislation as it relates to collection of information for corporate clients. We believe it is more appropriate to allow requirements of this nature to remain within the anti-

money laundering sphere rather than the sphere of securities regulation. At a minimum, we would expect the securities regulators to be satisfied that by meeting the equivalent AML requirements relating to this requirement, registrants are also meeting the requirements under securities regulations.

Net Asset Value ("NAV") Adjustment

Section 4.30 requires the ongoing reporting of any NAV adjustment made during a reporting period, together with certain descriptive information about the NAV adjustment. We urge the CSA to clarify what it means by "net asset value adjustment" ideally through the inclusion of a precise definition. The CSA states in their summary of comments that "Fund managers should ensure that NAV errors are treated in a consistent manner". This can occur only if there is a consistent approach to "NAV adjustments" among all fund managers, which itself can occur only through regulatory guidance to all fund managers on what a NAV adjustment is. Moreover, through the comment above the CSA introduces the term "NAV errors" which is also undefined. We urge the CSA to formally recognize *IFIC Bulletin 22 – Correcting Portfolio NAV Errors* which would at a minimum lead to industry consistency in the treatment of NAV errors as defined by IFIC and set industry-wide materiality thresholds rather than allowing each investment fund manager to set its own.

National Instrument 81-106 ("81-106") requires that to the extent that an incorrect or untimely NAV calculation is material it must be disclosed in the investment fund's management report. We note the CSA's comment that 81-106 deals with the reporting of the investment funds themselves rather than the operations of the investment fund manager, however we do not feel that this distinction warrants the preparation and filing of a separate report. If the CSA is looking for trends and operational concerns at the fund manager, the CSA could just as effectively gauge this information on a report pertaining to the fund manager's funds as it could from a report about the fund manager itself.

Marketing and Wholesaling Activities

Section 2.8.1 states that investment fund managers will have to register as a dealer if they carry on marketing and wholesaling activities, unless these activities are incidental to their activities as a fund manager. Investment fund managers will always engage to a greater or lesser extent in the promotion of their funds. Accordingly, because this is such a prevalent practice and is a healthy and pro-competitive business activity for investment fund managers to engage in, investment fund managers require more direction on what specific activities the CSA will consider to be a "tipping point" that will bring their activities into dealer territory.

Transition Provisions

The Notice and Request for Comment states that an investment fund manager must apply for registration within six months of the effective date of the Instrument, but will have a one-year transition period to comply with the capital and insurance requirements. Does this mean that an investment fund manager can apply for registration, and be accepted, without evidence of proper capitalization and insurance? Or does this mean that the application must be submitted within six months but will not be accepted until capital and insurance are in place, which must occur within 1 year? Pursuant to sections 10(2) and (3), for a dealer or advisor who is also an investment fund manager, minimum capital for calculating excess working capital is $50,000 on the effective date of the Instrument, but this expires six months later. What is supposed to take over at the six

month mark if the investment fund manager has a one-year transition period to meet the requirements of NI 31-103?

Dispute Resolution Service

Like other large and diverse Canadian financial groups, BMO maintains an ombudsman's office whose role is to objectively review customer complaints and reach conclusions based on an independent judgment of the facts. The ombudsman is independent of BMO and is similar to the OBSI. We wish to receive confirmation from the CSA that a registrant that is also a member of a financial group that maintains an impartial, independent third party ombudsman will be permitted to use this ombudservice as its "dispute resolution service" for purposes of Division 6, rather than having to retain the services of an external ombudservice.

Proposed Notice of Termination Form 33-109F1

The open-ended questions within Section E (such as Questions 3 and 10), which require statements of opinion rather than fact regarding items that may be unrelated to a person's termination, should be removed or guidance provided as to how they should be responded to. With respect to the catch-all provision at Question 10, we believe the first 9 questions sufficiently canvass the circumstances behind the termination and should generate a sufficiently wide range of factual responses such that Q10, which calls for opinion on part of terminating employer, can be deleted. In addition to being too broad and subjective to lead to a meaningful response, Q10 exposes firms to significant legal, reputation and monetary risk.

We would ask the CSA to comment on what the appropriate selection within Section D would be for representatives dually employed by a registrant and an affiliated financial institution, where the representative surrenders his or her registration to focus on their duties with the financial institution. We submit that the "Other" box should be ticked, together with an explanation that the individual will remain employed by the financial institution in a non-registrable capacity, on the basis that any undesirable conduct through the registrant would apply to the individual's employment with the financial institution and the financial institution would likely not continue to employ the individual if any of the circumstances in Section E applied.

We thank the CSA for their continued consultation with industry stakeholders and investors regarding this proposal and for the opportunity to comment on the second draft of NI 31-103. We trust that our concerns will be given due consideration.

Should you have any questions about this submission please feel free to contact the undersigned.

Yours truly,

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