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May 8, 2008

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Securities Act - Identical consideration - Issuer needs relief from the requirement in s. 107(1) of the Act that all holders of the same class of securities must be offered identical consideration - Under the bid, Canadian resident shareholders may receive shares, cash, or a combination of both; US resident shareholders will receive substantially the same value as Canadian shareholders, in the form of cash paid to the US shareholders based on the proceeds from the sale of their shares; the number of shares held by US residents is de minimis; the US does not have an identical consideration requirement

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(1), 114(2)

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
Marathon PGM Corporation
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement under the Legislation to offer identical consideration (the

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Identical Consideration Requirement) to all the holders of the same class of securities that are subject to a take-over bid (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that s. 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, Nunavut, Yukon Territory and the Northwest Territories, 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* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a company existing under the Canada Business Corporations Act;
 2. the Filer's head office is located in Ontario;
 3. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and is not in default of any of the requirements of the applicable securities legislation of any such jurisdiction in which it is a reporting issuer;
 4. the authorized capital of the Filer consists of an unlimited number of common shares (the Filer's Shares), of which, as of March 18, 2008, there were 21,780,653 Filer's Shares issued and outstanding;
 5. the Filer's Shares are listed on the Toronto Stock Exchange (the TSX);

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6. on February 19, 2008, the Filer issued a press release announcing its intention to make an offer (the Offer) to acquire all of the outstanding common shares (Discovery Shares) of Discovery PGM Exploration Ltd. (Discovery);
7. Discovery is a company existing under the British Columbia Business Corporations Act;
8. Discovery's head office is located in British Columbia;
9. Discovery is a reporting issuer in British Columbia, Alberta, and Ontario and is not in default of any of the requirements of the applicable securities legislation of any such jurisdiction in which it is a reporting issuer;
10. the authorized capital of Discovery consists of an unlimited number of Discovery Shares;
11. the Discovery Shares are listed on the TSX Venture Exchange;
12. to the knowledge of the Filer, and based on geographic analysis reports delivered to the Filer by Discovery, as of February 20, 2008, there were 27,847,368 Discovery Shares outstanding, of which 2,036,655 (approximately 7.3%) were held by 41 U.S. residents and of which 526,383 (approximately 1.9%) were held by 12 persons not resident in the United States or Canada;
13. under the terms of the Offer, each holder of a Discovery Share (other than Non-Canadian Discovery Shareholders, as defined below) will receive consideration per Discovery Share of 0.0794 of a Filer Share;
14. the Filer's Shares issuable under the Offer have not been and will not be registered or otherwise qualified for distribution under the securities legislation of any jurisdiction outside of Canada, including the *United States Securities Act of 1933*, as amended (the 1933 Act) and U.S. state securities laws. Accordingly, the delivery of the Filer's Shares to holders of Discovery Shares who are either U.S. Persons (as that term is defined in Regulation S under the 1933 Act) or resident in the United States or any territory or possession thereof (U.S. Residents, and together with U.S. Persons, the Discovery US Shareholders), or to citizens or residents of any other jurisdiction outside of Canada where delivery of the Filer's Shares may not be effected without further action by the Filer (Discovery Foreign Shareholders, and together with Discovery US Shareholders, the Non-Canadian Discovery Shareholders) may constitute a violation of the laws of such jurisdictions;

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15. the Filer's Shares would be required to be registered under the 1933 Act if they were to be issued and delivered to Discovery US Shareholders. However, in lieu of delivering the Filer's Shares to Non-Canadian Discovery Shareholders, the Filer intends to use a mechanism, the details and procedures of which are described in paragraph (19) below (the Vendor Placement). As a result of the Vendor Placement, the registration requirements of the 1933 Act, in addition to the applicable laws of certain U.S. states and the requirements of any other jurisdictions which may otherwise require registration or qualification of the Filer's Shares (the Other Foreign Jurisdictions), will not apply to the Filer and/or the Offer because the Filer's shares will not be delivered in the United States or the Other Foreign Jurisdictions to Non-Canadian Discovery Shareholders;
16. the Offer to the Non-Canadian Discovery Shareholders as amended by the Vendor Placement, and the sale of the Filer's Shares for the benefit of the Non-Canadian Discovery Shareholders pursuant to the Vendor Placement, will not constitute a violation of U.S. federal and state securities laws or the laws of the Other Foreign Jurisdictions;
17. the Multijurisdictional Disclosure System does not provide relief from the registration or qualification requirements of such U.S. securities laws;
18. registration under the securities laws of the U.S. or the Other Foreign Jurisdictions of the Filer's Shares deliverable to Non-Canadian Discovery Shareholders pursuant to the Offer would be extremely costly and burdensome to the Filer;
19. the Filer proposes to deliver to the depositary under the Offer (the Depositary) the Filer's Shares which Non-Canadian Discovery Shareholders would otherwise be entitled to receive under the Offer; the Depositary, through a registered broker, will sell those Filer's Shares by private sale or on any stock exchange on which the Filer's Shares are then listed after the payment date for the Discovery Shares tendered by the Non-Canadian Discovery Shareholders under the Offer and, as soon as possible after completion of the sale, the Depositary will distribute the aggregate net proceeds of the sale, after expenses and applicable withholding taxes, pro rata among the Non-Canadian Discovery Shareholders that tendered their Discovery Shares under the Offer; such procedure to be modified as necessary to comply with the laws of the Other Foreign Jurisdictions;
20. any sale of the Filer's Shares described in paragraph (19) above will be completed as soon as possible after the date on which the Filer takes up the Discovery Shares tendered by the Non-Canadian Discovery Shareholders

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under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable Non-Canadian Discovery Shareholders and minimize any adverse impact of the sale on the market for the Filer's Shares;

21. the takeover bid circular to be prepared by the Filer and sent to all shareholders of Discovery will disclose the Vendor Placement to be followed for Non-Canadian Discovery Shareholders who tender their Discovery Shares to the Offer;
22. there is currently a liquid market (as such term is defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*) for the Filer's Shares and the Filer has been advised by the registered broker who will sell the Filer's Shares in connection with the Vendor Placement that there would continue to be such "liquid market" for the Filer's Shares following the completion of the Offer and the sale of the Filer's Shares on behalf of Non-Canadian Discovery Shareholders as contemplated in the Offer; and
23. except to the extent that Requested Relief from the Identical Consideration Requirement is granted, the Offer will comply with the requirements under applicable securities legislation concerning take-over bids.

Decision

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

The decision of the Decision Makers under the Legislation is that, in connection with the Offer, the Exemption Sought is granted so that the Filer is exempt from the Identical Consideration Requirement, provided that Non-Canadian Discovery Shareholders, who would otherwise receive Filer's Shares pursuant to the Offer, instead receive cash proceeds from the sale of the Filer's Shares in accordance with the procedures set out in paragraph (19) above.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission