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VIA EMAIL

Timothy B. Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7553

In the Matter of BMO Harris Financial Advisors, Inc. and BMO Asset Management Corp.

Dear Mr. Henseler:

We submit this letter on behalf of our client, Bank of Montreal ("BMO" or the "Applicant"), a Canadian bank reporting under the multijurisdictional disclosure system ("MJDS") with securities registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"), and the settling firms, BMO Harris Financial Advisors, Inc. ("BHFA") and BMO Asset Management Corp. ("BMO AM," together with BHFA, the "Settling Firms") in the above-captioned action brought by the U.S. Securities and Exchange Commission (the "Commission").

We hereby request a determination by the Commission or the Division of Corporation Finance (the "Division"), acting pursuant to authority duly delegated by the Commission, that the Applicant should not be an "ineligible issuer" as defined under Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act") as a result of the entry of a cease-and-desist order pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against the Settling Firms (the "Order"), which is described below. Relief from the ineligible issuer provisions is appropriate in the circumstances of this case for the reasons set forth below. BMO requests that exemptive relief be made effective upon the entry of the Order.

BACKGROUND

The Settling Firms entered into a settlement with the Commission, which resulted in the Commission issuing the Order. The Settling Firms consented to entry of the Order

without admitting or denying the findings set forth in the Order, except for the jurisdiction of the Commission and the subject matter of the proceeding. The Order finds that the Settling Firms violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder as a result of the Settling Firms failing to disclose certain conflicts of interest. Specifically, the Order finds that from July 2012 through March 2016, both Settling Firms failed to disclose that, for retail investors in a specific investment advisory program they advised, the Settling Firms preferred proprietary mutual funds and invested approximately 50% of client assets in the proprietary mutual funds. The Order also finds that from July 2012 through September 2015, BHFA invested client assets—in the same investment advisory program—in higher-cost share classes for certain mutual funds when lower-cost share classes were available, which allowed BHFA to receive revenue-sharing payments and to avoid paying transaction fees to its clearing broker. The Order finds that the investment in higher-cost share classes reduced returns for affected investors and violated BHFA's duty of best execution.

Pursuant to the Order, the Settling Firms must (i) cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; and (ii) pay disgorgement of $25 million, prejudgment interest of $4,733,542, and a civil monetary penalty of $8.25 million.

DISCUSSION

Effective on December 1, 2005, the Commission reformed and revised the registration, communications, and offering procedures under the Securities Act.[1] As part of these reforms, the Commission revised Securities Act Rule 405 and created a new category of offering communication, the "free writing prospectus" ("FWPs"). Eligible issuers may use FWPs in registered offerings pursuant to Rules 164 and 433 under the Securities Act. These benefits, however, are unavailable to issuers defined as "ineligible issuers"[2] under Rule 405.

An issuer is an "ineligible issuer," as defined under Rule 405, if, among other things, "(vi) [w]ithin the past three years, the issuer or any entity that at the time was a subsidiary of the issuer was subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) Requires that the person cease and desist from violating the anti-fraud

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1 Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

2 This request for relief is for all purposes of the definition of "ineligible issuer" under Rule 405 including but not limited to whatever purpose the definition may now or hereafter be used under the federal securities laws, including Commission rules and regulations.

provisions of the federal securities laws; or (C) Determines that the person violated the anti-fraud provisions of the federal securities."

BMO understands that entry of the Order against the Settling Firms, which are subsidiaries of BMO, makes BMO an ineligible issuer for a period of three years after the date of the Order. This result would preclude the Applicant from having the benefits of the Securities Offering Reform for three years, including the use of FWPs.

Notwithstanding the foregoing, paragraph (2) of the definition of "ineligible issuer" under Rule 405 provides that an issuer "shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." The Commission has delegated authority to the Division of Corporation Finance to make such a determination pursuant to 17 CFR § 200.30-1(a)(10).

The Applicant believes that there is good cause for the Commission to make such a determination based on precedent as well as the Division's Statement[3] on granting such waivers, on the following grounds:

1. A waiver is appropriate in light of the nature of the violation.

As noted above, the conduct set forth in the Order involves investment advisory client disclosure failures by the Settling Firms during the periods July 2012 through March 2016, related to conflicts of interest around proprietary mutual funds, and July 2012 through September 2015, related to conflicts of interest around share-class selection. The conduct and violations set forth in the Order do not pertain to activities undertaken by BMO in connection with its capital raising activities, role as an issuer of securities, or its financial reporting or filings with the Commission. Nor does the conduct set forth in the Order relate to fraud in connection with BMO's offering of securities. Rather, the conduct occurred at the subsidiary level by the Settling Firms.

The personnel primarily responsible for the conduct are or were employed by the Settling Firms. None of those individuals has responsibility for, or any influence over, BMO as an issuer of securities or its filings with the Canadian securities regulators or the Commission.

The Applicant has established and maintains both controls and procedures with respect to financial reporting and disclosures controls and procedures. Such controls and procedures apply to the Applicant's preparation of its filings with the Canadian securities regulators and the Commission. The process for continuous disclosure is managed in

[3] Division of Corporation Finance, Revised Statement on Well-Known Seasoned Issuer Waivers (April 24, 2014), available at http://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp-031214.htm (the "Division Statement").

Toronto, Canada, and all disclosures are made in accordance with the Applicant's disclosure controls and procedures, including its disclosure policy. The Applicant's Disclosure Committee consists of its Chief Financial Officer; General Counsel; Chief Risk Officer; Head, Investor Relations; Controller; Chief Accountant; Senior Vice President, Finance; Senior Vice President, Deputy General Counsel and Corporate Secretary; and the Associate General Counsel, Finance & Securities. The Disclosure Committee's responsibilities include the review of all continuous disclosure filings and any new material information proposed to be disclosed in an offering document. In addition, following the release of the Applicant's interim and annual financials, the Treasury Group conducts a quarterly diligence process in connection with its funding activities. The results of this process are updated throughout the quarter and support, for example, the Applicant's compliance with applicable securities laws; its representations, warranties, and covenants under related transaction documents; any auditor comfort process; and any necessary legal opinions. The Cross-Asset Solutions group utilizing the US medium-term-note shelf registration statement filed with the Commission is based in New York, participates in the aforementioned diligence process, and utilizes a review process for FWPs filed with Commission that includes review by internal and external counsel to BMO.

Moreover, the Order does not contain any findings that the Settling Firms committed scienter-based or criminal violations of the federal securities laws in respect of the conduct.

As demonstrated above, none of the findings in Order relates to the Applicant's conduct as an issuer of securities and does not call into question the Applicant's ability to make accurate disclosures about its future offerings.

2. The Settling Firms have taken remedial steps to address the findings of misconduct in the Order.

During the pendency of the investigation by the staff of the SEC's Division of Enforcement, which led to the Order, the Settling Firms undertook a number of remedial measures to address the conduct set forth in the Order. As part of the process, the Settling Firms engaged a compliance consultant to assess and make recommendations about the Settling Firms' policies and procedures with regard to (1) placement of investment advisory client assets in affiliated mutual funds, (2) share class recommendations for advisory clients, and (3) revenue sharing arrangements. As a result of this review process and additional enhancements undertaken by the Settling Firms prior to the engagement of the compliance consultant, the Settling Firms have made substantial improvements to their policies and procedures.

With regard to the first issue concerning the placement of investment advisory client assets in affiliated mutual funds, the Settling Firms created new policies and

procedures around investments in affiliated products, as well as made enhancements to existing due diligence procedures for client investments to ensure proprietary products are subject to the same standards as non-proprietary. In addition, BHFA established a new Product Committee, which conducts oversight of the due diligence review process for affiliated products.

With regard to the second issue concerning share-class selection, as of July 2017, BHFA converted all of its advisory clients' mutual fund holdings to the lowest-cost share class available on the BHFA platform. In addition, BHFA adopted new policies and procedures and updated existing ones related to share-class selection to ensure that the appropriate share-class is selected for advisory accounts, as well as implemented systematic controls to review share-class selection on a periodic basis.

With regard to the third issue, BHFA adopted a new procedure and updated existing ones that prohibit the receipt of revenue sharing from the sale of affiliated mutual funds in advisory accounts, as well as implemented systematic controls to review revenue and ensure no revenue sharing is generated.

Finally, both Settling Firms have updated their client disclosures, including their Forms ADV, to disclose the conflicts of interest identified in the Order.

3. If the waiver request is denied, the Applicant will face unduly severe consequences.

The loss of the Applicant's status as an eligible issuer could, as described in more detail below, affect the Applicant's ability to utilize FWPs, which could potentially harm investors and the market as a whole. This would be an unduly severe consequence, particularly in light of the fact that the conduct described in the Order does not involve the issuance of BMO securities.

The Applicant is a global financial institution that relies on the benefits afforded to eligible issuers in its day-to-day operations. Were BMO to be deemed an ineligible issuer and not obtain a waiver, it would lose the ability to communicate more freely with investors using FWPs. The Applicant relies on FWPs to convey targeted and relevant information to customers in a user-friendly format that is often easier to understand than the typically dense statutory prospectus. The SEC has recognized that investors and the securities markets benefit from the use of FWPs, which among other things facilitate greater transparency to investors.[4]

The Applicant currently employs user-friendly FWPs to offer securities through Cross-Asset Solutions, a business line that issues SEC registered structured notes on an

[4] Securities Offering Reform, Securities Act Release No. 8501 (Nov. 3, 2004)

almost daily basis. In fiscal 2018, Cross-Asset Solutions issued 297 structured notes from the U.S. medium-term note shelf, including five new exchange traded notes, for a total approximate notional of $772,092,000. If BMO were no longer able to use FWPs, this business line would necessarily be adversely impacted.

The loss of its eligible issuer status would limit the Applicant's ability to market the structured products offered by its Cross-Asset Solutions business.

CONCLUSION

In light of the foregoing, subjecting the Applicant to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists for the grant of the requested relief. Accordingly, we respectfully request that the Division of Corporation Finance, acting pursuant to authority duly delegated by the Commission and pursuant to paragraph (2) of the definition of "ineligible issuer" in Rule 405, determine that under the circumstances the Applicant will not be considered an "ineligible issuer" within the meaning of Rule 405 as a result of the Order. We further request that this determination be made (i) as of the date of the Order and (ii) for all purposes of the definition of "ineligible issuer," however it may now or hereafter be used under the federal securities laws and the rules thereunder.

If you have any questions regarding this request, please contact me at (202) 383-8060.

Sincerely yours,

Robert B. Kaplan