

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C. S.5, AS AMENDED**

- and -

**BMO NESBITT BURNS INC., BMO PRIVATE INVESTMENT COUNSEL INC., BMO
INVESTMENTS INC. and BMO INVESTORLINE INC.**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE COMMISSION
AND BMO NESBITT BURNS INC., BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. AND BMO INVESTORLINE INC.**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to subsections 127(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc. (collectively, the “BMO Registrants”).
2. BMO Nesbitt Burns Inc. (“BMO NB”) is a corporation amalgamated pursuant to the laws of Canada and is an indirect subsidiary of the Bank of Montreal (“BMO”), a diversified financial services provider. BMO NB is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is registered with the Commission as an investment dealer, investment fund manager and futures commission merchant. The matters described below with regard to BMO NB pertain only to the Private Client Division business unit within it that provides advice to retail clients.
3. BMO Private Investment Counsel Inc. (“BPIC”) is a corporation incorporated pursuant to the laws of Canada and is an indirect subsidiary of BMO. BPIC is registered with the Commission as an investment fund manager, portfolio manager and exempt market dealer.
4. BMO Investments Inc. (“BMO II”) is a corporation amalgamated pursuant to the laws of Canada. It is an indirect subsidiary of BMO and part of its wealth management businesses. BMO II is a member of the Mutual Fund Dealers Association of Canada (“MFDA”) and is registered with the Commission as an investment fund manager and mutual fund dealer.
5. BMO InvestorLine Inc. (“BMO IL”) is a corporation incorporated pursuant to the laws of Canada and is an indirect subsidiary of BMO. BMO IL is a member of IIROC and is registered with the Commission as an investment dealer.

6. Commencing in early February 2015, the BMO Registrants promptly self-reported to Staff of the Commission (“Commission Staff”) the matters described in Part III below. During Commission Staff’s investigation of these matters, the BMO Registrants provided prompt, detailed and candid co-operation to Commission Staff.
7. As summarized at paragraph 14 below and more fully described in Part III below, it is Commission Staff’s position that there were inadequacies in the BMO Registrants’ systems of controls and supervision which formed part of their compliance systems (the “Control and Supervision Inadequacies”) which resulted in certain clients paying, directly or indirectly, excess fees that were not detected or corrected by the BMO Registrants in a timely manner.

PART II - JOINT SETTLEMENT RECOMMENDATION

8. Commission Staff and the BMO Registrants have agreed to a settlement of the proceeding initiated in respect of the BMO Registrants by Notice of Hearing dated December 12, 2016 (the “Proceeding”) based on the terms and conditions set out in this settlement agreement (the “Settlement Agreement”). Commission Staff have consulted with IROC Staff and MFDA Staff in relation to the underlying facts which are the subject matter of this Settlement Agreement.
9. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.
10. It is Commission Staff’s position that:
 - a) the statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by the BMO Registrants, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and
 - b) it is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:
 - (i) Commission Staff’s allegations are that each of the BMO Registrants failed to establish, maintain and apply procedures to establish controls and supervision:
 - A. sufficient to provide reasonable assurance that the BMO Registrants, and each individual acting on behalf of the BMO Registrants, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - B. that were reasonably likely to identify the non-compliance described in A. above at an early stage that would have allowed the BMO Registrants to correct the non-compliant conduct in a timely manner;

- (ii) Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants;
- (iii) the BMO Registrants discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;
- (iv) during the investigation of the Control and Supervision Inadequacies following the self-reporting by the BMO Registrants, the BMO Registrants provided prompt, detailed and candid co-operation to Commission Staff;
- (v) the BMO Registrants had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff. As part of this Settlement Agreement, the BMO Registrants have co-operated with Commission Staff with a view to providing appropriate compensation to clients and former clients who were harmed by any of the Control and Supervision Inadequacies (the “Affected Clients”);
- (vi) as part of this Settlement Agreement, the BMO Registrants have agreed to pay appropriate compensation to the Affected Clients, in accordance with a plan submitted by the BMO Registrants to Commission Staff and presented to the Commission (the “Compensation Plan”). As at the date of this Settlement Agreement, the BMO Registrants anticipate paying compensation to Affected Clients of \$49,885,661 in the aggregate in respect of the Control and Supervision Inadequacies;
- (vii) the Compensation Plan prescribes, among other things:
 - A. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including the time value of money in respect of any monies owed by the BMO Registrants to the Affected Clients;
 - B. the approach to be taken with regard to contacting and making payments to the Affected Clients;
 - C. the timing to complete the various steps included in the Compensation Plan;
 - D. a \$25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately \$109,900 as compared to the \$49,885,661 in compensation to be paid), which aggregate *de minimis* amount will be donated to the Canadian Foundation for Economic Education;

- E. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the BMO Registrants are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each BMO Registrant will use reasonable efforts to locate any Affected Clients who are entitled to payment of \$200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the BMO Registrant determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than \$400, the BMO Registrant shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to Affected Clients who cannot be located by December 31, 2018 will be donated to the Canadian Foundation for Economic Education;
 - F. the resolution of client inquiries through an escalation process; and
 - G. regular reporting to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission ("OSC Manager") detailing the BMO Registrants' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries;
- (viii) at the request of Commission Staff, each of the BMO Registrants conducted an extensive review of their other businesses that are subject to the Act and are operating in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by BMO II. Based on this review, the BMO Registrants have advised Commission Staff that there are no instances other than those Control and Supervision Inadequacies described herein;
- (ix) the BMO Registrants either have already taken or are taking corrective action including implementing additional controls and supervision to address the Control and Supervision Inadequacies, by establishing procedures and implementing controls, supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "Enhanced Control and Supervision Procedures") and, as part of this Settlement Agreement, the BMO Registrants are required to report to the OSC Manager on the

development and implementation of the Enhanced Control and Supervision Procedures;

- (x) the BMO Registrants have agreed to make a voluntary payment of \$2,100,000 to the Commission to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act;
 - (xi) the BMO Registrants have agreed to make a further voluntary payment of \$90,000 to reimburse the Commission for costs incurred or to be incurred in accordance with subsection 3.4(2)(a) of the Act;
 - (xii) the total agreed voluntary payment of \$2,190,000 will be paid by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and
 - (xiii) the terms of this Settlement Agreement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the BMO Registrants will emphasize to the marketplace that Commission Staff expect registrants to have compliance procedures with appropriate controls and supervision in place which:
 - A. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - B. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.
11. The BMO Registrants neither admit nor deny the accuracy of the facts or the conclusions of Commission Staff as set out in Part III of this Settlement Agreement.
12. The BMO Registrants agree to this Settlement Agreement and to the making of an order in the form attached as Schedule "A".

PART III – COMMISSION STAFF’S STATEMENT OF FACTS AND CONCLUSIONS

A. Overview

13. Commencing in early February 2015, the BMO Registrants self-reported the Control and Supervision Inadequacies to Commission Staff. Some of the BMO Registrants’ clients have fee-based accounts and are charged a fee for investment management services received in respect of assets held in the accounts (the “Fee-Based Accounts”). The investment management fee is based on the client’s assets under management or assets under administration (the “Account Fee”). Further, some of the BMO Registrants’ clients may not always have been advised of the existence of, and their eligibility to invest in, or convert their higher Management Expense Ratio (“MER”) series of an MER Differential Fund (as defined below) into the lower MER series of the same fund.
14. The Control and Supervision Inadequacies are summarized below:
 - 1) for some BMO NB clients with Fee-Based Accounts, certain investment products (including but not limited to mutual funds, principal protected notes and principal at risk notes, collectively, the “Investment Products”) and structured investment products (including but not limited to exchange traded funds and closed ended funds, collectively, the “Structured Investment Products”) with embedded trailer fees held in Fee-Based Accounts were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period January 1, 2008 to April 30, 2016;
 - 2) for some BPIC clients with Fee-Based Accounts, certain Investment Products and Structured Investment Products with embedded trailer fees were transferred into their BPIC Fee-Based Accounts and were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period January 1, 2008 to June 30, 2016;
 - 3) for some BMO IL clients with Fee-Based Accounts, certain Investment Products and Structured Investment Products with embedded trailer fees held in Fee-Based Accounts were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period September 10, 2012 to March 31, 2016 (collectively (1), (2) and (3) are defined as the “Asset Management Fee Issue”);
 - 4) some clients of BMO II were not advised that they qualified for a lower MER series of an MER Differential Fund (as defined below) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period April 1, 2012 to June 30, 2015;
 - 5) some clients of BMO NB were not advised that they qualified for a lower MER series of an MER Differential Fund and indirectly paid excess fees when they

invested in the higher MER series of the same mutual fund during the period January 1, 2008 to October 31, 2016;

- 6) some clients of BPIC were not advised that they qualified for a lower MER series of an MER Differential Fund when they transferred certain mutual funds into their BPIC accounts and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period January 1, 2008 to October 31, 2016; and
 - 7) some clients of BMO IL were not advised that they qualified for a lower MER series of an MER Differential Fund and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period September 10, 2012 to July 22, 2016 (collectively (4), (5), (6) and (7) are defined as the “Lower MER Issue”).
15. These Control and Supervision Inadequacies continued undetected for an extended period of time. The BMO Registrants discovered the Control and Supervision Inadequacies following inquiries made and/or reviews conducted by the relevant BMO Registrants.
 16. As set out in greater detail below in the section entitled “Mitigating Factors”, the BMO Registrants have taken and are taking several remedial steps in order to correct the Control and Supervision Inadequacies.
 17. The BMO Registrants have engaged an independent third party to (i) validate the BMO Registrants’ identification of the Affected Clients, the methodology used by the BMO Registrants to calculate the compensation amounts and the results of those calculations for the Asset Management Fee Issue and (ii) identify the Affected Clients, and calculate and validate the compensation amounts for the Lower MER Issue.

B. The Control and Supervision Inadequacies

1) Excess Account Fees Paid by some clients of BMO NB

18. For some clients of BMO NB who have Fee-Based Accounts, assets held in a Fee-Based Account included certain Investment Products and Structured Investment Products with embedded trailer fees paid by the issuer to BMO NB.
19. As part of its review relating to this matter, BMO NB identified certain Investment Products and Structured Investment Products during the period January 1, 2008 to April 30, 2016 that were incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some BMO NB clients were charged excess Account Fees. Specifically,
 - a) it was determined that BMO NB did not have adequate systems of internal controls and supervision in place to ensure that all Investment Products and Structured

Investment Products with an embedded trailer fee were excluded consistently from the calculation of the Account Fee;

- b) it was determined that BMO NB's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and
 - c) BMO NB took immediate steps to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee will be classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.
20. Upon identification of the issue described above, BMO NB took steps to determine the extent of the problem and how to compensate Affected Clients. BMO NB retained an independent third party to validate BMO NB's identification of the Affected Clients, the methodology BMO NB used to calculate the compensation amounts to be paid to the Affected Clients and the results of those calculations for the excess Account Fees charged. Having taken the steps described above, BMO NB self-reported this Control and Supervision Inadequacy to Commission Staff.
21. BMO NB has determined that, as a result of this Control and Supervision Inadequacy, approximately 39,613 client accounts were charged excess Account Fees during the period January 1, 2008 to April 30, 2016.
22. BMO NB has agreed to compensate the Affected Clients who held these Investment Products and Structured Investment Products, which paid an embedded trailer fee, in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that BMO NB pay to the Affected Clients:
- a) the excess Account Fee;
 - b) an amount representing the applicable sales tax charged on the excess Account Fee; and
 - c) an additional amount in respect of the excess Account Fee calculated from the time the excess Account Fee was charged to November 30, 2016, based on a simple rate of 5% per annum calculated monthly (the "Opportunity Cost").
23. Where Account Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the client. The undercharges will also not otherwise be charged to Affected Clients or any other clients.
24. As at the date of this Settlement Agreement, BMO NB has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Opportunity Cost, is \$39,258,681.

2) Excess Account Fees Paid by some clients of BPIC

25. For some clients of BPIC who have Fee-Based Accounts, certain Investment Products and Structured Investment Products with embedded trailer fees paid by the issuer to BPIC were transferred into their BPIC Fee-Based Accounts.
26. As part of its review relating to this matter, BPIC identified certain Investment Products and Structured Investment Products during the period January 1, 2008 to June 30, 2016 that were incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some BPIC clients were charged excess Account Fees. Specifically,
 - a) it was determined that BPIC did not have adequate systems of internal controls and supervision in place to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee were excluded consistently from the calculation of the Account Fee;
 - b) it was determined that BPIC's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and
 - c) BPIC took appropriate steps to ensure that the incorrectly classified Investment Products and Structured Investment Products with an embedded trailer fee will be classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.
27. Upon identification of the issue described above, BPIC took steps to determine the extent of the problem and how to compensate Affected Clients. BPIC retained an independent third party to validate BPIC's identification of the Affected Clients, the methodology BPIC used to calculate the compensation amounts to be paid to the Affected Clients and the results of those calculations for the excess Account Fees charged. Having taken the steps described above, BPIC self-reported this Control and Supervision Inadequacy to Commission Staff.
28. BPIC has determined that, as a result of this Control and Supervision Inadequacy, approximately 6,519 client accounts were charged excess Account Fees during the period January 1, 2008 to June 30, 2016.
29. BPIC has agreed to compensate the Affected Clients who held these Investment Products and Structured Investment Products, which paid an embedded trailer fee, in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that BPIC pay to the Affected Clients:
 - a) the excess Account Fee;
 - b) an amount representing the applicable sales tax charged on the excess Account Fee; and

- c) the Opportunity Cost.
30. As at the date of this Settlement Agreement, BPIC has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Opportunity Cost, is \$4,744,650.
- 3) Excess Account Fees Paid by some clients of BMO IL**
31. For some clients of BMO IL who have Fee-Based Accounts, assets held in a Fee-Based Account included certain Investment Products and Structured Investment Products with embedded trailer fees paid to BMO IL.
32. As part of its review relating to this matter, BMO IL identified certain Investment Products and Structured Investment Products during the period September 10, 2012 to March 31, 2016 that were incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some BMO IL clients were charged excess Account Fees. Specifically,
- a) it was determined that BMO IL did not have adequate systems of internal controls and supervision in place to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee were excluded consistently from the calculation of the Account Fee;
 - b) it was determined that BMO IL's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and
 - c) BMO IL took immediate steps to ensure that the incorrectly classified Investment Products and Structured Investment Products with an embedded trailer fee will be classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.
33. Upon identification of the issue described above, BMO IL took steps to determine the extent of the problem and how to compensate Affected Clients. BMO IL retained an independent third party to validate BMO IL's identification of the Affected Clients, the methodology BMO IL used to calculate the compensation amounts to be paid to the Affected Clients and the results of those calculations for the excess Account Fees charged. Having taken the steps described above, BMO IL self-reported this Control and Supervision Inadequacy to Commission Staff.
34. BMO IL has determined that, as a result of this Control and Supervision Inadequacy, approximately 176 client accounts were charged excess Account Fees during the period September 10, 2012 to March 31, 2016.
35. BMO IL has agreed to compensate the Affected Clients who held these Investment Products and Structured Investment Products, which paid an embedded trailer fee, in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that BMO IL pay to the Affected Clients:

- a) the excess Account Fee;
 - b) an amount representing the applicable sales tax charged on the excess Account Fee; and
 - c) the Opportunity Cost.
36. Where Account Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the clients. The undercharges will also not otherwise be charged to Affected Clients or any other clients.
37. As at the date of this Settlement Agreement, BMO IL has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Opportunity Cost, is \$7,236.

Excess Management Fees Paid by Some Clients of BMO II, BMO NB, BPIC and BMO IL Due to Lower MER Issue

38. BMO II offers a number of mutual funds (each a “BMO Fund”) that are available in different series. For certain of these BMO Funds, there are two series of the same mutual fund which differ in that the MER of one series is lower than the MER of the other series (the “MER Differential Funds”). The lower MER series of these MER Differential Funds are available to clients who meet certain eligibility criteria. In particular:
- a) clients who met a minimum \$250,000 investment threshold were eligible for a lower MER series of BMO Funds that feature this series (the “Series H”), which had an MER that was generally 19 to 37 basis points lower than the other series available for the same mutual fund;
 - b) clients who invested a minimum of \$150,000 were eligible for a lower MER series of the BMO Money Market Fund (the “Series M”), which had an MER that was generally 65 basis points lower than the other series available for the same mutual fund;
 - c) clients who invested a minimum of \$50,000 were eligible for a lower MER series of BMO Funds that feature this series (the “Series CLS”), which had an MER that was generally 67 basis points lower than the other series available for the same mutual fund; and
 - d) clients of BMO NB were eligible to purchase the lower MER “NB” series of BMO Funds that include a NB series (the “Series NB”) without having to meet a threshold, which had an MER that was generally 2 to 57 basis points lower than the other series.
39. The MER Differential Funds were launched between November 2008 and December 13, 2013, except for the CLS Series, which were launched prior to January 1, 2008.

40. The BMO Registrants conducted a review of the MER Differential Funds for the period commencing January 1, 2008 and determined that certain client accounts at each of BMO II, BMO NB, BPIC and BMO IL invested in an MER Differential Fund that appeared to qualify for the lower MER series of an MER Differential Fund were not invested in that series and therefore, the holders of those client accounts did not benefit from its lower MER.
41. Upon identification of the issues above, particulars of which follow below, BMO II, BMO NB, BPIC and BMO IL initiated inquiries to determine the extent of the problem, devise mechanisms to prevent clients from continuing to buy or hold the higher MER series, and assess how to compensate Affected Clients. The mechanisms implemented included the termination or capping of certain series.

4) Excess Management Fees Paid by Some Clients of BMO II

42. During the period April 1, 2012 to June 30, 2015, BMO II clients who invested in MER Differential Funds may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series of an MER Differential Fund to the lower MER series of the same fund. Specifically:
 - a) it was determined that BMO II did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;
 - b) it was determined that BMO II's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
 - c) BMO II has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BMO II has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.
43. Upon identification of the issue above, BMO II took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they

were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund, as applicable.

44. BMO II has determined that approximately 748 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from April 1, 2012 to June 30, 2015.
45. In accordance with the Compensation Plan, in respect of those client accounts, BMO II will pay Affected Clients:
 - a) an amount representing the difference in the return that the Affected Client would have received on any securities held by the client of an MER Differential Fund had the Affected Client been invested in the lower MER series of that mutual fund in a timely manner upon becoming eligible to invest in the lower MER series held in that mutual fund (the “Difference in Return”); and
 - b) an additional amount in respect of the Difference in Return from the date of the sale, conversion, transfer or disposition of any higher MER series of an MER Differential Fund for any period up to November 30, 2016, based on a simple interest rate of 5% per annum calculated monthly, except in respect of the BMO Money Market Fund where the rate is based upon an annual rate equal to the average returns of the BMO Money Market Fund from 2013 to 2015, not compounded, and calculated monthly (the “MER Opportunity Cost”).
46. On this basis, BMO II has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is \$648,837.

5) Excess Management Fees Paid by Some Clients of BMO NB

47. During the period January 1, 2008 to October 31, 2016, BMO NB clients invested in MER Differential Funds may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series of an MER Differential Fund into, the lower MER series of the same fund. Specifically:
 - a) it was determined that BMO NB did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;
 - b) it was determined that BMO NB’s internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

- c) BMO NB has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BMO NB has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to the switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.
- 48. Upon identification of the issue above, BMO NB took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund to the account, as applicable.
 - 49. BMO NB has determined that approximately 13,196 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from January 1, 2008 to October 31, 2016.
 - 50. In accordance with the Compensation Plan, in respect of those client accounts, BMO NB will pay Affected Clients:
 - a) the Difference in Return; and
 - b) the MER Opportunity Cost.
 - 51. On this basis, BMO NB has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is \$5,185,923.
- 6) Excess Management Fees Paid by Some Clients of BPIC**
- 52. During the period January 1, 2008 to October 31, 2016, BPIC clients, when transferring units of an MER Differential Fund into their BPIC account, may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series in an MER Differential Fund into, the lower MER series of the same fund. Specifically:
 - a) it was determined that BPIC did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an

investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;

- b) it was determined that BPIC's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
 - c) BPIC has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BPIC has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to the switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.
53. Upon identification of the issue above, BPIC took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund to the account, as applicable.
54. BPIC has determined that approximately 134 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from January 1, 2008 to October 31, 2016.
55. In accordance with the Compensation Plan, in respect of those client accounts, BPIC will pay Affected Clients:
- a) the Difference in Return; and
 - b) the MER Opportunity Cost.
56. On this basis, BPIC has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is \$40,075.

7) Excess Management Fees Paid by Some Clients of BMO IL

57. During the period September 10, 2012 to July 22, 2016, BMO IL clients invested in MER Differential Funds may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series of an MER Differential Fund into, the lower MER series of the same fund. Specifically:
- a) it was determined that BMO IL did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;
 - b) it was determined that BMO IL's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
 - c) BMO IL has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BMO IL has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to the switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.
58. Upon identification of the issue above, BMO IL took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund to the account, as applicable.
59. BMO IL has determined that approximately 7 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from September 10, 2012 to July 22, 2016.
60. In accordance with the Compensation Plan, in respect of those client accounts, BMO IL will pay Affected Clients:
- a) the Difference in Return; and

- b) the MER Opportunity Cost.
61. On this basis, BMO IL has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is \$259.

C. Breaches of Ontario Securities Law

62. In respect of the Control and Supervision Inadequacies, the BMO Registrants failed to establish, maintain and apply procedures to establish controls and supervision:
- a) sufficient to provide reasonable assurance that the BMO Registrants, and each individual acting on behalf of the BMO Registrants, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - b) that were reasonably likely to identify the non-compliance described in (a) above at an early stage and that would have allowed the BMO Registrants to correct the non-compliant conduct in a timely manner.
63. As a result, these instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103- *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In addition, the failures in the BMO Registrants' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

D. Mitigating Factors

64. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants.
65. The BMO Registrants discovered and self-reported the Control and Supervision Inadequacies to Commission Staff.
66. During the investigation of the Control and Supervision Inadequacies by Commission Staff following the self-reporting by the BMO Registrants, the BMO Registrants provided prompt, detailed and candid cooperation to Commission Staff.
67. The BMO Registrants formulated an intention to pay appropriate compensation to Affected Clients in connection with their self-reporting of the Control and Supervision Inadequacies to Commission Staff and, thereafter, the BMO Registrants co-operated with Commission Staff with a view to providing appropriate compensation to the Affected Clients who were harmed by any of the Control and Supervision Inadequacies.
68. As part of this Settlement Agreement, the BMO Registrants have agreed to pay appropriate compensation to the Affected Clients, in accordance with the Compensation Plan. As at the date of this Settlement Agreement, the BMO Registrants anticipate paying

compensation to Affected Clients of approximately \$49,885,661 in the aggregate in respect of the Control and Supervision Inadequacies.

69. The Compensation Plan prescribes, among other things:
- a) the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including the time value of money owed by the BMO Registrants to the Affected Clients;
 - b) the approach to be taken with regard to contacting and making payments to the Affected Clients;
 - c) the timing to complete the various steps included in the Compensation Plan;
 - d) a \$25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately \$109,900 as compared to \$49,885,661 in compensation to be paid), which aggregate *de minimis* amount will be donated to the Canadian Foundation for Economic Education;
 - e) the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the BMO Registrants are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each BMO Registrant will use reasonable efforts to locate any Affected Clients who are entitled to payment of \$200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the BMO Registrant determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than \$400, the BMO Registrant shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located Affected Clients on December 31, 2018 will be donated to the Canadian Foundation for Economic Education;
 - f) the resolution of client inquiries through an escalation process; and
 - g) regular reporting to the OSC Manager detailing the BMO Registrants' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries.
70. At the request of Commission Staff, each of the BMO Registrants conducted an extensive review of their other businesses that are subject to the Act and are operating in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by BMO II. Based on this review, the BMO

Registrants have advised Commission Staff that there are no other instances other than those Control and Supervision Inadequacies described herein.

71. The BMO Registrants have taken and are taking corrective action including implementing the Enhanced Control and Supervision Procedures and, as part of this Settlement Agreement, the BMO Registrants are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures.
72. The BMO Registrants have agreed to make voluntary payments totaling \$2,190,000, as described in paragraphs 10(b)(x) and 10(b)(xi) above.
73. The BMO Registrants will pay the total agreed voluntary payment of \$2,190,000 by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.
74. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the BMO Registrants will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:
 - a) provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - b) are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

E. The BMO Registrants' Undertaking

75. By signing this Settlement Agreement, the BMO Registrants undertake to:
 - a) pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;
 - b) make the voluntary payments referred to in paragraphs 10(b)(x) and 10(b)(xi) above (the "Undertaking").

PART IV – TERMS OF SETTLEMENT

76. The BMO Registrants agree to the terms of settlement listed below and consent to the Order in substantially the form attached hereto, that provides that:

- a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;
- b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:
 - (i) within 90 days of receiving comments from Commission Staff regarding the Enhanced Control and Supervision Procedures, the BMO Registrants shall provide to the OSC Manager revised written policies and procedures (the “Revised Policies and Procedures”) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the BMO Registrants’ policies and procedures to establish the Enhanced Control and Supervision Procedures (the “Remaining Issues”);
 - (ii) thereafter, the BMO Registrants shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;
 - (iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the “Confirmation Date”), the BMO Registrants shall submit a letter (the “Attestation Letter”), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the BMO Registrants, to the OSC Manager, expressing their opinion on whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the BMO Registrant for the 6 month period commencing from the Confirmation Date;
 - (iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;
 - (v) the BMO Registrants shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;
 - (vi) any of the BMO Registrants or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and
 - (vii) the BMO Registrants shall comply with the Undertaking.

77. The BMO Registrants agree to make the voluntary payments described in subparagraph 75(b) by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement.

PART V – COMMISSION STAFF COMMITMENT

78. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 79 below and except with respect to paragraph 70 above, and nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against the BMO Registrants in relation to any control and supervision inadequacies leading to clients paying excess fees other than in respect of the matters described herein.
79. If the Commission approves this Settlement Agreement and any of the BMO Registrants fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against the BMO Registrants. These proceedings may be based on, but are not limited to, the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

PART VI – PROCEDURE FOR APPROVAL OF SETTLEMENT

80. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for December 15, 2016, or on another date agreed to by Commission Staff and the BMO Registrants according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
81. Commission Staff and the BMO Registrants agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on the BMO Registrants' conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.
82. If the Commission approves this Settlement Agreement, the BMO Registrants agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
83. If the Commission approves this Settlement Agreement, the BMO Registrants will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, the BMO Registrants agree that they will not make any public statement that there is no factual basis for this Settlement Agreement. Nothing in this paragraph affects the BMO Registrants' testimonial obligations or the right to take legal or factual positions in other reviews or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada

and/or its Commission Staff is not a party (“Other Proceedings”) or to make public statements in connection with Other Proceedings.

84. The BMO Registrants will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission’s jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VII – DISCLOSURE OF SETTLEMENT AGREEMENT

85. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:
- a) this Settlement Agreement and all discussions and negotiations between Commission Staff and the BMO Registrants before the settlement hearing takes place will be without prejudice to Commission Staff and the BMO Registrants; and
 - b) Commission Staff and the BMO Registrants will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
86. The parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. The obligation to keep this Settlement Agreement confidential shall cease upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and the BMO Registrants otherwise agree or if required by law.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

87. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.
88. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 9th day of December, 2016.

BMO NESBITT BURNS INC.

“Julie Ouellon-Wente”
Witness

Per: “Charyl Galpin”
Charyl Galpin
Executive Vice-President & Managing Director,
Head of BMO Nesbitt Burns

“Julie Ouellon-Wente”
Witness

Per: “Bruce Ferman”
Bruce Ferman
Senior Vice President & Managing Director

BMO INVESTMENTS INC.

“Julie Ouellon-Wente”
Witness

Per: “Kevin Gopaul”
Kevin Gopaul
Chief Executive Officer

“Julie Ouellon-Wente”
Witness

Per: “Ross Kappelé”
Ross Kappelé
Executive Vice President & Head of Retail
Distribution

BMO INVESTORLINE INC.

“Julie Ouellon-Wente”
Witness

Per: “Charyl Galpin”
Charyl Galpin
President

“Julie Ouellon-Wente”
Witness

Per: “Neil Puddicombe”
Neil Puddicombe
Corporate Secretary

BMO PRIVATE INVESTMENT COUNSEL INC.

“Julie Ouellon-Wente”
Witness

Per: “Myra Cridland”
Myra Cridland
Director and Chair

“Julie Ouellon-Wente”
Witness

Per: “Anthony Bennett”
Anthony Bennett
President & Chief Executive Officer

Commission Staff:

Per: “Jeff Kehoe”
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE A



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*,
RSO 1990, c S.5**

- AND -

**IN THE MATTER OF BMO NESBITT BURNS INC.,
BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. AND BMO INVESTORLINE INC.**

ORDER

(Subsections 127(1) and 127(2) of the *Securities Act*)

WHEREAS:

1. on December 12, 2016, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing in relation to the Statement of Allegations filed by Staff of the Commission (“Commission Staff”) on December 12, 2016 with respect to BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc. (the “BMO Registrants”);
2. the Notice of Hearing gave notice that on December 15, 2016, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between Commission Staff and the BMO Registrants dated December 9, 2016 (the “Settlement Agreement”);
3. in the Statement of Allegations, Commission Staff alleged that there were inadequacies in the BMO Registrants’ systems of controls and supervision which formed part of their compliance systems (the “Control and Supervision Inadequacies”) which resulted in certain clients of the BMO Registrants paying, directly or indirectly, excess fees that were not detected or corrected by the BMO Registrants in a timely manner;

4. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants;
5. Commission Staff are satisfied that the BMO Registrants discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;
6. Commission Staff are satisfied that during their investigation of the Control and Supervision Inadequacies, the BMO Registrants provided prompt, detailed and candid cooperation to Commission Staff;
7. Commission Staff are satisfied that the BMO Registrants had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff;
8. as part of the Settlement Agreement, the BMO Registrants undertake to:
 - (a) pay appropriate compensation to eligible clients and former clients who were harmed by the Control and Supervision Inadequacies (the “Affected Clients”) in accordance with a plan submitted by the BMO Registrants to Commission Staff (the “Compensation Plan”) and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the “OSC Manager”) in accordance with the Compensation Plan;
 - (b) make a voluntary payment of \$90,000 to reimburse the Commission for costs incurred or to be incurred by it, in accordance with subsection 3.4(2)(a) of the *Securities Act* (the “Act”); and
 - (c) make a further voluntary payment of \$2,100,000, to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act(the “Undertaking”);
9. the Commission has received the voluntary payments totalling \$2,190,000 in escrow

pending approval of the Settlement Agreement;

10. the Commission reviewed the Settlement Agreement, the Notice of Hearing and the Statement of Allegations and heard submissions from counsel for the BMO Registrants and from Commission Staff; and
11. the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT:

- (a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;
- (b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:
 - (i) within 90 days of receiving comments from Commission Staff regarding the procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the “Enhanced Control and Supervision Procedures”), the BMO Registrants shall provide to the OSC Manager revised written policies and procedures (the “Revised Policies and Procedures”) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the BMO Registrants’ policies and procedures to establish the Enhanced Control and Supervision Procedures (the “Remaining Issues”);
 - (ii) thereafter, the BMO Registrants shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;
 - (iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the “Confirmation Date”), the BMO Registrants shall submit a letter (the “Attestation Letter”), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the BMO Registrants, to the OSC Manager, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed,

administered and enforced by the BMO Registrant for the 6 month period commencing from the Confirmation Date;

(iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

(v) the BMO Registrants shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;

(vi) any of the BMO Registrants or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and

(vii) the BMO Registrants shall comply with the Undertaking; and

(c) the voluntary payment referred to in recital 8(c) above is designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act.

DATED at Toronto, Ontario this 15th day of December, 2016
