



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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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.**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff (“Commission Staff”) of the Ontario Securities Commission (the “Commission”) make the following allegations:

I. THE RESPONDENTS

1. 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.

2. 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.
3. 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 and is registered with the Commission as an investment fund manager and mutual fund dealer.
4. 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. Together, BMO NB, BPIC, BMO II and BMO IL are referred to herein as the “BMO Registrants.”

II. THE BMO REGISTRANTS’ CONDUCT

5. Commencing in early February 2015, the BMO Registrants promptly self-reported to Commission Staff inadequacies in their 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.
6. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants.

7. 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. The BMO Registrants either have already taken or are taking corrective action, including implementing additional controls, supervisory and monitoring systems, to prevent the re-occurrence of the Control and Supervision Inadequacies in the future.
8. 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").
9. BMO II offers a number of 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 management expense ratio ("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.
10. The Control and Supervision Inadequacies are summarized as follows:
 - 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;
- 4) some clients of BMO II 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 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.

III. BREACH OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

11. 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 that would have allowed the BMO Registrants to correct the non-compliant conduct in a timely manner.
12. 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.
13. Commission Staff reserve the right to make such other allegations as Commission Staff may advise and the Commission may permit.

DATED at Toronto, this 12th day of December 2016.