

### **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 44-101 *Short Form Prospectus Distributions*, s. 8.1 - Disclosure - An issuer wants relief from the requirement to include in the prospectus a statement of purchasers' statutory rights in the prescribed form. 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 provide an amended statement of rights in the prospectus or prospectus supplement so that the prospectus properly describes applicable rights and purchasers are not misled.

National Instrument 44-102 *Shelf Distributions*, s. 11.1 – exemption from shelf distribution form requirements - An issuer wants relief from the requirement to include certain disclosure in the base shelf prospectus and an issuer's and underwriter'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 has obtained exemptive relief from the prospectus delivery requirement and 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*, ss. 11, 84 and 169

National Instrument 44-101 s.8.1; 44-102, s. 11.1

April 7, 2020

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  
Wheaton Precious Metals Corp.  
(the Issuer)

and

Merrill Lynch Canada Inc., BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., TD Securities Inc., National Bank Financial Inc., Eight Capital, Raymond James Ltd. and Canaccord Genuity Corp. (as Canadian Agents), BofA Securities, Inc., BMO Capital Markets Corp., RBC Capital Markets, LLC, Scotia Capital (USA) Inc., MUFG Securities Americas Inc. and Mizuho Securities USA LLC (as US Agents and, together with the Canadian Agents, 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 Makers) has received an 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(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the Delivery Requirement) does not apply to the Agents or other registered investment dealer acting on behalf of the Agents as a selling agent (each, a Selling Agent) in connection with any at-the-market distribution, as defined in National Instrument 44-102 *Shelf Distributions* (NI 44-102) of newly issued common shares (Common Shares) of the Issuer under an equity distribution agreement (the Equity Distribution Agreement) to be entered into among the Filers (the ATM Distribution); and

(b) that the requirements to include in a base shelf prospectus or prospectus supplement or in an amendment thereto:

- (i) a forward-looking issuer certificate in the form specified in section 2.1 or 2.4 of Appendix A to NI 44-102;
- (ii) a forward-looking underwriter certificate in the form specified in section 2.2 or 2.4 of Appendix A to NI 44-102; and
- (iii) a statement respecting purchasers' statutory rights of withdrawal and remedies for rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus*,

do not apply to the Shelf Prospectus (as defined below), the Prospectus Supplement (as defined below) or any amendment thereto.

The Decision Makers have also received a request from the Filers for a decision that the application and this decision be kept confidential and not made public until the earliest of (i) the date on which the Filers enter into the Equity Distribution Agreement, (ii) the date on which the Issuer advises the Decision Makers that there is no longer any need to hold the application and this decision in confidence, 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 (the Principal Regulator);
- (b) the Filers have provided notice that section 4.7 of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, New Brunswick, Nova Scotia and Prince Edward Island (collectively, the Passport Jurisdictions); 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*, MI 11-102, National Instrument 21-101 *Marketplace Operation* and National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

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

*Wheaton Precious Metals Corp.*

1. the Issuer is a corporation continued under the Business Corporations Act (Ontario). The head office of the Issuer is located at 3500 – 1021 West Hastings Street, Vancouver, British Columbia, V6E 0C3 and its registered office is located at Suite 2100, 40 King Street West, Toronto, Ontario, M5H 3C2;
2. the Common Shares are listed on the TSX and are also listed on the New York Stock Exchange (NYSE) under the symbol “WPM”;
3. the Issuer is a reporting issuer in each province of Canada; the Issuer is not in default of securities legislation in any such jurisdiction of Canada;
4. the Issuer is subject to reporting obligations under the United States Securities Exchange Act of 1934, as amended (the 1934 Act), and files its continuous disclosure documents with the Securities and Exchange Commission (the SEC) in the United States as a foreign private issuer, pursuant to the U.S.-Canada multi-jurisdictional disclosure system;
5. the Issuer filed a short form base shelf prospectus (the Shelf Prospectus) in British Columbia, Ontario and the Passport Jurisdictions and a registration statement on Form F-10/A with the SEC on May 3, 2019 under the multi-jurisdictional disclosure system providing for the distribution, from time to time, of Common Shares, preferred shares, debt securities, subscription receipts, units and warrants having an aggregate offering price of up to US\$2,000,000,000 (or the equivalent thereof in other currencies);
6. the Issuer plans to enter into an Equity Distribution Agreement with the Agents and file a prospectus supplement in each of the provinces of Canada (the Prospectus Supplement) and with the SEC (the U.S. Prospectus Supplement) to qualify the distribution of Common Shares in connection with the ATM Distribution;

*The Agents*

7. each of the Canadian Agents is registered as an investment dealer under the securities legislation in each province of Canada. None of the Canadian Agents are in default of securities legislation in any jurisdiction of Canada;
8. each of the U.S. Agents is a broker-dealer registered with the SEC;

*Proposed ATM Distribution*

9. subject to mutual agreement on terms and conditions, the Issuer proposes to enter into the Equity Distribution Agreement with the Agents providing for the sale from time to time by the Issuer through the Agents, as agents, of Common Shares under ATM Distributions pursuant to the shelf procedures prescribed by Part 9 of NI 44-102 and otherwise in the United States;

10. before making any ATM Distributions, the Issuer will have filed the Prospectus Supplement in each province of Canada and the U.S. Prospectus Supplement with the SEC to qualify the sale of Common Shares under the Equity Distribution Agreement; the Prospectus Supplement and the U.S. Prospectus Supplement will supplement the disclosure in the Shelf Prospectus and will describe the terms of the ATM Distribution, including the terms of the Equity Distribution Agreement;
11. if the Equity Distribution Agreement is entered into, the Issuer will immediately do both of the following:
  - (a) issue and file a news release pursuant to section 3.2 of NI 44-102 announcing the Equity Distribution Agreement and indicating that the Prospectus Supplement has been filed on SEDAR and specifying where and how purchasers under an ATM Distribution may obtain copies; and
  - (b) file the Equity Distribution Agreement on SEDAR;
12. the Issuer will not, during the period that the final receipt for the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Common Shares that exceeds 10% of the aggregate market value of Common Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made;
13. the Issuer will conduct ATM Distributions only through the Agents, as agents, directly or through one or more Selling Agents and only through methods constituting “at-the-market distributions” within the meaning of NI 44-102 through the facilities of (i) the TSX, (ii) the NYSE, or (iii) any other “marketplace” (as defined in National Instrument 21-101 – *Marketplace Operation*) in Canada or the United States (each, a Marketplace);
14. the Canadian Agents will act as agents of the Issuer in connection with an ATM Distribution directly or through one or more Selling Agents on the TSX or any other Marketplace in Canada (a Canadian Marketplace), and will be paid an agency fee or commission by the Issuer in connection with such sales; if sales are effected through one or more Selling Agents, the Selling Agents will be paid a seller’s commission for effecting the trades on behalf of the Canadian Agents. The Canadian Agents will sign an underwriter’s certificate in the Prospectus Supplement in the form set out in paragraph 31 below;
15. a purchaser’s rights and remedies under applicable securities legislation against the Canadian Agents, as agents of an ATM Distribution through a Canadian Marketplace, will not be affected by a decision to effect the sale directly or through one or more Selling Agents;
16. the aggregate number of Common Shares sold on the TSX or any other Canadian Marketplace under an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Common Shares on the TSX or any other Canadian Marketplace on that day;

17. the Equity Distribution Agreement will require that, at the time of each sale of Common Shares under an ATM Distribution, the Issuer represents to the Agents that the Shelf Prospectus, as supplemented by the Prospectus Supplement (or the U.S. Prospectus Supplement, as applicable), including the documents incorporated by reference in the Shelf Prospectus (which will include any news release that has been designated and filed as a Designated News Release as defined and outlined below) and any applicable amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (or the U.S. Prospectus Supplement, as applicable) (collectively, the Prospectus), contains full, true and plain disclosure of all material facts relating to the Issuer and the Common Shares being distributed; the Issuer will therefore be unable to proceed with 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 Issuer or the Common Shares;
18. after the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a "material fact" (as defined in the Legislation), the Issuer will identify such news release as a "designated news release" for the purposes of the Prospectus; this designation will be made on the face page of the version of such news release filed on SEDAR (any such news release, a Designated News Release); the Prospectus Supplement and the U.S. Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Prospectus. A Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a "material change" (as defined in the Legislation);
19. if, after the Issuer delivers a notice to the Agents directing the Agents to sell Common Shares on the Issuer's behalf under the Equity Distribution Agreement (a Sell Notice), the sale of the Common Shares specified in the Sell Notice, taking into consideration prior sales under all previous ATM Distributions, would constitute a material fact or material change, the Issuer will suspend sales under the Equity Distribution Agreement until either: (i) it has filed a material change report or a Designated News Release, as applicable, or amended the Prospectus, or (ii) circumstances have changed such that the sale would no longer constitute a material fact or 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 material change, the Issuer will take into account a number of factors, including, without limitation (i) the parameters of the Sell Notice, including the number of Common Shares proposed 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 outstanding Common Shares represented by the number of Common Shares proposed to be sold under the Sell Notice, (iii) sales under earlier Sell Notices, (iv) trading volume and volatility of Common Shares, (v) recent developments in the business, affairs and capital structure of the Issuer, and (vi) prevailing market conditions generally;
21. it is in the interest of the Filers to minimize the market impact of sales under an ATM Distribution; the Agents will monitor closely the market's reaction to trades made on

Marketplaces under an 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 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, the Agents will recommend against effecting the trade at that time;

#### *Disclosure of Common Shares Sold*

22. the Issuer will disclose the number and average price of Common Shares sold under ATM Distributions, as well as total gross proceeds, commission and net proceeds, in its annual and interim financial statements or management discussion and analysis filed on SEDAR;

#### *Prospectus Delivery Requirement*

23. under the 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. the delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as neither the Agents nor the Selling Agents, as applicable, effecting the trade will know the purchaser's identity;
25. although purchasers under an ATM Distribution would not physically receive a printed prospectus, the Shelf Prospectus and the Prospectus Supplement (together with all documents incorporated by reference) will be filed and readily available to all purchasers electronically via SEDAR; moreover, as stated in paragraph 11 above the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and the Prospectus Supplement can be obtained;
26. the liability of an issuer or an underwriter (and others) for misrepresentation in a prospectus under the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Delivery Requirement because a purchaser of the securities offered by a prospectus during the period of distribution has a right of action for damages or rescission without regard as to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus;

#### *Withdrawal Right and Right of Action for Non-Delivery*

27. under the Legislation, an agreement of purchase and sale in respect of a distribution to which the prospectus requirement applies is not binding upon the purchaser if the dealer from whom the purchaser purchases the security 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 evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale (the Withdrawal Right);

28. under the Legislation, a purchaser of a security to whom a prospectus was required to be sent or delivered in compliance with the Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the 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;

*Prospectus Form Requirements*

30. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following issuer certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such issuer certificate to supersede and replace the issuer certificate included in the Shelf Prospectus solely with regard to the ATM Distribution:

*The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, 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. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following underwriter certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such underwriter certificate to supersede and replace the underwriter certificate included in the Shelf Prospectus solely with regard to the ATM Distribution:

*To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, 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.;*

32. a different statement of purchasers' rights than that required by the Legislation is necessary so that the Prospectus Supplement will accurately reflect the relief granted from the Delivery Requirements. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

*Securities legislation in certain of the provinces of Canada provides 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 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 Common Shares under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Common Shares and will not have remedies for rescission or, in some jurisdictions, revision of the price, or damages for non-delivery, because the prospectus, prospectus supplements relating to Common Shares purchased by a purchaser and any amendment relating to Common Shares purchased by such purchaser will not be delivered as permitted under a decision dated [●], 2020 and granted under National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions.*

*In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, the accompanying prospectus supplement and any amendment contains a misrepresentation, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. Any remedies under securities legislation that a purchaser of Common Shares under an at-the-market distribution by the Issuer may have against the Issuer or the Agents for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation will remain unaffected by the non-delivery and the decision referred to above.*

*The purchaser should refer to the decision referred to above and any applicable provisions of the securities legislation of the purchaser's province for the particulars of these rights or consult with a legal adviser.; and*

33. the Prospectus Supplement will disclose that, solely with regards to the ATM Distribution, the statement prescribed in paragraph 32 above supersedes and replaces the statement of purchasers' rights included in the Shelf Prospectus.

#### **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 the Exemption Sought is granted, provided that:

- (a) during the 60-day period ending not earlier than 10 days prior to the commencement of an ATM Distribution, the Common Shares have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day;

- (b) the Issuer does not, during the period that the final receipt for the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Common Shares that exceeds 10% of the aggregate market value of Common Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made;
- (c) the Issuer complies with the disclosure requirements set out in paragraphs 22, 30, 31, 32, and 33 above; and
- (d) the Filers respectively comply with the representations made in paragraphs 3, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 above.

This decision will terminate 25 months from the date of the receipt for the Shelf Prospectus.

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

John Hinze  
Director, Corporate Finance  
British Columbia Securities Commission