



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

April 8, 2011

Robert E. Buckholz  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004

**Re: Bank of Montreal  
File No. TP 11-09**

Dear Mr. Buckholz:

In your letter dated April 8, 2011, as supplemented by conversations with members of the staff (the "Staff") of the Securities and Exchange Commission ("Commission"), you request on behalf of Bank of Montreal, a Schedule 1 Bank under the Bank Act (Canada) and a financial holding company ("BMO"), an exemption from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934 ("Exchange Act") in connection with a proposed acquisition of the Marshall & Ilsley Corporation ("M&I") by BMO (the "Acquisition").

You seek an exemption to permit BMO and its affiliates to conduct specified transactions outside the United States in the common shares of BMO ("BMO Shares") as well as derivatives of such shares ("BMO Share Derivatives") during the Acquisition. Specifically, you request that: (i) BMO, BMO Nesbitt, and BMO Ireland be permitted to continue to engage in market making and customer-facilitation trading in BMO Share Derivatives as described in your letter; (ii) BMO Nesbitt and BMO Ireland be permitted to continue to engage in derivatives hedging and index-related adjustments as described in your letter; (iii) the Brokerage Providers be permitted to continue to engage in brokerage activities as described in your letter; (iv) the Asset Managers be permitted to continue to engage in asset management activities as described in your letter; and (v) BMO Nesbitt be permitted to continue to engage in plan-related activities as described in your letter.

You also seek an exemption to permit certain BMO affiliates to conduct specified transactions in the United States in BMO Shares during the Acquisition. Specifically, you request that: (i) SBSB and Stoker be permitted to continue to engage in unsolicited asset management activities and trading indexes of which BMO Shares are a component; and (ii) BMO Capital Markets, BMO Capital Markets GKST Inc., BMO Nesbitt Burns Trading Corp. S.A., and Harris Investor Services (collectively "US Brokerage Providers") be permitted to continue to engage in unsolicited brokerage activities in the United States as described in your letter. We have attached a copy of your correspondence to avoid reciting the facts set forth therein. Unless otherwise noted, each defined term in our response has the same meaning as defined in your letter.

*Response:*

Based on the facts and representations that you have made in your letter, but without necessarily concurring with your analysis, the Commission hereby grants BMO an exemption from Rules 101 and 102 of Regulation M to permit BMO, BMO Nesbitt, BMO Ireland, the Brokerage Providers, the Asset Managers, SBSB, Stoker, and the US Brokerage Providers (collectively, the "Companies") to continue to engage in the transactions described in your letter. In particular, in your correspondence you make the following key representations:

- The average daily trading volume ("ADTV") value of BMO Shares on the TSX in the 2010 calendar year was approximately \$154.1 million, or approximately 81% of the worldwide ADTV value for that year, and for the Prescribed Period was approximately \$190.6 million, or approximately 68% of the worldwide ADTV value for that period. BMO's market capitalization at January 31, 2011 was approximately \$32.8 billion, the fourth largest for any Canadian bank and the ninth largest of any Canadian company, representing 2.6% of the S&P TSX 60 Index;
- The worldwide ADTV value of BMO Shares was approximately \$191.3 million for the 2010 calendar year and approximately \$280 million for the Prescribed Period and the estimated public float value for BMO Shares was approximately \$35.2 billion as of March 15, 2011;
- The ADTV value of BMO Shares on the NYSE in the 2010 calendar year was approximately \$37.2 million, or approximately 19% of the worldwide ADTV value for that year, and for the Proscribed Period was approximately \$89.4 million, or approximately 32% of the worldwide ADTV of BMO Shares for that period;
- The principal trading market for BMO Shares is the TSX in Canada;
- BMO expects to issue approximately 66.45 million BMO Shares as part of the Acquisition. The number of BMO Shares expected to be issued in connection with the Acquisition as consideration for shares of M&I common stock will represent approximately 11.7% of the BMO Shares outstanding January 31, 2011 and, assuming the full exercise of all converted M&I stock options as described in your letter, will then represent approximately 12.5% of BMO Shares outstanding January 31, 2011;
- BMO has established information barrier policies and procedures to prevent material non-public information from passing between the sales/trading areas of BMO and its affiliates and other areas of BMO and its affiliates;
- BMO, BMO Nesbitt, and BMO Ireland conduct their market making and customer-facilitation trading activities outside of the United States;

- BMO Nesbitt and BMO Ireland conduct their derivatives hedging and index-related adjustments outside the United States;
- The Brokerage Providers, other than the US Brokerage Providers, conduct their brokerage activities outside the United States;
- The Asset Managers, other than SBSB and Stoker, conduct their asset management activities outside the United States;
- BMO Nesbitt conducts its plan-related activities outside of the United States;
- BMO Nesbitt, BMO Ireland, the Brokerage Providers (other than the US Brokerage Providers), and the Asset Managers (other than SBSB and Stoker) each has confirmed that the activities for which it is requesting relief will be conducted in the ordinary course of business and not for the purpose of facilitating the Acquisition, in accordance with applicable law in Canada, which permits such activities during a distribution;
- In the United States, BMO conducts a securities business through the US Brokerage Providers who are all members of FINRA;
- The US Brokerage Providers will only engage in unsolicited brokerage activities in the normal course of business with its customers;
- In the United States, BMO conducts asset management activities through SBSB and Stoker which are registered with the Commission as investment advisers; and
- SBSB and Stoker will only engage in unsolicited asset management activities and trading broad indices of which BMO is a component in the normal course of business with its customers.

The exemption is subject to the following conditions:

1. None of the transactions of the Companies described in your letter shall occur in the United States, with the exception of the transactions of SBSB, Stoker, and the US Brokerage Providers described in your letter;
2. All of the transactions described in your letter shall be effected in the ordinary course of business and not for the purpose of facilitating the Acquisition;
3. The proxy statement/prospectus to be distributed to M&I shareholders shall disclose the possibility of, or the intention to make, the transactions described in your letter;

4. BMO and each of the Companies shall provide to the Division of Trading and Markets (the "Division"), upon request, a daily time-sequenced schedule of all transactions made during the period beginning on the day the proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution. Such schedule shall include:
  - (a) size, broker (if any), time of execution, and price of the transactions;
  - (b) the exchange, quotation system, or other facility through which the transactions occurred; and
  - (c) whether the transactions were made for a customer account or a proprietary account;
5. Upon request of the Division, BMO and each of the Companies will transmit the information requested in item 4 (above) to the Division at its offices in Washington, D.C. within 30 days of its request;
6. BMO and each of the Companies shall retain all documents and other information required to be maintained pursuant to this exemption for at least two years following the completion of the Acquisition;
7. Representatives of BMO and each of the Companies shall be made available (in person at the offices of the Commission in Washington, D.C. or by telephone) to respond to inquiries of the Division relating to their records; and
8. Except as otherwise exempted by this letter, BMO and each of the Companies will comply with Regulation M.

The foregoing exemption from Rules 101 and 102 of Regulation M is based solely on your representations and the facts presented to the Staff and is strictly limited to the application of this rule to the proposed transactions. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

Robert E. Buckholz  
April 8, 2011  
Page 5 of 5

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, including Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the participants in the various transactions. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority,

A handwritten signature in black ink, appearing to read 'J. J. Tao', is written over a horizontal line.

Josephine J. Tao  
Assistant Director

Attachment

# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

RECEIVED

2011 APR 13 PM 3:01

SEC / TM

*125 Broad Street*  
*New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

April 8, 2011

Division of Trading and Markets,  
Securities and Exchange Commission,  
100 F Street, N.E.,  
Washington, D.C. 20549.

Attention: Josephine J. Tao, Assistant Director

Re: Bank of Montreal: Request for Exemptive Relief from Rules 101 and 102 of Regulation M

Ladies and Gentlemen:

We are writing on behalf of our client, Bank of Montreal, a Schedule I Bank under the Bank Act (Canada) and a financial holding company ("BMO"), regarding the application of Regulation M to transactions by BMO and its affiliates in the common shares of BMO ("BMO Shares") during the distribution of BMO Shares to be made by BMO to shareholders of Marshall & Ilsley Corporation, a bank holding company organized as a Wisconsin corporation ("M&I"), in connection with the proposed acquisition of M&I by BMO (the "Acquisition"). Specifically, on behalf of BMO, we ask the Staff to grant exemptive relief from Rules 101 and 102 of Regulation M to permit BMO and its affiliates to continue, in the ordinary course of business as described below and in accordance with applicable local law, to engage in the following activities outside the United States (and, to the extent specified, in the United States) during the Regulation M restricted period applicable to the Acquisition:

- ***Market Making and Facilitation Trading in Equity Derivatives:*** BMO and its subsidiaries BMO Nesbitt Burns, Inc. and its subsidiaries (collectively, "BMO Nesbitt") and Bank of Montreal Ireland PLC ("BMO Ireland") regularly make bids and offers for, and purchase and sell futures and forwards, swaps and options, relating to baskets and indices that include BMO Shares, and other derivatives relating to BMO Shares (such futures, forwards, options, swaps, baskets, indices and other

derivatives, collectively, “BMO Share Derivatives”) on the Montreal Exchange (“MX”) and in the over-the-counter market.<sup>1</sup> In addition, BMO Nesbitt and BMO Ireland purchase and sell, solely in the over-the-counter market, certain BMO Share Derivatives for which, for credit quality purposes, BMO is the counterparty. BMO Nesbitt and BMO Ireland effect these transactions for their own accounts, on both solicited and unsolicited bases, in order to provide liquidity to the market, to facilitate customer transactions and to readjust BMO Nesbitt’s and BMO Ireland’s ownership position in BMO Shares as appropriate following such transactions. BMO Nesbitt is a designated market maker on the Toronto Stock Exchange (“TSX”) for certain third-party exchange traded funds (“ETFs”).

- ***Derivatives Hedging and Index-Related Adjustments:*** In connection with the trading activities described above under “Market Making and Facilitation Trading in Equity Derivatives” and customer trades, BMO Nesbitt and BMO Ireland solicit and effect trades in BMO Shares, and enter into cash-settled swaps, for their own account and for the accounts of their customers, for the purpose of hedging positions (or adjusting or liquidating existing hedge positions) of BMO and its affiliates and of their customers. BMO Nesbitt is the designated market maker on the TSX for certain ETFs that are index-based and also trades certain ETFs that are index-based and include BMO Shares. The traded ETFs for which BMO is not the market maker generally consist of 10 or more securities and BMO Shares comprise less than 10% of the value of each such ETF. These ETFs are listed solely on Canadian exchanges and are comprised exclusively of Canadian securities. In order to appropriately hedge its positions in these ETFs, BMO Nesbitt will effect trades in the securities that are components of the applicable ETFs, including BMO Shares. In addition, BMO Nesbitt solicits and effects trades in BMO Shares in order to appropriately adjust BMO Nesbitt’s proprietary index-related portfolio in response to changes in the applicable indices. During the restricted period related to the Acquisition, these hedging and other transactions will be effected exclusively on the TSX or other exchanges or alternative trading systems (“ATSs”) in Canada, and all such transactions will be entered into in the ordinary course of business and not in contemplation or facilitation of the Acquisition.
- ***Brokerage Activities and Facilitation Trading:*** Some of BMO’s subsidiaries, including BMO Nesbitt, BMO InvestorLine Inc. (“InvestorLine”), BMO Capital Markets Corp. (“BMO Capital Markets”), Harris Investor Services, Inc. (“Harris”

---

<sup>1</sup> Although these activities and the others described in this letter are conducted outside of the United States (except for those activities specifically described as occurring in the United States), BMO’s customers or counterparties involved in such activities may be based in the United States, Canada or elsewhere.

Investor Services”), BMO Capital Markets Limited and BMO Nesbitt Burns Securities Ltd. (“Nesbitt Burns Ltd.”) (such subsidiaries collectively the “Brokerage Providers”), engage in discount brokerage and full-service brokerage activities for their customers through ordinary customer facilitation and related services. The discount brokerage division engages only in unsolicited brokerage activities, while the full service brokerage division provides additional services, including discussions with customers regarding investment strategies (including with respect to BMO Shares) and solicited and unsolicited brokerage activities.<sup>2</sup> The Brokerage Providers also effect transactions in BMO Shares for their own account in order to facilitate unsolicited customer transactions. The Brokerage Providers may accomplish these activities by either relaying buy or sell orders for BMO Shares to BMO Nesbitt for execution or relaying buy and sell orders for BMO Shares to unaffiliated third parties. These activities are conducted outside the United States, and the related trades are executed on the TSX.<sup>3</sup> Additionally, four United States BMO subsidiaries – BMO Capital Markets, BMO Capital Markets GKST Inc., BMO Nesbitt Burns Trading Corp. S.A. and Harris Investor Services (such subsidiaries collectively the “US Brokerage Providers”) – engage in unsolicited brokerage activities of the kind described above with their customers and related trades may be effected on either the New York Stock Exchange (“NYSE”) or the TSX. All of the US Brokerage Providers are members of FINRA. We ask that the requested relief also cover these United States activities of these BMO subsidiaries.

- ***Asset Management:*** Certain subsidiaries of BMO, including BMO Nesbitt, BMO Asset Management Inc. (“BMO Asset Management”), BMO Harris Investment Management Inc. (“BMO Harris”), Pyrford International Limited (“Pyrford”), Harris Investment Management, Inc. (“Harris Investment”), HIM Money, Inc. (“HIM Money”), Harris N.A., The Harris Bank N.A. (“THBNA”), Sullivan, Bruyette, Speros & Blayney, Inc. (“SBSB”), Stoker Ostler Wealth Advisors (“Stoker”), Harris myCFO Investment Advisory Services LLC and Harris Investor Services (such subsidiaries individually an “Asset Manager” and collectively the “Asset Managers”), manage the assets of certain mutual funds, pooled funds, pension funds, trust accounts, estate portfolios and other investor portfolios (including those of endowments, corporations and individuals) (such funds, accounts and portfolios, the “Managed Funds”). As part of their ordinary investment management activities on behalf of the Managed Funds, the Asset Managers may buy and sell BMO Shares for

---

<sup>2</sup> During the applicable restricted period, BMO will fully restrict and direct employees in the full service brokerage division not to solicit orders from customers with respect to BMO Shares.

<sup>3</sup> From time to time, BMO Capital Markets may engage in direct buying and selling of BMO Shares rather than relaying orders to other entities.

certain of the Managed Funds' accounts. A substantial majority of such activity takes place in Canada, and a small portion of such activity may occur in other non-United States jurisdictions. During the restricted period related to the Acquisition, the Asset Managers will only effect such transactions on an unsolicited basis at the direction of a client and, based on the applicable exemptive relief that BMO has received from the Investment Industry Regulatory Organization of Canada ("IROC") and the Ontario Securities Commission ("OSC"), the Asset Managers may exercise their discretion to acquire BMO Shares when directed to do so by a client or beneficiary or pursuant to the terms of a client's or beneficiary's investment mandate. In order to replicate an underlying index in accordance with stated investment guidelines or upon receipt of cash contributions on behalf of indices and enhanced index funds managed by the Asset Managers, certain Asset Managers may also acquire BMO Shares on behalf of index, and enhanced index, funds managed by the Asset Managers if BMO Shares are a component of the relevant index. The transactions described above may be routed to certain BMO subsidiaries, including BMO Nesbitt, or to unaffiliated third parties, at the direction of the applicable Asset Manager. In addition, SBSB and Stoker, both of which are registered with the Securities and Exchange Commission (the "SEC") as investment advisors, may buy and sell in the United States (i) BMO Shares on the NYSE, but only on an unsolicited basis at the direction of a client and (ii) broad-based indices in which BMO Shares are a component.<sup>4</sup>

- ***Purchases for Certain Plans:*** In order to deliver BMO Shares to BMO employees under certain BMO employee plans, including (i) the Employee Share Ownership Plan for employees of BMO or its subsidiaries living and working in Canada or expatriates who continue to be on the Canadian payroll, (ii) the Employee Share Ownership Plan for employees of BMO Nesbitt and its subsidiaries living and working in Canada or expatriates who continue to be on the Canadian payroll and (iii) the All Employee Share Ownership Plan for employees of BMO or its subsidiaries who are subject to income tax in the United Kingdom (such plans collectively the "Employee Plans"), BMO Nesbitt purchases BMO Shares on the TSX. BMO Nesbitt makes the purchases on a bi-weekly or monthly basis, depending on the plan, solely to satisfy BMO's obligation to deliver shares based on pre-determined payroll deductions of the employee. During the restricted period related to the Acquisition, these purchases may only be made pursuant to exemptive relief granted by the OSC on behalf of BMO Nesbitt.

---

<sup>4</sup> Unless expressly directed by a client to do otherwise, SBSB and Stoker route these orders to an unaffiliated broker-dealer for execution.

The availability of the exemptions requested by this letter would be conditioned on the disclosure and record-keeping undertakings outlined below under “Relief Requested.”

BMO has provided us with, and authorized us to make on its behalf, the factual representations set forth in this letter about the market for BMO Shares and the activities of BMO and its affiliates. The description of Canadian laws and regulations has been provided by Osler, Hoskin & Harcourt LLP.

## **I. The Market for BMO Shares**

The principal trading market for BMO Shares is the TSX. Additionally, there are a number of ATSS in Canada where BMO Shares may be traded. BMO Shares are also listed on the NYSE. BMO is a foreign private issuer as defined in Rule 3b-4(c) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “Exchange Act”) and is subject to the information reporting requirements of the Exchange Act.

As of January 31, 2011, BMO had approximately 567.8 million common shares outstanding. BMO’s market capitalization at January 31, 2011, was approximately \$32.8 billion,<sup>5</sup> the fourth largest of any Canadian bank and the ninth largest of any Canadian company, representing 2.6% of the S&P TSX 60 Index. The average daily trading volume value of BMO Shares on the TSX during the two month period beginning on January 4, 2011 and ending on March 4, 2011 (the “Prescribed Period”) was approximately \$190.6 million, or approximately 68% of the worldwide average daily trading volume value for that period. The average daily trading volume value of BMO Shares on the NYSE for the Prescribed Period was approximately \$89.4 million, or approximately 32% of the worldwide average daily trading volume value for that period. In addition, the average daily trading volume value of BMO Shares on the TSX for the 2010 calendar year was approximately \$154.1 million, or approximately 81% of the worldwide average daily trading volume value for that year, and the average daily trading volume value of BMO Shares on the NYSE for the 2010 calendar year was approximately \$37.2 million, or approximately 19% of the worldwide average daily trading volume value for that year. BMO expects to issue approximately 66.45 million BMO Shares (representing approximately 11.70% of BMO Shares outstanding as of January 31, 2011, and, assuming the full exercise of all converted M&I stock options as described below, representing approximately 12.50% of BMO Shares outstanding as of

---

<sup>5</sup> As used in this letter, “\$” refers to U.S. dollars and “C\$” refers to Canadian dollars. For purposes of this letter, and except as otherwise noted, Canadian dollars have been converted to United States dollars at the rate of C\$1.0010 = \$1.00, the average exchange rate from December 1, 2010 through January 31, 2011, as published by the Federal Reserve.

January 31, 2011) as consideration for shares of M&I common stock in the Acquisition, based on approximately 528.68 million shares of M&I common stock outstanding as of December 31, 2010. In addition, as described in more detail below under “The Acquisition,” BMO currently expects that approximately 4.5 million BMO Shares will be issuable in respect of converted M&I stock options.

The TSX provides for trading in equities through a fully automated electronic exchange trading system. Order entry is restricted to persons with authorized access and the system provides for fully automated order matching and trade execution. The TSX is an auction market based on time and price priority (subject to priority to crosses between orders from the same participating organization). There is full pre-trade transparency of orders (price and volume) other than a portion of the volume that may be hidden on an “iceberg order” where a large order is to be traded.<sup>6</sup> Public identification of the participating organization entering the order is optional. There is full post trade transparency (price and volume) of executions. There is a Market on Close facility for certain securities with no pre-trade transparency other than broadcast imbalance and indicative calculated closing price. There is a 45-minute post-closing Special Trading Session that permits trades effected solely at the regular session closing prices. Order and trade data is disseminated in real time to various information vendors. Other Canadian markets (the ATSS) offer similar functionality but do not all provide pre-trade transparency. Some markets only provide post-trade transparency.

The MX is Canada’s exchange for listed derivatives. It provides for trading in single stock equity options, currency options (U.S. Dollar), index futures and options and interest rates futures and options through a fully automated electronic exchange trading system. Order entry is restricted to persons with authorized access and the system provides for fully automated ordering matching and trade execution. The MX is a continuous auction market based on time and price priority. There is full pre-trade transparency of orders (price and volume) with the exception that participants may opt to only disclose a portion of the total volume that they wish to trade. The balance may be hidden as part of an “iceberg order” that becomes visible as the disclosed portion is executed. There is full post trade transparency (price and volume) of executions. Order and trade data is disseminated in real time to various information vendors.

In 2010, the aggregate turnover on the TSX for equity securities was in excess of \$1,020 billion, and as of September 30, 2010, the overall market capitalization of equity securities listed on the TSX was approximately \$1,928 billion. As of September 30, 2010, there were approximately 1485 listed companies on the TSX. The

---

<sup>6</sup> Additional information regarding iceberg orders is provided by the TSX and is available at [http://www.tsx.com/en/trading/products\\_services/iceberg\\_orders.html](http://www.tsx.com/en/trading/products_services/iceberg_orders.html).

primary market index is the S&P/TSX Composite, which currently is comprised of 211 of the most prominent domestic companies listed on the TSX, including BMO.

## II. BMO's Market Activities

BMO is one of North America's leading financial services firms, offering banking and asset management products and services throughout the world. For the fiscal year ended October 31, 2010, BMO had consolidated reported net income of approximately \$2.81 billion and at October 31, 2010 it had total assets of approximately \$411.23 billion and shareholders' equity of approximately \$21.86 billion. BMO serves more than 8 million customers in three key operating groups in a number of locations across North America and Europe: Personal and Commercial Banking, including P&C Canada and P&C U.S.; Private Client Group, including BMO Bank of Montreal, BMO Nesbitt, InvestorLine, BMO Guardian, HIM Money, BMO Harris Private Banking, HPB, Harris Investment Management, Pyford, BMO Life Insurance and BMO Life Assurance Company; and the BMO Capital Markets group, including BMO Capital Markets. BMO's head office is in Montreal, Quebec, Canada and its executive offices are located in Toronto, Ontario, Canada. The market activities for which BMO is seeking relief will be managed principally by representatives in Toronto. As described in more detail below under "Canadian Market Regulation," in Canada, BMO and its affiliates are regulated by, among others, the OSC and other provincial securities regulatory authorities and IIROC.

The trading activities for which BMO is seeking relief will, except as described below with respect to United States activities, occur solely on securities exchanges or the over-the-counter market in Canada and be managed principally by representatives within Canada and subject to the regulation and supervision of IIROC and other applicable Canadian regulatory agencies. The management of the ordinary course trading activities of the applicable affiliates is operated separately from the management of BMO responsible for decisions relating to the Acquisition. The clients and counterparties involved may be based or organized in Canada, the United States or other jurisdictions. BMO has confirmed that the activities described below for which it is requesting relief are permitted under, and would be conducted in accordance with, applicable Canadian law (including, where applicable, pursuant to relevant exemptive relief).

- **Market Making and Facilitation Trading in Equity Derivatives:** BMO and its subsidiaries BMO Nesbitt and BMO Ireland regularly make bids and offers for, and purchase and sell BMO Share Derivatives on the MX and in the over-the-counter market. In addition, BMO Nesbitt purchases and sells, solely in the over-the-counter market, certain BMO Share Derivatives for which, for credit quality purposes, BMO is the counterparty. BMO Nesbitt and BMO Ireland effect these

transactions for their own accounts, on both solicited and unsolicited bases, in order to provide liquidity to the market, to facilitate customer transactions and to readjust BMO Nesbitt's and BMO Ireland's ownership position in BMO Shares as appropriate following such transactions. BMO Nesbitt is a designated market maker on the TSX for certain third-party ETFs. Other BMO Share Derivatives that are involved in these transactions include (i) over-the-counter swaps, options, forwards and other structured products relating to BMO Shares and baskets and indices that include BMO Shares and (ii) listed futures and options relating to BMO Shares and baskets and indices that include BMO Shares.

- ***Derivatives Hedging and Index-Related Adjustments:*** In connection with the trading activities described above under "Market Making and Facilitation Trading in Equity Derivatives" and customer trades, BMO Nesbitt and BMO Ireland solicit and effect trades in BMO Shares, and enter into cash-settled swaps, for their own accounts and for the accounts of customers, for the purpose of hedging positions (or adjusting or liquidating existing hedge positions) of BMO and its affiliates and their customers. BMO Nesbitt is the designated market maker on the TSX for certain ETFs that are index-based and also trades certain ETFs that are index-based and include BMO Shares. The traded ETFs for which BMO is not the market maker generally consist of 10 or more securities and BMO Shares comprise less than 10% of the value of each such ETF. These ETFs are listed solely on Canadian exchanges and are comprised exclusively of Canadian securities. In order to appropriately hedge its positions in these ETFs, BMO Nesbitt will effect trades in the securities that are components of the applicable ETFs, including BMO Shares. In addition, BMO Nesbitt solicits and effects trades in BMO Shares in order to appropriately adjust BMO Nesbitt's proprietary index-related portfolio in response to changes in the applicable indices. During the restricted period related to the Acquisition, these hedging and other transactions will be effected exclusively on the TSX or other exchanges or ATSS in Canada, and all such transactions will be entered into in the ordinary course of business and not in contemplation or facilitation of the Acquisition.
- ***Brokerage Activities and Facilitation Trading:*** The Brokerage Providers engage in discount brokerage and full-service brokerage activities for their customers through ordinary customer facilitation and related services. The discount brokerage division engages only in unsolicited brokerage activities, while the full service brokerage division provides additional services, including discussions with customers regarding investment strategies (including with respect to BMO Shares) and solicited and unsolicited brokerage activities.<sup>7</sup> The Brokerage

---

<sup>7</sup> During the applicable restricted period, BMO will fully restrict and direct employees in the full service brokerage division not to solicit orders from customers with respect to BMO Shares.

Providers also effect transactions in BMO Shares for their own account in order to facilitate unsolicited customer transactions. The Brokerage Providers may accomplish these activities by either relaying buy or sell orders for BMO Shares to BMO Nesbitt for execution or relaying buy and sell orders for BMO Shares to unaffiliated third parties. These activities are conducted outside the United States, and the related trades are executed on the TSX.<sup>8</sup> In addition, the US Brokerage Providers engage in unsolicited brokerage activities of the kind described above with their customers and related trades may be effected on either the NYSE or the TSX. We ask that the requested relief also cover these activities of the United States broker-dealers. During the restricted period, the Brokerage Providers will suspend all brokerage activities except for unsolicited brokerage transactions and customer facilitation trades in Canada and unsolicited brokerage activities in the United States.

- **Asset Management:** As part of their ordinary investment management activities on behalf of the Managed Funds, the Asset Managers may buy and sell BMO Shares for certain of the Managed Funds' accounts.<sup>9</sup> A substantial majority of such activity takes place in Canada, and a small portion of such activity may occur in other non-United States jurisdictions. During the restricted period related to the Acquisition, the Asset Managers will only effect such transactions on an unsolicited basis at the direction of a client and, based on the applicable exemptive relief that BMO has received from the IIROC and the OSC, the Asset Managers may exercise their discretion to acquire BMO Shares when directed to do so by a client or beneficiary or pursuant to the terms of a client's or beneficiary's investment mandate. In order to replicate an underlying index in accordance with stated investment guidelines or upon receipt of cash contributions on behalf of indices and enhanced index funds managed by the Asset Managers, certain Asset Managers may also acquire BMO Shares on behalf of index, and enhanced index, funds managed by the Asset Managers if BMO Shares are a component of the relevant index. The transactions described above may be routed to certain BMO subsidiaries, including BMO Nesbitt, or to

---

<sup>8</sup> From time to time, BMO Capital Markets may engage in direct buying and selling of BMO Shares rather than relaying orders to other entities.

<sup>9</sup> The Asset Managers comprise the autonomous global asset management business of BMO and provide asset management services on a worldwide basis. As autonomous divisions of BMO, the Asset Managers might be considered to fall outside of the definition of "affiliated purchaser" set forth in Rule 100 of Regulation M and thus the restrictions of Regulation M would not apply to them. Nevertheless, BMO has assumed for the purpose of this request that the Asset Managers will be subject to the provisions of Rule 102, and respectfully requests the relief described in this letter for the Asset Managers.

unaffiliated third parties, at the direction of the applicable Asset Manager. In addition, SBSB and Stoker, both of which are registered with the SEC as investment advisors, may buy and sell in the United States (i) BMO Shares on the NYSE, but only on an unsolicited basis at the direction of a client and (ii) broad-based indices in which BMO Shares are a component.<sup>10</sup> Under Canadian law, the Asset Managers have a fiduciary duty to oversee the Managed Funds in a manner that is in the best interests of the Managed Funds and to deal fairly, honestly and in good faith in doing so. Further, only portfolio managers registered as advising representatives of an Asset Manager are permitted to advise the Managed Funds in respect of any securities. The Restrictions under Regulation M therefore make it more difficult for an Asset Manager to meet its fiduciary duty to purchase, or to bid for, BMO Shares when such actions are otherwise in the best interests of the Managed Funds.

- ***Purchases for Certain Plans:*** In order to deliver BMO Shares to BMO employees under certain BMO employee plans, including the Employee Plans, BMO Nesbitt purchases BMO Shares on the TSX. BMO Nesbitt makes the purchases on a bi-weekly or monthly basis, depending on the plan, solely to satisfy BMO's obligation to deliver shares based on pre-determined payroll deductions of the employee. Employees cannot make lump sum contributions to the Employee Plans. The deductions, together with matching contributions from BMO (where applicable) and net of certain deductions (where applicable) are aggregated by third party administrators. These third party administrators also advise BMO Nesbitt of the aggregate dollar amount of BMO Shares to be purchased. (In the United States, purchases for, and the administration of, the applicable employee plans are performed by a third party and are therefore exempted by Rule 102(c)(2) of Regulation M and, accordingly, are not part of our request for exemptive relief.) During the restricted period related to the Acquisition, the purchases described in this paragraph may be made pursuant to exemptive relief granted by the OSC.
- ***Information Barriers:*** BMO has established information barrier policies and procedures to prevent material non-public information from passing between the sales/trading areas of BMO and its affiliates and other areas of BMO and its affiliates. Accordingly, during restricted periods prior to announcements of earnings results or other material developments that have not yet become public, BMO's traders and sales force who conduct trading activities are generally able to continue their market activities, although senior management may restrict such

---

<sup>10</sup> Unless expressly directed by a client to do otherwise, SBSB and Stoker route these orders to an unaffiliated broker-dealer for execution.

activities in extraordinary circumstances. BMO will continue to maintain these policies and procedures during the distribution related to the Acquisition.

- **Other activities:** BMO and its affiliates conduct other market activities in BMO Shares in the ordinary course of their business, such as publishing research reports with respect to BMO and trading in BMO Shares or in BMO Share Derivatives. In connection with the distribution related to the Acquisition, BMO and its affiliates will comply with Regulation M, either by suspending market activities not subject to exemptive relief during the relevant period (such as the publishing of research reports) or by conducting those actions in accordance with an available exception from Regulation M. Accordingly, BMO is not seeking relief from the Staff for these activities.

### III. The Acquisition

On December 17, 2010, BMO and M&I entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which M&I will be acquired by BMO in a stock-for-stock transaction. Under the Merger Agreement, Mike Merger Sub, LLC, a newly formed Delaware limited liability company and wholly-owned indirect subsidiary of BMO ("Merger Sub"), will merge with and into M&I, with Merger Sub surviving the merger.

In connection with the Acquisition, M&I's common shareholders will have the right to receive, for each share of common stock of M&I, 0.1257 BMO Shares. The number of BMO Shares to be distributed in the Acquisition is based on a fixed exchange ratio and is not subject to change based on fluctuations in the price of BMO Shares on the TSX or the NYSE. Consequently, during the distribution related to the Acquisition, BMO does not have an incentive to seek to increase the market price of BMO Shares in order to deliver fewer BMO Shares to M&I shareholders. In addition, as discussed below under "Canadian Market Regulation," market manipulation and dissemination of false information to affect the prices of listed securities are prohibited under Canadian law.

The Acquisition is subject to the approval of M&I shareholders. M&I plans to mail the proxy statement/prospectus to its common shareholders as soon as practicable following the declaration of effectiveness of the registration statement referred to below, and the meeting of M&I's shareholders to vote on whether to approve the Acquisition is expected to occur approximately (but not earlier than) 20 business days from the date of such mailing.

The BMO Shares to be delivered in the Acquisition distribution will be registered under the Securities Act of 1933, as amended, and the rules and regulations

promulgated thereunder, pursuant to a registration statement on Form F-4. As noted above, based on outstanding share information provided by M&I as of December 31, 2010, BMO currently expects that approximately 66.45 million BMO Shares would be issued as merger consideration in the Acquisition, representing approximately 11.70% of BMO Shares outstanding as of January 31, 2011 (and, assuming the full exercise of all converted M&I stock options as described below, representing approximately 12.50% of BMO Shares outstanding as of January 31, 2011). Upon completion of the Acquisition, all outstanding options to purchase shares of M&I common stock will be converted into options to purchase BMO Shares on the basis set forth in the Merger Agreement. Based on information provided by M&I, BMO currently expects that approximately 4.5 million BMO Shares will be issuable in respect of converted M&I stock options. All of the BMO Shares to be delivered in the Acquisition and upon exercise of converted M&I stock options will be newly issued shares. In addition, an application will be made to list on the TSX and the NYSE the BMO Shares issuable in the Acquisition and upon exercise of converted M&I stock options.

#### **IV. Application of Regulation M**

In connection with the Acquisition, BMO will distribute BMO Shares to M&I shareholders and, therefore, will be engaged in a “distribution” in the United States for purposes of Regulation M. Pursuant to Rule 100 of Regulation M, the restricted period for the distribution will begin on the day that the proxy statement/prospectus is first mailed to M&I shareholders and will end when the M&I shareholder vote is completed. Thus, the restricted period is likely to last at least four weeks.

The Asset Managers, BMO Ireland, InvestorLine, BMO Capital Markets, BMO Capital Markets Limited, BMO Capital Markets GKST Inc., BMO Nesbitt Burns Trading Corp. S.A. and Nesbitt Burns Ltd. may, from time to time, purchase BMO Shares for their own accounts and/or the accounts of others and may recommend and exercise investment discretion with respect to the purchase of BMO Shares. Depending upon the specific subsidiary and type of activity, these purchases may occur on either a solicited or unsolicited basis and may be performed by the subsidiary directly, through another BMO subsidiary or through an unaffiliated third party. Accordingly, the BMO subsidiaries may be deemed to be “affiliated purchasers” of BMO, as defined in Rule 100 of Regulation M.<sup>11</sup> Additionally, BMO Nesbitt is serving as a financial advisor to BMO in connection with the Acquisition and therefore BMO believes that it qualifies as a

---

<sup>11</sup> As noted above, however, certain divisions of BMO, as autonomous divisions of BMO, may not be “affiliated purchasers,” but for purposes of this letter BMO has assumed that they may be deemed to be affiliated purchasers under Regulation M.

distribution participant subject to Rule 101 of Regulation M.<sup>12</sup> The other affiliates described in this letter that constitute affiliated purchasers, as well as BMO itself, would be subject to Rule 102 of Regulation M, and we have assumed for purposes of the relief requested in this letter that BMO Nesbitt would also be deemed to be subject to Rule 102.

Under Rule 102, BMO and its affiliated purchasers would not be permitted to bid for or purchase, or attempt to induce any person to bid for or purchase, BMO Shares during the applicable restricted period, except to the extent that one of the specified exceptions under the applicable rule is available. There are no exceptions available under Rule 102 that would permit BMO and its affiliated purchasers to engage in the activities described in this letter. Therefore, without the requested exemptive relief, BMO and its affiliates would not be permitted to engage in their respective ordinary course financial services activities for an extended period of time, which will last at least four weeks.

BMO Nesbitt is a significant market maker in listed options on BMO Shares and a significant participant in trading of other BMO Share Derivatives, including in connection with providing expected services to their customers.<sup>13</sup> Accordingly, if BMO Nesbitt is precluded from conducting ordinary course market-making and trading activities in BMO Share Derivatives, the application of Regulation M could have adverse effects on the Canadian market for BMO Share Derivatives. Additionally, if BMO and BMO Nesbitt (and, as applicable, BMO Ireland) are prohibited from hedging their derivatives and adjusting or terminating those hedges, they would be exposed to market price movement in respect of positions established in the ordinary course of business prior to commencement of the restricted period.

---

<sup>12</sup> Although a limited set of the activities for which exemptive relief is requested under this letter could be permitted under Rule 101 of Regulation M to the extent effected by a distribution participant, BMO respectfully requests exemptive relief for all such activities in the event that BMO Nesbitt was deemed not to be a distribution participant. We note that the investment banking department of BMO Nesbitt, which is serving in the financial advisory role, is subject to information barrier policies and procedures, which are in compliance with applicable OSC regulations, to prevent material non-public information from passing between it and the sales/trading areas of BMO and its affiliates (including the departments of BMO Nesbitt for which relief is requested under this letter).

<sup>13</sup> Derivatives on BMO Shares (other than securities futures) generally would not be “covered securities” for the purpose of Rule 100 of Regulation M. See, e.g., Release 34-38067 (Dec. 20, 1996), 62 FR 520, 524. Derivative market activities by BMO affiliates, however, might in some cases be regarded as involving inducements to purchase BMO Shares. To avoid uncertainty, the activities covered by this request for exemption include the BMO Share Derivatives trading and hedging and other activities in BMO Shares described in this letter.

If they are restricted by Regulation M, the Brokerage Providers may be unable to execute unsolicited brokerage orders submitted by their customers in the normal course, or customer facilitation trades in the ordinary course, thereby forcing their customers to take their orders elsewhere (with related delays and inconvenience) or to refrain from completing ordinary course financial transactions. Likewise, given the importance of BMO Shares to the overall Canadian securities market, to prohibit the Asset Managers from trading BMO Shares during the restricted period (which, as noted above, would be limited to transactions effected on an unsolicited basis at the discretion of a client and, based on the applicable exemptive relief that BMO has received from the OSC and the IROC, to transactions effected by certain Asset Managers at the discretion of a beneficiary and to transactions effected by certain Asset Managers on behalf of index, and enhanced index, funds managed by certain Asset Managers if BMO Shares are a component of the relevant index) would have a significant adverse effect on their ability to manage their investments on behalf of their clients. Additionally, the restrictions imposed by Regulation M make it more difficult for an Asset Manager to meet its fiduciary duty to purchase, or to bid for, BMO Shares when such actions are otherwise in the best interests of the Managed Funds.

BMO Nesbitt's role as purchaser for the Employee Plans is essential to the administration of the plans. With respect to these plans, BMO Nesbitt purchases BMO Shares solely to satisfy BMO's obligation to deliver shares based on pre-determined payroll deductions of the employee. BMO Nesbitt serves as the purchaser in Canada solely because it is an in-house broker-dealer and, accordingly, BMO's use of BMO Nesbitt allows BMO to reduce the expense of engaging a third-party agent.

The market making, derivatives hedging, brokerage, asset management and plan-related activities described in this letter are also important aspects of BMO's business as a major Canadian financial institution, are standard activities for Canadian financial institutions and are permissible under home country law under comparable circumstances (including, where applicable, pursuant to relevant exemptive relief). Accordingly, interrupting these activities for such an extended period could also have an adverse impact on BMO's business, including its ability to properly manage its risks and loss of business to customer and employee dissatisfaction.

BMO Shares would easily qualify as actively traded securities that are exempt under Rule 101(c)(1), with a worldwide average daily trading volume value for the Prescribed Period of approximately \$280.0 million, a worldwide average daily trading volume for the 2010 calendar year of \$191.3 million and an estimated public float value (as of March 15, 2011) of approximately \$35.2 billion. Regulation M normally would not interfere with market activities in actively traded securities, such as BMO Shares. However, because the BMO affiliates may constitute affiliated purchasers of the issuer,

they may not rely on the actively traded securities exception to do what brokers for large United States issuers are normally allowed to do during distributions by those issuers.

Finally, BMO believes that the risk of market manipulation by affiliates of BMO is further limited by the information barrier policies and procedures and fiduciary duties described above, the fact that the market activities that are the subject of this request for exemptive relief are ordinary course market activities of BMO and its affiliates rather than activities commenced or managed in contemplation of the Acquisition, the fixed exchange ratio applicable to the Acquisition and the fact that applicable Canadian law prohibits market manipulation and dissemination of false information to affect the prices of listed securities. As discussed further below under “Canadian Market Regulation,” the activities for which exemptive relief is being requested are subject to and will be conducted in accordance with applicable Canadian law (including, where applicable, pursuant to relevant exemptive relief). Applicable Canadian law provides important safeguards against the risk of the types of abuse that Regulation M was designed to prevent.

For these reasons, BMO asks the Staff to provide an exemption from Regulation M that would allow BMO and its affiliates to continue to engage in the ordinary course market activities described above during the restricted period applicable to the Acquisition, as permitted under market practice and applicable Canadian law.

## **V. Canadian Market Regulation**

### ***Regulation of the BMO and its Subsidiaries***

BMO Nesbitt is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, it is a member of IIROC<sup>14</sup> and the TSX Venture Exchange, it is an approved participant of the Montreal Exchange and it is a participating organization of the TSX. The Asset Managers are either registered as advisors under the securities legislation of all provinces and territories of Canada or they are exempt from the requirement to be registered as such.

As dealers and advisors that, to the extent applicable, are registered under the securities legislation of all provinces and territories of Canada, BMO Nesbitt and the

---

<sup>14</sup> IIROC is a national self-regulatory organization that oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC was formed in 2008 through the consolidation of the Investment Dealers Association of Canada and Market Regulation Services Inc. IIROC performs its regulatory responsibilities by setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees. IIROC also enforces market integrity rules regarding trading activity on Canadian equity marketplaces.

Asset Managers are subject to regulatory oversight by the OSC and the securities regulatory authorities of all other provinces and territories of Canada, and are required to comply with those requirements of Ontario securities law that are summarized below.<sup>15</sup> As a member of the IIROC, BMO Nesbitt is also subject to regulatory oversight by the IIROC and is required to comply with the by-laws, regulations and policies of the IIROC. As a participating organization of the TSX, BMO Nesbitt is also subject to regulatory oversight by IIROC and is required to comply with the provisions of the Universal Market Integrity Rules (“UMIR”) that are summarized below. These provisions include Rule 7.7, the Canadian securities regulatory version of Regulation M.

### ***Ontario Securities Law***

The principal regulatory authority in Ontario is the OSC. Like the securities regulatory authorities in the other provinces and territories, the OSC is responsible for regulating a variety of different market participants that include investment fund managers, dealers, advisers, issuers of securities, investment funds, self-regulatory organizations, clearing agencies and marketplaces, including exchanges and alternative trading systems. The principal source of such regulation is the *Securities Act* (Ontario) (the “Ontario Act”)<sup>16</sup> which grants the OSC extensive authority to enforce its provisions.

In addition to the regulation of the market participants referred to above, the Ontario Act regulates, among other things, the conduct of takeover bids and issuer

---

<sup>15</sup> Due to the impracticality of attempting to summarize the securities laws of all Canadian provinces and territories, this summary has been limited to a consideration of the securities laws of Ontario for three reasons. First, Ontario has the most significant capital market in Canada and the greatest number of market participants. As a result, the OSC is one of the most influential members of the association established by the securities regulatory authorities of Canada’s provinces and territories, referred to as the Canadian securities administrators, and Ontario’s securities laws have a broader application than the securities laws of the other jurisdictions. Second, Ontario’s securities laws have tended to be at least as onerous as the securities laws of the other jurisdictions and compliance with the standards established by such laws has therefore generally served to ensure compliance with the securities laws of the other provinces and territories. Third, Ontario’s securities laws have become increasingly representative of the securities laws of the other provincial and territorial jurisdictions as a result of the regulatory uniformity that has been achieved through the publication of national instruments by the Canadian securities administrators.

<sup>16</sup> The term “Ontario Act” includes, for purposes of this letter, any relevant regulations and rules made under the Ontario Act.

bids as well as trading by insiders.<sup>17</sup> The Ontario Act prohibits insider trading by providing that no person or company in a special relationship with a reporting issuer<sup>18</sup> shall purchase or sell securities of the reporting issuer with the knowledge of a material fact<sup>19</sup> or material change<sup>20</sup> that has not been generally disclosed. It also provides that no reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed. For purposes of these trading and tipping prohibitions, a person or company in a special relationship includes a person or company that is an insider or affiliate<sup>21</sup> of the reporting issuer, such as BMO Nesbitt and the Asset Managers. Trading with knowledge of the trading activity of a managed account is also prohibited in certain circumstances. According to the Ontario Act, any person or company having information concerning the investment program of a managed account, including a mutual fund, is also prohibited from purchasing or selling the securities of an issuer for the person or company's own account where the portfolio securities of the managed account include securities of that issuer and the information is used by the person or company for its own advantage.

---

<sup>17</sup> The term "insider" is defined in section 1(1) of the Ontario Act to include, in part, every director or officer of a reporting issuer, such as BMO, and every director or officer of a company that is a subsidiary of a reporting issuer, such as BMO Nesbitt and the Asset Managers.

<sup>18</sup> The term "reporting issuer" is defined in section 1(1) of the Ontario Act to mean, in part, an issuer that has qualified its securities for distribution pursuant to a prospectus under the Act or that has had its securities listed and posted for trading on a recognized stock exchange.

<sup>19</sup> The term "material fact" is defined in section 1(1) of the Ontario Act to include, in part, a fact that would reasonably be expected to have a significant effect on the market price or value of securities.

<sup>20</sup> The term "material change" is defined in section 1(1) of the Ontario Act to mean a change in the business, operations or capital of an issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer.

<sup>21</sup> A company is deemed to be an affiliate of another company if one of them is the subsidiary of the other, or if both are subsidiaries of the same company, or each of them is controlled by the same person or company. A company is deemed to be a subsidiary of another company if, among other things, it is controlled by that other company, it is controlled by that other company and one or more companies each of which is controlled by that other company or it is a subsidiary of a company that is the other company's subsidiary. A company is deemed to be controlled by another company, or by two or more companies, if the voting securities of the first company carrying more than 50% of the votes for the election of directors are held for the benefit of the other company or companies and the votes carried by such securities are entitled to elect a majority of the directors of the first company.

The Ontario Act also regulates conflicts of interest by prohibiting certain self dealing transactions and by prescribing disclosure requirements for transactions that involve related issuers of registrants such as BMO Nesbitt and those Asset Managers that are registered under the Ontario Act. Certain of these prohibited transactions and disclosure requirements are summarized below.

As the result of self dealing restrictions, a mutual fund is prohibited from knowingly making an investment in, among others, any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company.<sup>22</sup> BMO would be considered a substantial security holder of the Asset Managers and mutual funds managed by the Asset Managers would therefore be prohibited from making an investment in BMO in the absence of any exemption. A mutual fund that is a reporting issuer is also prohibited from purchasing securities from, or selling securities to, the manager of the fund, such as an Asset Manager, or any affiliate of the manager, such as BMO Nesbitt, unless the price for the security is not more than the ask price in the case of a purchase, or less than the bid price in the case of a sale, all as reported on a public quotation system in common use.

The Ontario Act also prohibits a portfolio manager from causing any investment portfolio that is managed by it to invest in any issuer in which a “responsible person” is an officer or director unless the specific fact is disclosed to the portfolio manager’s client and the client’s written consent is obtained prior to the investment. As a result of the definition of the term “responsible person”, this self dealing restriction serves to preclude any Asset Manager registered under the Ontario Act from causing any of its clients to invest in BMO without the client’s prior written consent to do so if any director or officer of the Asset Manager or any director or officer of an affiliate of the Asset Manager that participates in the formulation of, or has access prior to implementation to, any investment decisions that are made on behalf of, or any advice that is given to, the client is also a director or officer of BMO.

Registrants are also required to identify any material conflicts of interest that may exist or arise between the firm and a client and to provide a description of any such conflicts that a reasonable investor would be expected to be informed of to the client before purchasing or selling any securities for the client.

Investment fund managers are also required under the Ontario Act to refer any conflict of interest matter relating to an investment fund to the independent review committee of the investment fund.

---

<sup>22</sup> For such purpose, a person or company is considered to be a substantial security holder of an issuer if that person or company owns beneficially voting securities to which are attached more than 20% of the voting rights attached to all voting securities of the issuer.

***Investment Industry Regulatory Organization of Canada***

The trading activity of those who trade securities through the TSX is subject to regulation by IIROC. IIROC is recognized as a self regulatory organization by the securities regulatory authorities of all provinces of Canada. Its responsibilities include the regulation of securities trading and market-related activities of participants on Canadian equity marketplaces through, among other things, the administration and enforcement of a common set of market integrity rules known as UMIR. The Canadian equity marketplaces that are currently regulated by IIROC include the TSX; TSX Venture Exchange; CNSX Markets Inc.; Omega ATS; Pure Trading; Alpha ATS; Bloomberg Tradebook Canada Company; Chi-X Canada; Liquidnet Canada Inc.; and MATCH Now.

As noted above, Rule 7.7 of UMIR is the Canadian securities regulatory version of Regulation M.<sup>23</sup> Rule 7.7 prohibits a dealer-restricted person, such as BMO Nesbitt in the context of the distribution of BMO Shares contemplated by the Acquisition, from trading restricted securities for its own account, an account over which it exercises control or direction or the account of an issuer-restricted person during the restricted period in relation to a distribution of an issuer's securities, subject to certain exemptions. A dealer-restricted person is comparable to a "distribution participant" under Regulation M and an issuer-restricted person is comparable to an "issuer" under Regulation M. The exemptions that are available to a dealer-restricted person when trading for its own account, or an account over which it exercises control or direction, include an exemption that permits the dealer-restricted person to trade "highly-liquid securities" during the restricted period as well as an exemption that permits the dealer-restricted person to engage in market stabilization and market-balancing activities for the purpose of maintaining a fair and orderly market during the restricted period. For purposes of Rule 7.7<sup>24</sup>, the term "highly-liquid security" is defined to mean a listed security or quoted security that has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than

---

<sup>23</sup> Rule 7.7 of UMIR is also comparable to, and complemented by, OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transaction* administered by the OSC. Unlike Rule 7.7 of UMIR, OSC Rule 48-501 has a broader application to issuer-restricted persons. As described above, Rule 7.7 prohibits a dealer-restricted person from trading restricted securities for its own account, an account over which it exercises control or direction or an account of an issuer-restricted person during the restricted period in relation to a distribution of the issuer's securities. It does not impose an express trading restriction on issuer-restricted persons such as BMO, its affiliates and the directors and officers thereof. In addition to the trading restrictions that are imposed upon dealer-restricted persons by Rule 7.7, OSC Rule 48-501 expressly prohibits an issuer-restricted person from trading restricted securities for its own account and any account over which it exercises control or discretion during the restricted period.

<sup>24</sup> The term "highly liquid security" has the same meaning for purposes of OSC Rule 48-501.

10 days prior to the commencement of the restricted period: (i) an average of at least 100 times per trading day and (ii) with an average trading value of at least C\$1,000,000 per trading day; or is subject to Regulation M and is considered to be an “actively-traded security” for purposes of Regulation M.

IIROC maintains, and posts each trading day, a list of securities that meet the definition of “highly-liquid security” for purposes of Rule 7.7 and BMO shares appear on this list.

The above-described exemptions that are generally available to dealer-restricted persons are not available to a dealer-restricted person when acting for an issuer-restricted person. Accordingly, although BMO Nesbitt may purchase BMO Shares for either its own account or an account over which it exercises control or direction throughout the restricted period, and it may attempt to induce or cause persons to purchase BMO Shares during the restricted period, it may not purchase BMO Shares for an issuer-restricted person as the result of subsection 7.7(2) of UMIR and subsection 2.1(a) of OSC Rule 38-501. BMO Nesbitt has therefore applied to, and received from, IIROC and the OSC an exemption from subsection 7.7(2) of UMIR and subsection 2.1(a) of OSC Rule 48-501, respectively, to permit it to engage in the following trading activity:

- the purchase of BMO Shares on behalf of an Asset Manager when the Asset Manager is purchasing BMO Shares on behalf of Managed Funds;
- the purchase of BMO Shares on behalf of BMO Nesbitt, BMO Asset Management, BMO Harris, Harris Investment, HIM Money and Pyrford when these subsidiaries purchase BMO Shares on behalf of investment funds managed by these subsidiaries; and
- the purchase of BMO Shares on behalf of insiders of BMO when such purchase is made in accordance with the terms and conditions of a benefit or compensation plan.

UMIR also requires marketplace participants to transact business openly and fairly and in accordance with just and equitable principles of trade<sup>25</sup> and it prohibit participants from directly or indirectly, engaging in, or participating in the use of, any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace.<sup>26</sup> UMIR also imposes best execution<sup>27</sup> and best price<sup>28</sup> obligations on participants and it prohibits participants from frontrunning.<sup>29</sup>

---

<sup>25</sup> UMIR Rule 2.1(1).

<sup>26</sup> UMIR Rule 2.2(1).

## VI. Relief Requested

Pursuant to Rules 101(d) and 102(e) of Regulation M, BMO is seeking exemptive relief from the application of Rules 101 and 102 of Regulation M to permit BMO and its affiliates to continue to engage in the market making, derivatives hedging, brokerage, customer facilitation, asset management and plan-related activities described in Section II of this letter during the Regulation M restricted period related to the Acquisition. These activities would be conducted in the ordinary course of business and not for the purpose of facilitating the Acquisition. The activities would (subject to the requested relief and, where applicable, applicable relief received from Canadian regulators) be conducted in accordance with all applicable law, all as described in this letter.

As a condition to the relief being requested, BMO would undertake to include disclosure in the proxy statement/prospectus that will be distributed to M&I shareholders. The disclosure will be substantially similar to the following:

Since the announcement of the merger, BMO and certain of its affiliates have engaged, and intend to continue to engage throughout the proxy solicitation period, in various market making, derivatives hedging, brokerage, asset management and plan-related activities involving BMO common stock outside the United States (and, to a limited extent, within the United States). Among other things, BMO or one or more of its affiliates intends to engage in trades in BMO common stock for its own account and the accounts of its customers (and, to the extent described below, its employees) for the purpose of hedging their positions established in connection with the trading of certain derivatives relating to BMO common shares, hedging BMO's position in respect of positions in its market making obligations related to certain exchange traded funds, effecting brokerage transactions for its customers and other customer facilitation transactions, in BMO common stock, and effecting delivery of BMO common stock as required pursuant to certain of BMO's benefit or compensation plans for employees. Further, certain of BMO's asset management affiliates may buy and sell BMO common stock, or ETFs, funds or indices including BMO common stock, outside the United States (and, in the case of certain asset management activities, within the United

---

<sup>27</sup> UMIR Rule 5.1.

<sup>28</sup> UMIR Rule 5.2.

<sup>29</sup> UMIR Rule 4.1.

States) as part of their ordinary investment management activities on behalf of their customers. These activities occur outside the United States and, in the case of unsolicited brokerage transactions (including in the context of asset management activities) and certain trades in broad-based indices that include BMO common stock, in the United States and the transactions in BMO common stock are effected on the Toronto Stock Exchange and the New York Stock Exchange. The foregoing activities could have the effect of preventing or retarding a decline in the market price of BMO common stock. BMO has sought certain exemptive relief from the SEC in relation to Regulation M under the Exchange Act, and has received certain exemptive relief from the Ontario Securities Commission in relation to its Rule 48-501 Trading During Distributions, Formal Bids And Share Exchange Transactions, in order to permit BMO and certain of its affiliates to engage in the foregoing activities during the proxy solicitation period.

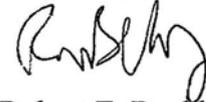
As a further condition to the relief being requested, BMO will undertake to keep records of the date and time when any BMO Shares are purchased or sold, the market in which the purchase or sale is effected, the amount of BMO Shares purchased or sold and the price of the purchase or sale, for each purchase or sale of BMO Shares that any BMO affiliates make during the restricted period (this information with respect to purchases or sales will not include any client-specific data, the disclosure of which is restricted under applicable law). BMO will maintain such records for a period of two years following the completion of the distribution related to the Acquisition. Upon the written request of the Director of the Division of Trading and Markets of the SEC, BMO will make a copy of the relevant records described above available at the SEC's offices in Washington, D.C. within 30 days.

In connection with the relief requested by BMO in this letter, please note that substantially similar exemptive relief from Rule 101 and/or Rule 102 of Regulation M was granted with respect to market making activities, brokerage activities, asset management activities and plan-related activities to: Banco Bilbao Vizcaya Argentaria, S.A. under your exemptive letter of October 28, 2010; Deutsche Bank Aktiengesellschaft under your exemptive letter of September 16, 2010; the Toronto-Dominion Bank under your exemptive letter of August 19, 2010; ING under your exemptive letter of November 19, 2009; Shinhan Financial Group Co., Ltd. under your exemptive letter of March 5, 2009; Banco Santander, S.A. under your exemptive letter of December 22, 2008; and the Toronto-Dominion Bank under your exemptive letter of December 21, 2007.

\* \* \*

If you have any questions or comments with respect to any of the matters discussed in this letter or require any additional information, please contact the undersigned at (212) 558-3876.

Very truly yours,



Robert E. Buckholz

(Enclosures)

cc: Simon Fish  
Conni Gibson  
(Bank of Montreal)