

JUNE 25, 2019

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
FRANCO-NEVADA CORPORATION
(the **Issuer**), BMO NESBITT BURNS INC. AND
CIBC WORLD MARKETS INC.
(collectively, the **Canadian Agents**)

AND

BMO CAPITAL MARKETS CORP. AND
CIBC WORLD MARKETS CORP.
(collectively, the **U.S. Agents** and
together with the Canadian Agents, the **Agents**, and
together with the Issuer, the **Filers**)

DECISION

Background

The Ontario Securities Commission (the **Decision Maker**), being the principal regulator in the Jurisdiction, has received an application (the **Application**) from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for the following relief (the **Exemptions 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 the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Agents or any other TSX participating organization or other marketplace participant acting as selling agent for the Agents (each, a **Selling Agent**) in connection with any at-the-market distribution (each, an **ATM Distribution** and, collectively, the **ATM Offering**), as defined in National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) of newly issued common shares (**Common Shares**) of the Issuer in Canada and the United States pursuant to one or more substantially identical equity distribution agreements (the **Equity Distribution Agreement**) to be entered into between the Issuer and the Agents; and

- (b) that the requirements to include in a base shelf prospectus or prospectus supplement or an amendment thereto:
- (i) a forward-looking issuer certificate of the Issuer in the form specified in section 2.1 or section 2.4, as applicable, of Appendix A to NI 44-102;
 - (ii) a forward-looking underwriter certificate in the form specified by section 2.2 or section 2.4, as applicable, of Appendix A to NI 44-102; and
 - (iii) a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 – *Short Form Prospectus*;

(collectively, the **Prospectus Form Requirements**) do not apply to the Shelf Prospectus (as defined below), the Prospectus Supplement (as defined below) or an amendment thereto provided that the Issuer include in the Prospectus Supplement or an amendment thereto the form of issuer certificate and form of underwriter certificate and include in the Prospectus Supplement or an amendment thereto the revised description of a purchaser's statutory rights of withdrawal and remedies for rescission or damages described below, in each case (other than with respect to the underwriter certificate) superseding and replacing the corresponding language in the Shelf Prospectus solely with regards to the ATM Offering.

The Decision Maker has also received a request from the Filers for a decision that the Application and this decision (together, the **Confidential Material**) be kept confidential and not be made public until the earliest of (i) the date on which the Filers publicly announce the ATM Offering, (ii) the date on which the Filers first enter into the Equity Distribution Agreement, (iii) the date any of the Filers advise the Decision Maker that there is no longer any need for the Confidential Material to remain confidential, and (iv) 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 passport application):

- (a) the Ontario Securities Commission is the principal regulator for the Application as the Issuer's head office is located in Ontario; and
- (b) the Filers have provided notice that subsection 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon Territory (collectively and together with the Jurisdiction, the **Reporting Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, in MI 11-102 or in NI 44-102 have the same meaning if used in this decision, unless otherwise defined herein. Unless otherwise noted, all dollar figures in this decision refer to Canadian dollars.

Representations

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

The Issuer

1. The Issuer is a corporation incorporated under the *Canada Business Corporations Act*. The head office of the Issuer is located in Toronto, Ontario.
2. The Issuer is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.
3. The Common Shares are listed on the Toronto Stock Exchange (the **TSX**) and the New York Stock Exchange (the **NYSE**) under the symbol “FNV”.
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.
5. The Issuer filed a short form base shelf prospectus (the **Shelf Prospectus**) in the Reporting Jurisdictions and a registration statement on Form F-10 with the SEC on June 15, 2018 under the multi-jurisdictional disclosure system providing for the distribution, from time to time, of Common Shares, preferred shares, debt securities, warrants and subscription receipts having an aggregate offering price of up to US\$2,000,000,000 (or the equivalent thereof in other currencies).
6. The Ontario Securities Commission issued a receipt for the Shelf Prospectus on June 18, 2018, which receipt was deemed pursuant to MI 11-102 to have been issued by the securities regulatory authority in each of the other Reporting Jurisdictions.
7. The Issuer plans to enter into an Equity Distribution Agreement with the Agents and file a prospectus supplement in each of the provinces and territories of Canada and with the SEC to qualify the distribution of Common Shares in connection with the ATM Offering (the **Prospectus Supplement**).

The Agents

8. BMO Nesbitt Burns Inc. is a corporation incorporated under the laws of Canada, with its head office located in Toronto, Ontario.
9. CIBC World Markets Inc. is a corporation incorporated under the laws of the Province of Ontario, with its head office located in Toronto, Ontario.
10. Each of the Canadian Agents is registered as an investment dealer under the securities legislation of each province and territory of Canada, is a member of the Investment Industry Regulatory Organization of Canada and is a participating organization of the TSX.
11. BMO Capital Markets Corp. is a corporation formed under the laws of the State of Delaware, with its head office located in New York, New York.
12. CIBC World Markets Corp. is a corporation formed under the laws of the State of Delaware, with its head office located in New York, New York.

13. Each of the U.S. Agents is a broker-dealer registered with the SEC under the 1934 Act.
14. None of the Agents are in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada.

Proposed ATM Offering

15. Subject to mutual agreement on terms and conditions, the Filers propose to enter into the Equity Distribution Agreement for the purpose of the ATM Offering involving the periodic sale of Common Shares by the Issuer through the Agents, as agents, under the shelf prospectus procedures prescribed by Part 9 of NI 44-102.
16. 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 Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and specifying where and how purchasers of Common Shares under the ATM Offering may obtain copies; and
 - (b) file the Equity Distribution Agreement on SEDAR.
17. Prior to making an ATM Distribution, the Issuer will have filed, in each province and territory of Canada and with the SEC, the Prospectus Supplement describing the terms of the ATM Offering, including the terms of the Equity Distribution Agreement and a description of any exemptions granted by the Canadian securities regulatory authorities in any of the Reporting Jurisdictions (including, for greater certainty, the Exemptions Sought), and otherwise supplementing the disclosure in the Shelf Prospectus.
18. Under the proposed Equity Distribution Agreement and in accordance with subsection 9.1(1) of NI 44-102, the Issuer will not, during the period that 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.
19. The Issuer will conduct ATM Distributions only through one or more of the Agents (as agents) directly or through a Selling Agent, and only through methods constituting “at-the-market distributions” within the meaning of NI 44-102, including sales made on (i) the TSX, (ii) the NYSE, or (iii) another “marketplace” (as defined in National Instrument 21-101 *Marketplace Operation*) upon which the Common Shares are listed, quoted or otherwise traded (each, a **Marketplace**).
20. The Canadian Agents will act as the sole 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 a Selling Agent, the Selling Agent will be paid a seller’s commission for effecting the trades

on behalf of the Canadian Agents. The Canadian Agents will each sign an agent's certificate, in the form set out in paragraph 37 below, in the Prospectus Supplement.

21. 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 a Selling Agent.
22. The aggregate number of Common Shares sold on one or more Canadian Marketplaces pursuant to an 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.
23. 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 Shelf Prospectus, as supplemented by the Prospectus Supplement, including the documents incorporated by reference in the Shelf Prospectus (which shall include any news release that has been designated and filed as a Designated News Release (as defined below)) and any subsequent amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, 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 pursuant to 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.
24. During the period 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 such term is 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 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 such term is defined in the Legislation).
25. If, after the Issuer delivers a sell notice to the Agents directing the Agents to sell Common Shares on the Issuer's behalf pursuant to the Equity Distribution Agreement (a **Sell Notice**), the sale of the Common Shares specified in the Sell Notice, taking into consideration prior sales under the ATM Offering, would constitute a material fact or material change, the Issuer will suspend sales under the Equity Distribution Agreement until either: (a) it has filed a Designated News Release or material change report, as applicable, or amended the Prospectus; or (b) circumstances have changed such that a sale would no longer constitute a material fact or material change.
26. 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:
 - (a) 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;

- (b) the percentage of the outstanding Common Shares that the number of Common Shares proposed to be sold pursuant to the Sell Notice represents;
 - (c) sales under earlier Sell Notices;
 - (d) trading volume and volatility of the Common Shares;
 - (e) recent developments in the business, operations or capital of the Issuer; and
 - (f) prevailing market conditions generally.
27. It is in the interest of the Issuer and the Agents to minimize the market impact of sales under an ATM Distribution. Therefore, the Agents will closely monitor the market's reaction to trades made on any Marketplace pursuant to 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 trades pursuant to the applicable Sell Notice at that time.

Disclosure of Common Shares Sold in ATM Offering

28. The Issuer will disclose the number and average price of Common Shares sold pursuant to ATM Distributions, as well as gross proceeds, commissions and net proceeds, in its annual and interim financial statements and management's discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

29. Pursuant to 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.
30. Delivery of a prospectus is not practicable in the circumstances of an ATM Distribution, as neither the Agents nor a Selling Agent effecting the trade will know the identity of the purchasers.
31. The Prospectus will be filed and readily available electronically via SEDAR to all purchasers under ATM Distributions. As stated in paragraph 16 above, the Issuer will issue a news release that specifies where and how copies of the Prospectus may be obtained.
32. 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, as 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 or not the purchaser relied on the misrepresentation or in fact received a copy of the prospectus.

Withdrawal Right and Right of Action for Non-Delivery

33. Pursuant to 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**).
34. 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 the dealer who did not comply with the Prospectus Delivery Requirement (the **Right of Action for Non-Delivery**).
35. Neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of the ATM Offering because of the impracticability of delivering the Prospectus to a purchaser of Common Shares thereunder.

Modified Certificates and Statements

36. To reflect the fact that the ATM Offering 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 Offering:

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 under 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 and territories of Canada.

37. 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):

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 under 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 and territories of Canada.

38. 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

Prospectus Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies 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 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 of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus supplement, the accompanying prospectus and any amendment thereto relating to Common Shares purchased by such purchaser because the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the Common Shares purchased by such purchaser will not be delivered as permitted under a decision dated ●, 2019 and granted pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

Securities legislation in certain of the provinces and territories of Canada further provides purchasers with remedies 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 contains a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. 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 supplement, the accompanying prospectus and any amendment thereto 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.

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

39. The Prospectus Supplement will disclose that, solely with regards to the ATM Offering, the statement prescribed in paragraph 38 above supersedes and replaces the statement of purchasers' rights included in the Shelf Prospectus.

Decision

The Decision Maker is satisfied that this decision satisfies the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemptions Sought are granted, provided:

- (a) at least one of the following is true:
 - (i) 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:
 - A. an average of at least 100 times per trading day, and
 - B. with an average trading value of at least \$1,000,000 per trading day; or
 - (ii) at the commencement of an ATM Distribution, the Common Shares are subject to Regulation M under the 1934 Act and are an “actively-traded security” as defined thereunder;
- (b) the Issuer does not, during the period that 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 28 and 36 through 39 above; and
- (d) the Issuer and Agents respectively comply with the representations made in paragraphs 16, 19, 20, and 22 through 27 above.

This decision will terminate on July 18, 2020 (being the date that is 25 months from the date of the receipt for the Shelf Prospectus).

The further decision of the Decision Maker is that the Confidentiality Relief in respect of the Exemptions Sought is granted.

As to the Exemptions Sought from the Prospectus Delivery Requirement and the Confidentiality Relief:

“Cecilia Williams”

Commissioner
Ontario Securities Commission

“Craig Hayman”

Commissioner
Ontario Securities Commission

As to the Exemptions Sought from the Prospectus Delivery Requirement, the Prospectus Form Requirements and the Confidentiality Relief:

“Jo-Anne Matear”

Jo-Anne Matear
Manager, Corporate Finance
Ontario Securities Commission