

September 23 , 2016

**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.  
(BMS)**

**AND**

**AND  
IN THE MATTER OF  
BMG SILVER BULLIONFUND  
(the Silver Fund)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from BMS, which will be the trustee and manager of the new Silver Fund to be established by BMS, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for exemptive relief from:

- (i) Section 2.3(1)(f) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit the Silver Fund to invest substantially all of its assets in silver bullion (the **Bullion Relief**), and
- (ii) The form requirements of Item 4 of Form 81-101F3 *Contents of Fund Facts Document* (the **Form**) in order to allow disclosure of the investment risk classification that will be used by the Silver Fund (the **Disclosure Relief**)

(collectively, the **Exemption Sought**).

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

1. the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and;
2. BMS 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 all of the other provinces and territories of Canada (collectively, with Ontario, the **Jurisdictions**).

### **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.

### **Representations**

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

#### ***General***

1. BMS was incorporated in Ontario on November 3, 1998 and is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador. The head office of BMS is located in the city of Markham, Ontario.
2. BMS will act as manager, promoter and trustee of the Silver Fund.
3. The Silver Fund will be a mutual fund trust that is established under the laws of Ontario pursuant to a trust agreement made by BMS as the manager and trustee of the Silver Fund.
4. A preliminary simplified prospectus in respect of the Silver Fund was filed on SEDAR under project no. 2519282 on August 15, 2016. Once a final prospectus for the Silver Fund is filed and a receipt therefor is obtained, the Silver Fund will be a “reporting issuer” or equivalent in each of the Jurisdictions.
5. BMS and the Silver Fund are not in default of the Legislation.

#### ***Bullion Relief***

6. The investment objective of the Silver Fund will be to seek to achieve capital preservation and long-term appreciation by investing substantially all of its assets in silver bullion.
7. All silver bullion purchased by the Silver Fund will be in London Good Delivery bar form.

8. The Silver Fund will maintain a fixed investment policy of investing all of its assets in its silver bullion regardless of market conditions. The Silver Fund may also hold cash in amounts generally not exceeding more than five percent (5%) of the Silver Fund's net assets in order to pay expenses and to facilitate redemptions. The Silver Fund will not base its investment decisions on changes in the price of silver bullion.
9. BMS believes there is adequate liquidity for silver bullion in the marketplace such that the Silver Fund should not have any problem achieving its investment objective or satisfying redemptions.
10. If silver bullion is unavailable, which is not expected to occur, the Silver Fund will continue to hold any pending investments in cash until silver bullion becomes available again. At that time, the Silver Fund will immediately invest any cash in excess of five percent (5%) of its net assets in silver bullion.
11. BMS will make available on its website:
  - (i) the current holdings of the Silver Fund on a daily basis; and
  - (ii) will periodically list the number of ounces of silver bullion that the Silver Fund holds.
12. The Silver Fund will disclose in its prospectus, and in each renewal thereof, that up-to-date information about the amount of silver bullion held by the Silver Fund may be found on BMS' website.
13. The Bank of Nova Scotia (**BNS**) will be the custodian of the Silver Fund. All silver bullion held by the Silver Fund in bar form will be physically held in the Canadian vaults of BNS or another qualified Canadian subcustodian(s) on a segregated and allocated basis.
14. BNS, on the direction of BMS, will invest the assets of the Silver Fund in silver bullion.
15. The custody arrangements between the Silver Fund and BNS will be governed by the terms of a Bullion Trading Account Agreement and a Holding Account Agreement, which will satisfy the custody provisions of Part 6 of NI 81-102.
16. The auditors of the Silver Fund will perform a physical count of all bullion held by the Silver Fund at least once a year.
17. BNS and/or any sub-custodian of the Silver Fund will maintain insurance as BNS and/or such sub-custodian deems appropriate against all risks of physical loss or damage except the risk of war, nuclear incident, terrorism events or government confiscation. BNS and/or any such sub-custodian shall maintain insurance with regard to its business on such terms and conditions as it deems appropriate. The

Bullion Trading Account Agreement and the Holding Account Agreement will provide that BNS shall not cancel its insurance except upon 30 days' prior written notice to BMS.

18. The Silver Fund will not use specified derivatives, engage in hedging, leverage or lease any silver bullion.
19. The Silver Fund will not at any time invest in a "security" as such term is defined in subsection 1(1) of the *Securities Act* (Ontario) (the **OSA**), including securities or certificates of companies that produce silver bullion.
20. Fund valuation services will be provided to the Silver Fund pursuant to the terms of a Valuation and Record Keeping Agreement between BMS and RBC Investor Services Trust (**RBC Investor Services**).
21. All of the cash of the Silver Fund will be held by RBC Investor Services as a sub-custodian of BNS, who will have access to the cash of the Silver Fund to, among other things, pay expenses of the Silver Fund.

#### ***Disclosure Relief***

22. 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.
23. 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.
24. 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.
25. BMS has chosen a risk classification methodology that relies on an analysis of certain qualitative factors to determine the risk classification for the Silver Fund. BMS holds that the use of qualitative factors is appropriate 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.
26. BMS 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 BMS to rate the investment risk level of the Silver Fund in the fund facts documents.

27. BMS 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 Silver Fund:

<b>Sample Disclosure</b>	<b>Prescribed Disclosure of Item 4 of Form 81-101F3</b>
<p><b>How risky is it?</b></p> <p>The value of the Fund can go down as well as up. You could lose money.</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 silver and the role of silver as a wealth protection strategy.</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><b>How risky is it?</b></p> <p>The value of the Fund can go down as well as up. You could lose money.</p> <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 general, funds with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may 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>

<p><b>Risk rating</b></p> <p>Bullion Management Services Inc. has rated the risk rating of the Fund as <b>medium</b>.</p> <p>This rating is based on qualitative factors and Bullion Management Services Inc.'s views on the fundamentals of silver and the role of precious metals as a wealth protection strategy. It doesn't tell 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.</p> <p>For more information about the risk rating and specific risks that can affect the Fund's returns, see "What Are the Risks of Investing in the Fund?" section of the Fund's simplified prospectus.</p>	<p><b>Risk rating</b></p> <p>[Fund Manager] has rated the volatility of this fund as [medium].</p> <p>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.</p> <p>For more information about the risk rating and specific risks that can affect the Fund's returns, see the [insert cross-reference to the appropriate section of the mutual fund's simplified prospectus] section of the Fund's simplified prospectus.</p>
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28. BMS believes the disclosure cited above will assist investors in understanding the investment risk rating that it assigns to the Silver Fund.
29. 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 Fund Facts*.
30. On December 10, 2015, the CSA published an amended version of the Proposed Methodology for a 90 day comment period that ended on March 9, 2016. It is expected that the CSA will publish final amendments aimed at implementing a standardized risk classification methodology over the coming months.
31. Until the CSA publishes final amendments to implement the Proposed Methodology, BMS would like the Silver Fund to be able to provide the disclosure in its fund facts documents as set out above in paragraph 27.

**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:

***Bullion Relief***

- (a) the prospectus of the Silver Fund discloses, in the investment strategy section, that the Silver Fund has obtained relief to invest in silver bullion;
- (b) the prospectus of the Silver Fund, including each renewal thereof, shall at all times contain disclosure regarding the unique risks associated with an investment in the Silver Fund including:
  - (i) the risk that direct purchases of silver bullion by the Silver Fund may generate higher transaction and custody costs than other types of investments, which may impact the performance of the Silver Fund;
  - (ii) the risk that silver bullion may at times be unavailable thus preventing that Silver Fund from achieving its investment objective of being substantially invested in silver bullion;

***Disclosure Relief***

- (c) the fund facts documents of the Silver Fund provide the disclosure set out above in paragraph 27; and
- (d) the Disclosure Relief will terminate on the effective date, following any applicable transition period, for any legislation or rule dealing with the Proposed Methodology.

*“Vera Nunes”*

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Vera Nunes, Manager  
Investment Funds and Structured Products  
Ontario Securities Commission