

# Securities Law & Instruments

---

## Headnote

National Policy 11-203 -- Process for Exemptive Relief Applications in Multiple Jurisdictions -- Relief from the prescribed risk disclosure in requirements in Part I, Item 4(1) and (2)(b) of Form 81-101F3 Contents of a Fund Facts Document, subject to certain conditions.

## Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 6.1.

Form 81-101F3 Contents of a Fund Facts Document, Part I, Item 4(1), (2)(b).

September 15, 2015

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO (the  
Jurisdiction) AND IN THE MATTER OF THE PROCESS FOR  
EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS  
AND IN THE MATTER OF BULLION MANAGEMENT SERVICES INC.  
(the Filer) AND BMG BULLIONFUND AND BMG GOLD BULLIONFUND  
(the Funds)**

## DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption from the form requirements for a fund facts document set out in Part I, Items 4(1) and (2)(b) of Form 81-101F3 -- *Contents of Fund Facts Document* (the **Form**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 -- *Passport System (MI 11-102)* is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

### **Interpretation**

Terms defined in National Instrument 14-101 -- *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated in Ontario on November 3, 1998 and is registered as an investment fund manager in Ontario. The Filer's head office is located in Ontario.
2. The Filer acts as manager, promoter and trustee of the Funds.
3. Each of the Funds is an open-ended mutual fund trust established under the laws of the Province of Ontario by a master trust agreement.
4. The Funds are reporting issuers under the Legislation. Units of the Funds are currently offered for sale under a simplified prospectus and annual information form dated September 5, 2014 in all the provinces and territories in Canada.
5. The BMG BullionFund invests only in unencumbered, physical gold, silver and platinum bullion.
6. The BMG Gold BullionFund invests only in unencumbered, physical gold bullion.
7. The Filer and the Funds are not in default of the Legislation.
8. The Form prescribes the disclosure required in a fund facts document for a mutual fund. Part I, Item 4(1) of the Form prescribes the disclosure describing the use of volatility as a way to gauge the investment risk level of the mutual fund under the heading "How risky is it?" in the fund facts document. Part I, Item 4(2)(b) of the Form requires the manager of a mutual fund to rate the investment risk level of the mutual fund on the risk scale in the fund facts document under the sub-heading "Risk rating" and prescribes accompanying disclosure.
9. The prescribed disclosure set out in Part I, Items 4(1) and (2)(b) of the Form is based on volatility of a mutual fund's returns.
10. Currently, the fund manager of a mutual fund must rate the investment risk level of a mutual fund based on a risk classification methodology chosen at the fund manager's discretion. There is currently no prescribed risk classification methodology under securities legislation.

11. In arriving at its rating of the investment risk level of each Fund, the Filer employs qualitative risk factors listed in paragraph 13 below.

12. The Filer holds that volatility, by itself, would not accurately reflect the risks associated with bullion-based products. For this reason, the Filer has chosen a risk classification methodology that relies on an analysis of certain qualitative factors to determine the risk classification for the Funds. The Filer holds that the use of qualitative factors is necessary because of the nature of precious metals as an investment, the relationship between precious metals and certain common investment risks, and certain special properties of precious metals.

13. The Filer gives consideration to the following types of qualitative risk factors when determining the Funds' risk classification:

(a) *Liquidity Risk*: Liquidity risk is associated with the market on which a product trades. A financial product that can be sold quickly without price concession is considered liquid.

(b) *Management Risk*: Most mutual funds rely on the performance of a manager to provide positive returns for the fund. The manager's skill in picking stocks or other assets, market timing, use of derivatives, hedging, leverage, security lending, and other factors play a large part in the overall performance of a fund. This adds intangible risk to most funds, as the skill of a manager can vary over time, or a manager can change.

(c) *International Risk*: International risk can include both political risk and currency risk. Political risk includes the possibility of nationalization or confiscation of assets, capital controls, punitive tariffs, taxation or regulatory change. Many financial products, including precious metals, may be subject to these risks.

(d) *Default Risk and Credit Rating Risk*: Default risk and credit rating risk are associated with debt obligations. When a bond or mortgage defaults, the investor will suffer losses. The investor may also suffer losses if a debt instrument's credit rating is downgraded. This results in a reduction in the market price of the bond.

(e) *Loss of Purchasing Power Risk*: Purchasing power risk is essentially inflation risk. It impacts all asset classes. During high inflation periods, financial assets such as stocks and bonds tend to underperform, while tangible assets such as real estate, commodities and precious metals tend to outperform financial assets and inflation.

(f) *Systemic Risk*: Systemic risk can refer to the aggregation and interplay of factors such as market risk, economic risk, inflation risk, default and international risk. Systemic risk can also include terrorist attacks, war, oil supply disruptions,

stock market crashes, collapse of a major financial institution or a breakdown of the banking system. Systemic risk is not diversifiable with financial assets, and will affect all asset classes.

(g) *Loss of Capital Risk*: Loss of capital risk concerns the loss of a part or all of the original value or principal amount of an investment

(h) *Underperformance Risk*: All asset classes are subject to underperformance risk, which includes the risk that a fund will underperform the market as a whole, a sector or other funds.

14. The Filer submits that the prescribed disclosure in Part I, Item 4(1) and (2)(b) of the Form is incompatible with the risk classification methodology, i.e. use of qualitative factors, that is used by the Filer to rate the investment risk level of the Funds in the fund facts documents.

15. The Filer proposes to use the following disclosure in place of the prescribed language in Part I, Item 4(1) and (2)(b) of the Form for the fund facts documents for the Funds:

<b>Prescribed Disclosure of Part I, Item 4 (1) and (2)(b) of the Form</b>	<b>The Filer's Proposed Disclosure for BMG BullionFund</b>	<b>The Filer's Proposed Disclosure for BMG Gold BullionFund</b>
<b>How risky is it?</b>	<b>How risky is it?</b>	<b>How risky is it?</b>
The value of the fund can go down as well as up. You could lose money.	The value of the Fund can go down as well as up. You could lose money.	The value of the Fund can go down as well as up. You could lose money.

<b>Prescribed Disclosure of Part I, Item 4 (1) and (2)(b) of the Form</b>	<b>The Filer's Proposed Disclosure for BMG BullionFund</b>	<b>The Filer's Proposed Disclosure for BMG Gold BullionFund</b>
<p>One way to gauge risk is to look at how much a fund's returns change over time. This is called "volatility".</p>	<p>In assessing the risk level of a fund, most fund managers use a methodology based on volatility which looks at how much a fund's returns change over time. However, for this Fund, Bullion Management Services Inc. identifies the risk level based primarily on qualitative factors (e.g., negative correlation to other asset classes, effective hedge vs inflation and value of US dollar, preservation of purchasing power and intrinsic value) and Bullion Management Services Inc.'s views on the fundamentals of gold, silver and</p>	<p>In assessing the risk level of a fund, most fund managers use a methodology based on volatility which looks at how much a fund's returns change over time. However, for this Fund, Bullion Management Services Inc. identifies the risk level based primarily on qualitative factors (e.g., negative correlation to other asset classes, effective hedge vs inflation and value of US dollar, preservation of purchasing power and intrinsic value) and Bullion Management Services Inc.'s views on the fundamentals of gold and the role of</p>



<b>Prescribed Disclosure of Part I, item 4 (1) and (2)(b) of the Form</b>	<b>The Filer's Proposed Disclosure for BMG BullionFund</b>	<b>The Filer's Proposed Disclosure for BMG Gold BullionFund</b>
---------------------------------------------------------------------------	------------------------------------------------------------	-----------------------------------------------------------------

<p>platinum, and the role of precious metals as a wealth protection strategy.</p>	<p>precious metals as a wealth protection strategy.</p>
-----------------------------------------------------------------------------------	---------------------------------------------------------

In general, funds with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and they have a greater chance of higher returns. Funds with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

<p><b>Prescribed Disclosure of Part I, Item 4 (1) and (2)(b) of the Form</b></p>	<p><b>The Filer's Proposed Disclosure for BMG BullionFund</b></p>	<p><b>The Filer's Proposed Disclosure for BMG Gold BullionFund</b></p>
	<p><b>The risk rating of this Fund may not be comparable to other mutual funds that use a methodology based on volatility of fund returns.</b></p>	<p><b>The risk rating of this Fund may not be comparable to other mutual funds that use a methodology based on volatility of fund returns.</b></p>
	<p>For a description of the risk classification methodology that Bullion Management Services Inc. uses to rate the risk level of the Fund, see the "Fund Risk Classification" section of the simplified prospectus.</p>	<p>For a description of the risk classification methodology that Bullion Management Services Inc. uses to rate the risk level of the Fund, see the "Fund Risk Classification" section of the simplified prospectus.</p>
<p><b>Risk rating</b></p>	<p><b>Risk rating</b></p>	<p><b>Risk rating</b></p>

<b>Prescribed Disclosure of Part I, Item 4 (1) and (2)(b) of the Form</b>	<b>The Filer's Proposed Disclosure for BMG BullionFund</b>	<b>The Filer's Proposed Disclosure for BMG Gold BullionFund</b>
[Insert name of manager of the mutual fund] has rated the volatility of this fund as [insert investment risk level identified in paragraph (a) in bold type].	Bullion Management Services Inc. has rated the risk rating of the Fund as <b>medium.</b>	Bullion Management Services Inc. has rated the risk rating of the Fund as <b>medium.</b>

<b>Prescribed Disclosure of Part i, Item 4 (1) and (2)(b) of the Form</b>	<b>The Filer's Proposed Disclosure for BMG BullionFund</b>	<b>The Filer's Proposed Disclosure for BMG Gold BullionFund</b>
This rating is based on how much the fund's returns have changed from year to year. It doesn't tell you how volatile the fund will be in the future. The rating can change over time. A fund with a low risk rating can still lose money.	This rating is based on qualitative factors and Bullion Management Services Inc.'s views on the fundamentals of gold, silver and platinum, and the role of precious metals as a wealth protection strategy. It doesn't tell you what the risk rating of the Fund will be in the future. The rating can change over time. A fund with a low risk rating can still lose money.	This rating is based on qualitative factors and Bullion Management Services Inc.'s views on the fundamentals of gold and the role of precious metals as a wealth protection strategy. It doesn't tell you what the risk rating of the Fund will be in the future. The rating can change over time. A fund with a low risk rating can still lose money.

16. On December 12, 2013, the Canadian Securities Administrators (**CSA**) published a standardized CSA risk classification methodology for use by mutual fund managers in the fund facts document (the **Proposed Methodology**) for comment in CSA Notice 81-324 and Request for Comment -- *Proposed CSA Mutual Fund Risk Classification Methodology for Use in Funds Facts (CSA Notice 81-324)*.

17. On January 29, 2015, the CSA published CSA Staff Notice 81-325 -- *Status Report on Consultation under CSA Notice 81-324*, which indicated that the CSA will proceed with proposed rule amendments aimed at implementing the Proposed Methodology for use by mutual funds in fund facts documents.

18. Until the CSA publish final amendments to implement the Proposed Methodology, the Filer would like the Funds to provide the disclosure in their fund facts documents as set out in paragraph 15 above.

## Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the fund facts documents for the Funds will provide the disclosure set out in paragraph 15 above.

The decision, as it relates to a Jurisdiction, will terminate on the effective date, following any applicable transition period, for any legislation or rule dealing with the Proposed Methodology.

"Stephen Paglia"  
Manager (Acting)  
Investment Funds and Structured Products Branch  
Ontario Securities Commission

---

Contact ([//www.osc.gov.on.ca/en/contactus\\_index.htm](http://www.osc.gov.on.ca/en/contactus_index.htm)) | Legal  
([//www.osc.gov.on.ca/en/statements\\_legal\\_index.htm](http://www.osc.gov.on.ca/en/statements_legal_index.htm)) | Legislation  
([//www.osc.gov.on.ca/en/SecuritiesLaw\\_legislation\\_index.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_legislation_index.htm)) | Accessibility  
([//www.osc.gov.on.ca/en/accessibility-osc\\_index.htm](http://www.osc.gov.on.ca/en/accessibility-osc_index.htm)) | Français ()

© Ontario Securities Commission 2016