

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78195; File No. TP 15-18)

June 29, 2016

Order Granting Bank of Montreal, Vaulted Gold Bullion Trust, BMO Capital Markets, and Certain Broker-Dealers, a Limited Exemption from Rules 101(a) and 102(a) of Regulation M Pursuant to Rules 101(d) and 102(e) of Regulation M

By letter dated June 29, 2016 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets (“Staff”), counsel for Bank of Montreal (the “Initial Depositor”) requested on behalf of the Initial Depositor, the Vaulted Gold Bullion Trust (the “Trust”), BMO Capital Markets Corp. (“BMOCMC”), and any broker-dealer that underwrites (in addition to BMOCMC) a distribution of securities issued by the Trust referred to as “Gold Deposit Receipts” (“Receipts”) (collectively, the “Requestors”), that the Securities and Exchange Commission (“Commission”) grant an exemption from Rules 101(a) and 102(a) of Regulation M in connection with the continuous distribution of Receipts. Specifically, the Requestors ask in their Letter that the Commission exempt BMOCMC and any registered broker-dealer or bank, as defined in the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that is a direct or indirect DTC participant that underwrites (in addition to BMOCMC) (“Other Underwriters”) a distribution of Receipts from Rule 101(a), and the Initial Depositor and Trust, from the requirements of Rule 102(a), so that the Requestors may effect redemptions and exchanges of Receipts during the course of the continuous offering of the Receipts.<sup>1</sup>

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase, any security which is

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<sup>1</sup> “Redemptions” are where the Initial Depositor redeems a Receipt in-kind for gold bullion whereas “exchanges” are purchases of Receipts by the Initial Depositor for a cash price.

the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 102(a) of Regulation M similarly prohibits issuers, selling security holders, and any of their affiliated purchasers from directly or indirectly bidding for, purchasing, or attempting to induce another person to bid for or purchase, a covered security until the applicable restricted period has ended.

As represented in the Letter, the objective of the Trust is to provide a way for investors to invest in unencumbered, allocated, physical gold bullion (“Gold Bullion”) on a spot basis. As a result, at any given time, the value of the Receipts is intended to reflect the spot price for one troy ounce of Gold Bullion, determined by BMOCMC using an independent, third-party price quotation system known as “EBS,” as the source for the spot price of gold, without adjustment or modification, plus a deposit fee of 2.00%, payable to the Initial Depositor, in addition to: (1) in the case of a Class A Gold Deposit Receipt, a sales fee of 2.00% to any participating broker-dealer that sells Receipts to an investor; (2) in the case of a Class F Gold Deposit Receipt, which will be sold only through fee-based programs, a sales fee of 0.25%; and (3) in the case of Class F-1 Gold Deposit Receipts, which will be sold to trust or fiduciary accounts, with no additional fee (collectively, the “Sales Fees”).<sup>2</sup> The Trust is not actively managed. The Trust does not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the spot price of gold. The Trust uses all proceeds, less Sales Fees, from the sale of Receipts to purchase a fixed quantity of Gold Bullion that corresponds to the then outstanding Receipts and the Trust holds the Gold Bullion. Initial sales of the Receipts would be effected at the spot

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<sup>2</sup> If, for any reason, EBS is not posting spot prices, BMOCMC will use the spot price reflected by a different independent, third-party system, the London Bullion Market Association PM Gold Price (“London PM”), as its source for the spot price of Gold Bullion. BMOCMC will refer to this source without adjustment or modification, with the addition of the Sales Fees.

price of gold, plus the deposit fee and any Sales Fees. Subsequent transactions in the Receipts, including the redemptions and exchange transactions for which relief is being sought, would be effected at the spot price of gold, plus, in the case of a redemption for Gold Bullion, a withdrawal and delivery fee, and, in the case of a cash redemption, any additional fees the holder may be charged by his broker for that transaction. Requestors state that it is intended that the Initial Depositor provide liquidity for holders of the Receipts by effecting redemptions and exchanges of the Receipts. Neither the Initial Depositor nor BMOCMC will receive a sales commission in connection with the sale of Receipts, although the Initial Depositor will charge investors a 2.00% deposit fee at the time of purchase. Subject to the payment of certain withdrawal and delivery fees, holders of Receipts may elect to redeem their Receipts for Gold Bullion through the Other Underwriters that may also charge sales fees of up to 2.00% per transaction.

Based on the representations and facts presented in the Letter, we find that it is appropriate in the public interest and consistent with the protection of investors to grant a conditional exemption from Rule 101 of Regulation M to BMOCMC and any broker-dealer or bank that underwrites (in addition to BMOCMC) a distribution of Receipts, and Rule 102 of Regulation M to the Initial Depositor and the Trust to provide legal certainty to engage in redemptions and exchanges of Receipts during the continuous distribution of the Receipts. This exemption is based in particular on the following representations and facts, among others:

- There is no secondary market for the Receipts, and the Requestors do not intend to create or facilitate the development of a secondary market for the Receipts;
- The Requestors will terminate redemptions and exchanges in the event a secondary market for the Receipts develops;

- Initial sales of the Receipts would be effected at the spot price of gold, plus the deposit fee and any Sales Fees. Subsequent transactions in the Receipts, including the redemptions and exchange transactions for which relief is being sought, would be effected at the spot price of gold, plus, in the case of a redemption for Gold Bullion, a withdrawal and delivery fee, and, in the case of a cash redemption, any additional fees the holder may be charged by his broker for that transaction;
- The assets of the Trust (Gold Bullion) will be fully disclosed to holders of Receipts, the spot price of gold will be available to holders through widely-available third-party systems, and holders will have access to information regarding the spot price of gold from the Trust's website and from Bloomberg (which will reflect the current intra-day price using EBS or London PM as an alternate); and
- The terms of redemptions and exchanges, including all fees, are fully disclosed in the registration statement relating to the Receipts, and any modifications to such terms will be fully disclosed to investors in advance of the effectiveness of such modifications.

### Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that BMOCMC and any broker-dealer or bank that underwrites (in addition to BMOCMC) a distribution of Receipts, based on the representations and the facts presented in the Letter (as supplemented by conversations with Staff), in particular that the initial sales of the Receipts would be effected at the spot price of gold, plus the deposit fee and any Sales Fees and subsequent transactions in the Receipts, including the redemptions and exchange transactions for which relief is being sought, would be effected at the spot price of gold, plus, in the case of a redemption for Gold Bullion, a withdrawal and delivery fee, and, in the case of a cash redemption, any additional fees the holder

may be charged by his broker for that transaction, and subject to the conditions contained in this Order, are exempt from the requirements of Rule 101 with respect to redemptions and exchanges of Receipts as described in the Letter.

This exemptive relief is subject to the following conditions:

- BMOCMC and the Other Underwriters relying upon this exemption shall terminate redemptions or exchanges during the distribution of Receipts if a secondary market for Receipts develops;<sup>3</sup>
- BMOCMC and the Other Underwriters shall discontinue redemptions or exchanges, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of the representations or facts above; and
- Initial sales of the Receipts would be effected at the spot price of gold, plus the deposit fee and any Sales Fees and subsequent transactions in the Receipts, including the redemptions and exchange transactions for which relief is being sought, would be effected at the spot price of gold, plus, in the case of a redemption for Gold Bullion, a withdrawal and delivery fee, and, in the case of a cash redemption, any additional fees the holder may be charged by his broker for that transaction.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Initial Depositor and Trust, based on the representations and the facts presented in the Letter (as supplemented by conversations with Staff), in particular that the initial sales of the Receipts would be effected at the spot price of gold, plus the deposit fee and any Sales Fees and subsequent

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<sup>3</sup> We note that, as with similar conditions required in other Regulation M exemptive orders and letters that we have issued, redemptions and exchanges as provided in this Order must be terminated immediately upon the development of a secondary market regardless of whether such secondary market is only occasionally or periodically available and regardless of the form of the market.

transactions in the Receipts, including the redemptions and exchange transactions for which relief is being sought, would be effected at the spot price of gold, plus, in the case of a redemption for Gold Bullion, a withdrawal and delivery fee, and, in the case of a cash redemption, any additional fees the holder may be charged by his broker for that transaction, and subject to the conditions contained in this Order, are exempt from the requirements of Rule 102 with respect to redemptions and exchanges as described in the Letter.

This exemptive relief is subject to the following conditions:

- The Initial Depositor and Trust shall terminate redemptions and exchanges during the distribution of Receipts if a secondary market for the Receipts develops;<sup>4</sup>
- The Initial Depositor and Trust shall discontinue redemptions or exchanges, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of the representations or facts above; and
- Initial sales of the Receipts would be effected at the spot price of gold, plus the deposit fee and any Sales Fees and subsequent transactions in the Receipts, including the redemptions and exchange transactions for which relief is being sought, would be effected at the spot price of gold, plus, in the case of a redemption for Gold Bullion, a withdrawal and delivery fee, and, in the case of a cash redemption, any additional fees the holder may be charged by his broker for that transaction.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Sections 9(a) and 10(b)

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<sup>4</sup> See Note 3, supra.

of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on the exemption. This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, any broker-dealer registration requirements for persons engaging in the transactions under Section 15(a), the adequacy of the disclosure concerning, or the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Robert W. Errett  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(6).