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Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

Securities Act, s. 84 – exemption from prospectus delivery requirement – A registered dealer wants relief from the requirement to deliver a prospectus – The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 of National Instrument 44-102 *Shelf Distributions* and on the conditions specified in the order; the issuer will issue a news release announcing the ATM distribution and file the distribution agreement on SEDAR; the news release will indicate that the shelf prospectus and supplement have been filed and will specify where and how purchasers may obtain a copy

National Instrument 44-102 *Shelf Distributions*, s. 11.1 – exemption from shelf distribution form requirements – An issuer wants relief from the requirement to include in the prospectus an issuer's certificate in the required form - The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 and on the conditions specified in the order; the issuer will include in the prospectus an amended certificate stating that the prospectus constitutes full, true and plain disclosure as of the date of each distribution of the securities

Securities Act, ss. 11 and 169 – *Confidentiality* – An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted – The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 11, 84 and 169

National Instrument 44-102, s. 11.1

July 29, 2016

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
B2Gold Corp. (the Issuer),

Canaccord Genuity Corp. (Canaccord),
Canaccord Genuity Inc. (Canaccord USA),
HSBC Securities (Canada) Inc. (HSBC Canada),
and HSBC Securities (USA) Inc. (HSBC USA)
(collectively, the Agents and, together with the Issuer, the Filers)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application (the Application) from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for the following relief (the Exemption Sought):

- (a) that the requirement that a dealer, not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement) and any amendment to the prospectus (the Prospectus Delivery Requirement) does not apply to the Agents or any other registered investment dealer acting on behalf of the Agents as a selling agent (a Selling Agent) in connection with the at-the-market distribution (the ATM Distribution) as defined in National Instrument 44-102 *Shelf Distributions* (NI 44-102) made by the Issuer pursuant to an equity distribution agreement to be entered into between the Issuer and the Agents (the Equity Distribution Agreement);
- (b) that the requirements (collectively, the Prospectus Form Requirements) to include in a prospectus supplement:
 - (i) a forward-looking issuer certificate of the Issuer in the form specified in section 2.1 of Appendix A to NI 44-102; and
 - (ii) a forward-looking underwriter certificate in the form specified in section 2.2 of Appendix A to NI 44-102;

do not apply to a prospectus supplement (the Prospectus Supplement), to be filed in respect of the sale of common shares of the Issuer (the Common Shares) pursuant to ATM Distributions.

Furthermore, the Decision Makers have received a request from the Filers for a decision that the Application and this decision (the Confidential Material) be kept confidential and not made public until the earliest of (i) the date on which the Issuer and the Agents enter into the Equity Distribution Agreement, (ii) the date on which the Filers advise the Decision Maker that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision (the Confidentiality Relief).

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

- (a) the British Columbia Securities Commission is the principal regulator for this Application;
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:

B2Gold Corp.

1. the Issuer was incorporated under the *Business Corporations Act* (British Columbia) on November 30, 2006; the Issuer is a Vancouver based mining company;
2. the Issuer is a reporting issuer or the equivalent under the securities legislation of each province of Canada and is not in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada;
3. the Common Shares are listed on the TSX and the NYSE MKT LLC (the NYSE MKT);
4. the Issuer has filed a final base shelf prospectus dated January 11, 2016 (the Shelf Prospectus and, together with the Prospectus Supplement, the Prospectus);

The Agents

5. Canaccord is a corporation established under the laws of British Columbia; Canaccord is registered as an investment dealer under applicable securities legislation of each of the provinces of Canada;
6. Canaccord USA is a corporation established under the laws of Delaware; Canaccord USA is a broker-dealer registered with the SEC under the *Securities Exchange Act of 1934*, as amended (the 1934 Act);
7. HSBC Canada is a corporation established under the laws of Ontario; HSBC Canada is registered as an investment dealer under applicable securities legislation of each of the provinces of Canada;

8. HSBC USA is a corporation established under the laws of Delaware; HSBC USA is a broker-dealer registered with the SEC under the 1934 Act;
9. none of the Agents are in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada;

Proposed ATM Distribution

10. the Filers propose to enter into the Equity Distribution Agreement relating to an ATM Distribution by the Issuer under the shelf prospectus procedures prescribed by Part 9 of NI 44-102;
11. prior to making an ATM Distribution, the Issuer will have filed in each of the provinces of Canada and the SEC in connection with the ATM Distribution the Prospectus Supplement; The Prospectus Supplement will describe the terms of the ATM Distribution, including the terms of the Equity Distribution Agreement and otherwise supplementing the disclosure in the Shelf Prospectus;
12. upon entering into the Equity Distribution Agreement, the Issuer will immediately:
 - (a) issue and file a news release pursuant to section 3.2 of NI 44-102 indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and disclosing where and how purchasers may obtain a copy; and
 - (b) file the Equity Distribution Agreement on SEDAR;
13. the Equity Distribution Agreement will limit the number of Common Shares that the Issuer may issue and sell pursuant to any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Common Shares calculated in accordance with Section 9.2 of NI 44-102;
14. the Issuer will conduct ATM Distributions through the Agents, as underwriters, directly or through a Selling Agent, through the facilities of the TSX, the NYSE MKT, or any other “marketplace” (as defined in National Instrument 21-101 *Marketplace Operation*) in Canada or the United States (each a Marketplace);
15. the Agents will act as the sole underwriters on behalf of the Issuer in connection with the sale of the Common Shares on the TSX or any other Marketplace in Canada (a Canadian Marketplace) directly by the Agents or through one or more Selling Agents and will be the sole entities paid an underwriting fee or commission by the Issuer in connection with such sales; the Agents will sign an underwriter’s certificate in the Prospectus Supplement;
16. the Agents will effect the ATM Distribution on a Canadian Marketplace either themselves or through one or more Selling Agents; if the sales are effected through a Selling Agent, the Selling Agent will be paid a seller’s commission for effecting the trades on behalf of the Agent; a purchaser’s rights and remedies under Canadian securities legislation against the

Agents, as underwriters of an ATM Distribution, through a Canadian Marketplace will not be affected by a decision to effect the sale directly or through a Selling Agent;

17. the aggregate number of Common Shares sold on a Canadian Marketplace under the ATM Distribution on any trading day will not exceed 25% of the trading volume of the Common Shares on all Canadian Marketplaces on that day;
18. the Equity Distribution Agreement will provide that, at the time of each sale of Common Shares pursuant to an ATM Distribution, the Issuer will represent to the Agents that the Prospectus contains full, true and plain disclosure of all material facts relating to the Issuer and the Common Shares; the Issuer would therefore be unable to initiate sales under an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Common Shares or the Issuer;
19. if, after the Issuer delivers a sell notice to the Agents, the sale of the Common Shares specified in the notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer would have to suspend sales under the Equity Distribution Agreement until either: (i) it had filed a material change report or amended the Prospectus, or (ii) circumstances had changed so that the sales would no longer constitute a material fact or a material change;
20. in determining whether the sale of the number of Common Shares specified in a sell notice would constitute a material fact or a material change, the Issuer will take into account a number of factors, including: (i) the parameters of the sell notice including the number of Common Shares to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution; (ii) the percentage of the outstanding Common Shares that number represents; (iii) trading volume and volatility of the Common Shares; (iv) recent developments in the business, affairs and capital structure of the Issuer; and (v) prevailing market conditions generally;
21. in addition, the Agents will monitor closely the market's reaction to trades made under the ATM Distribution in order to evaluate the likely market impact of future trades; the Agents have experience and expertise in managing sell orders to limit downward pressure on trading prices; if any of the Agents have concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Common Shares, that Agent will recommend against effecting the trade at that time; it is in the interest of both the Issuer and the Agents to minimize the market impact of sales under the ATM Distribution;

Disclosure of Sales in Monthly Report and Interim Report

22. within seven calendar days after the end of each calendar month during which the Issuer conducts an ATM Distribution, the Issuer will disclose in a report filed on SEDAR the number and average selling price of the Common Shares distributed through a Canadian Marketplace under the ATM Distribution, and the commission and gross and net proceeds for such sales; furthermore, for each financial period in which the Issuer conducts an ATM Distribution, it will disclose in its annual and interim financial statements and related

management discussion and analysis filed on SEDAR the number and average selling price of the Common Shares distributed pursuant to the ATM Distribution, and the commission and gross and net proceeds for such sales;

Prospectus Delivery Requirement

23. under the Prospectus Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits;
24. delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as the Agents or any Selling Agent, as applicable, effecting the trade may not know the identity of the purchasers;
25. the Prospectus (together with all documents incorporated by reference therein) will be filed and readily available electronically via SEDAR to all purchasers under ATM Distributions. As stated in paragraph 12 above, the Issuer will issue a news release that specifies where and how copies of the Prospectus can be obtained;
26. the liability of an issuer or an underwriter (or others) for a misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement because purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission without regard to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus;

Withdrawal Right and Rescission or Damages for Non-Delivery

27. pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the Withdrawal Right);
28. pursuant to the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against a dealer who did not comply with the Prospectus Delivery Requirement (the Right of Action for Non-Delivery);
29. neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Distribution because of the impracticability of delivering the Prospectus to a purchaser of Common Shares thereunder;

Prospectus Form Requirements

30. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following issuer certificate:

“This short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces of Canada.”;

31. also to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following underwriter certificate:

“To the best of our knowledge, information and belief, the short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus, as required by the securities legislation of each province of Canada.”

32. a different statement of purchasers’ rights than that required by the Legislation is necessary in order to allow the Prospectus to accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

“Securities legislation in certain of the provinces of Canada provide purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of the Common Shares under an at-the-market distribution will not have any right to withdraw from an agreement to purchase the Common Shares and will not have remedies of rescission or, in some jurisdictions, revision of the price or damages for non-delivery of the prospectus because the prospectus, prospectus supplements relating to the Common Shares purchased by the purchaser and any amendment related to Common Shares purchased by such purchaser will not be delivered as permitted under a decision document dated *, 2016 and granted pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Securities legislation in certain of the provinces of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised

by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation in the jurisdictions that a purchaser of the Common Shares under an at-the-market distribution may have against us or the Agents for rescission, or in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser or any amendment contain a misrepresentation remain unaffected by the non-delivery of the prospectus and the decision referred to above.

Purchasers should refer to the applicable provisions of the securities legislation and the decision document referred to above for the particulars of their rights or consult with a legal advisor.”;

33. the Prospectus Supplement will disclose that, in respect of ATM Distributions under the Prospectus Supplement, the statement prescribed in paragraph 32 above supersedes the statement of purchaser's rights in the Shelf Prospectus; and

34. the Filers will not make a public announcement of their intention to conduct ATM Distributions prior to the execution of the Equity Distribution Agreement.

Decision

¶ 4 Each of the Decision Makers is satisfied that the exemptive relief application meets the test set out in the Legislation for the Decision Maker to make a decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

(a) the Issuer makes the disclosure described in sections 22, 30, 31, 32 and 33; and

(b) the Issuer complies with the representations in section 12, 14, 17, 18, 19 and the Agents comply with the representations in sections 14, 15, 16, 17 and 21.

This decision will terminate 25 months after the issuance of the receipt for the Shelf Prospectus.

The further decision of the Decision Makers is that the Confidentiality Relief is granted.

Robert Kirwin
Director, Corporate Finance
British Columbia Securities Commission