



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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Toronto ON M5H 3S8

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

- AND -

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

ORDER

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

WHEREAS:

1. On December 12, 2016, the Ontario Securities Commission (the “**Commission**”) issued a Notice of Hearing in relation to the Statement of Allegations filed by Staff of the Commission (“**Commission Staff**”) on December 12, 2016 with respect to BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc. (the “**BMO Registrants**”);
2. The Notice of Hearing gave notice that on December 15, 2016, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between Commission Staff and the BMO Registrants dated December 9, 2016 (the “**Settlement Agreement**”);
3. In the Statement of Allegations, Commission Staff alleged that there were inadequacies in the BMO Registrants’ systems of controls and supervision which formed part of their compliance systems (the “**Control and Supervision Inadequacies**”) which resulted in certain clients of the BMO Registrants paying, directly or indirectly, excess fees that were not detected or corrected by the BMO Registrants in a timely manner;
4. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants;

5. Commission Staff are satisfied that the BMO Registrants discovered and promptly self-reported the Control and Supervision Inadequacies to Commission Staff;
6. Commission Staff are satisfied that during their investigation of the Control and Supervision Inadequacies, the BMO Registrants provided prompt, detailed and candid cooperation to Commission Staff;
7. Commission Staff are satisfied that the BMO Registrants had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff;
8. As part of the Settlement Agreement, the BMO Registrants undertake to:
 - (a) pay appropriate compensation to eligible clients and former clients who were harmed by the Control and Supervision Inadequacies (the “**Affected Clients**”) in accordance with a plan submitted by the BMO Registrants to Commission Staff and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the “**OSC Manager**”) in accordance with the plan;
 - (b) make a voluntary payment of \$90,000 to reimburse the Commission for costs incurred or to be incurred by it, in accordance with subsection 3.4(2)(a) of the *Securities Act* (the “**Act**”); and
 - (c) make a further voluntary payment of \$2,100,000, to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act(the “**Undertaking**”);
9. The Commission has received the voluntary payments totalling \$2,190,000 in escrow pending approval of the Settlement Agreement;

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

IT IS ORDERED THAT:

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

Supervision Procedures were adequately followed, administered and enforced by the BMO Registrants for the 6 month period commencing from the Confirmation Date;

- (iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;
- (v) the BMO Registrants shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;
- (vi) any of the BMO Registrants or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above;
- (vii) the BMO Registrants shall comply with the Undertaking; and
- (viii) the voluntary payment referred to in recital 8(c) above is designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act.

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

<p style="text-align: center;"><i>“Garnet Fenn”</i></p> <hr style="width: 80%; margin: auto;"/> <p style="text-align: center;">Garnet Fenn</p>	<p style="text-align: center;"><i>“Timothy Moseley”</i></p> <hr style="width: 80%; margin: auto;"/> <p style="text-align: center;">Timothy Moseley</p>	<p style="text-align: center;"><i>“William Furlong”</i></p> <hr style="width: 80%; margin: auto;"/> <p style="text-align: center;">William Furlong</p>
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